

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
ENERGY HARBOR LLC FOR
CERTIFICATION AS A COMPETITIVE
RETAIL NATURAL GAS SERVICE
PROVIDER.

CASE NO. 20-550-GA-CRS

IN THE MATTER OF THE APPLICATION OF
ENERGY HARBOR LLC FOR
CERTIFICATION AS A COMPETITIVE
RETAIL ELECTRIC SERVICE PROVIDER.

CASE NO. 00-1742-EL-CRS

FINDING AND ORDER

Entered in the Journal on May 6, 2020

I. SUMMARY

{¶ 1} The Commission approves the applications filed in the above-captioned proceedings for certification of Energy Harbor LLC as both a competitive retail natural gas service provider and a competitive retail electric service provider.

II. DISCUSSION

{¶ 2} R.C. 4929.20 provides that retail natural gas suppliers and governmental aggregators must be certified by the Commission prior to providing competitive retail natural gas service (CRNGS). The Commission reviews applications for certification to determine if the applicant has the managerial, technical, and financial capability to provide CRNGS and whether there are reasonable financial assurances sufficient to protect customers and natural gas companies from default. Pursuant to R.C. 4929.20 and Ohio Adm.Code 4901:1-27-10, an application for certification to provide CRNGS shall be deemed approved 30 days after the filing of the application, unless the Commission suspends such approval.

{¶ 3} Similarly, R.C. 4928.08 provides that retail electric suppliers, including brokers and aggregators, must be certified by the Commission prior to providing competitive retail

electric service (CRES). The Commission reviews applications for certification to determine if the applicant has the managerial, technical, and financial capability to provide CRES and whether there are reasonable financial assurances sufficient to protect customers and electric companies from default. Pursuant to R.C. 4928.08 and Ohio Adm.Code 4901:1-24-10, an application for certification to provide CRES shall be deemed approved 30 days after the filing of the application, unless the Commission suspends such approval.

{¶ 4} Energy Harbor LLC, formerly known as FirstEnergy Solutions Corp. (Energy Harbor or Company), was issued a renewal certificate, Certificate No. 00-11E(9) (CRES Certificate), to provide CRES within the state of Ohio, effective November 2, 2016. The certificate was set to expire on November 2, 2018.

{¶ 5} On March 31, 2018, the Company, then known as First Energy Solutions Corp., filed a voluntary petition in the United States Bankruptcy Court (Bankruptcy Court) for relief pursuant to Chapter 11 of Title 11 of the United States Code. The Company timely filed a notice of material change in Case No. 00-1742-EL-CRS regarding the bankruptcy.

{¶ 6} Subsequently, on April 4, 2018, the Commission opened a proceeding to protect Ohio consumers from any adverse impacts resulting from the filing of the petition in the Bankruptcy Court; in addition, the Commission directed the Company to file a report regarding the filing by May 4, 2018. *In the Matter of the Filing by FirstEnergy Solutions Corp. of a Petition for Reorganization under Chapter 11 of the United States Bankruptcy Code*, Case No. 18-569-EL-UNC, Entry (Apr. 4, 2018) at ¶ 7. On May 4, 2018, the Company timely filed the report as directed by the Commission.

{¶ 7} On October 1, 2018, the Company filed an application for CRES certification renewal.

{¶ 8} On October 22, 2018, the Company filed a motion for a 120-day extension of its CRES Certificate. The Company noted that, although it was financially stable, it was in bankruptcy. The Company claimed that delaying the Commission's consideration of its

renewal application and extending its CRES Certificate for an additional 120 days would provide the Commission with the opportunity to evaluate the Company's financial performance while in bankruptcy and provide clarity on a potential sale of the Company retail book of business and any potential plan of reorganization of the Company.

{¶ 9} On October 26, 2018, the attorney examiner in Case No. 00-1742-EL-CRS granted the motion for an extension but determined that a 180-day extension would be more appropriate under the circumstances. Accordingly, the attorney examiner extended the CRES Certificate to May 1, 2019.

{¶ 10} On October 29, 2018, the Company filed a notice of withdrawal of its CRES renewal application filed on October 1, 2018.

{¶ 11} Subsequently, on March 20, 2019, the Company filed a second motion for extension of its CRES Certificate, seeking to extend for 180 days, through October 28, 2019. On March 22, 2019, the attorney examiner in Case No. 00-1742-EL-CRS granted the additional 180-day extension of the CRES Certificate. Accordingly, the expiration date of the CRES Certificate was extended to October 28, 2019.

