

**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”)<sup>1</sup>.

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<sup>1</sup> 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](http://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](http://www.polarvortexsettlement.com) or by calling it at 833-930-2422.<sup>2</sup>

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

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<sup>2</sup> If You wish to 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”)<sup>3</sup> 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”).<sup>4</sup> 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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<sup>3</sup> “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.

<sup>4</sup> 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<sup>5</sup> 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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<sup>5</sup> “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.<sup>6</sup> 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

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<sup>6</sup> 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](http://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](mailto: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**

<p><b>DO NOTHING</b></p> <p><i>(Note: No Action On Your Part Is Required For You To Receive A Payment if You Are Eligible to Receive One)</i></p>	<p>If the Settlement is approved by the Court and becomes Effective, <i>You are not required to do anything to receive a payment if Your Business is eligible to receive one.</i> 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.</p>
<p><b>REQUEST REVIEW OF THE CLAIMS' ADMINISTRATOR'S CALCULATION OF YOUR "RECOGNIZED CLAIM AMOUNT"</b></p>	<p>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.</p>
<p><b>ASK TO BE EXCLUDED FROM THE CLASS AND THE SETTLEMENT (“OPTING-OUT”)</b></p>	<p>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 <i>received</i> by the Claims Administrator on or before <b>April 21, 2020</b>. If You exclude Your Business from the Class, it will <i>not</i> participate in the Settlement, and it will <i>not</i> receive any payment from the Net Settlement Fund.</p>
<p><b>OBJECT</b></p>	<p>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 <i>received</i> by the Court and counsel for the Parties on or before <b>May 1, 2020</b>.</p>

<p><b>GO TO THE FAIRNESS HEARING CURRENTLY SCHEDULED FOR MAY 21, 2020 AT 10:00 A.M., ET</b></p>	<p>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 <i>received</i> by the Court and counsel for the Parties on or before <b>May 1, 2020</b>. 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.</p>
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*Please Do Not Call the Court with Questions About the Settlement.*

**SUMMARY OF THIS NOTICE**

1. Why Is This Notice Being Provided?
2. What Is This Action About? What Has Happened So Far?
3. Why Is This Action Being Brought on A Class-Wide Basis?
4. Who Is Included in the Settlement Class?
5. Why Is There A Settlement?
6. What Does the Settlement Provide?
7. The Proposed Plan of Allocation: How Will the Settlement Fund Be Allocated, and What Will My Business’s Share Be?
8. Does My Business Have the Right to Dispute the Claims Administrator’s Calculation of My Business’s “Recognized Claim Amount”?
9. When Will My Business Receive Its Share of the Settlement Proceeds?
10. Can My Business Opt Out of the Settlement? What Is the Procedure To Do So?
11. What Is the Effect of Opting Out?
12. Who Are the Lawyers in this Action?
13. How Will the Lawyers Be Paid?
14. How Does My Business Tell the Court If It Has Objections?
15. What Is the Difference Between Objecting and Opting Out of the Settlement Class?



16. When and Where Will the Court Decide Whether to Approve the Settlement?
17. Does a Representative of My Business Have to Attend the Fairness Hearing?
18. May a Representative of My Business Speak at the Fairness Hearing?
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?
20. Can I Get More Information?

<b>1. Why Is This Notice Being Provided?</b>
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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.

<b>2. What Is This Action About? What Has Happened So Far?</b>
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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 (Bkrcty. 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.<sup>7</sup> 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

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<sup>7</sup> 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<sup>8</sup>. 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

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<sup>8</sup> 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](http://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.<sup>9</sup>

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](http://www.polarvortexsettlement.com). The proceeds of the Settlement, if it is approved and becomes Effective, will be distributed *pro rata* to

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<sup>9</sup> 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, 17<sup>th</sup> 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.

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

<b>9. When Will My Business Receive Its Share of the Settlement Proceeds?</b>
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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](http://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.

<b>20. Can I Get More Information?</b>
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Yes. This Notice summarizes the proposed Settlement. You can view the full text of the Settlement Agreement at [www.polarvortexsettlement.com](http://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](mailto: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](http://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