UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	Chapter 11
FIRSTENERGY SOLUTIONS CORP., *et al.*,	Case No.: 18-50757 (Jointly Administered)
Debtors.	Judge Alan M. Koschik

CLASS CLAIMANT SCHWEBEL BAKING COMPANY'S MOTION TO: (A) ENTER FINAL ORDER APPROVING CLASS ACTION SETTLEMENT UNDER BANKR. RULE 7023 AND FED. R. CIV. P. 23; AND (B) APPROVE CLASS COUNSEL'S APPLICATION FOR AN AWARD OF PROFESSIONAL FEES AND EXPENSES

Class Claimant Schwebel Baking Company ("Schwebel" or "Class Claimant") submits this motion pursuant to Bankr. Rule 7023 (incorporating Fed. R. Civ. P. 23(e) & (h)) ("Rule 23") to: (A) enter the Parties' proposed Final Order Approving Class Action Settlement ("Final Order")[1] (*see* §I ¶¶20-33 below); and (B) approve Class Counsel's application for an award of: (i) attorneys' fees equal to one-third of the Settlement Fund and reimbursement of expenses in the amount of $27,538.88; (ii) professional fees to the Class's financial advisors and expert witness; and (iii) $15,000 to Schwebel for its service to the Class (collectively, "Professional Fees and Expenses") (*see* §II ¶¶34-56 below).[2]

PRELIMINARY STATEMENT

The Court preliminarily approved the Settlement on December 24, 2019 ("12/24/19 Order"; Dkt. No. 3546), and the Claims Administrator (the Heffler Claims Group ("Heffler"))

[1] Unless otherwise stated, all capitalized terms herein have the same meanings as those set forth in the Stipulation of Settlement (the "Stipulation") (filed at Dkt. No. 3401).

[2] Copies of (a) the Parties' agreed Final Order and (b) Class Counsel's [Proposed] Order Approving Professional Fees and Expenses Application, respectively, are attached as **Exs. 7-8** to the accompanying Joint Declaration of William Fredericks and David Neumann, dated April 6, 2020 (the "Joint Declaration"). Other documents and relevant declarations are also attached to the Joint Declaration as exhibits, and cites herein to those materials include a bolded "**Jt. Decl. Ex. [#]**" reference for the Court's convenience.

has mailed Individual Notices to the over 36,000 Class Members. *See* Declaration of Michael Hamer (the "Hamer Declaration") [**Jt. Decl. Ex. 1**] ¶¶3, 6.

The claims at issue arise out of the imposition by one of the Debtors, FirstEnergy Solutions Corp. ("FES"), of "Polar Vortex Surcharges" in 2014 on its large and mid-size industrial customers (the "Class Members"). Schwebel alleges that the imposition of such surcharges breached the terms of the common form contracts that FES had with each Class Member.[3] Under the proposed Settlement, in exchange for the release of the Class Members' claims, the Class will receive an allowed claim of $12,000,000 (the "Allowed Claim"), with the distributions thereon to be paid in the form of New Common Stock into a Settlement Fund consistent with the terms of Debtors' Eighth Amended Joint Plan of Reorganization (the "Plan"). After the settlement consideration is deposited into the Settlement Fund and converted into cash, the resulting cash (after deductions for Professional Fees and Expenses and Notice and Administration Costs approved by the Court) will be distributed to the Class Members pursuant to a Plan of Allocation.

The proposed Settlement represents an excellent result for the Class. The amount of the resulting Allowed Claim – $12 million – represents ***54.5%*** of the ***maximum*** amount ($22.054 million) of damages that the Class could have established had it prevailed on all issues in this matter. Jt. Decl. ¶¶3, 16. Given the time and expense required to complete fact and expert discovery, conduct a trial, and resolve appeals, the Settlement is well within the "range of reasonableness" meriting final approval. Notably, other key constituencies in these proceedings,

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[3] The Court has already certified the Class for settlement purposes and appointed Schwebel as Class Representative and the undersigned law firms as Class Counsel. *See* 12/24/19 Order at 3 ¶¶4-6. For the same reasons as set forth in Schwebel's Preliminary Approval Motion (Dkt. No. 3401) at 15-22, these prior rulings should be reaffirmed. *See* **Jt. Decl. Ex. 7** ¶10.

including the Ad Hoc Noteholder Group and the Official Committee of Unsecured Creditors (the "Committee"), also consented to the Settlement's material terms. *Id.* ¶¶23, 29(n).

Class Counsel, who have litigated the underlying claims for three years on a fully contingent basis, also respectfully submit that they have earned an award of attorneys' fees equal to 33 1/3% of the Settlement. As set forth in §II below, a one-third fee award is well within the range of percentage-based awards approved in this Circuit and particularly deserved given the significant litigation risks Class Counsel overcame to obtain a meaningful recovery on behalf of the Class. Moreover, based on recent trading prices for the New Common Stock that will ultimately be used to fund the Settlement (and any fee and expense awards), even if awarded in full, the requested 1/3 fee will fall far short of the "lodestar value" of the roughly 3,000 hours of time that Class Counsel invested in this high-risk case, and the resulting "negative multiplier" is thus plainly reasonable under the Sixth Circuit's lodestar "cross-check" for assessing percentage-based fee awards. Class Counsel also respectfully submit that the Court should also approve (a) Class Counsel's request for reimbursement of its out-of-pocket expenses; (b) the as yet unpaid $10,620 fee of the Class's testifying industry expert, Matthew Brakey; (c) the requested contingent fee of the Class's financial advisor and bankruptcy consultant, Dundon Advisors, LLC ("Dundon"); and (d) the requested $15,000 award to Schwebel for its service to the Class.

In sum, it is respectfully submitted that the Court should: (a) enter the Parties' proposed Final Order; and (b) approve the requested awards of Professional Fees and Expenses.

JURISDICTION

1. This Court has jurisdiction over this motion under 28 U.S.C. §1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2). Venue is proper under 28 U.S.C. §§1408-09. The statutory predicates for the relief requested are 11 U.S.C. §105 and

Bankr. Rule 7023. Insofar as Bankr. Rule 9019 approval is also required, the Court previously granted such approval by Order dated December 17, 2019 (Dkt. No. 3516).

NATURE OF THE UNDERLYING CLAIMS

2. In January 2014, FES's service region experienced unusually cold "Polar Vortex" weather conditions. As a result, PJM Interconnection LLC ("PJM"), the regional transmission organization ("RTO") that coordinates the supply of electricity on a wholesale basis within FES's service region, purchased additional electricity generation capacity. PJM billed the costs of those purchases to "retail" energy companies (such as FES), which supply electricity to actual end-users. Compl. ¶¶3, 18-19.[4] FES, in turn, "passed through" much of its share of the PJM charges to FES's large or mid-sized industrial and commercial customers (the Class Members).

3. Schwebel alleges that by "passing through" these PJM charges to the Class Members, FES breached the terms of the substantially similar form contracts that FES had with each Class Member. In particular, Schwebel alleges that these contracts allowed FES to "pass through" surcharges imposed by an RTO (such as PJM) ***only*** if they were due to an RTO imposing either "***new***" charges or a new "method or procedure for determining charges." *Id.* ¶¶2, 17 & Ex. A. Schwebel further alleges that the PJM surcharges that FES "passed through" to the Class Members were neither "new" nor the result of a changed "method or procedure for determining charges" – but instead simply reflected charges for ***customary*** RTO services that simply happened to be more ***expensive*** than had been expected due to unusually cold weather.

4. Schwebel paid roughly $11,000 in Polar Vortex Surcharges to FES, *see* Schwebel individual proof of claim (claim no. 935), but later protested to FES that the charges were improper. After FES declined to refund the disputed amounts, Schwebel sued. Compl. ¶24.

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[4] Citations to "Compl. ¶__" are to paragraphs of Schwebel's Complaint in the District Court, which was later filed as an exhibit to the Class POC (claim no. 934).

PROCEDURAL HISTORY OF, AND SUMMARY OF WORK PERFORMED DURING, THE THREE-YEAR COURSE OF THIS LITIGATION

5. Following completion of its pre-filing investigation, Class Counsel drafted and filed a class-action Complaint on behalf of Schwebel and a putative class in May 2017, seeking to recover an amount equal to all Polar Vortex Surcharges paid to FES. Jt. Decl. ¶9.

6. On July 3, 2017, FES moved to dismiss the Complaint and, in the alternative, to strike Schwebel's class allegations. Class Counsel fully briefed and presented oral argument in response to both motions. *Id.* On March 21, 2018, the District Court (Pearson, J.) denied both motions. *Schwebel Baking Co. v. First Energy Sols. Corp.*, 2018 WL 1419477 (N.D. Ohio Mar. 21, 2018) (Dist. Ct. Dkt. No. 27).

7. On March 31, 2018, the above-captioned Debtors filed for Chapter 11 relief in this Court. In response, Class Counsel reached out to the U.S. Trustee and assisted Schwebel, as Class Representative, to apply for a position on the Committee in these proceedings. On April 11, 2018, the U.S. Trustee selected Schwebel to serve on the Committee. Jt. Decl. ¶10. Schwebel has served on the Committee throughout these cases and the recent confirmation of the Plan.

8. After researching the conflicting approaches of various courts to allowing "class proofs of claim," Class Counsel prepared and filed Schwebel's Motion for an Order Applying Bankr. Rule 7023 to the Class Claims. Dkt. No. 1179; Jt. Decl. ¶11.

9. On the strength of those papers, Class Counsel negotiated a Stipulation (entered September 25, 2018) among Schwebel, the Committee and the Debtors, pursuant to which Class Counsel succeeded in obtaining a Court Order that "direct[ed] application of Bankruptcy Rule 7023" with respect to Schwebel's request for class treatment and allowed Schwebel to file its "protective class proof of claim." That Order permitted the filing of a Class Proof of Claim and

otherwise reserved decision on all other matters relating to class certification and or the Class Proof of Claim ("POC") until after the Parties could conduct discovery. Dkt. No. 1451; Jt. Decl. ¶11.

10. In late 2018 and early 2019, Class Counsel conducted significant document discovery on behalf of the putative Class and obtained over 36,000 pages of documents (plus responses to numerous interrogatories and requests to admit) from the Debtors. Discovery was adversarial and hard-fought; indeed, Class Counsel, on behalf of Schwebel, filed a motion to compel against the Debtors on February 5, 2019. Dkt. No. 2074; Jt. Decl. ¶12.

11. Shortly before Schwebel filed its motion to compel, the Parties began serious settlement discussions. Jt. Decl. ¶13. Both Class Counsel and the Class's financial advisor, Dundon, were involved in these discussions, which led to the negotiation of a Settlement Term Sheet later that month. Schwebel, through the work of its counsel and financial advisor, also secured the consent of the Committee, the Ad Hoc Noteholder Group, and Mansfield Certificateholders Group to the terms of the proposed Settlement, subject to the completion of customary "long form" settlement papers and the Rule 23 approval process. *Id.*

12. On June 25, 2019, pursuant to Stipulation and Agreed Order (and in accord with the Settlement Term Sheet that the Parties had negotiated) the Court provisionally allowed the Class POC in the amount of $12,000,000 in Class A6, so as to permit Schwebel, pursuant to Rule 3018(a), to vote on the Plan as the holder of that Claim. Dkt. No. 2820; Jt. Decl. ¶14.

13. On November 20, 2019, following protracted efforts to resolve issues arising from Schwebel's decision (on behalf of the putative Class) to exercise the "equity election" under the Plan, the Parties finalized and executed the long-form Stipulation. *Id.* ¶15.

SUMMARY OF THE SETTLEMENT

14. Under the Settlement, the Class will receive a non-priority unsecured Allowed Claim for the Class POC in the amount of $12,000,000 – or roughly 54.5% of the ***maximum*** Allowed Claim that Class Counsel believe could have been obtained had Schwebel prevailed on all matters relating to the Class POC. *Id.* ¶¶3, 16. After the Settlement Effective Date occurs, the consideration payable on the Allowed Claim will be transferred to the Settlement Fund. Because Schwebel exercised the "equity election" under the Plan in August 2019, the Settlement Fund will initially be funded with shares of New Common Stock (as defined in the Plan). The New Common Stock currently trades over-the-counter ("OTC") under the symbol "ENGH" (short for "Energy Harbor") based on the initial distribution ratio to FES Single Box Creditors (such as the Class) of 13.3005998 shares per $1,000 of claim, the Class's initial allocation should be 159,607 shares, with the potential for further modest distributions after the resolution of remaining disputed claims (for which the Debtors took a 16.4% holdback). *Id.* ¶17.

15. When trading of the New Common Stock (which is not registered) commenced, it traded between $24.50 and $27.50 per share, giving the Settlement a gross value (assuming no further distribution of shares) of roughly $3.9 to $4.4 million. *Id.* Unfortunately, in the second half of March 2020, the stock traded (again on very low volume) down to roughly $15.00 to $20.00 per share as global markets fell sharply due to COVID-19 concerns. These prices would yield substantially lower valuations of the Settlement of $2.4 to $3.2 million. *Id.* Although no one could have foreseen such events in 2019 when the Settlement was negotiated and the Class (like many of FES's largest and most sophisticated creditors) opted to make the "equity election" under the Debtors' Plan, Class Counsel respectfully submit that the Settlement ***still*** represents a highly desirable outcome for the Class, especially given: (a) the general litigation risks inherent in pursuing the underlying breach of contract claims; and (b) the ***additional*** bankruptcy-related

risks that also then had to be overcome after FES filed under Chapter 11. *Id.* ¶18; *see also* §II below.[5]

16. Importantly, the Settlement gives Class Counsel, upon the advice of the Class's financial advisor, flexibility as to when to ultimately sell (and convert to cash) the New Common Stock after it is received, and to thus avoid being forced into selling the shares at an unreasonable discount to their fair value. In all events, after the shares are sold and converted to cash, the Claims Administrator will distribute checks from the Net Settlement Fund to Class Members in accordance with the Plan of Allocation. Stipulation §§3.1, 6.1, 7.1-2, 12; Jt. Decl. ¶18.[6]

17. The Settlement's other main terms (including exchanges of customary releases) are summarized in the Declaration of William C. Fredericks in Support of Preliminary Approval, dated November 20, 2019 (Dkt. No. 3401-2) at 5-8.

IMPLEMENTATION OF THE COURT-APPROVED NOTICE PLAN

18. As set forth in the Hamer Declaration [**Jt. Decl. Ex. 1**] ¶¶3-7, 11, the Claims Administrator (Heffler) has duly disseminated the Court-approved forms of Notice to the Class in conformity with the 12/24/19 Order. In particular:

- Based on the data contained in the Records File, the Claims Administrator has mailed each of the roughly 36,000 Class Members their customized Individual Notice letter. Each Individual Notice (a) briefly described the Action and proposed Settlement; (b) stated the amount of Polar Vortex Surcharges paid by that Class Member (their "Recognized Claim Amount"); and (c) referred it to the more detailed Website Notice available at www.polarvortexsettlement.com. **Jt. Decl. Ex. 1 at** ¶¶3, 7;

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[5] As the Individual Notices were being printed in mid-March, Class Counsel added new disclosure text to the Website Notice to advise Class Members of: (a) the actual number of shares recently set aside for the Class; (b) recent trading prices for the shares; and (c) a financial website where they could access daily updated prices for the shares using the "ENGH" ticker symbol. Jt. Decl. ¶17, n. 4.

[6] To reduce costs while also ensuring that Settlement proceeds are fairly distributed, Class Members will ***not*** need to submit individual claims. Instead, the Claims Administrator has pre-calculated each Class Member's "Recognized Claim Amount" based on FES records and will issue checks to qualifying Class Members based on those amounts (subject to each Class Member's right to challenge that calculation). Jt. Decl. ¶26, n.5.

- The Claims Administrator activated the "www.polarvortexsettlement.com" website, and posted the Website Notice and other case-related documents on that website, on March 19, 2020. *Id.* ¶5. The longer, Court-approved Website Notice contains extensive details regarding the action, the Settlement, and Class Members' rights to "opt out" and object and also explains how they can exercise those rights, including their additional rights to appear at the May 21, 2020 Final Hearing.[7] *Id.* at Ex. B.

- On March 19, 2020, the Claims Administrator also activated a "1-800" number that Class Members can call at any time with Settlement-related questions. *Id.* ¶5

The Court, in its 12/24/19 Order ¶¶8-9, has already held that compliance with the above Notice Program satisfies the requirements of due process and Rule 23.

19. Although the relevant deadlines have not yet passed, to date, Heffler has received no opt-out requests, nor any objections, to the Settlement, Plan of Allocation, or the requested Professional Fees and Expenses. **Jt. Decl. Ex. 1** ¶¶9-10. Should any objections or opt-out requests subsequently be received, Class Counsel will address them in reply papers.

ARGUMENT[8]

I. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

20. The Court having previously granted preliminary approval under Rule 23 (as well as approval under Bankr. Rule 9019), and Notice having been duly issued, the time is now ripe for the Court to hold a "final hearing" (noticed for May 21, 2020), after which it must decide whether to finally approve the settlement as fair, reasonable, and adequate under Rule 23(e). *See, e.g., Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983).

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[7] In addition to adding the disclosures noted at n. 5 above, Class Counsel also modified the text of the Individual Notices before they were mailed (adding a prominent "banner" to the homepage of the Settlement Website) to remind Class Members that – especially in the wake of the COVID-19 crisis – they should check the polarvortexsettlement.com website (or contact Class Counsel) for possible updates in case the Court: (a) is forced to reschedule the Final Hearing; or (b) decides to hold it telephonically. *See* **Jt. Decl. Ex. 1** at ¶7, n.2 & Ex. A thereto.

[8] Unless otherwise noted, emphasis is added and internal cites are omitted in quoted material.

A. The Relevant Criteria All Strongly Support Final Approval

21. In determining whether a settlement is fair, adequate and reasonable under Rule 23(e), courts in the Sixth Circuit consider the following eight factors:

> (a) [T]he likelihood of success on the merits weighed against the amount and form of the relief offered in the settlement; (b) the risks, expense, and delay of further litigation; (c) the judgment of experienced counsel who have competently evaluated the strength of their proofs; (d) the amount of discovery completed and the character of the evidence uncovered; (e) whether the settlement is fair to the unnamed class members; (f) objections raised by class members; (g) whether the settlement is the product of arm's length negotiations as opposed to collusive bargaining; and (h) whether the settlement is consistent with the public interest.

In re Cardizem CD Antitrust Litig., 218 F.R.D. 508, 522 (E.D. Mich. 2003) (citing *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992), and *Williams*, 720 F.2d at 922-23); *accord Rankin v. Rots*, 2006 WL 1876538, at *3-4 (E.D. Mich. June 27, 2006).

1. Likelihood of Success on the Merits vs. the Value of the Settlement

22. Schwebel believes the Class's claims have merit. Unsurprisingly, however, the Debtors took a different view throughout, contending (*inter alia*) that: (a) the District Court's earlier ruling that the contract language at issue was ambiguous was only a temporary victory for Claimant, and that Defendants would ultimately prevail at summary judgment or trial on dispositive contract interpretation issues; and (b) they would also have prevailed on various affirmative defenses (notably the "voluntary payment doctrine") against Schwebel and all other Class Members (as they had all actually paid the surcharges at issue). Indeed, in 2017, it was FES that prevailed, at summary judgment, in a similar "polar vortex surcharge" payment dispute involving one of its largest Pennsylvania customers. *See FirstEnergy Sols. Corp. v. Allegheny Ludlum LLC*, 2017 WL 1383927 (W.D. Pa. Apr. 13, 2017). In short, success on the merits at summary judgment (and through trial and likely appeals) here was anything but certain.[9]

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[9] It is axiomatic that in reviewing a proposed settlement, courts "do not decide the merits of the

23. Despite these very real litigation risks (*see also* Jt. Decl. ¶¶9-25), Schwebel and its counsel obtained a Settlement under which the Class will receive an Allowed Claim of $12 million – or roughly 54.5% of the ***maximum*** amount ($22.054 million) of damages (*i.e.*, total polar vortex surcharges paid) that the Class could have established had it prevailed on all issues in this matter. Schwebel respectfully submits that this represents an excellent result and that the "value of the settlement" factor strongly supports for granting final approval.

2. Risks, Expense, and Delay of Continued Litigation

24. "Settlements should represent 'a compromise which has been reached after the risks, expense and delay of further litigation have been assessed.'" *Cardizem*, 218 F.R.D. at 523 (quoting *Williams*, 720 F.2d at 922). "'[T]he prospect of a trial necessarily involves the risk that Plaintiffs would obtain little or no recovery'" (*id.*), whereas "'settlement avoids the costs, delays, and multitude of other problems.'" *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001).

25. Here, the further costs to the Parties – and the Court – would be considerable absent a settlement, as the Debtors would have likely continued to fight Schwebel's claims through the rest of discovery, summary judgment, trial, and appeal. The Settlement eliminates the attendant risks, delays, and significant costs of such further litigation. *See also* Jt. Decl. ¶¶9-25. The benefits to the Class of the "bird in the hand" under the Settlement here thus far

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case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). Instead, the court's focus is on whether the agreement is "'the product of fraud or overreaching by, or collusion between, the negotiating parties'" and whether it appears that "'the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *Gardner v. Lafarge Corp.*, 2007 WL 1695609, at *5 (E.D. Mich. June 12, 2007) (citing *Clark Equip. Co. v. Int'l Union, Allied Indus. Workers of Am., AFL-CIO*, 803 F.2d 878, 880 (6th Cir. 1986)); *accord Williams*, 720 F.2d at 921 ("The Court has no occasion to determine the merits of the controversy or the factual underpinning of the legal authorities advanced by the parties.").

outweigh the risks of trying to obtain a better result through further litigation. *Cardizem*, 218 F.R.D. at 525.

3. The Judgment of Experienced Counsel

26. In assessing a proposed settlement, courts "also consider[] the opinion of experienced counsel as to the merits of the settlement." *Id.*; *see also Rankin*, 2006 WL 1876538, at *3-4 ("The Court will not substitute its business judgment for that of the parties; 'the only question ... is whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval'" (ellipsis in original).).

27. Here – after (a) investigating the claims at issue; (b) defeating Debtors' motions to dismiss and strike class action allegations in the District Court; (c) obtaining leave from this Court to file the Class POC; (d) conducting significant discovery; (e) retaining and consulting with its merits expert; and (f) retaining a financial expert to assist in negotiating and structuring the Settlement with non-debtor financial constituencies – it is respectfully submitted that the undersigned Class Counsel had a firm basis on which to assess the strengths and weaknesses of the claims at issue. Class Counsel's firm conviction that the proposed Settlement is fair, reasonable, and in the Class's best interest (*see* Jt. Decl. ¶¶25) also supports Final Approval.

4. Amount of Discovery Completed

28. Significant document and written discovery was taken in this Action, and the case has been vigorously litigated through contested motions in both this Court and the District Court. Jt. Decl. ¶29. Moreover, although formal expert discovery had not yet commenced, Class Counsel had already worked closely with its industry expert, Mathew Brakey, on two expert declarations that were submitted to this Court. *Id.* ¶29(l). Thus, this factor also strongly supports final approval.

5. Fairness to Absent Class Members

29. As stated above, the Settlement reflects a substantial recovery for the Class as a whole and provides for a *pro rata* distribution of the resulting Net Settlement Fund (after deduction of Court-approved fees and costs), based upon the amount of Polar Vortex Surcharges that each Class Member actually paid.[10] *Id.* ¶26. This factor thus also supports final approval.

6. The Reaction of the Class

30. Although the Court-appoved Individual Notice has been mailed to over 36,000 Class Members, to date, no objections have been received. Should any objections subsequently be received before the May 1, 2020 deadline, Class Counsel will address them in reply papers.

7. Whether the Settlement Is the Product of Arm's-Length Negotiations

31. Absent contrary evidence, courts presume that the parties negotiated in good faith and that the resulting agreement was reached without collusion. *Telectronics*, 137 F. Supp. 2d at 1016 ("Courts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered")(quoting NEWBERG ON CLASS ACTIONS §11.51 (3d ed. 1992)). This case was settled after 2½ years of litigation, contested motion practice, and significant discovery. *Id.* ¶29. This factor thus also supports final approval.

8. Public Policy Considerations

32. "[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources." *Cardizem*, 218 F.R.D. at 530 (quoting *Granada Invs., Inc. v.*

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[10] To reduce costs, and consistent with the similar threshold applicable to claim holders under Article VI.D.4 of the Plan, Class Members whose Recognized Claim Amounts are so small that their *pro rata* share of the Net Settlement Fund would be less than a $50 Minimum Payment Threshold will not qualify for a distribution under the proposed Plan of Allocation. Jt. Decl. ¶¶29.

DWG Corp., 962 F.2d 1203, 1205 (6th Cir. 1992)). Here, there is no reason to deviate from the strong public interest in favor of settling class actions – especially where the Settlement here will provide meaningful monetary benefit to the Class. *See also Telectronics*, 137 F. Supp. 2d at 1008-09 ("Being a preferred means of dispute resolution, there is a strong presumption by courts in favor of settlement."); *Berry*, 184 F.R.D. at 97 (settlements of class actions are favored).

33. In sum, ***all*** relevant factors support granting final approval here.[11]

II. THE COURT SHOULD APPROVE THE REQUESTED PROFESSIONAL FEES AND EXPENSES AND THE REQESTED SERVICE AWARD TO SCHWEBEL

A. Class Counsel's Fees and Expenses

1. Class Counsel Is Entitled to a Fee from the Common Fund It Obtained

34. Courts have long recognized the "common fund" exception to the general rule that a litigant bears its own attorneys' fees. As the U.S. Supreme Court has explained:

> [T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. . . . Jurisdiction over the fund involved in the litigation allows a court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.

Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980). Here, Class Counsel's work over the past three years has resulted in creation of a common fund with a market value (based on trading prices from the week of March 30, 2020) of roughly $2.4 to $3.2 million. Jt. Decl. ¶17.

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[11] The Court should also approve the proposed Plan of Allocation as "fair, reasonable and adequate" because, as stated in ¶29 and n. 10 above, it relies on a *pro rata* distribution of the Net Settlement Fund based on the dollar amount of polar vortex surcharges that each Class Member paid, subject to a minimum payment threshold of $50.00 based on the Court's prior use of a similar threshold for individual claims in this case. *See generally City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *10 (S.D.N.Y. May 9, 2014) ("A plan of allocation 'need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel.'"); *see also* Jt. Decl. ¶¶26-27.

2. The Court Should Award Attorneys' Fees Using the Percentage Method

35. In common fund cases, courts in this Circuit have discretion to apply either the "percentage of the fund" or the "lodestar" method, as long as the resulting fee is "'reasonable under the circumstances.'" *In re: Sulzer Orthopedics, Inc.*, 398 F.3d 778, 780 (6th Cir. 2005).[12] However, courts in this Circuit clearly prefer the percentage method in common fund cases, recognizing that "the lodestar method is cumbersome" while "the percentage-of-the-fund approach more accurately reflects the results achieved[] and . . . has the virtue of reducing the incentive for Plaintiffs' attorneys to over-litigate or 'churn' cases." *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014); *accord Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 789 (N.D. Ohio 2010) (percentage method "preferred" in common fund cases); *Kimber Baldwin Designs, LLC v. Silv Commc'ns, Inc.*, 2017 WL 5247538, at *5 (S.D. Ohio Nov. 13, 2017) (same); *Cardizem*, 218 F.R.D. at 532 (percentage method reflects "majority trend"); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 762 (S.D. Ohio 2007) (percentage method "encourages efficiency, judicial economy, and aligns the interests of the lawyers with the class"); *see also Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (percentage method generally viewed as "preferred" in common fund cases).

36. Moreover, here a 33 1/3% percentage fee award (absent a sharp increase in the price of the New Common Stock) would be substantially ***less than*** than a dollar award based on Class Counsel's total lodestar. *See* ¶¶47-50 below. And because Class Counsel (like the Class) will continue to be exposed to market risk until the New Common Stock allocated to the

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[12] Although federal courts exercise this discretion pursuant to their inherent equitable powers and Rules 23(g)-(h), an Ohio state court would have the same discretion in a common fund case. *See, e.g., Strickler v. Krese*, 2017 WL 11316415 (Ohio Ct. Com. Pl. Oct. 4, 2017).

Settlement Fund is converted to cash, awarding a fixed ***percentage***-of-the-fund fee will: (a) avoid the possibility that, as a result of further market declines, a fixed ***dollar*** lodestar fee would result in a fee award greater than one-third of the Settlement Fund; and (b) ensure that Class Counsel's interests remain fully aligned with respect to maximizing the proceeds from the sale of the New Common Stock. *See* Jt. Decl. ¶34. These factors also support awarding a percentage fee.[13]

3. The Requested 33 1/3% Fee Award Is Well Within the Applicable Range of Percentage-Based Fee Awards

37. A reasonable fee in common fund cases in this Circuit "'typically . . . ranges from 20 to 50 percent of the common fund'" created. *Mullins v. S. Ohio Pizza, Inc.*, 2019 WL 275711, at *4 (S.D. Ohio Jan 18, 2019) (collecting cases); *Simpson v. Citizens Bank*, 2014 WL 12738263, at *6 (E.D. Mich. Jan. 31, 2014) ("District courts in the Sixth Circuit begin with a 'benchmark percentage' ranging between 20-50%.").

38. In particular, courts within this Circuit regularly find that a 33 1/3% percentage-based fee award is reasonable. *See, e.g.*, *Barnes v. Winking Lizard, Inc.*, 2019 WL 1614822, *5 (N.D. Ohio Mar. 26, 2019) (granting counsel's request for 33 1/3% of fund, while adding that counsel's services would have "support[ed] [an even higher] 40% contingency fee percentage before" expenses); *Osman v. Grube, Inc.*, 2018 WL 2095172, at *3 (N.D. Ohio May 4, 2018) (approving 33 1/3% fee); *Kimber Baldwin*, 2017 WL 5247538, at *5-7 (same); *Skelaxin*, 2014 WL 2946459, at *1 ("the requested counsel fee of one third [of $73 million recovery] is fair and reasonable and . . . within the range of fees ordinarily awarded"); *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 2015 WL 1498888, at *16 (E.D. Mich. Mar. 31, 2015) (awarding 33 1/3%

[13] To avoid possible conflicts, Class Counsel agree not sell their awarded share of the Settlement Fund's New Common Stock (or any portion thereof) other than on the same terms as those that Class Counsel ultimately obtains for the Settlement Fund (and the Class) as a whole. *Id.*

fee); *In re S.E. Milk Antitrust Litig.*, 2013 WL 2155387, *8 (E.D. Tenn. May 17, 2013) (awarding 33 1/3% of $158 million settlement fund).

4. The Reasonableness of the Requested 33 1/3% Fee Is Further Supported by the Sixth Circuit's Six-Factor Test

39. In this Circuit, courts also consider whether the fee is reasonable under the six *Ramey* factors namely: (a) "the value of the benefit rendered to the class"; (b) "society's [interest] in rewarding attorneys who produce such benefits"; (c) "whether the services were undertaken on a contingent fee basis"; (d) "the complexity of the" action; (e) "the professional skill and standing of counsel involved on both sides"; and (f) "the value of the services on an hourly basis" (the lodestar cross-check). *Osman*, 2018 WL 2095172, at *5 (citing *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974)). These factors also support the requested fee.

(a) Value of Benefit Obtained for the Class

40. As set forth in §I above, the Settlement represents a significant recovery for the Class in the face of significant litigation risk. From the outset, those litigation risks have included, among other things, the risks that: (a) Schwebel would ultimately lose on its theory of contract interpretation; (b) FES would prevail on its "voluntary payment doctrine" affirmative defenses as to all or most Class Members; and (c) Schwebel, despite defeating Debtors' initial motion to strike class allegations, would ultimately be unable to certify the Class. These existing risks were then compounded when, on the heels of Judge Pearson's denial of FES's Motion to Dismiss, FES filed under Chapter 11 in 2018, thereby dramatically increasing collectability concerns.

41. It is respectfully submitted that less resourceful and committed counsel would have "thrown in the towel" once FES fell into bankruptcy. Class Counsel, however, soldiered

forward into the bankruptcy proceedings, against fierce opposition from Debtors' counsel, and emerged with an allowed claim of $12 million representing roughly 54.5% of the Class's ***maximum*** recoverable damages (based on evidence Class Counsel obtained in discovery showing that the total amount of Polar Vortex Surcharges paid by Class Members was $22.054 million). It is therefore respectfully submitted that despite the impact of the COVID-19 crisis on the current market value of the New Common Stock (which could not by foreseen when the Settlement was signed last November), Class Counsel achieved an excellent result for the Class, in the face of unusually large risks, given the limits of what was achievable against a bankrupt defendant. *See, e.g., Ganci v. MBF Inspection Servs., Inc.*, 2019 WL 6485159, at *2-3, 6 (S.D. Ohio Dec. 3, 2019) (recovery of non-reversionary settlement of $2.225 million against bankrupt defendant provided meaningful value supporting 33 1/3% fee).

(b) The Public Interest

42. "[T]here is a benefit to society in ensuring that small claimants may pool their claims and resources, and attorneys who take on class action cases enable this." *Kimber Baldwin*, 2017 WL 5247538, at *6; *accord Ganci*, 2019 WL 6485159, at *7 ("'Society has a stake in rewarding attorneys who achieve a result that the individual class members probably could not obtain on their own.'"). Accordingly, this factor also supports the requested fee.

(c) The Contingent Nature of the Fee

43. Class Counsel undertook this Action on a fully contingent fee basis and assumed significant risk from the outset that this Action would yield little or no recovery. Indeed, as noted above, when the underlying case was filed in May 2017, it was ***FES*** that had just prevailed on summary judgment on similar issues in the only other reported "polar vortex surcharge" court case to have been litigated. *See FirstEnergy*, 2017 WL 1383927. And Class Counsel's risks only increased after FES declared bankruptcy. Yet, unlike FES's litigation counsel (who have

been paid an hourly rate and reimbursed for expenses on a regular basis), Class Counsel have received nothing to date for their efforts. Jt. Decl. ¶35. This factor thus "'cuts significantly in favor of'" the requested fee. *Ganci*, 2019 WL 6485159, at *7; *accord Kimber Baldwin*, 2017 WL 5247538, at *6; *Osman*, 2018 WL 2095172, at *5.

(d) The Complexity of the Litigation

44. "'Generally speaking, most class actions are inherently complex.'" *Ganci*, 2019 WL 6485159, at *7 (quoting *Telectronics*, 137 F. Supp. 2d at 1013). This case was no exception, as it involved novel questions of how to interpret the "pass through events" clause in FES's contracts (which would have likely come down to dueling testimony by the Parties' industry experts as to the nature of the underlying polar vortex surcharges within the nuanced world of commercial electric power contracts). Developing factual and legal theories to defeat FES's voluntary payment defenses presented similar challenges, especially since Class Counsel had to develop a "mistake of fact" payment theory that could be applied to ***all*** Class members (so it could be used to negate FES's voluntary payment doctrine arguments on a ***Class-wide*** basis). *See generally* Jt. Decl. ¶¶21-24; *see also* the Parties' briefing on FES's Motions to Dismiss and to Strike Class Allegations, Dist. Ct. Dkt. Nos. 16-25.

45. Moreover, after FES filed under Chapter 11, Class Counsel then had to successfully navigate the additional complexities of the "class proof of claim" process in the bankruptcy proceedings. In sum, as in *Kimber Baldwin*, this case raised "nuanced legal issues" that "involved significant legal argument" by Class Counsel to "successfully defeat[] [d]efendant's [dispositive] motion[s]," and accordingly, the complexity factor also "weighs in favor of granting the requested [one-third] fee". 2017 WL 5247538, at *6.

(e) The Skill and Standing of Counsel on Both Sides

46. Class Counsel respectfully submitted that they combine the bankruptcy law and general expertise of a highly regarded Ohio firm (Meyers, Roman, Friedberg & Lewis LLP ("Meyers Roman")) with the expertise of a national class action firm (Scott+Scott Attorneys at Law LLP ("Scott+Scott")). *See also* **Jt. Decl. Exs. 2-3.** They were opposed throughout by highly experienced bankruptcy and class action attorneys from a pre-eminent national defense firm, Akin Gump Strauss Hauer & Feld, LLP, and able local counsel, Benesch, Friedlander, Coplan & Aronoff, LLP. This factor further supports the requested fee.

(f) The Value of Services Provided (Lodestar Cross-Check)

47. Finally, because a "lodestar cross-check" here results in a "negative multiplier," the "value of services provided" only further confirms that the requested 33 1/3% fee is reasonable.

48. In performing a lodestar "cross-check," courts consider the total value of the legal services provided, based on: (a) the number of hours billed by each professional or paraprofessional timekeeper, multiplied by (b) that timekeeper's reasonable hourly rate.[14] In doing so, courts look only to summaries of the billable time (and accompanying hourly rates) incurred by class counsel because requiring analysis of detailed individual time entries would effectively replace what is intended as a basic "cross-check" review with the type of more burdensome traditional lodestar analysis that the percentage-based method is meant to avoid. This is especially true where, as here, the class settlement (and resulting value of a percentage-based award) is not in the tens of millions. *Osman*, 2018 WL 2095172, at *3 (in relatively

[14] Where, as here, Class Counsel include an out-of-town specialist firm, it is appropriate to use the hourly rates consistent with those that courts have approved for that firm, as specialist counsel "tend to charge more . . . and tend to be found in larger cities where . . . litigation is more expensive." *Osman*, 2018 WL 2095172, at *4.

smaller class actions '"the risk of "excessive" or "windfall" [percentage] fees is not great,'" and '"counsel may rely upon summaries to demonstrate the time and effort that went into litigating the lawsuit'") (quoting *Dillworth v. Case Farms Processing, Inc.*, 2010 WL 776933, at *8 (N.D. Ohio Mar. 8, 2010)).[15]

49. As stated in their respective time and expense declarations (*see* **Joint Decl., Exs.2-3**), the two Class Counsel firms have spent 2,994.4 hours of attorney and paraprofessional time on this matter in the District Court and then in this Court, resulting in a total combined lodestar of $1,973,109. By contrast, the requested 33 1/3% fee equates to a current dollar value in the range of only $644,000 to $917,000, based on the lowest ($12.00) and highest ($16.52) prices at which New Common Stock shares have traded on the OTC market during the 10 trading days from March 23 to April 4, 2020. Jt. Decl. ¶33.[16] The resulting ratio between the ***high*** end of the requested 33 1/3% fee ($917,000) and Class Counsel's total lodestar is only 0.46. *Id.* Ratios of less than 1.0, as here, are referred to as "negative multipliers."

50. In class actions, "positive" lodestar multipliers of as high as 3x or 4x are frequently approved. *Cardinal Health*, 528 F. Supp. 2d at 767 (lodestar cross-check multipliers of 1.3 to 4.5 are commonly approved); *Dillow v. Home Care Network, Inc.*, 2018 WL 4776977, at *7 (S.D. Ohio Oct. 3, 2018) (approving fee award that was 2.9 times the lodestar as "well within the acceptable range of multipliers"); *Lowther v. AK Steel Corp.*, 2012 WL 6676131, at *5 (S.D. Ohio Dec. 21, 2012) (approving a "very acceptable" 3.06 multiplier and citing cases finding multipliers from 4.3 to 8.74 to be reasonable). *A fortiori*, a percentage fee award that, as

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15 If the Court were to nonetheless request more detailed records, Class Counsel can provide them.

16 This calculation assumes the Class will receive its initial allocation of 159,607 New Common Stock shares, plus a further 4% (or 6,384 shares) after Debtor's remaining disputed claims are resolved, or roughly 166,000 total shares. At the low end of the above price range, the Settlement Fund would be valued at roughly $2 million ($12.00 x 166,000) and at roughly $2.75 million ($16.52 x 166,000) at the high end. A 33 1/3% fee using recent market prices would thus be valued between roughly $664,000 and $917,000.

here, will likely result[17] in a ***negative*** multiplier is plainly reasonable. Accordingly, the "lodestar cross-check" – like all the other *Ramey* factors – also supports the requested fee.

5. Class Counsel's Requested Expenses, Including the Fees of Claimant's Testifying Expert, Should Be Approved

51. Class Counsel should also be reimbursed for their reasonable out-of-pocket expenses, such as filing fees, transcript costs, copying and document database management costs, legal research charges, and reasonable travel costs. *See, e.g.*, *Kimber Baldwin*, 2017 WL 5247538, at *7. As summarized in the Jt. Decl. ¶36, total incurred-to-date litigation expenses are $27,538.88. In addition, Class Counsel request that the Court authorize them to pay the costs of the Class's industry expert, Matthew Brakey of Brakey Energy, from the Settlement Fund. Mr. Brakey is an experienced Ohio-based energy consultant who submitted two expert affidavits to this Court. Class Counsel have carefully reviewed Mr. Brakey's detailed $10,620 invoice (*see* **Jt. Decl. Ex. 4**) and believe it to be fair and reasonable. Jt. Decl. ¶37

52. Class Counsel therefore respectfully request that the Court also authorize the payment of expenses in the following amounts: (a) $18,587.72 to Scott+Scott; (b) $8,951.16 to Meyers Roman; and (c) $10,620 to expert Matthew Brakey.[18]

B. The Fees and Expenses of the Class's Financial Advisor Should Be Approved

53. Class Counsel also respectfully request that the Court approve the payment of the fees and expenses of the Class's financial and strategic advisor, Dundon. Under its retainer

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[17] Class Counsel remain hopeful that the dramatic price declines experienced across financial markets in March 2020 will reverse course and that the price of New Common Stock shares will rebound to levels closer to the $25.00 per share price at which it was trading at the beginning of that month. However, even if that were to occur before Class Counsel eventually converts the Settlement Fund's holdings of New Common Stock into cash, the resulting cash value of the requested one-third fee award will likely still be negative or, at best, only marginally positive.

[18] Class Counsel's expense amounts include an accrual of $850 for Scott+Scott's expected travel expenses for attendance at the May 2020 Final Hearing and the costs of Meyers Roman in serving this motion. Should actual expenses be less (or if that hearing is ultimately held telephonically), Class Counsel will appropriately reduce their actual expense figures before charging the Settlement Fund.

agreement, rather than being entitled to a fixed dollar fee, Dundon, subject to approval of the Court, is entitled to be reimbursed for its out-of-pocket expenses (which will not exceed $2,500), plus a fee equal to: (a) 10% of the first $500,000 of the Class's gross recovery (*i.e.*, $50,000); plus (b) 5% of the Class's gross recovery to the extent that the Class's gross recovery exceeds $500,000.[19] Like Class Counsel, Dundon will not be paid until the New Common Stock is sold and converted to cash, so that Dundon's (and Class Counsel's) interests in selling that stock at full fair value will remain directly aligned with those of the Class. Jt. Decl. ¶38.

54. As detailed in the Declaration of Matthew Dundon, dated April 6, 2020 (the "Dundon Declaration" [**Jt. Decl. Ex. 5**], Dundon has a leading national advisory practice focused on litigation claims against bankrupt and financially distressed defendants, including, in particular, those brought on a class-wide basis. Here, the Class had to navigate numerous perils in the Debtors' Cases. Dundon's role included using its experience to help advise Schwebel and Class Counsel in how to best strategically navigate those perils, preserve the Class's claims in the bankruptcy proceedings, and identify if and when the bankruptcy process might give rise to an opportunity to favorably settle the Class's claims. It is also respectfully submitted that Dundon's financial review and analyses of matters brought before the Creditors Committee materially assisted the Class, and all unsecured creditors generally, in maximizing the value of the assets that would be available for distribution to the Class (and unsecured creditors generally). Class Counsel have worked closely with Dundon since retaining it in May 2018 and

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[19] As further detailed in the Dundon Declaration [**Jt. Decl. Ex. 5**] at ¶5, courts have repeatedly approved fees based on Dundon's contingent retainer arrangements. Class Counsel also note that they could have tried to retain Dundon on a regular hourly basis at the firm's regular hourly rates (which range from $450 to $700 per hour for its more junior to most senior professionals). *Id.* at n.1. However, given that Dundon professionals spent at least 400 hours devoted to these proceedings (*id.* ¶7), Class Counsel's decision to retain Dundon's services on a fully contingent, rather than hourly, basis will (absent a sharp rise in the price of the New Common Stock) have proved a wise decision.

believe that its work fully merits its requested fees, plus reimbursement of its expenses of $2,034.55. Jt. Decl. ¶39.

C. The Requested $15,000 Service Award to Schwebel Should Be Approved

55. "Service 'awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class.'" *Ganci*, 2019 WL 6485159, at *8 (quoting *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003)). "'[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of [a] class action.'" *Dillworth v. Case Farms Processing, Inc.*, 2010 WL 776933, at *7 (N.D. Ohio Mar. 8, 2010).

56. Here, Schwebel seeks a Service Award of $15,000 for its efforts in bringing and pursuing this Action, which are summarized in the accompanying Declaration of Ed Cinco, dated April 6, 2020 **[Jt. Decl. Ex. 6]**. Class Counsel also attest to Schwebel's contributions to this matter. Jt. Decl. ¶40. In sum, the requested $15,000 Service Award to Schwebel is fully merited and well within the range of service awards approved in other cases in this Circuit. *See, e.g.*, *Owner-Operator Indep. Drivers Ass'n, Inc. v. Arctic Express, Inc.*, 2016 WL 5122565, at *7 (S.D. Ohio Sept. 21, 2016) (approving two service awards of $25,000 each from $3 million settlement); *Davidson v. Henkel Corp.*, 2015 WL 13034891, at *3 (E.D. Mich. Dec. 8, 2015) (approving $15,000 service award to named plaintiff from $3.3 million settlement); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (approving six service awards of $50,000 each); *see also Dillow*, 2018 WL 4776977, at *8 (awarding $8,500 from $113,224 settlement where named plaintiff "contributed her efforts to the lawsuit by providing information and documents [and] remaining informed and involved throughout the litigation").

CONCLUSION

57. For all of the foregoing reasons, Class Claimant respectfully submits that the Court should: (A) enter the Parties' proposed Final Order **[Jt. Decl. Ex. 7]**, which grants Final Approval to the Settlement; and (B) enter Class Counsel's [Proposed] Order Approving Professional Fees and Expenses Application **[Jt. Decl. Ex. 8]**, granting the requested awards of Professional Fees and Expenses (including Schwebel's requested Service Award) in full.

Dated: April 6, 2020

s/ David Neumann

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Counsel for Schwebel and the Certified Class

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	Chapter 11
FIRSTENERGY SOLUTIONS CORP., *et al.*,	Case No.: 18-50757 (Jointly Administered)
Debtors.	Judge Alan M. Koschik

JOINT DECLARATION OF WILLIAM C. FREDERICKS, ESQ. AND DAVID NEUMANN, ESQ. IN SUPPORT OF CLASS CLAIMANT SCHWEBEL BAKING COMPANY'S MOTION TO: (A) ENTER FINAL ORDER APPROVING CLASS ACTION SETTLEMENT UNDER BANKR. RULE 7023 AND FED. R. CIV. P. 23; AND (B) APPROVE CLASS COUNSEL'S APPLICATION FOR AN AWARD OF PROFESSIONAL FEES AND EXPENSES[1]

I, William C. Fredericks, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a partner in the firm of Scott+Scott Attorneys at Law LLP ("Scott+Scott"), specializing in complex commercial and class action litigation. I submit this declaration in support of (A) Class Claimant Schwebel Baking Company's ("Schwebel") motion for entry of the Parties' proposed Final Order approving the Settlement; and (B) Class Counsel's motion for approval of Professional Fees and Expenses. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

I, David Neumann, pursuant to 28 U.S.C. §1746, declare as follows:

2. I am a partner in the firm of Meyers, Roman, Friedberg & Lewis ("Meyers Roman"), specializing in bankruptcy law. I submit this declaration in support of (A) Schwebel's motion for entry of the Parties' proposed Final Order approving the Settlement; and (B) Class Counsel's motion for approval of Professional Fees and Expenses. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

[1] Capitalized terms used herein have the same meaning as those given them in the Parties' Stipulation of Settlement, previously filed with the Court at Dkt. No. 3401.

PRELIMINARY STATEMENT

3. Schwebel and its counsel have achieved a significant Settlement on behalf of the Class. The Settlement provides that in exchange for the Class's release of all Released Claims against Debtors and their affiliates, the Class will receive an Allowed Claim on its Class Proof of Claim ("Class POC") of $12 million. This amount equals roughly 54.5% of the ***maximum*** claim amount that the Class could have obtained had it prevailed on every aspect of its Class POC.

4. As set forth below in ¶¶9-27, and in Schwebel's accompanying brief in support of Final Approval, we respectfully submit that the Settlement and Plan of Allocation are fair, reasonable, adequate, and in the Class's best interests and should be granted Final Approval. Given the work performed and results achieved in the face of significant risk, we similarly submit that Class Counsel's request for attorneys' fees equal to 33 1/3% of the Settlement Fund and reimbursement of their out-of-pocket litigation expenses in the total amount of $27,538.88 should be approved. *See* ¶¶28-35 below. And as stated in ¶¶36-40, we also respectfully submit that the Court should approve the payment of: (a) $10,620 to the Class's testifying expert, Mathew Brakey of Brakey Energy ("Brakey"); (b) the contingent percentage fee (worth roughly $145,000 based on the current price of the securities to be used to fund the Settlement) to the Class's financial and strategic advisor, Dundon Advisers, LLC ("Dundon"); and (c) $15,000 to the Class Representative, Schwebel.

5. By Order dated December 24, 2019 (the "Preliminary Approval Order"; Dkt. No. 3546), the Court preliminarily approved the Settlement, certified the Class for settlement purposes, and approved the Parties' proposed Notice Plan. Pursuant to the Court-approved Notice Plan, the Claims Administrator has: (a) mailed customized Individual Notices (which summarized the Settlement, included the recipient's pre-calculated "Recognized Claim Amount," and directed them to the Website Notice for more detailed information) to the more

than 36,000 Class Members in this Action; (b) established the Settlement Website at www.polarvortexsettlement.com; (c) posted the detailed Website Notice, full text of the Settlement, and various Settlement-related filings on the Settlement Website; and (d) activated the dedicated "1-800" line that Class Members can also call for additional information. *See* Declaration of Michael Hamer of Claims Administrator Heffler Claims Group Confirming Implementation of Court-Ordered Notice Plan, dated April 4, 2020 (the "Hamer Declaration" or "Hamer Decl.") (attached hereto as **Exhibit 1**).

6. Pursuant to the Notice Plan, Class Members have also been advised of their rights to exclude themselves from the Class and to object to: (a) any part of the Settlement or Plan of Allocation; (b) Class Counsel's request for attorneys' fees of 33 1/3% of the gross Settlement Fund and payment of expenses of up to $75,000; (c) payment of Dundon's contingent fee; and/or (d) Schwebel's request for a $15,000 Service Award. To date, however, no opt-out requests or objections have been received. Hamer Decl. **[Exhibit 1 hereto]** at ¶¶9-10.

NATURE OF THE UNDERLYING CLAIMS

7. In January 2014, FES's service region experienced unusually cold "Polar Vortex" conditions. As a result, PJM Interconnection LLC ("PJM"), the regional transmission organization ("RTO") that coordinates the supply of electricity on a wholesale basis within FES's service region, purchased additional electricity generation capacity. PJM billed the costs of those purchases to "retail" energy companies (such as Debtor FES), which supply electricity to actual end-users. *See also* Compl. ¶¶3, 18-19.[2] FES, in turn, "passed through" its share of the PJM charges to FES's large or mid-sized industrial and commercial customers (the Class Members).

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[2] Citations to "Compl. ¶__" are to paragraphs of Schwebel's Complaint in the District Court, which has been filed in these proceedings as an exhibit to the Class POC (claim no. 934).

8. Schwebel alleges that by "passing through" these PJM charges to the Class, FES breached the terms of the substantially similar form contracts that FES had with each Class Member. In particular, Schwebel alleges that these contracts only allowed FES to "pass through" surcharges imposed by an RTO (such as PJM) ***only*** if they were due to an RTO imposing either "***new***" charges or a new "method or procedure for determining charges." *Id.* ¶¶2, 17 & Ex. A. And Schwebel further alleges that the PJM surcharges that FES "passed through" to the Class Members were neither "new" nor the result of a changed "method or procedure for determining charges" – but instead simply reflected charges for ***customary*** RTO services that simply happened to be more ***expensive*** than had been expected due to unusually cold weather.

SUMMARY OF THE LITIGATION AND WORK PERFORMED

9. Following completion of its pre-filing investigation, Class Counsel drafted and filed a class action Complaint on behalf of Schwebel and a putative class in May 2017, seeking to recover an amount equal to all Polar Vortex Surcharges paid to FES. On July 3, 2017, FES moved to dismiss the Complaint and/or strike Schwebel's class allegations. Class Counsel fully briefed and presented oral argument in response to both motions. On March 21, 2018, the District Court (Pearson, J.) denied both motions. *See Schwebel Baking Co. v. First Energy Sols. Corp.*, 2018 WL 1419477 (N.D. Ohio Mar. 21, 2018) (Dist. Ct. Dkt. No. 27).

10. On March 31, 2018, Debtors filed for Chapter 11. In response, Class Counsel worked with Schwebel to apply for a position on the Creditors Committee (the "Committee") in these proceedings. On April 11, 2018, the U.S. Trustee selected Schwebel to serve on the Committee.

11. After researching the conflicting approaches of various courts to allowing "class proofs of claim," on August 20, 2018, Class Counsel prepared and filed Schwebel's Motion for an Order Applying Bankruptcy Rule 7023 to the Claims of a Class of Debtor FES's Customers Arising from Its Polar Vortex Surcharges, together with supporting memorandum of law and Schwebel's [Proposed] Class POC. Dkt. No. 1179. On the strength of those papers, Class Counsel successfully negotiated a Stipulation, dated September 25, 2018, among Schwebel, the Committee, and Debtors, pursuant to which the Court "direct[ed] application of Bankruptcy Rule 7023" with respect to Schwebel's request for class treatment and allowed Schwebel to file its Class POC. The Order also reserved decision on all other matters relating to class certification or the Class POC, while allowing Schwebel (and Debtors) to could conduct discovery. Dkt. No. 1451.

12. Thereafter, Class Counsel took significant document discovery on behalf of Schwebel and the putative Class and obtained over 36,000 pages of documents (plus responses to numerous interrogatories and requests to admit) from the Debtors. Class Counsel also managed Schwebel's responses to Debtors' document requests and interrogatories, including Schwebel's own production of documents. Discovery was adversarial and hard-fought; indeed, Class Counsel was forced to file a motion to compel against Debtors on February 5, 2019. Dkt No. 2074.

13. Shortly before Schwebel filed its February 5, 2020 motion to compel, the Parties began serious settlement discussions. Both Class Counsel and the Class's financial advisor, Dundon, were involved in these discussions, which led to the successful negotiation of a Settlement Term Sheet later that month. Schwebel, through Class Counsel's and Dundon's efforts, also secured the consent of the Committee, the Ad Hoc Noteholder Group, and Mansfield

Certificateholders Group to the proposed Settlement, subject to the completion of customary "long form" settlement papers and the Rule 23 approval process.

14. Class Counsel also negotiated a further Stipulation and Agreed Order, dated June 25, 2019, in accordance with the Settlement Term Sheet, whereby the Court temporarily allowed the Class POC in the amount of $12,000,000 in Class A6 so as to permit Schwebel, under Rule 3018(a), to vote on the Plan as the holder of that Claim. Dkt No. 2820.

15. Class Counsel also prepared the initial drafts of the "long form" settlement papers. Thereafter, they also engaged in lengthy negotiations to finalize those papers and, in particular, to resolve disputes over the proper scope of the Class and technical issues arising from Schwebel's decision (on behalf of the Class) to exercise the "equity election" under the Plan. The Parties finally signed the formal Stipulation of Settlement on November 20, 2019, and Class Counsel were ready to file their papers in support of preliminary approval the following day. After a hearing on December 16, 2019, the Court granted preliminary approval on December 24. Dkt. No. 3546.

THE SETTLEMENT AND QUALITY OF THE RESULT ACHIEVED

16. Under the Settlement, the Class will receive a single-box non-priority unsecured allowed claim on the Class POC in the amount of $12,000,000. By contrast, information produced in discovery, as further refined and supplemented by information produced by Debtors to Class Claimant during subsequent settlement discussions, confirms that the total amount of all Polar Vortex Surcharges actually paid by Class Members to FES was $22,054,419. The Allowed Claim amount of $12 million provided by the Settlement therefore represents roughly ***54.5% of***

the maximum allowed claim ($22,054,419) that the Class could have obtained had Schwebel, as Class Representative, prevailed on all issues relating to the Class POC.[3]

17. Because Schwebel exercised the "equity election" under the Plan in August 2019, the Settlement Fund will be funded with shares of New Common Stock (as defined in the Plan). This stock currently trades over-the-counter ("OTC") under the symbol "ENGH" (short for "Energy Harbor", the name of the "new FES"). Based on the initial distribution ratio to FES Single Box Creditors (such as the Class) of 13.3005998 shares per $1000 of claim, the Class's initial allocation should be 159,607 shares, with the potential for further modest distributions after resolution of remaining disputed claims (for which the Debtors took a 16.4% holdback). When the New Common Stock (which is currently not registered) commenced very limited OTC trading in early March 2020, it traded at between $24.50 and $27.50 per share, giving the Settlement a gross value (assuming no further distribution of shares) of roughly $3.9 to $4.4 million. Unfortunately, in the second half of March the stock traded, again on very low volume, at roughly $15.00 to $20.00 per share as global markets fell sharply due to COVID-19 concerns. Using these lower prices would yield substantially lower valuations of $2.4 to $3.2 million.[4]

18. Although recent events were not foreseeable in 2019 when the Settlement was negotiated and the Class (like FES's largest and most sophisticated creditors) exercised the "equity election" under Debtors' Plan, we submit that the Settlement ***still*** represents a highly

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[3] The Settlement's other main terms are summarized in Schwebel's accompanying brief in support of Final Approval and have also been summarized in the previously submitted Declaration of William C. Federicks in Support of Preliminary Approval, dated November 20, 2019 (Dkt. No. 3401-2) at 5-8.

[4] As the Individual Notices were being printed in mid-March 2020, counsel added new disclosure text to the Website Notice to advise Class Members of: (a) the actual number of shares recently set aside for the Class; (b) the share's recent trading prices; and (c) a financial website where they could obtain daily updated prices for the shares using the "ENGH" ticker symbol. *See* Hamer Decl. **[Exhibit 1 hereto]** at Ex. B, pp. 18-19.

desirable result for the Class, especially given (a) the risks of pursuing the underlying breach of contract claims; and (b) the ***additional*** bankruptcy-related risks that the Class then had to overcome after FES filed under Chapter 11. *See* ¶¶19-25 below. Moreover, because the Settlement gives Class Counsel flexibility as to when to ultimately sell the New Common Stock (so it can avoid having to sell at an unreasonable discount to fair value), we remain hopeful that the trading price of the Settlement Fund's shares will materially increase before they are actually sold (after which the resulting cash proceeds will be distributed in accord with the Settlement and Plan of Allocation).

SUMMARY OF RISKS FACED BY THE CLASS AND ITS COUNSEL

19. **Risks of Proving Liability.** Class Counsel believe the Class's claims have merit. However, Debtors and their nationally-known counsel, Akin Gump, took a very different view throughout, contending, *inter alia*: (a) that despite the District Court's earlier ruling that the contract language at issue was ambiguous, Debtors would ultimately prevail at summary judgment or trial on dispositive contract interpretation issues; and (b) that Debtors would in any event prevail on various affirmative defenses (notably the "voluntary payment doctrine"), as Schwebel and all other Class members had ***all*** arguably paid the surcharges at issue "voluntarily" despite having (per Debtors) sufficient information to have challenged them at the time of payment.

20. Indeed, ***before*** Class Counsel filed the original complaint in May 2017, Debtor FES had prevailed, at summary judgment, in a similar "polar vortex surcharge" payment dispute involving one of its largest Pennsylvania customers. *See FirstEnergy Sols. Corp. v. Allegheny Ludlum LLC*, 2017 WL 1383927 (W.D. Pa. Apr. 13, 2017). In short, despite Class Counsel's

success in defeating dismissal before Judge Pearson, ultimate success on the merits at summary judgment, trial, and likely appeals was anything but certain here.

21. We also respectfully submit that the fact that no other named plaintiff (or plaintiffs' attorneys) ever sought to bring the class claims at issue here – even though such claims have been ripe for ***years*** in a case involving over 36,000 commercial claimants who had paid the disputed charges back in 2014 – further confirms that to the extent others even considered bringing a class action, this matter was viewed from the outset as a ***very*** high risk case.

22. **Bankruptcy and Collectability Risks.** The high risks of prevailing on liability were only further compounded when FES filed for bankruptcy in May 2018, thereby dramatically increasing collectability risks (even if liability were established) and giving rise to an entirely new set of complex procedural challenges requiring additional professional expertise.

23. Less resourceful, less committed, and less experienced counsel might well have thrown in the towel on the Class's claims after FES's Chapter 11 filing. However, Class Counsel responded by both (a) drawing on their own internal class action and bankruptcy expertise (at Scott+Scott and Myers Roman, respectively), *and* (b) engaging advisers (Dundon) with specialized expertise in advising putative creditor classes to keep pressing the claims in this Court. Further risks that Schwebel and Class Counsel successfully overcame in this Court included: (a) obtaining a critical Stipulation and Order, after extensive briefing, that granted Schwebel's motion that the Court apply Bankruptcy Rule 7023 to these proceedings; (b) obtaining permission from the Court to proceed with significant discovery against the Debtors; and (c) obtaining, once a settlement-in-principle was finally within reach, the consent of the

Creditors Committee and various Ad Hoc Bondholder Groups in these proceedings to the Settlement's material terms.

24. **Risks of Maintaining Class Certification Through Trial.** Finally, although Class Counsel had succeeded in obtaining an Order directing the application of Bankruptcy Rule 7023 to these proceedings (Dkt. No. 1451), Debtors had reserved all of their other rights under that Order to contest actual certification of a class under relevant Rule 23 criteria after fact discovery was complete. Class Counsel believe that Schwebel would have ultimately prevailed on a motion to certify a class in connection with the Class POC. However, a review of the briefs on FES's hotly contested motion to strike class action allegations in the District Court shows that maintaining class certification through trial was not a foregone conclusion here.

25. **Summary.** Having weighed the risks and benefits of further litigation vs. the Settlement's "bird in the hand," and based upon all of their research, investigation, discovery, and experience, both Class Counsel firms agree that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Class and should be approved.

THE PLAN OF ALLOCATION

26. The Plan of Allocation, set forth in the Website Notice (*see* Hamer Decl. **[Exhibit 1 hereto]** at Ex. B, pp. 20-21), provides for the *pro rata* distribution of the Net Settlement Fund (after deduction of Court-approved fees and costs and any required taxes) based upon the Claims Administrator's calculation (based on Debtors' records) of the total amount of Polar Vortex Surcharges that each Class Member paid. To reduce costs, and in accordance with the similar threshold applied to claimants under Article VI.D.4 of the Plan, Class Members whose Recognized Claim Amounts are so small that their *pro rata* share of the Net Settlement Fund would be less than a $50 minimum payment threshold will not qualify for a distribution. In the unlikely event that any Class Member believes that its Recognized Claim Amount was

incorrectly calculated, the Website Notice specifies the steps that can be followed to correct any alleged miscalculation.[5]

27. Class Counsel believe that their *pro rata* based Plan of Allocation is fair and reasonable and recommend that the Court approve it.

CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES

28. Class Counsel respectfully request an award of attorneys' fees equal to 33 1/3% of the Settlement Fund. As noted below, the requested fee, absent a sharp increase in the trading price of the New Common Stock, represents a "negative" 0.46 multiplier on Class Counsel's combined lodestar of roughly $1.973 million. (Because the lodestar multiplier is less than 1.0, it is referred to as a "negative" multiplier, as it reflects a discount to, rather than a premium on, the value of counsel's lodestar). The legal authorities supporting a 33 1/3% fee are set forth in the accompanying briefing. The primary factual bases for the requested fee are summarized below.

29. **The Work Performed.** To summarize the work referenced at ¶¶9-15 above, Class Counsel's work on this case included, *inter alia*:

(a) researching and preparing the underlying complaint in this Action, which was filed in the District Court;

(b) fully briefing, and prevailing on, FES's Motion to Dismiss in the District Court;

(c) fully briefing, and prevailing on, FES's Motion to Strike Class Action Allegations in the District Court;

(d) retaining, and extensively consulting with, its specialized bankruptcy and restructuring advisers, Dundon, after FES filed for bankruptcy;

(e) successfully navigating Schwebel through the process of being appointed to the Committee, and thereafter assisting Schwebel in discharging its responsibilities as a Committee member and in its related efforts to try to maximize the potential recoveries available for unsecured creditors (including the Class);

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[5] Because each Class Member's Recognized Claim Amount has been pre-calculated, in contrast to most class actions, eligible Class Members here will ***not*** have to fill out or submit a proof of claim form in order to receive any payment to which they are entitled.

(f) preparing the Class POC;

(g) preparing and fully briefing Schwebels' Motion for Entry of an Order Directing Application of Bankruptcy Rule 7023 to these proceedings and successfully negotiating a Stipulated Order granting this relief;

(h) obtaining permission from this Court to take significant fact discovery and thereafter obtaining and reviewing over 36,000 pages of documents from Debtors;

(i) reviewing and producing several hundred pages of documents from Schwebel in response to Debtors' document requests;

(j) preparing and serving numerous interrogatories on Debtors and analyzing their responses thereto;

(k) helping research and prepare Schwebel's responses to Debtors' interrogatories;

(l) consulting with the Class's industry expert, Brakey, in connection with preparing the Complaint – and in connection with his preparation of two expert affidavits that were submitted to this Court;

(m) fully briefing certain significant discovery disputes, which were pending before the Court when the Parties reached their settlement-in-principle;

(n) negotiating their settlement-in-principle with Debtors and also obtaining the consent thereto of various creditor constituencies; and

(o) drafting and negotiating the comprehensive "long-form" Stipulation and related papers to settle this Action and preparing the briefing in support of and taking all other steps needed to obtain both preliminary and final approval of the Settlement.

30. In sum, the Settlement was the result of Class Counsel's persistence, and skill, and their efforts to achieve the best resolution reasonably possible for Schwebel and the Class, whether through settlement or continued litigation, assisted by the work performed at their direction by their retained specialist advisors (Dundon) and industry expert (Brakey).

31. **Lodestar Analysis.** Attached hereto as **Exhibits 2-3** are the separate Fee and Expense Declarations submitted on behalf our respective firms (namely the "Fredericks Fee Declaration" and "Neumann Fee Declaration" and collectively, the "Fee Declarations"). The "Exhibit A" to these Fee Declarations summarize the amount of time spent by each attorney and paraprofessional employed by Class Counsel, and the relevant lodestar calculations based on

their current billing rates. This information was prepared from contemporaneous daily time records regularly prepared and maintained by each respective firm, which are available at the request of the Court. As set forth therein, the hourly rates for attorneys and paraprofessionals included in these schedules are commensurate with their regularly hourly rates as charged to paying clients and/or consistent with the regular rates for Scott+Scott attorneys as periodically adjusted over time that have been accepted by courts across the country in other class action litigation in recent years. For persons no longer employed by Class Counsel, the lodestar calculations are based upon the billing rates for such persons in their final year of employment.

32. In total, to date: (a) Scott+Scott has spent 1,805.4 hours in connection with its work in this matter, with a resulting lodestar of $1,585,306; and (b) Meyers Roman has spent 1,189 hours in connection with its work in this matter, with a resulting lodestar of $387,000. In sum, Class Counsel have devoted a total of 2,994.4 hours on this matter, for a total lodestar of $1,973,106.

33. By contrast, the requested 33 1/3% fee equates to a current dollar value in the range of only $644,000 to $917,000, based on the lowest ($12.00) and highest ($16.52) prices at which New Common Stock shares have traded on the OTC market during the ten trading days from March 23 to April 4, 2020. The resulting ratio between the high end of the requested 33 1/3% fee ($917,000) and Class Counsel's total lodestar is only 0.46 – resulting in a "negative multiplier." Class Counsel hope that the declines experienced in financial markets in March 2020 will reverse course and that the price of New Common Stock shares will rebound to levels at or above the $25 price at which they traded in early March 2020. However, even if such a rebound occurs by the time Class Counsel convert the Settlement Fund's holdings of New

Common Stock into cash, the resulting value of the requested 33 1/3% fee will likely still result in a negative multiplier.

34. We also note that Class Counsel – like the Class – will continue to be exposed to market risk until the New Common Stock is deposited into the Settlement Fund and converted to cash. Specifically, to avoid possible conflicts, Class Counsel agree not sell their awarded share of the Settlement Fund's New Common Stock (or any portion thereof) other than on the same terms that it ultimately obtains for the Settlement Fund (and the Class) as a whole. Accordingly, awarding a fixed percentage-of-the-fund fee will (a) avoid the possibility that, as a result of further market declines, the award of a fixed dollar lodestar-based fee would result in a fee award exceeding one-third of the Fund; and (b) ensure that Class Counsel's interests remain fully aligned with respect to maximizing the proceeds from the sale of the New Common Stock.

35. **The Fully Contingent Nature of the Representation.** Class Counsel undertook the prosecution of this matter on a fully contingent-fee basis. In undertaking this representation, they had to ensure that they dedicated sufficient resources to prosecuting the case and that funds were available to pay staff and cover the out-of-pocket costs that this type of case requires. Given that class actions routinely take several years to conclude, contingent-fee litigation imposes heightened financial risks for counsel that bring them. This case has been no exception, as neither Class Counsel firm has yet received any compensation for their work.

CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF ITS REASONABLE OUT-OF-POCKET LITIGATION EXPENSES

36. As set forth at the "Exhibit C's" to each accompanying Fee Declaration, Class Counsel have incurred a total of $27,538.88 in unreimbursed expenses in connection with this

matter ($18,587.72 for Scott+Scott[6]; and $8,951.16 for Meyers Roman). These expenses are reflected in their respective books, which are prepared from expense vouchers, check records, and other source materials that accurately record the expenses incurred. Each Class Counsel's respective Exhibit C schedule also breaks down that firm's respective expenses incurred by category – *e.g.*, experts' fees, travel costs, Westlaw costs, copying, etc. – for which they seek reimbursement. Such expense items are billed separately by Class Counsel, are not duplicated in the firms' billing rates, and were reasonably necessary to prosecute this Action.

THE FEES OF THE CLASS'S TESTIFYING EXPERT, MATHEW BRAKEY

37. Not included in Class Counsel's above-referenced out-of-pocket expenses is the unpaid invoice of the Class's industry expert, Brakey. Brakey is an experienced Ohio-based consultant and advisor to consumers of electric power who performed valuable services to the Class at the direction of Class Counsel, including the preparation of two sworn declarations to this Court (*see* Dkt. Nos. 1179, 2074). After careful review of Brakey's invoice in the amount of $10,620 (attached hereto as **Exhibit 4**), Class Counsel find that it is fair and reasonable and ask that the Court authorize its payment in full from the Settlement Fund.

THE PROFESSIONAL FEES AND EXPENSES OF THE CLASS'S FINANCIAL AND STRATEGIC ADVISOR, DUNDON ADVISERS, LLC

38. Under its retainer agreement, rather than being entitled to a fixed dollar fee, Dundon, subject to approval of the Court, is entitled to be reimbursed for its out-of-pocket expenses, plus a fee equal to (a) 10% of the first $500,000 of the Class's gross recovery (*i.e.*, $50,000); and (b) 5% of the Class's gross recovery to the extent it exceeds $500,000. Like Class Counsel, Dundon has also agreed that it will not be paid until the New Common Stock is sold

[6] This amount includes an accrual of $850 for Scott+Scott's expected travel expenses to the May 2020 Final Hearing. Should actual travel expenses be less (or if that hearing is ultimately held telephonically), Scott+Scott will appropriately reduce their actual expense figures before charging the Settlement Fund.

and converted to cash, so that Dundon's (and Class Counsel's) interests in selling that stock at full fair value will remain directly aligned with those of the Class.

39. As detailed in the Declaration of Matthew Dundon, dated April 6, 2020 (attached hereto as **Exhibit 5**), Dundon has a leading national advisory practice focused on litigation claims against bankrupt and financially distressed defendants, including, in particular, those brought on a class, collective, or otherwise representative basis. Here, the Class had to navigate numerous perils in Debtors' bankruptcy. Dundon's role included using its experience to help advise Schwebel and Class Counsel in how to best strategically navigate those perils, preserve the Class's claims in the bankruptcy proceedings, and identify if and when the bankruptcy process might give rise to an opportunity to favorably settle the Class's claims. We also believe that Dundon's review and analyses of matters brought before the Committee materially assisted the Class – and all unsecured creditors generally – in maximizing the value of the assets that would be available for distribution to the Class (and unsecured creditors generally). Based on having worked closely with Dundon, since retaining it in May 2018, and for the further reasons set forth in the Dundon Declaration, we believe that Dundon's work fully merits its requested fees and expenses.

SCHWEBEL'S REQUEST FOR A SERVICE AWARD

40. Class Representative Schwebel has been a faithful representative of the Class, having *inter alia*: (a) maintained regular communication with Class Counsel; (b) reviewed copies of complaints and other pleadings; (c) served as an active member of the Committee; and (d) participated in producing documents and responding to interrogatories. Based on our familiarity with the role that Schwebel personnel have played here, we believe that they easily spent at least 100 hours on this matter, as set forth in the Declaration of Ed Cinco (attached hereto as **Exhibit 6**), and that Schwebel fully merits a service award of $15,000.

REACTION OF THE CLASS

41. The Notices informed Class Members of: (a) the Settlement's material terms; (b) the Plan of Allocation; (c) Class Counsel's intent to apply for an award of attorneys' fees of 33 1/3% of the Settlement Fund and litigation expenses of up to $75,000; (d) Dundon's contingent retainer terms and request for payment thereon; and (e) Schwebel's request for a $15,000 Service Award.

42. The Individual Notice was mailed to the over 36,000 Class Members in this matter, and the detailed Website Notice has been posted on the Settlement Website. Hamer Decl. [**Exhibit 1 hereto**] at ¶¶3, 5-6, 11. Although the May 1, 2020 deadline for filing written objections to the Settlement, Plan of Allocation, Professional Fees and Expenses Application, and/or Schwebel's request for a Service Award has not yet passed, to date, neither Heffler (*id.* ¶10) nor Class Counsel have received any. If any objections are received by the May 1 deadline, Class Counsel will address them in reply papers, as provided for in the Court's Preliminary Approval Order.

43. Pursuant to the Preliminary Approval Order, Class Members who wish to "opt-out" must submit valid written requests to exclude themselves from the Class, so that they are received by or before April 21, 2020. Although this deadline has also not yet passed, to date, neither Heffler (*see* Hamer Decl. [**Exhibit 1 hereto**] at ¶9) nor Class Counsel have received any such requests.

CONCLUSION

44. Class Counsel respectfully submit that the Court should: (a) enter the Parties' proposed Final Order in the form attached hereto as **Exhibit 7**; and (b) approve the requested award of Professional Fees and Expenses in full (proposed form of order attached as **Exhibit 8**).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 6th day of April, 2020.

/s/ William C. Fredericks
William C. Fredericks

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 6th day of April, 2020.

/s/ David Neumann
David Neumann

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: FIRSTENERGY SOLUTIONS CORP., et al., Debtors.	Case No. 18-50757 (Jointly Administered) **DECLARATION OF MICHAEL E. HAMER OF THE CLAIMS ADMINISTRATOR (HEFFLER CLAIMS GROUP, LLC) CONFIRMING IMPLEMENTATION OF COURT-ORDERED NOTICE PLAN**

I, Michael E. Hamer, hereby declare as follows:

1. I am a Project Manager for Heffler Claims Group, LLC ("Heffler"). Our business address is 1515 Market Street, Suite 1700, Philadelphia, PA 19102. Our main telephone number is (215) 665-8870. I am over twenty-one years of age and am authorized to make this Declaration on behalf of Heffler and myself. This Declaration is based upon my personal knowledge as well as information provided to me by my associates and staff. I submit this Declaration to confirm Heffler's implementation of the Notice Plan[1] and to summarize relevant facts relating thereto, as required by the Parties' Stipulation of Settlement ("the Stipulation") and this Court's "Order Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 7023 (A) Preliminarily Approving Proposed Settlement; (B) Certifying

[1] Capitalized terms not specifically defined herein have the same meaning as defined in the Stipulation or the Preliminary Approval Order.

Settlement Class for Settlement Purposes Only; (C) Appointing Class Representative and Class Counsel; (D) Approving the Form and Manner of Notice to Settlement Class Members; and (E) Scheduling a Fairness Hearing to Consider Final Approval of the Settlement" dated December 24, 2019 (Docket No. 3546) ("the Preliminary Approval Order").

2. The Court duly appointed Heffler as Claims Administrator to provide notification and administration services in the above-captioned matter. These services included: (a) confirming or updating addresses for the List of Settlement Class Members ("the Class List") eligible to participate in the Settlement; (b) preparing, printing and mailing of Individual Notices to Settlement Class Members in the Class List; (c) establishing the *www.polarvortexsettlement.com* website ("the Settlement Website"), and causing the Website Notice (together with copies of the full text of the Stipulation and various other case-related documents) to be published on that site; (d) updating addresses for Settlement Class Members that are determined to be stale, and re-mailing the Individual Notice to them if the original Individual Notice was returned as undeliverable; (e) tracking of written Requests for Exclusion; and (f) performing such other tasks as Counsel may mutually agree, or the Court may order or request from Heffler.

3. Heffler received the Class List, which contained 89,041 separate billing account records with associated customer names and mailing addresses (if

available) of Settlement Class Members. Recognizing that certain accounts for the same customer were billed to separate locations (e.g, a company with three offices might have a separate bill sent to each office), or separately established accounts in the name of the same Settlement Class Member might all be sent to one central office, Heffler worked to eliminate and consolidate as many billing records as was practicable to eliminate redundancies. Following this consolidation process – and erring on the side of ensuring that all Settlement Class Members would receive at least one Individual Notice at each separate address that they had used for billing purposes – Heffler identified 50,803 billing addresses associated with approximately 36,000 separate Settlement Class Members. The resulting list of 50,803 Settlement Class Member addresses was then processed, standardized and updated ("the NCOA Processing") utilizing the National Change of Address Database ("NCOA") that is maintained by the U.S. Postal Service ("USPS"). The NCOA contains change of address notifications filed with the USPS. In the event a Settlement Class Member had filed a USPS change of address notification, the address listed with NCOA was updated in our database and was used for purposes of mailing the Individual Notices.

4. Earlier this year, Heffler established the following post office box address for receiving correspondence relating to this matter: In re First Energy Solutions Corp Bankruptcy, c/o Heffler Claims Group, P.O. Box 58234,

Philadelphia, PA 19102-8234 ("the Settlement P.O. Box"). Heffler regularly checks the Settlement P.O. Box to see if any Requests for Exclusion, undeliverable Individual Notices, or inquiries or other communications about the Settlement have been received from Settlement Class Members.

5. On or about March 19, 2020, Heffler set up, and has thereafter continued to operate and maintain, both (a) a dedicated toll-free telephone number for this settlement at 1-833-930-2422, as well as (b) the previously referenced dedicated Settlement Website at *www.polarvortexsettlement.com*. The Individual Notice advised all Settlement Class Members that they could read and download copies of the more detailed "Website Notice" (and various other documents relating to the case, including the full text of the Stipulation) relevant from the Settlement Website. The Individual Notices also advised that Settlement Class Members could also obtain additional information by calling the toll free 1-833-930-2422 number or writing to Heffler at the Settlement P.O. Box or by contacting Class Counsel using the contacts provided for them in the Individual Notice.

6. Implementation of the Notice Plan commenced on March 20, 2020 when the previously mentioned 50,803 Individual Notices were mailed to Settlement Class Members using either the original addresses provided in the Class List or updated addresses identified through NCOA Processing.

7. Each customized Individual Notice letter (a) briefly described the

action and proposed Settlement, (b) stated the amount of Polar Vortex Surcharges paid by that Class Member (their "Recognized Claim Amount"), and (c) as noted above, referred the recipient to the more detailed Website Notice at the Settlement Website for additional information about their rights and how to exercise them. A copy of a sample form of the customized Individual Notice mailed to each Settlement Class Member is attached as **Exhibit A.**[2]

8. Through April 3, 2020, Heffler has received a total of 1,099 Individual Notices returned by the USPS as undeliverable. Heffler has submitted these to LexisNexis to obtain updated addresses and will promptly remail an appropriately customized Individual Notice to the updated addresses so obtained. Because Heffler has been advised that the Settlement Class in this matter consists entirely of former commercial or industrial customers of the former FirstEnergy Solutions Corporation ("FES"), and that membership in the Settlement Class in this matter has been determined based on whether they paid certain "polar vortex surcharges" that FES invoiced in 2014, it is likely that Heffler will not be able to obtain updated addresses for Settlement Class Members whose Individual Notices have been returned as undeliverable because the entities in question are no longer in business.

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[2] As compared to the forms of Notice previously submitted to the Court, Class Counsel and Defense Counsel slightly modified the text of the Individual Notices before they were mailed (and also added a prominent "banner" to the homepage of the Settlement Website) to remind Class Members that -- especially in the wake of the COVID-19 crisis -- they should check the www.polarvortexsettlement.com website (or contact Class Counsel) for possible updates in case the Court (a) is forced to reschedule the Final Hearing, or (b) decides to hold it telephonically.

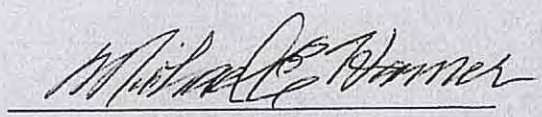
9. Heffler is responsible for receipt and logging of all written Requests for Exclusion from the Settlement. Pursuant to the Preliminary Approval Order, to be valid any Requests for Exclusion must be *received* no later than April 21, 2020. Through April 1, 2020, Heffler has not received any Requests for Exclusion.

10. Heffler is not responsible for receipt and logging of any written Objections to the Settlement. Pursuant to the Preliminary Approval Order, to be valid any Objections must be *received* no later than May 1, 2020 by the Clerk of the Court and Class and Defense Counsel. However, it is not uncommon for Heffler to receive Objections in cases it administers. Through April 1, 2020, Heffler has not received any Objections to any aspect of the Settlement.

11. On March 19, 2020, Heffler established and activated the Settlement Website. The Settlement Website contains downloadable and printable copies of, among other things, the Court-approved Website Notice, the Stipulation of Settlement (with exhibits), the 7023 Approval Motion, and the 7023 Preliminary Approval Order. The Fee and Expense Application and the Final Approval Motion (which are due to be filed on April 6, 2010) will also be promptly posted when available. The Website Notice also contains a Frequently Asked Questions page and an "Important Dates" section reflecting key dates and deadlines regarding the Settlement. A copy of the Website Notice posted to the Settlement Website is attached hereto as **Exhibit B.** Through April 1, 2020, the Settlement Website has

hosted 171 user sessions with a total of 347 page views.

12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 4th day of April 2020, in Springfield, Pennsylvania.



Michael E. Hamer

EXHIBIT A

In re First Energy Solutions Corp Bankruptcy
c/o Heffler Claims Group, Claims Administrator
P.O. Box 58234
Philadelphia, PA 19102-8234
Telephone: 1-833-930-2422

March 20, 2020

<<Refnum barcode>>
<<refnum>>
<<Company Name>>
<<Address1>>
<Address2>>
<<City, State Zip-zip4 >>

RE: *In re FirstEnergy Solutions Corp. et al.*, No. 18-50757 (Bktcy. N.D. Ohio)

Dear Sir or Madam:

You are receiving this letter, and also being advised to view the more detailed "Website Notice" at *www.PolarVortexSettlement.com*, because, based on information provided by FirstEnergy Solutions Corp. ("FES"), your business is a member of a class of FES business customers that has been certified by the U.S. Bankruptcy Court for the Northern District of Ohio (the "Court"), and because a proposed settlement of the class's claims is now pending before the Court.[1]

WHAT CLAIMS ARE AT ISSUE THAT INVOLVE MY BUSINESS?

The Class Representative in this matter, Schwebel Baking Company ("Schwebel"), alleges that FES breached FES's contracts with its large and mid-size industrial and commercial customers (the "Settlement Class Members") by "passing through" to those customers certain "Polar Vortex Surcharges" that FES had paid in connection with efforts to ensure a reliable supply of electricity during unusually cold weather conditions in early 2014. FES (which filed for bankruptcy in 2018) has maintained throughout that it was entirely proper for it to "pass-through" the surcharges at issue, but it has agreed to a proposed class-wide Settlement to avoid the cost of further expensive litigation and to facilitate the implementation of its recently Court-approved Plan of Reorganization.

WHAT DOES THE SETTLEMENT PROVIDE?

Under the Settlement, in exchange for releasing all Polar Vortex Surcharge-related claims, the Settlement Class will receive an Allowed Claim of $12,000,000 in FES's bankruptcy proceedings. By

[1] Capitalized terms not otherwise defined in this letter have the same meanings that are given to them in the more detailed Website Notice document, available at www.PolarVortexSettlement.com.

contrast, Class Counsel estimate that had Schwebel and the Settlement Class prevailed on all aspects of their breach of contract claims, the Settlement Class would have been entitled to an Allowed Claim of roughly $22,000,000. However, because the Settlement Fund will initially be funded with equity securities in the reorganized, post-bankruptcy FES which will then have to be sold and converted to cash (after which distribution checks will be sent to eligible Settlement Class Members), it is not possible to know with certainty what the ultimate cash value of the Settlement will be. The *estimated* value of the Settlement Fund, based on information from FES's last Disclosure Statement dated May 30, 2019 (which estimates how much value will be available to distribute to all of FES's various creditors at the end of the bankruptcy proceedings) is $3.768 million, or 31.4 cents for each dollar of the Class's $12 million Allowed Claim, before deductions for settlement-related notice and administration costs and Class Counsel's application for an award of professional fees and expenses.

WHAT ARE MY OPTIONS?

To Participate in the Settlement and Be Eligible to Receive a Payment:

To reduce claims administration costs, you will ***not*** be required to file an individual claim, submit supporting documentation, or take any other actions for your Company to receive any payment it is entitled to under the Settlement. Instead, under the proposed Plan of Allocation, each Settlement Class Member will receive a percentage share of the net Settlement fund based on their "Recognized Claim Amount," which is equal to the total net amount of Polar Vortex Surcharges that it paid to FES.

Your Recognized Claim Amount will not be the same as the payment you will receive under the Settlement; instead, it will be used to determine your percentage *pro rata* share of the Net Settlement Fund. Your payment will be determined by dividing (a) your Recognized Claim Amount by (b) the total of all Recognized Claim Amounts of all Settlement Class Members. To avoid the significant administrative expense involved in paying relatively small claims, distributions will not be made to Settlement Class Members who would otherwise be entitled to receive a distribution of less than $50 (the "Minimum Payment Threshold").

To Request a Review of your Recognized Claim Amount:

Based on billing records provided by FES, Heffler Claims Group (the "Claims Administrator") has calculated your Recognized Claim Amount (*i.e.*, the total amount of all Polar Vortex Surcharges that you paid) to be $<<PVS>>. If you believe that your Recognized Claim Amount is ***not*** correct, and that it would be higher if calculated based on information from your records, you must submit a letter by **May 11, 2020** (together with *copies* of supporting documentation) to the Claims Administrator that complies with the requirements of §8 of the Website Notice.

To Object to any Aspect of the Settlement, or to Request Exclusion from the Class:

If your business wishes to object to the proposed Settlement, Plan of Allocation or related Professional Services Fees and Expense Application, it may submit an objection to the Court, and it also has the right to enter an appearance through an attorney (at its own expense). If your business does not want to be part of the proposed Settlement, the Court will exclude from the Class any member who timely and validly requests exclusion. Any requests for exclusion must be received by **April 21, 2020**, and any objections must be received by **May 1, 2020**, and conform with the requirements set forth in the Website Notice.

THIS LETTER IS ONLY A SUMMARY AND SHOULD BE READ IN CONJUNCTION WITH THE WEBSITE NOTICE, WHICH IS AVAILABLE AT WWW.POLARVORTEXSETTLEMENT.COM OR BY CALLING 1-833-930-2422.

The Website Notice contains important additional information concerning: (a) the nature of the underlying claims asserted on behalf of the Settlement Class; (b) the definition of the Settlement Class; (c) the defenses asserted by Debtor FES to the claims that were asserted against it; (d) the terms of the Settlement and the proposed Plan of Allocation; (e) estimated notice and administrative costs and Class Counsel's application for an award of Professional Services Fees and Expenses; (f) each Settlement Class Member's rights to appear by counsel, to request exclusion from the Settlement Class, to challenge the calculation of its Recognized Claim Amount, and to object to the Settlement, the Plan of Allocation or any Professional Services Fee and Expense Application; (g) the time and manner for exercising the foregoing rights; and (h) the binding effect of the proposed Settlement and proposed class-wide Judgment on Settlement Class Members.

PLEASE NOTE THAT IF YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT (AND THE COURT APPROVES IT) YOU DO *NOT* NEED TO TAKE ANY ACTION (SUCH AS FILING A CLAIM FORM) TO RECEIVE WHATEVER PAYMENT YOUR BUSINESS IS ENTITLED TO UNDER THE PROPOSED SETTLEMENT AND PLAN OF ALLOCATION.

Please do not contact the Court with questions, as it will be unable to answer them. Instead, please review the Website Notice at www.PolarVortexSettlement.com. You can also call the Claims Administrator, Heffler Claims Group, at 1-833-930-2422, or contact Co-Class Counsel, Scott+Scott Attorneys at Law LLP, at 1-212-223-6444.

Very truly yours,
Heffler Claims Group

In re First Energy Solutions Corp Bankruptcy
c/o Heffler Claims Group
Claims Administrator
P.O. Box 58234
Philadelphia, PA 19102-8234

<<refnum barcode>>

<<refnum>>

<<Company Name>>
<<Address1>>
<Address2>>
<<City, State Zip-zip4 >>

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: FIRSTENERGY SOLUTIONS CORP., et al., Debtors.	Chapter 11 Case No. 18-50757 (Jointly Administered) Hon. Judge Alan M. Koschik

NOTICE TO SETTLEMENT CLASS MEMBERS OF (1) PROPOSED SETTLEMENT OF CLASS PROOF OF CLAIM ARISING FROM POLAR VORTEX SURCHARGES; (2) CERTIFICATION OF SETTLEMENT CLASS AND APPOINTMENT OF CLASS COUNSEL AND SETTLEMENT CLASS CLAIMANT; (3) RIGHTS TO OPT OUT OR OBJECT; AND (4) SETTING OF DATE FOR FAIRNESS HEARING TO CONSIDER FINAL APPROVAL OF PROPOSED SETTLEMENT

Based on records maintained by FirstEnergy Solutions ("FES", now known as Energy Harbor LLC) or its affiliates, your company or business ("You" or "Your Business") is a member of the Settlement Class (as defined below) that has been certified for settlement purposes only in connection with Claim No. 934 (the "Class Proof of Claim") as filed in the above-captioned bankruptcy proceedings. The Class Proof of Claim is based on breach of contract claims asserted on behalf of the Settlement Class relating to certain "Polar Vortex Surcharges" that FES charged Settlement Class Members in connection with unusually cold weather conditions experienced in FES's service area in early 2014. This Notice provides important information with respect to the Class Proof of Claim and proposed class-wide resolution of the matter (the "Settlement") that has been preliminarily approved by the U.S. Bankruptcy Court for the Northern District of Ohio (the "Bankruptcy Court" or the "Court")[1].

[1] The Court is also sometimes referred to herein as "the "Bankruptcy Court" to distinguish it from the U.S. District Court ("District Court"), where the claims at issue were first asserted. Other capitalized terms used in this Notice and not otherwise defined have the meanings given them in the Parties' Stipulation of Settlement (the "Settlement Agreement"), which sets forth the full terms of the Settlement. A complete copy of the Settlement Agreement is available at www.polarvortexsettlement.com.

The Settlement applies to a certified Settlement Class consisting of all current or former Large and Mid-Sized Commercial or Industrial Business Customers of FES that (a) had one or more accounts with FES that were invoiced, by or on behalf of FES, for Polar Vortex Surcharges in 2014; and (b) paid all or a portion of such Polar Vortex Surcharges, but excluding any such customer that has settled or released any claims against the Debtors relating to its payment of all or any portion of its Polar Vortex Surcharges.

IF YOU DO NOT OBJECT TO THE PROPOSED SETTLEMENT (AND THE SETTLEMENT IS APPROVED AND BECOMES EFFECTIVE), YOU DO NOT HAVE TO TAKE ANY ACTION IN ORDER FOR YOUR BUSINESS TO RECEIVE THE PAYMENT (IF ANY) FROM THE NET SETTLEMENT FUND TO WHICH YOUR BUSINESS MAY BE ENTITLED BASED ON THE "RECOGNIZED CLAIM AMOUNT" THAT HAS ALREADY BEEN CALCULATED FOR YOUR BUSINESS. EACH RESPECTIVE CLASS MEMBER'S "RECOGNIZED CLAIM AMOUNT" IS SET FORTH IN THE SEPARATE LETTER (THE "INDIVIDUAL NOTICE") THAT HAS BEEN MAILED TO EACH SETTLEMENT CLASS MEMBER. If You have misplaced or did not receive a copy of the Individual Notice letter that sets forth the amount of Your Business's Recognized Claim Amount, You can obtain another copy by emailing the Claims Administrator through the website at www.polarvortexsettlement.com or by calling it at 833-930-2422.[2]

If You disapprove of the Settlement, the proposed Plan of Allocation, or the Fee and Expense Application, You may object by following the procedures described below. You may also request to have Your Business excluded from the Settlement Class and the Settlement by

[2] If You wish the challenge the calculation of Your "Stated Recognized Claim Amount" as set forth in Your Individual Notice, you may do so by following the procedures described below in the answer to Question 8 below.

following the procedures described below (in which case Your Business will *not* be included in, or recover anything under, the Settlement). *See* Answers to Questions 10-11 and 14-15 below. You do *not* have to appear in Court in connection with any matters relating to the Settlement.

PLEASE READ THIS NOTICE CAREFULLY. A FEDERAL BANKRUPTCY COURT HAS AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION.

This Notice advises You of the proposed Settlement of breach of contract claims that were first asserted by Schwebel Baking Company ("Schwebel Baking" or the "Settlement Class Claimant"), on behalf of itself and a proposed class, in a lawsuit it filed against FES in the U.S. District Court for the Northern District of Ohio in May 2017 captioned *Schwebel Baking Company v. FirstEnergy Solutions Corp.*, 4:17-cv-00974-BYP (N.D. Ohio) (the "District Court Action"). After FES and certain of its related companies (collectively, "Debtors")[3] filed for bankruptcy protection in March 2018, the claims at issue continued to be litigated in the Bankruptcy Court under the caption *FirstEnergy Solutions Corp., et al.*, No. 18-50757 (Bkrtcy N.D. Ohio) (the "Bankruptcy Proceedings").[4] Both the complaint in the District Court Action and the Class Proof of Claim in the Bankruptcy Proceedings were filed by the Settlement Class Claimant on behalf of the Settlement Class. The Settlement Class Claimant and Debtors (including FES) are referred to collectively as the "Parties."

The Bankruptcy Court has preliminarily approved the proposed Settlement, which would settle all class-wide claims relating to the Polar Vortex Surcharges asserted in the District Court Action and the Bankruptcy Proceedings (collectively, the "Action"), and has scheduled a hearing

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[3] "Debtors" includes FES and First Energy Nuclear Operating Company, and their respective subsidiaries, including FE Aircraft Leasing Corp, FirstEnergy Generation, LLC, FirstEnergy Generation Mansfield Unit 1 Corp; First Energy Nuclear Generation, LLC, and Norton Energy Storage L.L.C.

[4] The Debtors have filed a motion [Docket No. 3822] in the Bankruptcy Court seeking to change the case caption in light of the Debtors' emergence from chapter 11 on February 27, 2020.

(the "Fairness Hearing") to consider whether to grant final approval to the Settlement and Plan of Allocation as fair, reasonable and adequate. At the Fairness Hearing, the Bankruptcy Court will also consider Class Counsel's application for an award of fees and expenses (including an award of no greater than $15,000 to Schwebel Baking for its time and commitment in service to the Settlement Class) (the "Fee and Expense Application"). The Fairness Hearing is scheduled to be held before the Hon. Alan M. Koschik, U.S. Bankruptcy Court Judge, on **May 21, 2020 at 10:00 a.m.**, prevailing Eastern Time, at the U.S. Bankruptcy Court for the Northern District of Ohio, located in the John F. Seiberling Federal Building, 2 South Main Street, Akron, Ohio 44308. Please check this website for details and updates on the timing and format for the Fairness Hearing. In light of the Coronavirus outbreak and related travel and other restrictions, it is possible that the Fairness Hearing may be held telephonically or by other means, and may also be rescheduled.

Summary of the Settlement. In sum, the Settlement provides that, in exchange for releasing Debtors and their Affiliates[5] from the Polar Vortex Surcharge-related claims at issue (the "Released Claims"), the Settlement Class will receive an "Allowed Claim" in the pending Bankruptcy Proceedings in the amount of $12,000,000 (which Class Counsel estimate is roughly 55% of the maximum possible allowed claim that could have been obtained on behalf of the Settlement Class had the Settlement Class Claimant prevailed on behalf of the Settlement Class on every disputed issue in connection with the Action and the Class Proof of Claim).

Because, *inter alia*, the Settlement Fund that will be created for the benefit of Settlement Class Members will initially be funded with equity securities ("New Common Stock") in the parent company of reorganized, post-bankruptcy FES, Energy Harbor Corp., and because Class Counsel

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[5] "Affiliates," as used herein, refers to an entity's past and present trustees, directors, partners, officers, employees, contractors, auditors, principals, agents, attorneys, advisors, predecessors-in-interest, successors-in-interest, and parent and subsidiary companies.

will have to sell those securities and convert them to cash before any payments are made to Settlement Class Members -- it is not possible to know with certainty what the ultimate cash value of the Settlement Fund will be. Class Counsel, on behalf of the Settlement Class, intend to sell (and convert into cash) any New Common Stock received as promptly as possible, consistent with their fiduciary duties to avoid selling such securities at an unreasonable discount from their fair value.

Debtor FES, in its Court-approved Disclosure Statement dated May 30, 2019, projected the value of "FES Single-Box Unsecured [Creditor] Claims" (the category of creditor claims into which the Settlement's "allowed claim" falls) will be 31.4% of the amount of such claims.[6] Class Counsel did not participate in the creation of and has not independently validated the foregoing valuation projection, but that projection reflected the most recent valuation estimate that was publicly available from the materials that have been filed in Debtors' ongoing bankruptcy proceedings. Applying this estimated 31.4% bankruptcy recovery rate, the estimated value of the Settlement to Settlement Class Members would be approximately $3.768 million (or 31.4 cents for each dollar of the Class's $12 million Allowed Claim), before deductions for administrative costs and Class Counsel's fees and expenses in connection with litigating and settling the Settlement Class's claims. If the Settlement is approved, the final value of the Settlement, before deductions for Settlement-related notice and administration costs (capped at $75,000) and any Court award of fees and expenses to Class Counsel (see §13 below), may be either greater or less than $3.768 million due to, *inter alia*, the final amount of all allowed FES Single Box Unsecured

[6] Because the combined debts of FES (and the other Debtors) exceeded their ability to pay them, all "allowed claims" held by unsecured creditors of FES (and not just the "allowed claim" of the Settlement Class) have been subjected to a "bankruptcy discount" under the Debtors' Court-approved Plan of Reorganization.

Claims, and the final value of the aggregate consideration available to be distributed to all holders of allowed FES Single Box Unsecured Claims, being either greater or less than what was projected in the Disclosure Statement. Class Counsel's ability to realize cash value upon the sale of the New Common Stock to be received under the Settlement will also be affected by, *inter alia*, such securities' liquidity, by changes in market conditions prior to the occurrence of the Settlement Effective Date, by any market premium or discount to fair value at the time the securities are sold or otherwise converted to cash, and by transaction costs. *See also* additional information concerning New Common Stock at the response to Question 6, below.

The full terms of the Settlement are contained in the Parties' Stipulation of Settlement (the "Settlement Agreement"), which is available at www.polarvortexsettlement.com. The proceeds of the Settlement, if the Settlement is approved and becomes Effective, will be distributed *pro rata* to Settlement Class Members in accord with the Plan of Allocation described below and the letter (the "Individual Notice") that has been separately mailed to each Settlement Class Member. To avoid the time and administrative expense involved in paying relatively small claims, distributions will not be made to Settlement Class Members who would otherwise be entitled to receive a distribution of less than $50 (the "Minimum Payment Threshold").

Any questions regarding the Settlement, this Notice or the Individual Notice letter should be directed to Class Counsel as follows: Scott+Scott Attorneys at Law LLP, c/o William C. Fredericks, The Helmsley Building, 230 Park Avenue, 17th Floor, New York, NY 10169-1820, at (212) 223-6444, wfredericks@scott-scott.com. *Please do not contact the Court, as it will not be able to answer your questions.*

SUMMARY OF SETTLEMENT CLASS MEMBERS' OPTIONS IN THIS SETTLEMENT

DO NOTHING *(Note: No Action On Your Part Is Required For You To Receive A Payment if You Are Eligible to Receive One)*	If the Settlement is approved by the Court and becomes Effective, *You are not required to do anything to receive a payment if Your Business is eligible to receive one.* Your allocable portion of the Net Settlement Fund, subject to the Minimum Payment Threshold, will be calculated by the Claims Administrator under the Plan of Allocation (see §7 below) and mailed to You (at the address to which Your Individual Notice letter was sent) based on the "Recognized Claim Amount" information set forth in Your Individual Notice letter.
REQUEST REVIEW OF THE CLAIMS' ADMINISTRATOR's CALCULATION OF YOUR "RECOGNIZED CLAIM AMOUNT"	The Parties believe that the "Recognized Claim Amount" that has been provided in each Settlement Class Members' Individual Notice letter is reliable. However, if (1) You believe that the Claims Administrator has miscalculated Your "Recognized Claim Amount," and (2) You have supporting documentation to support a larger Recognized Claim Amount, You can ask the Claims Administrator (based on Your additional documentation) to recalculate Your Recognized Claim Amount by following the procedures set forth in §8 below.
ASK TO BE EXCLUDED FROM THE CLASS AND THE SETTLEMENT ("OPTING-OUT")	This is the only option that potentially allows You to pursue Your own claims or to be part of another lawsuit (at Your own expense) against FES or the other Released Debtor Parties based on the Released Claims covered by this Settlement. Requests for exclusion, prepared and sent in accord with the requirements set forth in §10 below, must be *received* by the Claims Administrator on or before **April 21, 2020**. If You exclude Your Business from the Class, it will *not* participate in the Settlement, and it will *not* receive any payment from the Net Settlement Fund.
OBJECT	Write to the Court about why You do not like the Settlement, the Plan of Allocation, or the Fee and Expense Application. Your Business will still be a member of the Settlement Class. Objections, prepared and sent in accordance with all of the requirements set forth in §14 below, must be submitted in writing and *received* by the Court and counsel for the Parties on or before **May 1, 2020**.

GO TO THE FAIRNESS HEARING CURRENTLY SCHEDULED FOR MAY 21, 2020 AT 10:00 A.M., ET	If You have submitted a timely written objection to the Court and counsel for the Parties, You can ask to speak (including through a lawyer of Your own choice at Your own expense) in Court about the fairness of the Settlement, the Plan of Allocation, or the Fee and Expense Application. Requests to speak must be submitted in writing and *received* by the Court and counsel for the Parties on or before **May 1, 2020.** *See also* §§16-18 below. Please check the website for details and updates on the timing and format for the Fairness Hearing. In light of the Coronavirus outbreak and related travel and other restrictions, it is possible that the Fairness Hearing may be held telephonically or by other means, and may also be rescheduled.

Please Do Not Call the Court with Questions About the Settlement.

SUMMARY OF THIS NOTICE

1. Why Is This Notice Being Provided?

Based on FES's books and records, Your Business paid certain charges that were identified as "RTO Surcharges" on invoices that FES sent Your Business in 2014 in connection with unusually cold "polar vortex" weather conditions experienced in FES's service area in early 2014. Accordingly, if You received a copy of an Individual Notice letter (which contains individualized information concerning Your Recognized Claim Amount and directs the recipient to this "Website Notice" document), You have already been identified as a Settlement Class Member. As a Settlement Class Member, You have the right to know about the proposed Settlement and related matters before the Court decides whether to approve the Settlement. If the Court approves the Settlement and proposed Plan of Allocation, and objections or appeals (if any) are resolved and the Settlement becomes Effective, then (a) the Net Settlement Fund to be created under the Settlement will be distributed to Settlement Class Members pursuant the Plan of Allocation, and (b) the Settlement Class Members will release FES and the other Released Debtor Parties (consisting of Debtors and their Affiliates) from claims based on the RTO Surcharges (hereafter, the "Polar Vortex Surcharges"), as detailed in the Settlement Agreement.

This Notice summarizes the history of the Action, the terms of the Settlement, and Your rights with respect to the Settlement. It is also being made available to inform You of a hearing (the "Fairness Hearing") to be held by the Court to consider the fairness, reasonableness and

adequacy of the Settlement, proposed Plan of Allocation, and Class Counsel's Fee and Expense Application. *See* §16-18 below for more details about the Fairness Hearing.

The U.S. Bankruptcy Court for the Northern District of Ohio, Eastern Division (the "Court") is in charge of this Action. This Notice is not an expression of any opinion by the Court concerning the merits of any claims or defense asserted in the Action, and the Court still has to decide whether to approve the Settlement. If it approves the Settlement, payment to Settlement Class Members based on the Plan of Allocation and their respective Recognized Claim Amounts (*see* §§7-9 below), subject to the $50 Minimum Payment Threshold, will be made after any appeals are favorably resolved and the Settlement becomes Effective pursuant to its terms.

2. What Is This Action About? What Has Happened So Far?

In this Action, the Settlement Class Claimant, Schwebel Baking, alleges that FES breached its contracts with Schwebel Baking and a class of similarly situated FES business customers who were located within FES's service area (the "Region"), by "passing through" certain surcharges to those customers. More specifically, in February 2014, PJM Interconnection (the regional transmission organization ("RTO") that provided electricity to FES, which FES then resold to FES's customers) charged FES for FES's share of certain unusually high ancillary charges (the "PJM Polar Vortex Charges") that PJM had incurred to maintain a reliable supply of electricity to "retail" electricity suppliers (such as FES) when the Region experienced unusually cold "Polar Vortex" conditions in early 2014. FES then "passed-through" certain of these charges to its business customers by adding an "RTO Surcharge" (or "Polar Vortex Surcharge") to those customers' invoices.

In those invoices, FES identified the amount of each Polar Vortex Surcharge being assessed, and referenced a website that FES business customers could access for more information

about the basis for their Polar Vortex Surcharges. Thereafter, Schwebel Baking and other Settlement Class Members paid FES some or all of the invoiced Polar Vortex Surcharges, even though Schwebel Baking (among other Class Members) had protested to FES that the Surcharges were not authorized by FES's relevant agreements. In response, FES asserted (and has continued to assert) that it was entirely proper under the relevant contract documents for FES to "pass through" and invoice each Settlement Class Member for its respective *pro rata* share of the PJM Polar Vortex Charges.

Several years later, on May 8, 2017, Schwebel Baking filed a complaint against FES (the "Complaint") in the District Court in the matter captioned *Schwebel Baking Company v. FirstEnergy Solutions Corp.*, 4:17-cv-00974-BYP (N.D. Ohio). On behalf of itself and a purported class of similarly situated FES customers, Schwebel Baking alleged claims for breach of contract against FES, asserting that FES was not entitled to pass through any PJM Polar Vortex Charges (which FES had previously paid to PJM) to FES's fixed-rate business customers.

In response, FES denied (and has continued to deny) any and all liability in connection with the claims alleged in the Complaint. FES's Answer to the Complaint also asserted fourteen (14) affirmative defenses, including that (i) the Complaint failed to state a claim for breach of contract; (ii) any claims were in any event also barred by the "voluntary payment doctrine" and/or the equitable doctrines of laches (under which aggrieved persons who unreasonably delay in trying to obtain a recovery may have their claims barred as a matter of equity) and/or waiver and estoppel (because Schwebel Baking and other Class Members had allegedly ratified FES's interpretation of relevant contract terms by later renewing contracts with FES that contained the same terms).

FES also filed a Motion to Dismiss the Complaint (the "Motion to Dismiss") in which FES asserted that the Complaint failed to state a cause of action and that the voluntary payment doctrine

barred Schwebel Baking's claims. FES also filed a Motion to Strike the Complaint's class action allegations (the "Motion to Strike") on the grounds that (a) there were material differences in the contracts that different customers had entered into with FES that precluded class treatment; and (b) FES's affirmative defenses, including those based on the voluntary payment doctrine, raised "individual issues of law or fact" such that "common issues" would not "predominate" over individualized issues as required to certify a class. Both Schwebel Baking and FES submitted extensive briefing, affidavits and oral argument on these Motions to the District Court.

In March 2018, the District Court denied the Motion to Dismiss, stating that dismissing the case prior to taking discovery would be proper only if FES's contract interpretation was the "only reasonable construction," and that Schwebel Baking had raised sufficient disputed factual and legal issues to avoid dismissal of its individual claims without first allowing discovery. The District Court also declined to strike the Complaint's class allegations, on the grounds that it would also be more appropriate to decide disputed class certification issues after discovery had been conducted.

On March 31, 2018, the Debtors (including FES) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, thereby commencing the Bankruptcy Proceedings under Case No. 18-50757 (Bkrtcy. N.D. Ohio). Given this bankruptcy filing, in April 2018 the District Court entered an order perpetually staying all proceedings in the District Court Action and closing that case.

On August 20, 2018, Schwebel Baking filed a Motion for Entry of an Order Applying Bankruptcy Rule 7023 to the Claims of a Class of Debtor FES's Customers Arising From Its Polar Vortex Surcharges, together with supporting affidavits. The Motion requested that, *inter alia*, the Bankruptcy Court (a) permit Schwebel Baking to file a class proof of claim, and (b) certify a class

under Bankruptcy Rule 7023 and Fed. R. Civ. P. Rules 23(a) and 23(b)(3). In connection with that Motion, Schwebel Baking also filed the Class Proof of Claim (claim no. 934) asserting, on behalf of itself and the putative class, an estimated $20,000,000 claim for breach of contract against FES. Pursuant to a stipulation that was so-ordered by the Court on September 25, 2018, the Parties and the Court agreed that: (1) Bankruptcy Rule 7023 should be applied to the Class Proof of Claim; (2) Schwebel Baking would be allowed to file the Class Proof of Claim on behalf of itself and the proposed class; and (3) the Court would defer final decision on class certification until after completion of relevant discovery. The Court thereafter set a schedule for conducting discovery and for submitting supplemental briefs, affidavits and expert reports. The Court also entered a Confidentiality Agreement and Stipulated Protective Order to govern all discovery conducted in the Action.

Before the Parties entered into settlement discussions in late January 2019, the Parties conducted significant discovery. For example, Schwebel Baking served Debtors with multiple Requests for Production of Documents, Requests for Admission and Interrogatories, and obtained Debtors' responses thereto. During the same period, Debtors also served Schwebel Baking with Debtors' Requests for Production of Documents and Interrogatories, to which Schwebel Baking responded. In total, Debtors ultimately produced over 36,000 pages of documents in response to Schwebel Baking's discovery requests before settlement discussions commenced. In response to a *subpoena duces tecum* from Schwebel Baking, PJM Interconnection also produced roughly 1,200 pages of documents. The Parties also engaged in numerous telephonic meet-and-confers and exchanged numerous emails and lengthy letters over contested discovery matters, and both sides had submitted fully briefed motions seeking to resolve various discovery disputes that were pending before the Court at the time the Parties agreed to settle.

On February 11, 2019, the Parties informed the Court that they had made meaningful progress towards reaching a settlement in principle of the claims at issue, and following further weeks of arm's length negotiations they ultimately reached agreement on the terms of written Term Sheet in March 2019, and signed the customary "long form" Settlement Agreement (including the exhibits thereto) on November 20, 2019.

Based upon the discovery taken to date, Settlement Class Claimant Schwebel Baking and Class Counsel believe that the proposed Settlement represents an excellent result for the Settlement Class, and is fair, reasonable, adequate, and in the Settlement Class's best interests, taking into account FES's bankruptcy and all other relevant factors, including the substantial benefits that the Settlement Class Members will receive under the Settlement versus the substantial costs, risks and uncertainties of continued litigation. *See also* §5 below.

3. Why Has The Action Been Litigated On A Putative Class-Wide Basis?

In proceedings brought on a putative class-wide basis, one or more representative parties, such as Schwebel Baking here, purports to assert claims on behalf of persons or entities that have similar claims. Schwebel Baking alleges that its claims against FES are similar to and typical of the claims of the other FES business customers who are members of the Settlement Class. By bringing first the Complaint in the District Court Action, and then (following FES's bankruptcy filing) the Class Proof of Claim in the Bankruptcy Proceedings, the Court is able to resolve the claims of all Settlement Class Members, without requiring each Settlement Class Member to incur the time and expense of pursuing its own separate claims.

4. Who Is Included In The Class?

The Court has already certified the "Settlement Class" in this matter. The Settlement Class, for the purposes of this Settlement only, consists of:

All current or former Large and Mid-Sized Commercial or Industrial Business Customers of FES that (a) had one or more accounts with FES that were invoiced, by or on behalf of FES, for Polar Vortex Surcharges in 2014; and (b) paid all or a portion of such Polar Vortex Surcharges. Excluded from the Settlement Class is any Settlement Class Member that has settled or released any claims against the Debtors relating to its payment of all or any portion of its Polar Vortex Surcharges.

IF YOU HAVE RECEIVED AN INDIVIDUAL NOTICE LETTER REGARDING THIS MATTER FROM THE CLAIMS ADMINISTRATOR (HEFFLER CLAIMS ADMINISTRATION), IT HAS ALREADY BEEN DETERMINED, BASED ON INFORMATION CONTAINED IN FES's BOOKS AND RECORDS, THAT YOUR BUSINESS IS A MEMBER OF THE SETTLEMENT CLASS.

5. Why Is There A Settlement?

The Court did not decide in favor of Schwebel Baking or FES (or any Related Debtor Party). Instead, both sides agreed to a Settlement. If approved, the Settlement will avoid the cost and uncertainties of further litigation (including the taking of depositions, the preparation of expert reports and taking of expert discovery, the submission of dispositive pre-trial motions, the holding of a trial, and the litigation of likely appeals), while allowing eligible Settlement Class Members to receive compensation.

Class Counsel believe that the claims asserted against FES have merit. They recognize, however, that continuing the litigation through trial and likely appeals would be expensive and potentially take additional years to resolve, and would involve the very substantial risk that Schwebel Baking would be unable to establish that the Debtors were liable, or that the Debtors (even if they were liable) had caused the Settlement Class to suffer legally recoverable damages. For example, no regulatory body has held that imposition of the Polar Vortex Surcharges on FES's business customers was improper, and persuading a court to resolve contractual ambiguities in the Settlement Class's favor would have likely involved a complex and expensive "battle of experts"

whose outcome would have been inherently uncertain. In addition, even if an underlying breach of contract were ultimately proven, it would have remained uncertain whether Schwebel Baking and individual Settlement Class Members could have defeated FES' affirmative defenses based on the voluntary payment doctrine, laches, waiver and estoppel. To obtain a larger recovery, Schwebel Baking would also have had to complete additional (and expensive) fact and expert discovery, and then prevailed at several future stages of litigation, including at class certification, summary judgment, trial, and any appeals. Further prosecution of the Action would therefore involve significant risks and potentially years of further litigation.

FES and its Affiliates continue to deny any liability in connection with the Released Claims and deny that they breached any contracts, and further maintain that each Settlement Class Member's Polar Vortex Surcharge claims would in any event also be barred by the voluntary payment doctrine, principles of laches and estoppel, and by other affirmative defenses. FES and its Affiliates state that they only agreed to the Settlement to avoid the substantial costs of further litigation, and to facilitate the consummation of the Debtors' Plan of Reorganization. The Settlement's material terms have also been approved by various constituencies in the Bankruptcy Proceedings, including the Court-appointed Official Committee of Unsecured Creditors.

6. What Does the Settlement Provide?

The Settlement provides that the Settlement Class will receive an Allowed Claim in the pending Bankruptcy Proceedings in the amount of $12,000,000 (which Class Counsel estimate is roughly 55% of the maximum possible allowed claim that could have been obtained on behalf of the Settlement Class in the Bankruptcy Proceedings had Schwebel Baking prevailed, on behalf of the Settlement Class, on every disputed issue in connection with the Action and the Class Proof of Claim).

Because, *inter alia*, the Settlement Fund that will be created for the benefit of Settlement Class Members will initially be funded with equity securities ("New Common Stock") in the parent of reorganized, post-bankruptcy FES, EnergyHarbor Corp., -- and because Class Counsel will have to sell those securities and convert them to cash before any payments are made to Settlement Class Members -- it is not possible to know with certainty what the ultimate cash value of the Settlement Fund will be. Class Counsel, on behalf of the Settlement Class, intend to sell (and convert into cash) any New Common Stock received as promptly as possible, consistent with their fiduciary duties to avoid selling such securities at an unreasonable discount from their fair value.

Debtor FES, in its Court-approved Disclosure Statement dated May 30, 2019, projected the value of "FES Single-Box Unsecured [Creditor] Claims" (the category of creditor claims into which the Settlement's "allowed claim" falls) will be 31.4% of the amount of such claims.[7] Class Counsel did not participate in the creation of and has not independently validated the foregoing valuation projection, but that projection reflected the most recent valuation estimate that was publicly available from the materials that have been filed in Debtors' ongoing bankruptcy proceedings. Applying this estimated 31.4% bankruptcy recovery rate, the estimated gross value of the Settlement here to Settlement Class Members would be approximately $3.768 million (or 31.4 cents for each dollar of the Class's $12 million Allowed Claim), before deductions for Settlement-related notice and administration costs and any award of Class Counsel's fees and expenses in connection with litigating and settling the Settlement Class's claims. If the Settlement is approved, the final value of the Settlement, before deductions for Settlement-related notice and

[7] Because the combined debts of FES (and the other Debtors) exceeded their ability to pay them, all "allowed claims" held by unsecured creditors of FES (and not just the "allowed claim" of the Settlement Class) have been subjected to a "bankruptcy discount" under the Debtors' Court-approved Plan of Reorganization.

administration costs (capped at $75,000) and any Court award of Class Counsel's fees and expenses, may be either greater or less than $3.768 million due to, *inter alia*, the final amount of all allowed FES Single Box Unsecured Claims (and the final value of the aggregate consideration available to be distributed to all holders of allowed FES Single Box Unsecured Claims) being either greater or lesser than what was projected in Debtor's Disclosure Statement, and the value of New Common Stock shares when they are sold (which will occur before any distributions are ultimately paid, in cash, to eligible Settlement Class members). For example, based on the formula that Debtor FES has used to make its initial distributions of New Common Stock to other creditors that (like the Settlement Class) are classified as "FES Single Box Unsecured Creditors," as of March 13, 2020, Class Counsel anticipate that the Settlement Class will receive a minimum of 159,607 shares of New Common Stock (and have the *potential* to receive, but are by no means guaranteed to receive, as many as 25,000 additional New Common Stock shares once certain additional unrelated claims against the Debtor are finally resolved. In addition, according to information available through Bloomberg LLP, during the nine days between March 5, 2020 (when the first trade of New Common Stock, which trades under the ticker symbol "ENGH", was reported) and March 13, 2020, inclusive, shares of New Common Stock traded between a low of $20.00 and a high of $28.75 per share[8]. Based on these prices, the total gross value of the Settlement before deductions would be roughly in the range of $3.2 million (using the lowest price in that date range and assuming no further shares are received) to $5.3 million (using the highest price in that date range and assuming that the Class ultimately receives an additional 25,000 shares

[8] Because shares of New Common Stock are not registered to trade publicly, such trades took place on markets that are not open to ordinary investors. In addition, it should be noted that early March 2020 was a period of exceptional market volatility. Settlement Class members interested in obtaining more recent information concerning trading prices for New Common Stock (ticker symbol: "ENGH") should be able to do so by checking publicly accessible websites, such as www.finance.yahoo.com.

of New Common stock under the Settlement). Class Counsel's ability to realize cash value upon the sale of the New Common Stock to be received under the Settlement will also be affected by, *inter alia*, such securities' liquidity, by any market premium or discount to fair value at the time the securities are sold or otherwise converted to cash, and by any associated transaction costs.

In exchange for this recovery, the Settlement provides that each Settlement Class Member, on behalf of itself and its Affiliates, will release all "Released Claimants' Claims" as against FES and its Affiliates. "Released Claimants' Claims" is defined as "any and all claims and causes of action of every nature and description, including Unknown Claims, whether arising under federal, state, common or foreign law, that any Settlement Class Member or Released Claimant Party (a) asserted in the District Court, the Bankruptcy Court or any other forum, or (b) could have asserted in any forum that arise or arose out of, or are based upon, any Settlement Class Member's payment of all or any portion of its Polar Vortex Surcharges, except for claims relating to enforcement of the Settlement." The Final Approval Order shall also provide for the release of all Released Claims as against FES and its Affiliates, and shall permanently bar each Settlement Class Member and its Affiliates from asserting any such claims.[9]

The full terms of the Settlement are contained in the Parties' Stipulation of Settlement (the "Settlement Agreement"), a copy of which is available at www.polarvortexsettlement.com. The proceeds of the Settlement, if it is approved and becomes Effective, will be distributed *pro rata* to

[9] The Settlement also provides that FES and each Debtor, on behalf of itself and its Affiliates, will release all "Released Debtors' Claims" (if any) as against each Settlement Class Member and its Affiliates. "Released Debtors' Claims" is defined as "any and all claims and causes of action of every nature and description including Unknown Claims, whether arising under federal, state, common or foreign law that [FES or its Affiliates] has or could have asserted in any forum that arise or arose out of, or are based upon, any Settlement Class Member's conduct with respect to disputing, litigating or settling the Polar Vortex Surcharges, except for claims relating to the enforcement of the Settlement." The Final Approval Order will also provide for the release of all Released Debtors Claims as against each Settlement Class Member and its Affiliates, and shall permanently bar FES and its Affiliates from asserting any such claims.

Settlement Class Members in accordance with the Plan of Allocation described at §7 below. Questions regarding the Settlement or the Plan of Allocation should be directed to Class Counsel c/o William C. Fredericks, Scott+Scott Attorneys at Law LLP, 230 Park Avenue, The Helmsley Building, 17th Floor, New York, NY 10169-1820, (212) 223-6444, wfredericks@scott-scott.com.

7. The Plan of Allocation: How Will the Settlement Fund Be Allocated, and What Will My Business's Share Be?

The distribution of the Net Settlement Fund (after the non-cash "New Common Stock" settlement consideration has been converted to cash) to each Settlement Class Member shall be *pro-rata* based on each respective Settlement Class Members' "Recognized Claim Amount," with each Settlement Class Members' "Recognized Claim Amount" being equal to the net amount of Polar Vortex Surcharges (a/k/a/ RTO Surcharges) actually paid by that Settlement Class Member.

Here, the Claims Administrator has already calculated a "Recognized Claim Amount" for each Settlement Class Member, based on information provided to it from FES's books and records, and each Settlement Class Member has been advised of its "Recognized Claim Amount" in the Individual Notice letter that has been mailed to it by the Claims Administrator. Your "Recognized Claim Amount" is not the same as what You will receive under the Settlement (assuming it becomes Effective), but will be used by the Claims Administrator to determine Your percentage *pro rata* share of the Net Settlement Fund (which will be determined by dividing (a) Your "Recognized Claim Amount" by (b) the total of all "Recognized Claim Amounts" of all Settlement Class Members).

To avoid the time and administrative expense involved in paying relatively small claims, the proposed Plan of Allocation provides that distributions will not be made to Settlement Class Members who would otherwise be entitled to receive a distribution check of less than $50 (the "Minimum Payment Threshold"). Any amounts that the Claims Administrator determines are too

small to qualify to be paid under the Minimum Payment Threshold shall be re-allocated and distributed on a *pro rata* basis to those Settlement Class Members that are eligible to be paid under the Minimum Payment Threshold.

Your Recognized Claim Amount, as set forth in Your separate Individual Notice letter, has already been calculated for You by the Claims Administrator. However, each Settlement Class Member has the right to submit evidence that its actual Recognized Claim Amount is greater than what is set forth in its Individual Notice letter. Given FES's representations that the relevant information they have provided to Claims Administrator is accurate and complete based on their reasonable review of readily accessible books and records, Class Counsel do not expect that any material errors in calculating any Settlement Class Member's Recognized Claim Amount will be identified. In the event of any disputes as to what Recognized Claim Amount should be for any given Settlement Class Member, the dispute shall be submitted to the Claims Administrator (subject to review by the Court) for resolution. *See* §8 below.

8. Does My Business Have the Right to Dispute the Court-Appointed Claims Administrator's Calculation of My Business's "Recognized Claim Amount?"

Yes. If You believe that Your Recognized Claim Amount is not correctly set forth in the separate Individual Notice letter that has been mailed to You, and that Your Recognized Loss Amount would be higher if calculated based on information from Your records, you must submit a letter to the Claims Administrator by Certified Mail, return receipt requested, stating what You believe Your Recognized Loss Amount figure should be, together with copies of (1) relevant invoices reflecting the Polar Vortex Surcharges (a/k/a "RTO Surcharges") that You were invoiced for, and (2) evidence of Your payment of such invoices (or such other supporting documentation sufficient to establish a higher Recognized Claim Amount) no later than **May 11, 2020.** The letter must be addressed as follows:

In re First Energy Solutions Corp Bankruptcy
c/o Heffler Claims Group
P.O. Box 58234
Philadelphia, PA 19102-8234

Any Settlement Class Member challenging the calculation of its Recognized Claim Amount must bear its own costs and expenses in connection with its challenge.

Do not send originals of any supporting documentation to the Claims Administrator. Also, please remember that, unless You have reason to believe that Your Recognized Claim Amount as stated in Your Individual Notice letter is incorrect, You do ***NOT*** need to take any further action to establish Your Recognized Claim Amount and, subject to the Minimum Payment Threshold, Your *pro rata* share of the Net Settlement Fund will be calculated based on Your Recognized Claim Amount number as stated in Your Individual Notice letter.

9. When Will My Business Receive Its Share of the Settlement Proceeds?

Payment to Settlement Class Members who qualify for a payment under the Plan of Allocation is conditioned on several matters, including entry of an order by the Court approving the Settlement and either affirmance of that order following any appeals or the expiration of the time for filing any such appeals. For a fuller description of all conditions required to be satisfied for the Settlement to become Effective, you can review a complete copy of the Settlement Agreement (*see* §6 above). In addition, before any Settlement proceeds can be distributed, any New Common Stock received as part of the Settlement consideration must first be sold and converted to cash. Class Counsel, on behalf of the Settlement Class, intend to sell (and convert into cash) any New Common Stock received under the Settlement as promptly as possible consistent with their fiduciary duties to avoid selling such securities at an unreasonable discount from their fair value, although unexpected delays due to market conditions are possible.

Subject to the foregoing, the Net Settlement Fund will be allocated and distributed to Settlement Class Members as soon as reasonably practicable in accordance with the Plan of Allocation as approved by the Court. If the Settlement is not approved, the Court's approval order is overturned on appeal, or the Settlement is otherwise terminated in accordance with its terms, the Parties will return to their respective positions as they existed as of November 20, 2019, and the existence of the proposed Settlement may not be introduced as evidence in subsequent litigation.

10. Can My Business Opt Out of the Settlement? What Is the Procedure To Do So?

If Your Business does not want to participate in the Settlement, and wishes to retain the ability to assert (at its own expense) any of the Released Claims on an individual basis against FES or any of the other Released Debtor Parties, it must timely and properly exclude itself ("opt out") from the Settlement and the Settlement Class. To do so, one or more of Your duly authorized representatives must submit a written request to be excluded from the Settlement and the Settlement Class that complies with the requirements of this paragraph so that it is ***received*** by no later than **April 21, 2020** (the "Opt-Out Deadline"). Any requests for exclusion must therefore be sent to the Claims Administrator either (a) by First Class Mail, in which case they must be postmarked by no later than **April 14, 2020,** or (b) by Priority Express Mail or by a reliable delivery service (such as Federal Express, DHL or UPS) by overnight or two-day delivery so that it is *received* no later than the **April 21, 2020** Opt-Out Deadline. Any such requests must be sent to the Claims Administrator at the following address:

In re First Energy Solutions Corp Bankruptcy
c/o Heffler Claims Group
P.O. Box 58234
Philadelphia, PA 19102-8234

To be valid, a request for exclusion must also (1) be signed, (2) include the printed name, business title or position, address and business telephone number of the person(s) executing the request on

Your behalf, (3) state that Your Business "wishes to be excluded from the Settlement Class relating to the FES Polar Vortex Surcharges," and (4) either include a statement that the person executing the request is an officer of Your Business, or, if the executing person is not an officer of Your Business, attach a separate document (such as an affidavit or corporate resolution) attesting to the authority of such person to execute the request on Your Businesses' behalf. Requests for exclusion must be individually made on behalf of a single Settlement Class Member in accordance with the above requirements, and any class, mass, or collective requests for exclusion will be invalid.

11. What Is the Effect Of Opting-Out?

If You ask to be excluded, Your Business will *not* receive any payment from the Settlement, or any other share of the Settlement's proceeds. Instead, if You ask to be excluded, You will not be bound by any rulings concerning the Polar Vortex Surcharge-related claims made in connection with the Settlement; You will not be able to object to the Settlement (because it will no longer affect You if You exclude yourself); and You will retain any rights You may have to file or assert, at Your own expense, Your own Polar Vortex Surcharge-related claims against FES or its Affiliates (and FES and its Affiliates will retain any rights to assert any voluntary payment, laches and other affirmative defenses in response to any such claims).

12. Do I Have a Lawyer in this Action?

The Court appointed the law firms of Scott+Scott Attorneys at Law LLP and Meyers, Roman, Friedberg & Lewis (collectively, "Class Counsel") to represent You and other Settlement Class Members. You are not personally liable for the fees and expenses incurred by these attorneys. If You want to be represented by Your own lawyer, you may hire one at your own expense.

13. How Will the Lawyers Be Paid?

Class Counsel will apply to the Court for an award of attorneys' fees of not more than 33⅓% of the Gross Settlement Fund, for an award to Class Representative Schwebel Baking of $15,000 for its service in representing the Settlement Class, for an award of Class Counsel's litigation expenses in an amount not exceeding $75,000, and for payment of the fees and expenses of the Class's consulting financial advisor, Dundon Advisers LLC ("Dundon"), which applications will collectively constitute the "Fee and Expense Application." Under its retainer agreement, rather than being entitled to a fixed dollar fee, Dundon, subject to approval of the Court, is entitled to a fee equal to $50,000, plus 5% of that portion (if any) of the Class's gross recovery that exceeds $500,000. Such fees, expenses and service awards as may be approved by the Court will be paid from the Gross Settlement Fund, and Settlement Class Members are ***not*** personally liable for any such fees, awards or expenses.

To date, Class Counsel have received nothing for their services in litigating the Action on behalf of the Settlement Class Claimant and the proposed Settlement Class, despite having expended more than 3,000 hours of attorney and paraprofessional time to date in connection with this matter. Class Counsel will file the Fee and Expense Application and supporting papers on the Court's docket (and post them at www.polarvortexsettlement.com) not later than **April 16, 2020.** The Court will rule on the Fee and Expense Application, and may award less than what is requested.

14. How Do I Tell the Court If My Business Has Objections?

You can object to the proposed Settlement, proposed Plan of Allocation, and Fee and Expense Application, or any portion thereof, by submitting a timely written objection to the Court, which will consider it if You submit it in accord with the requirements of this paragraph. To submit a timely and valid objection, the objection and any supporting papers must be filed electronically or by mail with the Clerk of the Court, U.S. Bankruptcy Court for the Northern

District of Ohio, John F. Seiberling Federal Building, 2 South Main Street, Akron, Ohio 44308. Copies of objections and all supporting papers must be both (i) *received* by the Clerk of the Court no later than **May 1,2020**, and (ii) served (by certified or registered mail, return receipt requested, or by a reliable delivery service such as Federal Express, DHL or UPS for overnight or two-day delivery) no later than **May 1, 2020** upon each of the following:

William C. Fredericks
SCOTT+SCOTT ATTORNEYS AT LAW LLP
The Helmsley Building
230 Park Ave., 17th Floor
New York, NY 10169
Tel: (212) 223-6444
(counsel for the Class)

Seamus C. Duffy
AKIN GUMP STRAUSS HAUER & FELD LLP
Two Commerce Square
2001 Market St. #4100
Philadelphia, P.A. 19103
Tel: (215) 965-1200
(counsel for Debtors)

To be valid the objection must also (1) be signed; (2) include the printed name, title, address and business telephone number of the duly authorized person(s) executing the opt-out request; (3) state all supporting bases and reasons for the objection; (4) clearly identify any and all witnesses, documents and any other evidence of any kind that You may seek to proffer at the Fairness Hearing in connection with the objection; and (5) provide a summary description of the substance of any testimony that You may wish to offer in support of the objection.

A Settlement Class Member that files and serves a timely written objection in accordance with this paragraph may also ask to speak at the Fairness Hearing (*see* §§16-18), including through its attorneys (at its own expense), provided that its written objection also states that it "intends to appear" at the Fairness Hearing and identifies the name and contact information of the person(s) planning to appear. An objector that does not timely include or submit a notice of their intention to appear in accord with this paragraph will not be permitted to speak at the Fairness Hearing. However, a Class Member does not need to appear at the Fairness Hearing to have the Court consider a written objection submitted in compliance with the requirements of this section.

15. What Is the Difference Between Objecting and Opting Out of the Class?

Objecting is simply telling the Court that You do not like something about the Settlement, the Plan of Allocation, or a related application. A Settlement Class Member can object only if it stays in the Settlement Class (because if it opts out, the Settlement will no longer apply to it). If a Settlement Class Member objects, but the Court approves the Settlement, that Settlement Class Member will be bound by the Settlement's terms in the same way as Settlement Class Members who do not object. A Settlement Class Member that excludes itself is telling the Court that it does not want to receive any payment under the Settlement and does not want to release any Released Claims it may have against FES and its Affiliates. If You exclude Yourself, You will receive nothing under the Settlement.

16. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a hearing, called a "Fairness Hearing," to decide whether to approve the Settlement. It has scheduled this Hearing for **May 21, 2020 at 10:00 a.m.**, prevailing Eastern Time, before The Honorable Alan M. Koschik, United States Bankruptcy Court Judge, at the U.S. Bankruptcy Court for the Northern District of Ohio, located in the John F. Sieberling Building, 2 South Main Street, Akron, Ohio 44308. At this hearing, the Court will consider whether the Settlement and Plan of Allocation are fair, reasonable and adequate, and whether to grant the Fee and Expense Application. The Court may decide these issues at the hearing or take them under consideration for a later decision. Please check this website for details and updates on the timing and format for the Fairness Hearing. In light of the Coronavirus outbreak and related travel and other restrictions, it is possible that the Fairness Hearing may be held telephonically or by other means, and may also be rescheduled.

17. Does a Representative of My Business Have to Go to the Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. But You may come at Your own expense. Settlement Class Members that submit an objection in accord with the requirements of §14 do not have to come to Court to have the Court will consider it. A Settlement Class Member may also have its own lawyers attend the Fairness Hearing (at its own expense), but it is not necessary. Settlement Class Members need not appear at the Fairness Hearing or take any other action to indicate their approval.

18. May a Representative of My Business Speak at the Fairness Hearing?

If You wish to speak at or present testimony or other evidence at the Fairness Hearing, Your written objection must also give the Court notice of your intention to appear at the Fairness Hearing, and also identify any witnesses that You intend to call or evidence You intend to present, as set forth in §14. Please note that the Fairness Hearing may be rescheduled by the Court without further notice to Settlement Class Members. Accordingly, Class Members who wish to attend the Fairness Hearing should confirm the date and time beforehand with Class Counsel.

19. Does My Business Need To Fill Out Any Forms, Or Will It Receive Its Share of the Settlement Fund Even If I Do Nothing?

It is not necessary for You to fill out or file a "proof of claim" or to take any other action for Your Business to participate in the Settlement and receive its share of the Settlement (assuming it becomes Effective) as described in this Notice. If Your Business does nothing, (a) it will be deemed to have a Recognized Claim Amount equal to that set forth in the Individual Notice letter that has been mailed to You, without Your having to prepare and file any separate claim, and without Your having to collect and submit any supporting documentation from Your files, and (b) the amount of any payment You may be entitled to under the Settlement will be automatically

calculated by the Claims Administrator based on Your Recognized Claim Amount in accord with the Plan of Allocation, and any check to which Your Business may be entitled will be sent to Your Business at the address to which Your Individual Notice letter was sent (unless You write to the Claims Administrator and request that any check be sent to a different address).

Please remember that it may take time for the Settlement to become Effective and for the settlement consideration to be converted to cash. Please be patient. After the date of the Fairness Hearing, You can check the settlement website for information concerning the status of the claims administration process in this matter.

20. Can I Get More Information?

Yes. This Notice summarizes the proposed Settlement. You can view the full text of the Settlement Agreement at www.polarvortexsettlement.com. For more detailed information concerning the Action and the Settlement, you may also contact a representative of Class Counsel at: Scott+Scott Attorney at Law LLP, Attn. William C. Fredericks, The Helmsley Building, 230 Park Avenue, 17th Floor, New York, NY 10169-1820, telephone: 1-212-223-6444, email: wfredericks@scott-scott.com. Reference is also made to the pleadings filed in support of the Class Proof of Claim, the Court's prior Orders, and all settlement-related papers filed in the Action, which may be inspected at the Office of the Clerk of the Court, located in the John F. Seiberling Federal Building, 2 South Main Street, Akron, Ohio 44308 during regular business hours. For a fee, all papers filed in these Bankruptcy Proceedings or in the prior District Court Action are also available through PACER at www.pacer.gov.

PLEASE DO NOT CALL OR WRITE THE COURT, DEBTORS OR THEIR COUNSEL REGARDING THIS NOTICE.

DATED: March 16, 2020 BY ORDER OF THE COURT

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	Chapter 11
FIRSTENERGY SOLUTIONS CORP., *et al.*,	Case No.: 18-50757 (Jointly Administered)
Debtors.	Judge Alan M. Koschik

DECLARATION OF WILLIAM C. FREDERICKS IN SUPPORT OF CLASS COUNSEL'S MOTION FOR APPROVAL OF THE PROFESSIONAL FEES AND EXPENSE APPLICATION AS TO SCOTT+SCOTT ATTYS AT LAW

I, William C. Fredericks, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a partner in the law firm of Scott+Scott Attorneys at Law LLP ("Scott+Scott"). I submit this declaration in support of Class Counsel's motion for approval of its Professional Fees and Expense Application. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. The schedule attached hereto as Exhibit A is a summary of the amount of time spent by attorneys and professional support staff employees of my firm who, from the initial investigation into the basis for bringing the Action through April 3, 2020, billed five or more hours to this action, and the lodestar calculation for those individuals based on my firm's current billing rates. For persons who are no longer employed by my firm, the lodestar calculation is based upon his or her billing rate in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on the application for fees and reimbursement of expenses has not been included.

3. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are consistent with the regular rates for Scott+Scott attorneys as

periodically adjusted over time that have been accepted by courts across the country in other class action litigation in recent years.

4. The total number of hours reflected in Exhibit A, from inception through and including April 3, 2020, is 1,805.4. The total lodestar reflected in Exhibit 1 for these hours is $1,585,306, consisting of $1,494,693 for attorneys' time and $90,613 for professional support staff time.

5. A summary briefly describing the nature of the work performed in this action by each of the attorneys in my firm who were principally involved in this matter is attached as Exhibit B.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit C, my firm seeks reimbursement for a total of $18,587.72 in expenses incurred in connection with this action from its inception through and including April 3, 2020.

8. The expenses reflected in Exhibit C are the expenses actually incurred by my firm. Internal copying is charged at $0.10 per page. On-line research charges are for out-of-pocket payments to WestLaw for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred.

10. With respect to the experience, qualifications and standing of my firm, I respectfully refer the Court to Scott+Scott's firm resume and the summary biographies of the attorneys in my firm who were principally involved in this action, which are available at www.scott-scott.com.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on April 6, 2020 in New York, New York.

/s/ William C. Fredericks
William C. Fredericks

EXHIBIT A

In re FirstEnergy Solutions Corp. [Chapter 11]
Case No. 18-50757

SCOTT+SCOTT ATTORNEYS AT LAW LLP

TIME REPORT

Inception through April 3, 2020

Name	Total Hours	Hourly Rate	Lodestar
Partners			
Judy Scolnick	90.60	$1,150	$ 104,190
William Fredericks	857.20	$1,150	$ 985,780
Geoff Johnson	35.40	$1,095	$ 38,763
Associates			
Scott Jacobsen	502.00	$625	$ 313,750
Kassandra Nelson	90.80	$575	$ 52,210
Paralegals & Lit Support			
Ellen DeWan	5.50	$395	$ 2,173
Kelly Hogan	10.50	$395	$ 4,148
Ann Slaughter	16.90	$395	$ 6,676
Kaitlin Steinberger	16.20	$395	$ 6,399
Elena Dowd	60.10	$395	$ 23,740
Mario Tlatenchi	7.90	$395	$ 3,121
Charlie Torres	112.30	$395	$ 44,359
TOTALS	**1,805.40**		**$ 1,585,306**

EXHIBIT B

In re FirstEnergy Solutions Corp. [Chapter 11]
Case No. 18-50757

SCOTT+SCOTT ATTORNEYS AT LAW LLP

SUMMARY OF TASKS PERFORMED BY THE ATTORNEYS PRIMARILY INVOLVED IN THE LITIGATION

PARTNERS

William C. Fredericks (857.2 hours): Mr. Fredericks was responsible for supervising the day-to-day handling of the litigation, and oversaw all aspects of case management, litigation strategy, discovery and settlement negotiation. He was involved in drafting and reviewing all of the written submissions in this action, starting with the Complaint, and thereafter including the preparation of the Schwebel's brief in the District Court in opposition to FES's motion to dismiss, the opposition to FES's motion to strike class action allegations, and Claimant Schwebel's motion for an Order directing the application of Bankruptcy Rule 7023 to the Bankruptcy Court proceedings following FES's Chapter 11 filing. Mr. Fredericks also presented oral argument on behalf of Schwebel in opposition to FES's motion to dismiss and motion to strike class action allegations. He also supervised the preparation of Claimant Schwebel's document requests and interrogatories, and participated in meet-and-confers with Defendants regarding their objections to Plaintiffs' requests and the scope of Defendants' responses. Mr. Fredericks also supervised matters relating to the preparation of the two expert declarations filed the Class's industry expert, Mr. Mathew Brakey. He was also responsible for retaining Schwebel's specialized financial and strategic consultants, Dundon Advisers LLC, and thereafter consulted frequently with its principal, Mr. Matthew Dundon – as well as Deavid Neumann of co-counsel firm Meyers Roman -- in connection with, inter alia, strategy for successfully navigating the Debtors' bankruptcy proceedings and maximizing opportunities for a beneficial settlement of the Class's Class Proof of Claim. Mr. Fredericks was also primarily responsible for the drafting of the final settlement papers, and negotiating various specific issues that arose in connection therewith, as well as preparing and editing the papers in support of Class Claimant Schwebel's motions to grant, respectively, preliminary and final approval to the Settlement.

Judith Scolnick (90.6 hours): Ms. Scolnick is a partner at Scott+Scott. Her work included background research on the claims alleged, editing and final review and approval of the complaint; and reviewing the theory of the case with representatives of Schwebel before the complaint was filed. Thereafter, Ms. Scolnick also supervised the preparation of Class Claimant Schwebel's briefs in the District Court in opposition to FES's motion to dismiss and in opposition to FES's motion to strike class action allegations. Although Mr. Fredericks assumed primary partner-level responsibility for the case following the effective transfer of these proceeding to the Bankruptcy Court, Ms. Scolnick thereafter continued to be available to consult with respect to case strategy and developments.

Geoff Johnson (35.4 hours): Mr. Johnson is the resident partner in Scott+Scott's Ohio office in Cleveland Heights. He was primarily involved in reviewing the merits of the claims at issue when the case was first brought, strategy discussions as to Schwebel becoming involved in the action, and consulting on strategy and options following FES's Chapter 11 filing.

ASSOCIATES

Scott Jacobsen (502.0 hours): Mr. Jacobsen was the primary associate handling the Action on behalf of Scott+Scott. He assisted in researching and drafting Schwebel's opposition to FES's motion to dismiss and its opposition FES's motion to strike class action allegations. Mr. Jacobsen thereafter assisted in the drafting of Schwebel's discovery requests and discovery responses, and was primarily responsible for conducting the review of Debtors' document production to Schwebel (which included working with members of Scott+Scott's IT staff to conduct targeted searches and identify through electronically-assisted means the significant overlap and commonality among the many FES electricity supply contracts that Debtors' produced to Schwebel). Mr. Jacobsen was also responsible for supervising the process of choosing and supervising the outside document management vendor that Class Counsel retained in this matter. He was also involved in meeting and conferring with Debtors' counsel over Debtors' discovery requests, and over Debtors' responses to Class Claimant Schwebel's discovery requests. Mr. Jacobsen was also primarily responsible for managing the process of identifying, locating, collecting and producing to Debtors all relevant and responsive documents from Schwebel's files, and for preparing Schwebel's privilege log. In addition, Mr. Jacobsen undertook a variety of miscellaneous legal research projects during the course of the Action.

Kassandra Nelson (90.8 hours): Ms. Nelson was actively involved in conducting the prefiling investigation into the claims asserted, and in the drafting of the Complaint. Thereafter, Ms. Nelson also assisted in the research and drafting of Schwebel's opposition to FES's motion to dismiss in the District Court. Following the District Court's denial of those motions, Ms. Nelson was also largely responsible for developing an initial discovery plan and draft case management order. Ms. Nelson also participated in conference calls with opposing and co-counsel concerning discovery and initial disclosures, and, following the effective transfer of proceedings to the Bankruptcy Court, helped research and draft Schwebel's motion for an Order directing the application of Bankruptcy Rule 7023 to the Bankruptcy Court proceedings. In addition, Ms. Nelson undertook a variety of miscellaneous legal research projects during the course of the Action, including those relating to Debtors' purported "voluntary payment doctrine" defense and potential statute of limitations issue in connection with the filing of Schwebel's Class Proof of Claim.

EXHIBIT C

In re FirstEnergy Solutions Corp. [Chapter 11]
Case No. 18-50757

SCOTT+SCOTT ATTORNEYS AT LAW LLP

EXPENSE REPORT

Inception through April 3, 2020

CATEGORY	AMOUNT
Court Fees/Service of Process Fees	$ 756.00
On-Line Legal Research	$ 4,439.25
Telephone/Faxes/Postage/Express Mail	$ 1,419.89
Internal Copying	$ 2,987.10
Out of Town Travel*	$ 2,574.45
Document management vendor costs (Epiq ediscovery & Int'l Litig. Servcies LLC)	$ 6,231.81
Staff Overtime	$ 179.22
TOTAL EXPENSES	**$ 18,587.72**

* Out of town travel includes an allowance of $850 for expenses in connection with the scheduled May 21, 2020 Final Hearing in Akron, Ohio, which have not yet been incurred. Should that hearing be converted to a telephonic hearing, or should the allowance otherwise not be incurred, Scott + Scott will reduce any approved expense award accordingly.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	Chapter 11
FIRSTENERGY SOLUTIONS CORP., *et al.*,	Case No.: 18-50757 (Jointly Administered)
Debtors.	Judge Alan M. Koschik

DECLARATION OF DAVID NEUMANN IN SUPPORT OF CLASS COUNSEL'S MOTION FOR APPROVAL OF THE PROFESSIONAL FEES AND EXPENSE APPLICATION AS TO MEYERS ROMAN FRIEDBERG & LEWIS LPA

I, David Neumann, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a partner in the law firm of Meyers Roman Friedberg & Lewis LPA. I submit this declaration in support of Class Counsel's motion for approval of its Professional Fees and Expense Application. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. The schedule attached hereto as Exhibit A is a summary of the amount of time spent by attorneys who, from the initial investigation into the basis for bringing the Action through April 6, 2020, billed five or more hours to this action, and the lodestar calculation for those individuals based on my firm's current billing rates. For persons who are no longer employed by my firm, the lodestar calculation is based upon his or her billing rate in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on the application for fees and reimbursement of expenses has not been included.

3. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the current billing rates for the respective attorneys.

4. The total number of hours reflected in Exhibit A, from inception through and including April 6, 2020, is 1,189 hours. The total lodestar reflected in Exhibit A for these hours is $387,800.00 with an average billable rate of $326 per hour.

5. A summary briefly describing the nature of the work performed in this action by each of the attorneys in my firm who were principally involved in this matter is attached as Exhibit B.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit C, my firm seeks reimbursement for a total of $8,951.16 in expenses incurred in connection with this action from its inception through and including April 6, 2020.

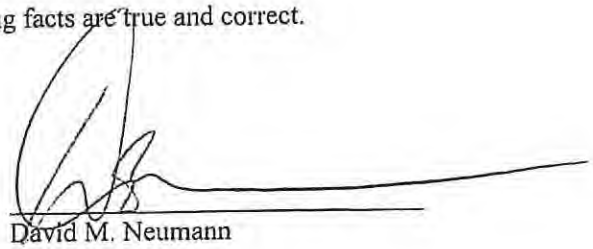
8. The expenses reflected in Exhibit C are the expenses actually incurred by my firm.

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred.

10. With respect to the experience, qualifications and standing of my firm, reference can be made to the firm's website: www.meyersroman.com.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on April 6, 2020 in Cleveland, Ohio.



David M. Neumann

EXHIBIT A

In re FirstEnergy Solutions Corp. [Chapter 11]
Case No. 18-50757

MEYERS ROMAN FRIEDBERG & LEWIS LPA

TIME REPORT

Inception through April 3, 2020

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Richard Bain	465	$365	$169,725
Peter Turner	29	$350	$10,150
David Neumann	336	$325	$109,200
Rachel Steinlage (2018 Rate)	84	$275	$23,100
Of Counsel			
Carolyn Blake	275	$275	$75,625
TOTALS	1189	$326 blended	$387,800.00

EXHIBIT B

In re FirstEnergy Solutions Corp. [Chapter 11]
Case No. 18-50757

MEYERS ROMAN FRIEDBERG & LEWIS LPA

SUMMARY OF TASKS PERFORMED BY THE ATTORNEYS INVOLVED IN THE LITIGATION

PARTNERS

David Neumann (336 hours): Mr. Neumann is a partner at Meyers Roman. Mr. Neuemann dealt largely with matters of bankruptcy procedure and strategy, including with regard to the drafting and editing of Claimant Schwebel's Class Proof of Claims and motion for an Order directing the application of Bankruptcy Rule 7023 to the Bankruptcy Court proceedings following FES's Chapter 11 filing. Mr. Neumann also consulted frequently with the Class's financial and strategic consultants, Dundon Advisers LLC, and its principal, Mr. Matthew Dundon – as well as William Fredericks of co-counsel firm Scott+Scott -- in connection with, inter alia, strategy for successfully navigating the Debtors' bankruptcy proceedings and maximizing opportunities for a beneficial settlement of the Class's Class Proof of Claim. Mr. Neumann was participated in the review and analysis of hot documents from Debtors' document production, and in framing discovery strategy and Schwebel's motion to compel prior to the commencement of serious settlement discussions. He was also involved in efforts to navigate the consent of various creditor constituencies to the parties' settlement in principle.

Richard Bain (465 hours): Mr. Bain is a partner at Meyers Roman. His work included regaularly briefing Class Claimant Schwebel on the progress of the case, and assisting its representative on the Creditors Committee, Ed Cinco, work to maximize creditor recoveries in the bankruptcy for the benefit of all general unsecured creditors, including the Class. Mr. Bain also regularly reviewed and commented on pleadings filed n both the District and Bankruptcy Courts.

Peter Turner (29 hours): Mr. Turner is a senior partner and chair of the litigation department at Meyers Roman. He was primarily involved in reviewing the merits of the claims at issue when the case was first brought, strategy discussions as to Schwebel becoming involved in the action, and consulting on options following FES's Chapter 11 filing.

Carolyn Blake (275 hours): Ms. Blake is of counsel to Meyers Roman. Ms. Blake, who also has experience with the electric supply industry, was also involved in reviewing the merits of the claims at issue when the case was first brought. Ms. Blake also assisted Schwebel personnel in recollecting relevant events at issue, and in reviewing and editing the Complaint and other pleadings. Ms. Blake was also involved in investigating the bases for challenging Debtors' contract interpretation theories and alleged voluntary payment doctrine defenses.

Rachel Steinlage (84 hours): Ms. Steinlage was primarily involved in helping to identify and navigate bankruptcy issues facing Schwebel and the Class after Debtor FES filed for bankruptcy. Ms. Steinlage also assisted Schwebel with its application to become a member of the Crefitors Committee, and in discharging his responsibilities to the Class and creditors generally in that capacity

EXHIBIT C

In re FirstEnergy Solutions Corp. [Chapter 11]
Case No. 18-50757

MEYERS ROMAN FRIEDBERG & LEWIS LPA
EXPENSE REPORT

Inception through April 3, 2020

CATEGORY	AMOUNT
Court Fees	$400.00
Postage/Express Mail	$1,651.16
Travel and Meals (reduced)	$6,900.00
TOTAL EXPENSES:	**$8,951.16**

Brakey Energy Retail LLC
8584 E. Washington St. #213
Chagrin Falls, OH 44023
(216) 903-0595
stephen@brakeyenergy.com

INVOICE

BILL TO
Meyers, Roman, Friedberg & Lewis
SCOTT + SCOTT Attorneys at Law LLP

INVOICE # 1043
DATE 03/27/2020

TERMS Net 180

DATE	DESCRIPTION	QTY	RATE	AMOUNT
10/18/2016	Billable hours for Matt Brakey (MNB) - Email correspondence with Scott + Scott regarding upcoming conference call.	0.25	295.00	73.75
10/20/2016	Billable hours for MNB - Call preparation. Conference call with MRFL and Scott + Scott.	1.50	295.00	442.50
12/23/2016	Billable hours for MNB - Receipt of rough draft of the complaint from Judy Scolnick. Email correspondence with Geoff Johnson, Judy Scolnick, and Carolyn Blake. Review of initial draft.	1	295.00	295.00
12/27/2016	Billable hours for MNB - Continue review of draft complaint.	1.25	295.00	368.75
12/29/2016	Billable hours for MNB - Finish review of draft complaint. Provide redlines to MRFL and Scott + Scott.	1.75	295.00	516.25
01/04/2017	Billable hours for MNB - Review working draft of complaint.	1	295.00	295.00
03/02/2017	Billable hours for MNB - Review newly revised complaint.	1.25	295.00	368.75
04/14/2017	Billable hours for MNB - Review and revise updated complaint.	2.25	295.00	663.75
04/26/2017	Billable hours for MNB - Review revised complaint.	1.25	295.00	368.75
04/27/2017	Billable hours for MNB - Review of final complaint.	0.50	295.00	147.50
09/05/2017	Billable hours for MNB - Review FES motion to dismiss.	0.75	295.00	221.25
09/19/2017	Billable hours for MNB - Review FES motion to dismiss reply.	0.50	295.00	147.50
04/24/2018	Billable hours for MNB - Emails with Rachel Steinlege, Bill Fredericks, and Carolyn Blake regarding upcoming call.	0.25	295.00	73.75
04/25/2018	Billable hours for MNB - Conference Call with Scott + Scott. Pre and post call preparation.	1.25	295.00	368.75
08/16/2018	Billable hours for MNB - Review draft affidavit. Provide redline to MRFL and Scott + Scott.	1.75	295.00	516.25
08/17/2018	Billable hours for MNB - Review revised affidavit and provide feedback. Revise final affidavit and sign.	1	295.00	295.00
11/11/2018	Billable hours for MNB - Review Schwebel's interrogatory responses.	0.75	295.00	221.25

DATE	DESCRIPTION	QTY	RATE	AMOUNT
11/22/2018	Billable hours for MNB - Review partial FES document production.	1.75	295.00	516.25
12/06/2018	Billable hours for MNB - Review of FES small commercial agreement.	0.50	295.00	147.50
12/14/2018	Billable hours for MNB - Review partial FES document production.	3	295.00	885.00
12/17/2018	Billable hours for MNB - Review partial FES document production.	1.50	295.00	442.50
12/28/2018	Billable hours for MNB - Review partial FES document production.	1	295.00	295.00
12/31/2018	Billable hours for MNB - Review partial FES document production.	3	295.00	885.00
02/01/2019	Billable hours for MNB - Review partial FES document production.	1	295.00	295.00
02/06/2019	Billable hours for MNB - Review Tom Schmuhl testimony.	1	295.00	295.00
02/07/2019	Billable hours for MNB - Review, research, and revise Matt Brakey declaration. Discussions with counsel.	4	295.00	1,180.00
02/28/2019	Billable hours for MNB - Discussion and correspondence with MRFL and Scott + Scott regarding FES non-disparagement.	0.75	295.00	221.25
03/02/2019	Billable hours for MNB - Discussion with MRFL counsel about non-disparagement clause.	0.25	295.00	73.75
03/14/2020	Total billed hours for MNB re: Schwebel's v FES.	36	0.00	0.00

Please make checks payable to Brakey Energy Retail LLC and mail to the above address.

BALANCE DUE **$10,620.00**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	Chapter 11
FIRSTENERGY SOLUTIONS CORP., *et al.*,	Case No.: 18-50757 (Jointly Administered)
Debtors.	Judge Alan M. Koschik

DECLARATION OF MATTHEW DUNDON IN SUPPORT OF THE APPLICATION OF DUNDON ADVISORS LLC FOR APPROVAL OF ITS FEES AND EXPENSES AS FINANCIAL AND STRATEGIC ADVISOR TO SCHEWEBEL AND THE CLASS

I, Matthew J. Dundon, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am the founder and a principal of Dundon Advisers LLC. As set forth below, I believe that Dundon Advisers LLC ("Dundon") is and has been highly qualified to act as financial and strategic adviser to the Class, to Class Counsel, and to the Class Representative, Schwebel Baking Company ("Schwebel"), and I respectfully submit that the Court should approve the payment in full of Dundon's fees from the Settlement Fund under the terms of its retainer agreement, as more fully described below, as fair and reasonable.

2. I established Dundon Advisers LLC ("Dundon") in February 2016 as a vehicle to continue and expand my then already well-established career as an adviser to institutional holders of (and investors in) litigation, bankruptcy and other special situations assets. My prior executive-level experience in those fields included service as Managing Director and Head of Fixed Income Research at Miller Tabak Roberts Securities (2006-2010), Portfolio Manager at Pine River Capital Management (2010-2014) and Managing Director and Portfolio Manager at Advent Capital Management (2014-2016). Between 1998 and 2006, I worked as a securities and leveraged finance attorney and as a high yield and distressed debt analyst. I received my A.B. from the University

of California at Berkeley, and my J.D. from the University of Chicago Law School. I am admitted to, and a member in good standing of, the bars of the State of New York and the Commonwealth of Massachusetts. When employed in the securities industry, I received the FINRA Series 7 (representative), 63 (state securities), 86/87 (securities analyst), and 24 (principal) registrations.

3. Dundon's leadership team includes, in addition to me, Jonathan Feldman, who has over 20 years of fixed investment experience (B.A. University of Pennsylvania; M.B.A. Columbia University); Peter Hurwitz, who has over 30 years of corporate executive, legal and restructuring experience (B.A. Middlebury College; J.D. Georgetown University); and Alejandro Mazier, who has over 20 years of banking and investing experience (B.S. Boston University; M.B.A. New York University). We are supported by more junior professionals who have a broad range of corporate, banking and investment experience suitable to the requirements of our clients.

4. Since it was founded in 2016, Dundon has grown to attain what I believe to be the leading national position as financial and strategic adviser to representative plaintiffs in class, collective and other representative litigation brought against companies in financial distress or in bankruptcy. Three years ago, Dundon established a restructuring practice that primarily advises unsecured creditors in bankruptcy, and this practice was ranked #2 nationally by *Debtwire* for 2019 Official Committee of Unsecured Creditors engagements. The nature and extent of Dundon's financial and strategic advisory work in recent years is reflected by the following:

a. Dundon has advised, or is presently advising, clients pursuing class, other representative or mass claims in the following bankruptcies or non-bankruptcy restructurings: *21st Century Oncology* (S.D.N.Y.), *A1 Express* (N.D. Ga.), *Acosta* (D. Del.), *Alta Mesa Holdings* (S.D. Tx), American Apparel (D. Del.), *Art Van* (D. Del.e), *Bebe Stores* (Calif. Superior Ct.), *Brookstone* (D. Del.), *Buffets LLC* (W.D. Tx), *Bumble Bee* (D. Del.), *Color Spot Nurseries* (D. Del.), *Crossmark* (Calif. Superior Ct.), *Cumulus Media* (S.D.N.Y.), *David's Bridal* (D. Del.), *Dean Foods* (S.D. Tx), *Ditech Home Loans* (S.D.N.Y.), *EXCO Resources* (S.D. TX.), *Express Messenger Service dba OnTrac* (W.D. Wa.), *Forever 21* (D. Del.), *Fred's* (D. Del.), *Glansaol Holdings* (S.D.N.Y.), *HVI Cat Canyon* (C.D. Cal.), *Ignite Restaurants*

(S.D. Tx.), *iHeart Media* (S.D. Tx.), *Jack Cooper* (N.D. Ga.), *Key Energy Services* (D. Del.), *Kona Grill* (D. Del.), *M&G Chemicals* (D. Del.), *Mattress Firm* (D. Del./Distr. Ct. D. Mass.), *Memorial Production Partners* (S.D. Tx.), *Mission Coal* (N.D. Al.), *Mudtech Services* (S.D. Tx.), *National Stores* (D. Del.), *Pacific Sunwear* (D. Del.), *Payless ShoeSource* (2019 filing) (E.D. Mo.), *PennySaver* (D. Del.), *Mac Acquisition* (D. Del.), *Perkins and Marie Callender's* (D. Del.), *Retrieval-Masters* (S.D.N.Y.), *PetersenDean* (Calif. Superior Ct.), *PetroQuest* (S.D. Tx.), *Rex Energy* (W.D. Pa.), *Samuels Jewelers* (D. Del.), *Sarar USA* (D.N.J.), *Sears Holdings* (S.D.N.Y.), *Senior Care Centers* (N.D. Tx.), *Southland Royalty Co.* (D. Del.), *Steak 'n Shake* (Dist. Ct. E.D. Mo.), *Stearns Home Loans* (S.D.N.Y.), *Takata* (D. Del.), *Things Remembered* (D. Del.), *Toys 'R' Us* (E.D. Va.), *Verity Health System* (C.D. Cal.), and *White Star Petroleum* (W.D. Ok.).

b. Dundon has also advised holders of large individual litigation claims against bankruptcy estates in *Avaya* (S.D.N.Y.); *Bon-Ton Stores* (D. Del.), *Payless Shoes* (E.D. Mo.), and *Shiekh Shoes* (C.D. Cal.). Dundon has advised a leading export credit insurers, and its insureds, on a standing basis on exposure and potential exposure to numerous bankruptcies and out-of-court insolvencies notably including *Bluestem* (Delaware), *Payless Shoes* (2017 E.D. Mo.), *Radio Shack* (2017 Delaware), and *Toys 'R' Us* (E.D. Va.).

c. Dundon's clients were appointed (as was Schwebel in these cases) to the respective Official Committee of Unsecured Creditors of *21st Century Oncology, A1 Express, Alta Mesa Holdings, Brookstone, Color Spot Nurseries, Cumulus Media, Ditech Holdings, HVI Cat Canyon, Ignite Restaurants, Jack Cooper, Kona Grill, Mac Acquisition, Mission Coal, National Stores, Pacific Sunwear, Payless Shoe Source, PetroQuest, Rex Energy, Samuels Jewelers, Sarar USA, Sears Holdings, Shiekh Shoes, Southland Royalty Co., Toys 'R' Us,* and *Verity Health System*. In many of these cases, Dundon has played a significant role not only for its clients, but for the whole of the creditor body as well.

d. Dundon also currently acts, or has acted, as financial, strategic and/or investment advisers to official committees of unsecured creditors, ad hoc groups of equity investors or creditors, or debtors, in the following cases: *1 Global* (S.D. Fl.), *Agera Energy* (S.D.N.Y.), *All American Oil and Gas* (W.D. Tx.), *Aralez Pharmaceuticals* (S.D.N.Y.), *BeavEx* (D. Del.), *Celadon Group* (Delaware), *Frank Theatres* (D.N.J.), *Fuse Media* (D. Del.), *Good Nature Brewery* (out of court), *Hilltop Energy* (D. Del.), *iPic Theatres* (D. Del.), *Jagged Peak/Trade Global* (D. Nev.), *June USA* (D. Del.), *La Salle Group* (N.D. Tx), *LBI Media* (D. Del.), *Loot Crate* (Delaware), *McClatchy* (S.D.N.Y.), *Open Road Films* (D. Del.), PG&E (N.D. CA), *Purdue Pharma* (S.D.N.Y.), *RAIT Financial Trust* (D. Del.), *Remnant Oil Co.* (W.D. Tx), *Sabine Oil & Gas* (D. Del.), *SIW Holdings* (D. Del.), *Valmiera Glass* (N.D. Ga.), *Vector Launch* (D. Del.), *Video Corporation of American* (D.N.J.), and *Woodbridge Group of Companies* (D. Del.).

e. Dundon also has non-distressed asset management clients, and loan and other non-securities brokerage clients.

5. Dundon performs its services on a wide range of fee bases. Its restructuring services are typically rendered on a non-contingent hourly basis[1], occasionally subject to negotiated caps and write-downs in respect of total dollars or blended average hourly rates. Although Dundon offers its litigation advisory clients the option of retaining the firm on such contingent hourly bases, the vast majority of such clients prefer to engage Dundon (as here) on a fully contingent fee basis. Despite the numerous occasions when we have been retained on a fully or partially contingent basis, in none of those cases has any party ever objected to the reasonableness of Dundon's fees, nor has any court declined to approve Dundon's fee arrangements where they were subject to judicial approval[2]. For example, Dundon's contingent retainer arrangements and/or resulting fees have been judicially approved in at least the following matters:

a. Payment to Dundon, where engaged for "tiered" percentage contingent fees, was expressly approved by the court in *Brookstone,* Case No. E 18-11780 (D. Del.); *Glansaol Holdings*, Case No. 18-14102 (S.D.N.Y.), *M&G USA,* Case No. 17-12307 (D. Del.); and *PetroQuest,* Case No. 18-36322 (S.D. Tx.);

b. Payment to Dundon, where engaged for "tiered" contingent percentage fees, was implicitly approved by the court, as part of a fund for counsel expenses, in *Sarar USA,* Case No. 18-24538 (D.N.J.);

c. Payment to Dundon, where engaged for a *non-tiered* percentage contingent fee, was expressly approved by the court in *Mattress Firm,* Case No. 7-12009 (D. Mass.) and *Steak 'n Shake*, Case No. 14-01535 (E.D. Mo. Dist. Ct..

[1] Dundon's regular hourly rates for its professional range from $655 to $700 per hour for senior staff at the level of Principal or Managing Director (such as myself) to $450 to $575 per hour for less-senior professional staff. 'Retention at these rates, and payment of fees calculated using these rates, has been routinely accepted by bankruptcy courts without objection by any party. Had Schwebel instead sought to retain my firm based on *contingent* hourly rates, the blended average of such rates would have been at least $900 per hour, consistent with contingent hourly rate arrangements that Dundon has previously entered into.

[2] In *In re Glansaol Holdings Inc., et al.*, 18-14102 (S.D.N.Y.), the Court required the parties to revise, supplement and resubmit settlement approval pleadings on a variety of concerns, but did not take particular issue with Dundon's fees, which were ultimately approved without any reduction or alteration.

d. Payment to Dundon, where engaged for a contingent hourly fee at a premium to Dundon's standard non-contingent hourly rates, was expressly approved by the court in *Mac Acquisition* Case No. 17-12224 (D. Del.),

e. Payment to Dundon, where engaged for contingent hourly fees at a premium to Dundon's standard non-contingent hourly rates, was implicitly approved, as part of a fund for counsel expenses, in *Buffets LLC,* Case No. 16-0557 (W.D. Tx.) and *Ignite Restaurants,* Case No. 17-33550 (S.D. Tx.),

In addition, Dundon's contingent or partially-contingent fees have been paid in full in multiple other cases (such as *Rex Energy,* Case No. 18-22032 (W.D. Pa.), *Acosta,* Case No. 19-12551 (D. Del.) and *Avaya,* Case No. 17-10089 (S.D.N.Y.), although given the nature of the proceedings and the approvals of relevant parties the payments in those cases did not require judicial approval. Dundon also expects to have its tiered percentage contingent fees paid in connection with a number of other cases in which settlements-in-principle have been reached, including *Payless Shoes* (E.D. Mo. 2019) and *Perkins and Marie Callender's* (D. Del.).

6. Here, under its retainer agreement (entered into as of April 6, 2018), Dundon agreed that, subject to approval of the Court, it would provide financial and advisory services to Schwebel and the Class in this matter in exchange for reimbursement of Dundon's out-of-pocket expenses[3], plus a fee equal to (a) 10% of the first $500,000 of the Class's gross recovery (i.e., $50,000), plus (b) 5% of the Class's gross recovery to the extent that the Class's gross recovery exceeds $500,000. This represents a 33⅓% discount -- bargained-for by Class Counsel -- from Dundon's standard fee structure of *15%* of first $500,000 of recoveries and 7.5% of additional recoveries. I therefore consider the specific terms of Dundon's contingent fee retainer agreement in this case to be well within (and if not towards the low end of) the customary range of fee arrangements my firm has entered into in numerous other matters, after taking into account of my overall assessment of the

[3] Dundon's relatively modest out of pocket expenses in this matter are $2,034.55, consisting primarily ($1,429.07) of travel expenses for the formation of the Official Committee of Unsecured Creditors in Akron, OH.

likelihood of a favorable recovery and the complexities of the matter when the fee agreement was made.

7. Over the two years course of its engagement in this matter, it is my conservative good faith estimate that Dundon professionals have spent at least 400 hours in connection with its analysis of Schwebel's causes of actions and defenses thereto, the Debtors' capital structure and economic condition, the objectives of other significant stakeholders in the broader bankruptcy case, and the overall prospects for (and specific opportunities to achieve) a favorable settlement for the Class, and a favorable recovery on FES general unsecured recoveries. Dundon was therefore able to play a central role in the negotiations among Schwebel and its counsel, Debtors, the Official Committee of Unsecured Creditors, and various ad hoc bondholder groups which resulted in the initial settlement-in-principle, and in thereafter helping to ensure that the negotiation, drafting and ultimate execution of the detailed "long form" Stipulation of Settlement did not get derailed by the particular complexities of this bankruptcy.

7. I also respectfully submit that Dundon has also contributed significantly to the broader causes and interests of these cases through its active support of Schwebel's participation in the activities of the Official Committee. The Committee's activities have, in my professional opinion, had a distinctively positively impact upon the recoveries of general unsecured recoveries (and, along the way, second lien bondholders), compared to the recovery that had been generally anticipated at the commencement of Debtors' bankruptcy proceedings here.

8. Based on the amount of time and effort that I and my colleagues at Dundon have expended in this matter, the quality of the successful Settlement that Dundon's efforts helped Schwebel and the Class obtain in the face of significant litigation risk, and the fact that Dundon's retainer terms in this matter were unremarkable compared to those that it has routinely entered into

in similar contexts, it is respectfully submitted that the Court should (a) approve payment of Dundon's fees from the Settlement Fund in accordance with the terms of its retainer in this matter, and (b) approve payment of Dundon's out-of-pocket expenses in this matter in the amount of $2,034.55. *See* fn. 4 above. With regard to the reasonableness of Dundon's fees, I would only add that, based on my conservative estimate of total hours spent by Dundon professionals on this matter (as multiplied by their customary hourly rates), and absent an unexpectedly large increase in the price of the FES New Common Shares being used to fund the Settlement, the value of Dundon's contingent fee in this matter will be significantly ***less*** than the "lodestar value" of the time that Dundon would have earned had it been retained on a non-contingent hourly basis (let alone on a contingent hourly rate basis).

Sworn to this 6th day of April, 2020

Matthew J. Dundon

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 18-50757
	)	
FIRSTENERGY SOLUTIONS	)	Chapter 11
CORP., *et al.*,	)	(Jointly Administered)
	)	
Debtors.	)	Judge Alan M. Koschik

DECLARATION OF ED CINCO IN SUPPORT OF CLASS CLAIMANT SCHWEBEL BAKING'S (A) MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT AND (B) APPLICATION FOR A SERVICE AWARD

I, Ed Cinco, declare as follows:

1. I hold the position of Purchasing Manager at Schwebel Baking Company ("Schwebel""), which is the Court-appointed Class Representative in connection with the "polar vortex surcharge" claims that Schwebel has asserted on a class-wide basis against Debtor FirstEnergy Solutions Corp. ("FES") in this matter (the "Action"). I submit this declaration in support of (a) Schwebel's motion for final approval of the proposed Settlement in this matter, and (b) Schwebel's application for a service award for the time and effort expended by Schwebel personnel in connection with Schwebel's representation of the Class. I have been directly involved in Schwebel's prosecution of the Action since May of 2018, and I have personal knowledge of the matters set forth in this declaration.

2. I have served as Purchasing Manager at Schwebel since 2014 (where I am responsible for procurement of all ingredients, packaging, sanitation supplies and utilities), and I have been a member of Schwebel's Senior Management Team since April 2019. I have a Bachelor of Science degree in Electrical Engineering from the University of Akron and an MBA from Kent State University. Prior to joining Schwebel, I was employed as a purchasing manager, operations manager and/or project engineer at various entities over the prior 20 years

3. At Schwebel, since roughly May of 2018 I have been the person who has had primary responsibility for supervising the polar vortex-related litigation brought by Schwebel. At

all times I have understood that I have a duty to ensure that Schwebel adequately performed its duties as the "named plaintiff" and/or "class claimant" in this litigation, which require me to also act as a representative of all Class members in this action. As such, I have performed the following work (*inter alia*) in connection with this litigation on behalf of the Class as set forth below, together with my conservative estimates of the amount of time I spent on each task:

- Numerous phone calls with Schwebel's outside counsel, primarily with attorneys at Meyers, Roman, Friedberg & Lewis in Ohio, and also with those at the Scott+Scott law firm in New York (20 hrs);
- At least four in person meetings with outside counsel, including two in New York, which involved reviewing the lawsuit (10 hrs);
- Collecting pertinent documents regarding the lawsuit (10 hrs).

In addition, I have spent countless dozens of additional hours participating in weekly Creditor Committee meetings (as the representative of Creditor Committee member Schwebel on that committee) and reviewing relevant documents – a portion of which was relevant to my acquiring a better understanding of FES's business and what type of settlement options were available to Class for settling the claims at issue within the bankruptcy proceedings.

4. In addition, other Schwebel employees, board members or support staff have spent time directly related to Schwebel's representation of the Class, including Paul Schwebel (retired CEO), Steve Cooper (current CEO), Doug Stahl (former CFO), Dan Gentile (current CFO), Mike Illes (IT dept head), Jeff Smith (IT) and Jim Hulten (former VP of Purchasing, who had formerly managed Schwebel's energy supply relationship with FES).

Staff Member	Position	Work Performed	Rate	Hrs	Value
Paul Schwebel	former CEO	Review & authorize complaint against FES; related conversations with class counsel; providing information to class counsel for inclusion in interrogatory responses	$225	10	$ 2,250

Steve Cooper	CEO	Briefings from EC and class counsel on case following Paul Schwebel's retirement	$225	4	$ 900
Doug Stahl	former CFO	Reading and verifying interrogatory responses as company officer; briefings from EC on case	$200	8	$ 1,600
Dan Gentile	CFO	Misc. briefings from EC on case status	$200	3	$ 600
Mike Illes	IT Director	Supervising searches on Schwebel's servers for potentially responsive emails or other electronic documents	$150	3	$ 450
Jeff Smith	IT Staff	Running searches on Schwebel's servers for potentially responsive emails & other electronic documents	$75	6	$ 450
Jim Hulten	Former VP, Purchasing	Initial collection of hard copy documents; phone calls/consults with outside counsel during first 6 months of case	$165	16	$ 2,640
Ed Cinco	Purchasing Manager	Day-to-day responsibility for supervising case; numerous phone calls/consults with class counsel re litigation developments, strategy and settlement ; review relevant litigation drafts and filings[1]	$125	50	$ 6,250
			TOTAL:	**100**	**$15,140**

5. Accordingly, on behalf of Schwebel, I respectfully submit that Schwebel merits a service award in the amount of at least $15,000 for the time that I and other Schwebel staff have personally spent on matters relating directly to this Action and the representation of the Class.

6. Based on its active participation throughout the prosecution and resolution of the claims asserted in the Action, Schwebel believes that the proposed Settlement is fair, reasonable

[1] My estimate of the time I personally spent on the case reflects only a part of the time I spent as Schwebel's *de facto* representative on the Creditors Committee, inasmuch as only a part of that time was spent on matters that were directly relevant to the Class's claims as opposed to "general" Creditor Committee business. Although I believe that the many dozens of additional hours I spent on general Creditor Committee business could fairly be construed as related to my (and Schwebel's) work on behalf of the Class – as Schwebel would likely not have been appointed to the Committee but for its role as a representative of a putative class of "polar vortex" creditors of FES, as noted above I have tried to be conservative for purposes of this application in terms of seeking reimbursement from fellow Class Members for Schwebel's service to the Class.

and adequate to the Settlement Class, and represents an excellent recovery for the Settlement Class in the face of substantial litigation risk. Schwebel therefore respectfully requests that the Court approve the proposed Settlement.

7. Based on my review and knowledge of the work performed, the fully contingent nature of their representation, and most importantly the results achieved by Plaintiffs' Counsel, Schwebel also supports Plaintiffs' Counsel's request for an award of attorneys' fees equal to one third of the Settlement Fund as fair and reasonable. In this regard, I also note my understanding that the 33⅓% fee requested here will likely result in a "negative lodestar multiple" of less than 1.0 on Class Counsel's combined total lodestar time (i.e., that the requested one third percentage attorneys' fee award will be insufficient to compensate Class Counsel them for all the hour they spent on the case at their customary hourly rates).

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Youngstown, Ohio,
on April 4, 2020

S/ Cinco 4/4/20

Ed Cinco
Purchasing Manager
Schwebel Baking Company

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: FIRSTENERGY SOLUTIONS CORP., et al., Debtors.	Chapter 11 Case No. 18-50757 (Jointly Administered) Hon. Judge Alan M. Koschik

FINAL ORDER APPROVING CLASS ACTION SETTLEMENT UNDER BANKRUPTCY RULE 7023 AND FEDERAL RULE OF CIVIL PROCEDURE 23

WHEREAS, by Order dated December 24, 2019 [Dkt. No. 3546 (the "Preliminary 7023 Approval Order"), the Court, pursuant to Section 105 of the Bankruptcy Code, Bankruptcy Rule 7023 and Federal Rule of Civil Procedure Rule 23, granted the *Motion of Schwebel Baking Company Pursuant to Section 105 of the Bankruptcy Code, Bankruptcy Rule 7023, and Federal Rule of Civil Procedure 23 for the Entry of an Order (I) Applying Bankruptcy Rule 7023 to these Proceedings (II) Certifying the Settlement Class for Settlement Purposes, (III) Appointing Class Counsel and Class Representative, (IV) Approving the Form and Manner of Notice to Settlement Class Members of the Settlement, and (V) Providing a Schedule for Fairness Hearing* [Dkt. No. 3401] (the "Preliminary 7023 Approval Motion");[1]

WHEREAS, by Order dated December 17 2019 [Dkt. No.3516] (the "9019 Order"), the Court, pursuant to Bankruptcy Rule 9019, granted the *Motion of Debtors for Entry of Order Approving Settlement Between Debtors and Schwebel Baking Company Pursuant To Bankruptcy Rule 9019* [Dkt. No. 3404] (the "9019 Motion"); and

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stipulation of Settlement (the "Settlement Agreement" or "Settlement") previously submitted at Dkt. No. 3401 as an exhibit to the Preliminary 7023 Approval Motion.

WHEREAS, the Court having considered the Preliminary 7023 Approval Motion, the 9019 Motion, the Settlement Agreement, the Plan of Allocation, and Class Claimant's Motion in Support of Entry of a Final Approval Order (the "Final Approval Motion"), and any objections or oppositions thereto; and the Court having held a final Fairness Hearing in connection with its consideration of the Settlement in accordance with Bankruptcy Rule 7023(e) and following the issuance of Notice to Settlement Class Members as directed by the Preliminary 7023 Approval Order; and the Court, after due deliberation, having determined that the legal and factual bases set forth in the Final Approval Motion establish just and sufficient cause for the relief requested therein,

IT IS HEREBY ORDERED, ADJUDGED, FOUND AND DECREED THAT:

1. This Court has jurisdiction over this matter pursuant to 28 USC §1334.

2. This is a core proceeding pursuant to 28 USC §157(b)(2).

3. The Final Approval Motion is GRANTED in its entirety.

4. All objections (if any) to the Final Approval Motion, the Settlement Agreement, the Plan of Allocation, the allowance of the Class Proof of Claim as provided in the Settlement Agreement, or the other relief requested in Final Approval Motion, that have not been withdrawn, waived, compromised, settled or released, and all reservations of rights in such objections (if any), are hereby OVERRULED in all respects on the merits and denied.

5. Appropriate and adequate notice of the proposed Settlement, the Plan of Allocation and the Fairness Hearing, in accordance with the Court's Preliminary 7023 Approval Order, due process, the Bankruptcy Rules, and Federal Rule of Civil Procedure 23, was duly provided to the Settlement Class.

6. The Settlement embodied in the Settlement Agreement is fair, reasonable, and adequate, is in the public interest, and merits approval under Bankruptcy Rule 7023 and Federal Rule of Civil Procedure 23, for the following reasons, *inter alia*:

a. If the Settlement is not approved, the continued litigation of the relevant claims will likely be complicated, protracted and expensive, thereby depleting the Debtors' estate and delaying and diminishing distributions to creditors, including Settlement Class Members, with uncertain results;

b. The Settlement Agreement was reached only after Class Counsel conducted significant formal and informal discovery, analyzed the applicable law, and weighed the likelihood of success against the risks of further litigation (including the risk that, even if the Settlement Class Representative were to prevail on behalf of the Settlement Class on all Settlement Class claims and were to obtain a greater recovery after trial, any such recovery would still face the risk of being overturned or reduced on appeal);

c. The Settlement, which grants the Settlement Class an allowed unsecured claim equal to roughly 50% of the amount of the Settlement Class's estimated total alleged damages, is well within the range of reasonableness given (1) the risk that the Settlement Class Representative (and other Class Members) would be unable to establish that Debtor FES's imposition of the disputed Polar Vortex Surcharges breached FES's contracts with any Settlement Class Members, and (2) the risk that, even if the Settlement Class Representative (and other Settlement Class Members) established breaches of the relevant contracts, the Debtors could still defeat the claims because of the voluntary payment doctrine, laches, waiver, or one or more of the Debtors' other affirmative defenses; and

d. The Settlement Agreement was negotiated in good faith and at arm's length by experienced counsel on both sides, who had acquired a thorough understanding of the strengths and weaknesses of the Parties' respective claims and defenses in the course of approximately two years' of vigorously contested litigation (including in the District Court as well as subsequently in this Court), and who were therefore well-positioned to evaluate the benefits of the Settlement, taking into account the expense, risk and uncertainty of further litigation.

In addition to considering the complexity, expense, likely duration and risks of further litigation, the stage of the proceedings (including the amount of discovery completed) and the range of reasonableness of the Settlement in light of the best possible recovery, the Court has also considered the reaction of the Settlement Class in deciding to approve the Settlement, as well as

the benefits to the Debtors' estate and Debtors' other creditors in efficiently and fairly resolving the claims that are being settled and resolved under the Stipulation.

7. In accordance with Federal Rule of Civil Procedure 23(e)(2)(A), the Settlement Class Claimant and Settlement Class Counsel have adequately represented the Settlement Class.

8. The Plan of Allocation is fair, reasonable and adequate, and (in conjunction with the Settlement Agreement) provides for an effective and cost-efficient method of distributing relief to the Settlement Class that treats Settlement Class Members equitably relative to each other, and that the Settlement and the Plan of Allocation merit approval under Federal Rule of Civil Procedure 23(e)(2).

9. On the Settlement Effective Date, the Settlement Agreement and the terms of this Order shall become final and binding upon the Parties and all members of the Settlement Class who did not timely and properly elect to exclude themselves in accordance with the Settlement Class Notice and Preliminary 7023 Approval Order.

10. The entry of this Order is without prejudice to the relief granted in the Preliminary 7023 Approval Order or the 9019 Order, and the Court's prior certification (for settlement purposes only) of the Settlement Class and appointment of Class Counsel and the Settlement Class Claimant on the grounds set forth in the Preliminary 7023 Approval Order are hereby reconfirmed.

11. The entry of this Order shall not serve to extend or stay the time of filing any appeal regarding any of the relief granted in the Preliminary 7023 Approval Order or the 9019 Order.

12. The Parties are hereby authorized, empowered and directed to take such steps and perform such acts as may be necessary and appropriate to carry out the terms of this Order and the Settlement Agreement.

13. Upon the occurrence of the Settlement Effective Date, all Released Claimants' Claims of each Released Claimant Party as against each Released Debtor Party, and all Released Debtors' Claims of each Released Debtor Party as against each Released Claimant Party, shall be fully, finally and forever compromised, settled, released, relinquished, discharged and dismissed with prejudice (and without costs except as provided herein or in the Settlement Agreement or documents incorporated therein).

14. Contingent on the occurrence of the Settlement Effective Date, (a) Claim No. 934 (the Class Proof of Claim) shall, without further order of the Court, be ALLOWED in so far as the Class shall be allowed a non-priority unsecured class claim in the amount of $12,000,000.00; and and (b) Claim No. 935 shall, in accordance with the terms of the Settlement Agreement, be deemed WITHDRAWN.

15. Payment or transfer of the distributions on the Allowed Claim shall be made into the Escrow Account in accordance with the Debtor's Plan and subject to all of the terms and conditions set forth in the Settlement Agreement.

16. The Court finds that all Parties and their counsel have complied with each requirement of Federal Rule of Civil Procedure 11 as to all proceedings relating to the subject matter of the Class Proof of Claim.

17. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and/or implementation of this Order.

18. There is no just reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed.

19. This Order is effective immediately upon entry.

Prepared by:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	Chapter 11
FIRSTENERGY SOLUTIONS CORP., *et al.*,	Case No.: 18-50757 (Jointly Administered)
Debtors.	Judge Alan M. Koschik

[PROPOSED] ORDER APPROVING CLASS COUNSELS' PROFESSIONAL FEES AND EXPENSE APPLICATION, INCLUDING CLASS REPRESENTATIVE SCHWEBEL BAKING'S APPLICATION FOR A SERVICE AWARD

This matter came on for hearing [by telephone] on _____[May 21, 2020] (the "Final Approval Hearing") on Class Counsel's motion to approve their Professional Fees and Expense Application. The Court having considered all matters submitted to it at the Final Approval Hearing and otherwise; and it appearing that customized Individual Notices of the Final Approval Hearing substantially in the form approved by the Court were mailed to each Class Member at their last known address, and that the more detailed Website Notice substantially in the form approved by the Court was duly published on www.polarvortexsettlement.com (the "Settlement Website") in accord with the Court's prior Preliminary Approval Order (Dkt. #3546); and the Court having considered and determined the fairness and reasonableness of (i) the requested award to Class Counsel of attorneys' fees and reimbursement of out-of-pocket litigation expenses; (ii) the requested payment to the Class's testifying expert, Matthew Brakey of Brakey Energy LLC; (iii) the requested payment of the professional fees and expenses of the Class's financial advisor, Dundon Advisers LLC, and (iv) the application for an award to Class Representative Schwebel Baking Company ("Schwebel Baking") for its services on behalf of the Class,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated November 29, 2019 (Dkt. #3401-2) (the "Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members, pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

3. Notice of Class Counsel's motion for approval of the Professional Fees and Expense Aplication, including for approval of service award to Schwebel, was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the requests for such awards satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") (which is applicable to these proceedings pursuant to the Court's prior Orders at Dkt. #3456 and Dkt. #1451 directing application of Bankruptcy Rule 7023 to these proceedings), due process, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Class Counsel are hereby awarded attorneys' fees in the amount of _____% [33⅓% requested] of the Settlement Fund, which fees and expenses shall be payable from the Settlement Fund from such portions of the Settlement Fund's assets as may be converted to cash from time to time in accordance with the terms of the Stipulation and ¶10 below. The Court finds such award to be fair and reasonable. Class Counsel shall allocate the attorneys' fees awarded between their two firms in such manner which they, in good faith, believe reflects the contributions of each Class Counsel firm to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys' fees to be paid from the Settlement Fund, the Court has considered and found that:

a. The Settlement has created a common Settlement Fund to be funded with at least 159,607 shares of FES New Common Stock (ticker symbol: "ENGH"), with the potential for additional shares to be added to that Fund upon resolution of remaining unresolved disputed claims proceedings in Debtors' Chapter 11 proceedings. Although one cannot yet determine what the cash value of the Settlement Fund will be when the FES New Common Stock is ultimately converted to cash, the market value of the 159,607 shares initially allocated to the Settlement fund (without assuming any additional distribution of shares) -- based on over-the-counter trading prices during March 2020 (a period of exceptional market volatility) that ranged between a high of $27.50 per share and a low of roughly $15.00 per share -- ranged between a high of roughly $4.4 million and a low of roughly $2.4 million. The Court therefore further finds that numerous Settlement Class Members will benefit from the Settlement that occurred because of Class Counsel's efforts and diligence;

b. Copies of the Individual Notice were mailed to over 36,000 Settlement Class Members stating that Class Counsel would submit a Professional Fees and Expense application, and directing them to the Website Notice that expressly advised them that Class Counsel would (1) apply for attorneys' fees of 33⅓% of the Settlement Fund, and payment of Plaintiffs' Counsel's litigation and expert fees and expenses in an amount not to exceed $75,000; (ii) seek fees for its financial and strageic advisor (Dundon Advisers) equal to $50,000 plus 5% of that portion of the Class's gross recovery that exceeds $500,000; and (iii) apply for an award of $15,000 to Class Representative Schwebel for its service to the Class;

c. Class Counsel conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy, and the scope of the work conducted involved litigation not only in this Bankruptcy Court, but also predecessor litigation of the claims at issue in the U.S. District Court;

d. The requested fee and expense award will cover all work performed in the Action, including all work yet to be performed in connection with supervising the administration of the Settlement;

e. The Action raised a number of complex issues, both in this Court and in the District Court;

f. Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Schwebel and the other members of the Class would have recovered substantially less, or nothing at all, from Debtors;

g. Class Counsel devoted over _____ hours, with a lodestar value of approximately $_____ million, to achieve the Settlement;

h. The fee awarded (even if the price of the New Common Stock increases significantly) will likely result in a "negative" lodestar multiplier of 1.0 or less on the value of Class Counsel's total lodestar; and

i. The amount of attorneys' fees awarded is fair and reasonable, consistent with awards in similar cases, and consistent with the Court's review of additional relevant factors set forth in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974).

6. Class Counsel are also awarded reimbursement of their out-of-pocket expenses, which the Court finds to be fair and reasonable and of a type customarily reimbursed in securities class actions, as follows:

(a) to Scott+Scott Attorneys at Law LLP, the sum of $_____ [$_____ requested, including an additional allowance of $850 for travel expenses from New York that must be credited back to the Settlement Fund if the Final Approval Hearing is held telephonically rather than in person in Ohio], and

(b) to Meyers, Romans, Friedberg & Lewis, the sum of $_____ [$_____ requested].

7. Class Counsel's request for payment from the Settlement Fund on the outstanding invoice of the Class's testifying industry expert, Matthew Brakey of Brakey Energy LLC, is hereby approved in the amount of $ _____ [the full amount of $10,620 is requested];

8. Class Counsel's request for payment from the Settlement Fund of the fees and expenses of the Class's financial and strategic expert, Dundon Advisers LLC, is hereby approved in the amount of fees of eqaul to _____ [requested: 10% of the first $500,000 recovered, plus 5% of that portion of the Class's gross recovery that exceeds $500,000], plus reimbursement of Dundon's out-of-pocket expenses in the amount of $_____ [$2,034.55 requested];

9. The Court approves the award of $_____ [$15,000 requested] to Class Representative Schwebel Baking for its services in representing the Class;

10. To the extent that payments of fees or expenses are authorized from the Settlement Fund to Class Counsel or other professionals under this Order, unless otherwise permitted by the Court such payments shall be made in cash from the proceeds of the ultimate sale of the New Common Stock used to fund Settlement Fund, subject to the proviso that, in allocating any percentage based award of fees, no Class Counsel or other professional shall be compensated in a manner that would result in them receiving better pricing or other sale terms, as compared to the members of the Settlement Class, in connection with the conversion to cash of their percentage interest in the New Common Stock that is used to fund the Settlement Fund. In other words, for the avoidance of doubt and by way of example, Class Counsel may not separately direct the sale of any of its percentage interest in New Common Stock at price X for its own account, while crediting the Settlement Class's share of the New Settlement Fund with a lower price, and instead shall take its share only from its portion of sales made on behalf of the Settlement Fund as whole (under which all persons, including Class Members, with an interest in the Settlement Fund will receive the benefit of the same sale price).

11. Any appeal or any challenge affecting this Court's approval of any aspect of this order awarding Professional Fees and Expenses (including any service award to the Class Reprsentative) shall in no way disturb or affect the finality of the Court's Final Approval Order with respect to the Settlement.

12. Exclusive jurisdiction is hereby retained over the Parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

13. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

14. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this _____ day of _____, 2020.

_____
The Honorable Alan M. Koschik
United States Bankruptcy Judge