{¶ 12} On September 12, 2019, the Company filed a motion for an additional 180-day extension of its CRES Certificate. The Company noted that there had been significant developments in its bankruptcy proceeding. The Company represented that creditors and other shareholders had reached agreement on all material aspects of the Company's plan of reorganization and that the Company was expected to emerge from bankruptcy by the end of 2019.

{¶ 13} By Entry dated October 21, 2019, in Case No. 00-1742-EL-CRS, the attorney examiner granted the Company's motion for extension. Accordingly, the attorney examiner extended the Company's CRES Certificate to April 29, 2020. The attorney examiner further noted that the Company should continue to file notices of material change in accordance with Ohio Adm.Code 4901:1-24-11 as necessary for the extended term of its certificate. In

addition, the attorney examiner directed the Company to file, within 15 days of the October 21, 2019 Entry, updated exhibits C-3, C-4, and C-5 of its renewal application; consistent with Ohio Adm.Code 4901:1-24-08, these updated exhibits could be marked “confidential” and filed under seal. Finally, the attorney examiner directed the Company to file, within 30 days of the October 21, 2019 Entry, an additional update to its report filed May 4, 2018, in Case No. 18-569-EL-UNC. That update was to include any new information not available at the time the report was filed as well as a detailed summary of its current plan for reorganization filed with the Bankruptcy Court. The Company timely filed its updated exhibits in Case No. 00-1742-EL-CRS, as well as the updated report in Case No. 18-569-EL-UNC, as directed by the attorney examiner.

{¶ 14} On February 27, 2020, the Company emerged from bankruptcy as Energy Harbor LLC, and since the date of emergence, the Company operates under the Energy Harbor LLC name.

{¶ 15} On March 5, 2020, the Company filed an application for certification as a CRNGS provider in the state of Ohio.

{¶ 16} On March 23, 2020, the Company filed an application for CRES certification renewal.

{¶ 17} However, on March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists.

{¶ 18} On March 16, 2020, an attorney examiner issued an Entry in Case No. 20-591-AU-UNC, directing that any time period prescribed by order, statute, or rule for the Commission to act upon a pending application or other filing should be tolled during the state of emergency and also during the 14 days thereafter, including the 30-day automatic approval process for applications and renewal applications for certification to provide CRNGS, as well as the 90-day period for the Commission to take action to approve or deny a suspended application. Further, the attorney examiner indicated that, during the declared emergency, Staff would continue to investigate pending applications and the Commission would act on such applications on a case-by-case basis. *In re the Proper Procedures and Process for the Commission's Operations and Proceedings during the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry (Mar. 16, 2020) at ¶ 5.

{¶ 19} The applications filed in the above-captioned proceedings were, thus, subject to the March 16, 2020 Entry and suspended from automatic approval during the state of emergency.

{¶ 20} On April 20, 2020, Staff filed a report of its review of the CRNGS certification application, indicating that the Company satisfies the statutory requirements for certification as a CRNGS provider, and recommending that the application be approved.

{¶ 21} On April 30, 2020, Staff filed a report of its review of the CRES certification renewal application, indicating that the Company satisfies the statutory requirements for certification as a CRES provider, and recommending that the application be approved.

{¶ 22} Upon review of the filed applications, as well as Staff's recommendations, the Commission finds that the Company is managerially, financially, and technically fit and capable of performing both CRNGS and CRES, and that the Company is managerially, financially, and technically fit and capable of complying with all applicable Commission rules and orders adopted pursuant to R.C. Chapters 4928 and 4929. Accordingly, both applications should be approved.

III. ORDER

{¶ 23} It is, therefore,

{¶ 24} ORDERED, That the applications filed in the above-captioned cases be approved. It is, further,

{¶ 25} ORDERED, That the Commission's docketing division issue the Company a certificate to provide CRNGS in the state of Ohio. It is, further,

{¶ 26} ORDERED, That the Commission's docketing division issue the Company a certificate to provide CRES in the state of Ohio. It is, further,

{¶ 27} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

DMH/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/6/2020 3:59:12 PM

in

Case No(s). 20-0550-GA-CRS, 00-1742-EL-CRS

Summary: Finding & Order approving the applications filed in the above-captioned proceedings for certification of Energy Harbor LLC as both a competitive retail natural gas service provider and a competitive retail electric service provider. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio