

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Certification Application)	
Of The City Of Vermilion)	Case No. 11-3545-EL-GAG
)	

Energy Harbor Notice of Withdrawal Of Opt-Out Notice

NOPEC’s Motion to Reject (“Motion”) is filled with misstatements and hyperbole.¹ Energy Harbor will not attempt to match NOPEC’s tone, which likely was prompted by NOPEC’s fear that Vermilion customers will object to paying ten percent more than the Energy Harbor rate for the NOPEC three-month rate for a variable price product.² NOPEC has accused Energy Harbor of a variety of violations of Ohio law, and sought expedited consideration regarding those alleged violations without providing Energy Harbor the courtesy of even a phone call to discuss this supposed “emergency.” By doing so, NOPEC has misrepresented the factual situation to this Commission by failing to address in its Motion the root cause of the confusion. Energy Harbor therefore must respond to correct the record.

Had NOPEC taken the time to conduct a reasonable investigation of the facts it would have learned the error in its position. In August of 2019, the City adopted an ordinance approving the NOPEC Plan of Governance for the NOPEC electricity aggregation program.³ It was at this point that there appears to have been a misunderstanding by the City leadership. In October of 2019, two months after the NOPEC ordinance, the City’s Mayor signed the attached contract amendment

¹ See, e.g., Motion p. 1 (claiming immediate action is needed to protect customers “from Energy Harbor’s false, misleading and deceptive claim that it has been selected to provide the aggregation’s power supply.”)

² Energy Harbor is offering a fixed price of 4.6 cents through 2023, while NOPEC’s most recent filing in Case No. 00-2317-EL-GAG offers 5.072 cents for the first three months with a floating rate thereafter.

³ See Motion Attachment B.

with FirstEnergy Solutions Corp. (the “FES Contract”) to continue the electric governmental aggregation program.⁴ Under the terms of the FES Contract, the City expressly represented to FES that it had undertaken all of the required formalities to enter into the FES Contract.⁵ That includes, among other things, obtaining the approval of City Council.

Shortly after the Mayor signed the amended FES Contract, FES learned that the City may have also enrolled with NOPEC. FES promptly reached out to the Mayor and his assistant on November 11, 2019 to inquire: “I am just following up with you regarding the electric aggregation program that we just renewed with the City of Vermilion. It came to my attention that you might have enrolled with NOPEC, too? Please let me know as soon as you can!”⁶

In response to this question, on January 23, 2020, the City expressly assured FES the NOPEC ordinance was not a problem. “Good Afternoon, There seems to be some confusion. **We signed up for gas aggregation with Nopec, Electric Aggregation with First Energy.**”⁷

FES had no reason to suspect anything was wrong since the City signed a contract with FES expressly representing that it had authority to enter into this agreement, and then expressly assured FES that its agreement with NOPEC was for gas instead of electricity. It therefore proceeded in the normal course to seek the City’s electric aggregation renewal. Notably, although the Commission docket for the City’s electric aggregation program is Case No. 11-3545-EL-GAG, neither the City nor NOPEC have made any filings in this docket giving the public (or Energy Harbor) notice of the NOPEC ordinance adopted eight months ago.

⁴ See Exhibit A.

⁵ FES Contract, Section D.

⁶ See Exhibit B- Becki Pastier email dated November 11, 2019.

⁷ Ex. B- Anne Maiden email dated January 23, 2020 (emphasis added).

It was not until after 5 pm on April 1, 2020, that Energy Harbor first learned there was an issue with the FES Contract. Energy Harbor received a letter that evening from the City claiming that the City had signed the FES Contract but stating they never received the version signed by FES.⁸ The City also stated that the City Counsel had never approved the FES Contract. The City asked for a response by the end of the day on April 2nd.

The very next day Energy Harbor immediately began investigating the City's claim. Energy Harbor learned that the FES Contract had in fact been fully executed. It is unclear why the City states they never received it. Energy Harbor scheduled a call with the City for 4 pm that same day to discuss the situation.

During that conversation, the City repeated its claim that the FES Contract need to be approved by City Council but was not. Energy Harbor takes the City at its word on this factual question. In fact, on the evening of April 2, 2020, Energy Harbor expressly told the City that it would not be attempting to enforce the contract the City signed. Once again, this important fact is not mentioned in NOPEC's Motion.

To summarize, the City mistakenly induced Energy Harbor to enter into the FES Contract by promising it had authority to do so. When Energy Harbor learned about the NOPEC agreement back in November it followed up with the City and the City again assured Energy Harbor the FES Contract was going forward. It was only in the evening of Wednesday April 1st that it became clear to Energy Harbor that there were two entities that believed they had valid contracts to serve the City's aggregation beginning June 2020. By April 2nd Energy Harbor had orally resolved this dispute with the City and began drafting a letter to withdraw its filing with the Commission.

⁸ Exhibit C- Mayor Forthofer letter dated April 1, 2020.

Energy Harbor accepts the City's position that this was a good faith mistake by the City. Energy Harbor is doing this because it has been and will continue to be a good faith partner to its aggregation communities.

Energy Harbor is disappointed that it will be losing many of the City's residents as customers in June and that they will be paying 10% more for electricity to NOPEC than they would have on the Energy Harbor contract. Energy Harbor strives to be a reliable partner with communities and a good faith market participant when, like here, the unexpected happens.

Energy Harbor hereby withdraws the opt-out notices filed on March 27, 2020.

Respectfully submitted,

/s/ N. Trevor Alexander

N. Trevor Alexander (0080713)

Kari D. Hehmeyer (0096284)

CALFEE, HALTER & GRISWOLD LLP

1200 Huntington Center

41 South High Street

Columbus, Ohio 43215

Tel: (614) 621-7774

Fax: (614) 621-0010

talexander@calfee.com

khehmeyer@calfee.com

Attorneys for Energy Harbor LLC

CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 6th day of April 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander

One of the Attorneys for Energy Harbor,
LLC

Master Agreement To Provide Services

To An Aggregated Group

Between,

The City of Vermilion, Ohio

And

FirstEnergy Solutions, Corp.

This Master Agreement To Provide Services ("Agreement"), is entered into as of this 10th day of, June 2011, ("Effective Date") by and between the City of Vermilion, Ohio ("City of Vermilion" or "Governmental Aggregator"), an Ohio municipality, and FirstEnergy Solutions, Corp. ("FES"), an Ohio corporation with its principal place of business at 341 White Pond Drive, Akron, Ohio, (collectively, "Parties").

RECITALS

A. FES is certified by the Public Utilities Commission of Ohio ("PUCO") as a Competitive Retail Electric Service ("CRES") Provider to sell competitive retail electric service to customers in the State of Ohio utilizing the existing transmission and distribution systems.

B. FES (directly or through its affiliates) is an energy services provider with extensive experience in the provision of a broad range of energy related services.

C. FES sells competitive retail electric service and related services to inhabitants of municipal corporations, boards of township trustees, or boards of county commissioners acting as governmental aggregators for the provision of competitive retail electric service ("Governmental Aggregators") under authority conferred under Section 4928.20 of the Ohio Revised Code.

D. Both parties have the corporate, governmental and/or other legal capacity(s), authority(s) and power(s) to execute and deliver this Agreement and related agreements and to perform its obligations hereunder.

E. The Governmental Aggregator has been or will be certified by the PUCO as a governmental aggregator pursuant to Chapter 4901:1-24-01, et. seq. OAC. FES is under no obligation to provide CRES Service until Governmental Aggregator has been certified by the PUCO.

F. The Governmental Aggregator has established or desires to establish a program whereby the Governmental Aggregator may arrange for the provision of competitive retail electric service to its residential and commercial inhabitants that do not opt-out of or otherwise elect not to participate in the program ("Aggregation Program").

G. By this Agreement, the City of Vermilion and FES desire to enter into a mutually beneficial energy and services provisions relationship whereby FES shall provide competitive retail electric service ("CRES Service") and related administrative services ("Administrative Services") necessary to fulfill the obligations of this Agreement.

H. FES is willing to offer to City a one-time grant in consideration for City's agreement to participate in the *Powering Our Communities* program, for the term of the Master Agreement as provided in Attachment A;

I. City desires to enter into this Agreement with FES to provide energy and energy-related services to members through Government Aggregation under the *Powering Our Communities* program;

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1

General Requirements

1.1 Governmental Aggregator Obligations and Authority.

1.1.1 The Governmental Aggregator, shall: (1) take all necessary action to become certified by the PUCO as a Governmental Aggregator, and to become so certified, and enact the appropriate legislation necessary to fulfill its role of Certified Governmental Aggregator; (2) establish an Aggregation Program available to those inhabitants, within the municipal boundaries, that the Governmental Aggregator, together with FES, have determined will be provided the opportunity to participate ("Eligible Customers"), which responsibility may be contracted for with FES; (3) mail out the required enrollment and opt-out notices, which responsibility may be contracted for with FES; and (4) authorize FES to contract for competitive retail electric service with those Eligible Customers that do not opt-out of the Aggregation Program, rescind their switch to FES as part of their enrollment in the Aggregation Program, otherwise terminate their participation in the Aggregation Program or CRES Service from FES, or have their participation terminated by the Governmental Aggregator, or their CRES Service terminated by FES or the EDU, or otherwise ("Aggregation Program Member" or "Member"), including without limitation the right to collect upon past due bills and balances.

1.1.2 The Governmental Aggregator shall, on a best efforts basis and in a timely manner, forward to FES all notices from the EDU concerning Member accounts served pursuant to this Agreement, including but not limited to verbal or written notices regarding transition costs, changes in the terms and conditions of tariffs, rates or riders, and notices concerning the operation and reliability of the EDU's system.

1.1.3 Governmental Aggregator has the authority to designate, and has designated FES as its CRES Services provider.

1.2 FES Obligations.

1.2.1 FES shall provide a firm supply of electric power (subject to the terms of the appropriate transmission and/or distribution tariffs) sufficient to serve the total electric generation needs of the Commercial and Residential Aggregation Program Members ("Electricity Supply"). FES shall arrange for the delivery of Electricity Supply in accordance with the requirements of the Member's EDU and/or Independent System Operator ("ISO")/Regional Transmission Organization ("RTO") according to the rules, regulations, and tariffs governing Electricity Supply from an alternative supplier. . These requirements may include electric energy, ancillary services, capacity, network transmission, losses, scheduling, unaccounted for energy, ISO/ EDU administration fees, and green power requirements. Notwithstanding the foregoing, FES is not responsible for the performance or failure to perform of the provider of such transmission, distribution, or ancillary services, or the consequences of such performance or failure to perform.

1.2.2 FES shall determine at its sole discretion, whether and at what rate and on what terms to accept into the Aggregation Program those customers who wish to join the Aggregation Program after the expiration of the opt-out period.

1.2.3 FES shall be responsible for all acts necessary for FES to perform its obligations hereunder, including but not limited to the scheduling of delivery of CRES Services hereunder.

1.2.4 FES shall provide Aggregation Program Members with the environmental disclosure data and other data it is required to provide, if any, to comply with the rules of the PUCO.

1.3 Term. The term of the Master Agreement shall be for the term identified in the Attachment A, subject nonetheless to the provisions of Article 2. Notwithstanding the foregoing, Members shall have the right to opt-out of the Aggregation Program at least every three years. CRES Service to individual Members will commence with the initial flow of electric generation service provided by FES to that specific Member under the terms of the Electric Service and Supply Contract included with the opt-out notifications, and continue through June 2020 unless the Member opts-out of the Aggregation Program, or unless the Electric Service and Supply Contract is otherwise terminated, or this Agreement is terminated as provided in Section 1.4, below.

1.4 Interaction Between Termination Dates of This Agreement and Member Electric Service and Supply Contracts. Members initially enrolled in the Aggregation Program shall receive CRES Services at the rate set forth in the Electric Services and Supply Contract. If this Agreement remains in force until June 2020, then individual Member Electric

Service and Supply Contracts will remain in force for this same period even if the Agreement expires and is not renewed prior thereto, unless the Member Electric Service and Supply Contract is terminated for another reason. If this Agreement is terminated prior to June 2020 due to a regulatory issue, then individual Member Electric Service and Supply Contracts will terminate early and the Members will be returned to EDU standard offer service in accord with the standard switching rules and applicable notices. If this Agreement is terminated due to the material breach of the Agreement, the Members' Electric Service and Supply Contracts will be terminated and the Members may choose another CRES Supplier or will be returned to EDU generation service in accord with the standard switching rules and applicable notices. These termination and/or contract term provisions set forth in this paragraph 1.4 shall apply and have force notwithstanding any conflicting termination and/or contract term provisions set forth in any Electric Services and Supply Contract or replacements thereof as between FES and Aggregation Program Members. Program Members are responsible for arranging for their supply of electricity upon expiration of this Agreement. If this Agreement is terminated prior to the end of the term, if Member has not selected another supplier, Member will be returned to the EDU.

- 1.5 Future Pricing. Pricing for CRES Service following the termination of this Agreement shall be determined by mutual agreement of the parties.
- 1.6 Governmental Aggregator Does Not Assume Credit Risk. As between the Governmental Aggregator and FES, FES shall be responsible for the risk of non-payment by any Member of the Aggregation Program.

- 1.7 Customer Data and Load Forecast Information. FES and Governmental Aggregator shall cooperate to obtain the consent of Members to obtain all available customer data and historical load and load forecast information, related to the Member's load and consumption, from any entity in possession of such data. Additional costs for Member(s) that are interval metered shall be borne by the Member(s).
- 1.8 Term of Enrollment. Members shall remain enrolled in the Aggregation Program until the Member exercises the right to opt-out, set forth in paragraph 1.3 herein, or they otherwise terminate their participation in the Aggregation Program, their participation in the Aggregation Program is terminated by the Governmental Aggregator, their CRES Service is terminated by FES or the EDU, or their electric service is terminated by the EDU or until this Aggregation Program is terminated, whichever occurs first. The Member(s) right to opt-out shall be determined based on paragraphs 1.3 and 1.4 herein.
- 1.9 Service Inquiries and Service Notices to Aggregation Group Members. Members may direct inquiries regarding this Agreement, and CRES Services provided hereunder, and any electric generation supply or billing questions, to FES at the address and phone number provided in Section 11.1, which address and phone number shall be provided in communications with Members regarding the Aggregation Program. Members should direct inquiries to concerning EDU related emergency, power outage, wire or service maintenance, metering, EDU service billing or other similar EDU related concerns to the EDU.
- 1.10 Subcontracting. FES may subcontract the performance of its obligations under this Agreement. However, no subcontract shall relieve FES of any of its obligations and/or

liabilities under this Agreement. FES shall be responsible for all payments and obligations as between FES and subcontractors, and Governmental Aggregator shall not be responsible for payments to any such subcontractor.

ARTICLE 2

Term, Termination, Succession, Assignment

2.1 Effective Date of Agreement and Termination. This Agreement shall commence on the Effective Date. This Agreement may be terminated prior to the initial Term, in compliance with this Agreement's provisions, if: (1) the Governmental Aggregator does not enact legislation authorizing the Aggregation Program, or does not receive or fails to maintain PUCO Certification; (2) the May 2011 ballot issue is rejected by the electors; (3) either Party is in material breach of this Agreement; (4) FES fails to maintain its PUCO Certification; or (5) any of the situations described in paragraphs 2.2 or 2.3 occur and Parties are unable to mutually negotiate modification(s) to the Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for the occurrence of the events set forth in paragraphs 2.2 or 2.3. This Agreement shall terminate upon the expiration of this Agreement's Term. This Agreement may be renewed by mutual agreement for a term agreed upon by the Parties.

2.2 Regulatory Contingencies.

(a) **Regulatory Events.** The following will constitute a "Regulatory Event" governing the rights and obligations of the Parties under this Agreement:

- (i) **Illegality.** If, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable

law, rule, or regulation, by any judicial, regulatory, administrative or government authority with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this Agreement.

(ii) Adverse Government Action. If (A) any regulatory agency or court having competent jurisdiction over this Agreement requires a change to the terms of the Agreement that materially adversely affects a Party(s), or (B) any regulatory or court action adversely and materially impacts a Party's ability to perform or otherwise provide Services pursuant to this Agreement.

(iii) New Taxes. If any ad valorem, property, occupation, severance, transmission, distribution, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, or transaction taxes or any other governmental charges, licenses, fees or assessments (other than such charges based on net income or net worth), or increases in such charges, or an application of such charges to a new or different class of parties, is levied or enacted and effective after the Effective Date of the this Agreement .

(b) Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. The Parties will mutually attempt to negotiate modification(s) to the Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for the occurrence of the Regulatory Event. If the Parties are

unable, within thirty (30) days of entering into negotiations, to agree upon modification(s) to this Agreement, the adversely affected Party shall have the right, upon sixty (60) days notice, to terminate this Agreement and close out its obligations hereunder.

2.3 Regulatory Events Defined. Regulatory changes or rulings, legislative and agency acts, and judicial rulings covered by preceding paragraph 2.2, include but are not limited to: i) material changes affecting FES' and/or Governmental Aggregator's electric supplier certification/franchise status, fees, costs, or requirements; ii) other changes or clarifications of federal, state or local government certification, licensing or franchise requirements for electric power suppliers; iii) changes to existing or new charges, fees, costs, and/or obligations, including without limitation transmission or capacity requirements or charges, that may be imposed upon FES by a regional transmission organization, independent transmission system operator, independent transmission provider, or government agency; iv) changes to existing or new charges, fees, costs, credits, emission allowance requirements, permitting requirements and/or obligations associated with environmental or energy law and regulations (including, without limitation, alternative energy requirements, carbon and greenhouse gas, or other similar controls); and v) other changes to or requirements of retail electric customer access or aggregation programs in a manner which will not reasonably allow a Party or the Parties to perform economically hereunder; and provided that in each such case such actions or effects were not known and in effect at the time of the Effective Date of this Agreement.

2.4 Termination Notices. In the event of termination hereunder, the terminating party shall exercise its best efforts to communicate to the non-terminating party the upcoming

possibility of termination. In the event that this Agreement is terminated prior to the end of the term, each individual Member of the Aggregation Program will be provided written notification from the terminating party of the termination of the Agreement at least sixty (60) days prior to termination, or as set forth in the governance plan, and in compliance with other regulatory or legal requirements and Members will also be notified of their right to return to the EDU or to select an alternate generation supplier. All other notification(s) shall be in accordance with PUCO requirements.

2.5 Non-Assignability. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the non-assigning Party, which authorization shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.

2.6 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement.

ARTICLE 3

Energy Scheduling, Transmission, Pricing and Delivery

3.1 Scheduling, Transmission and Delivery of Power. FES shall schedule energy as required by the transmission supplier and the EDU and shall arrange for transmission and distribution service to Members. FES will arrange for necessary electric distribution and transmission rights for delivery of such electricity at levels of firmness as necessary to

provide the CRES Services hereunder and subject to the understanding that FES has an obligation to make firm deliveries to Members as set forth in Paragraph 1.2.1. Delivery of firm energy shall not be curtailed or interrupted by FES except pursuant to Article 2 or Article 7 of this Agreement. FES does not take responsibility for any delivery of services supplied by the EDU or transmission supplier, or for the consequences of the failure to provide such services.

3.2 Activation of Service. CRES Service to a Member will commence after the Member has been enrolled by FES and the Member has been switched by the EDU to FES on the Member's regularly scheduled meter read date in accordance with the standard switching rules, all as set forth in the Electric Service and Supply Contract(s).

3.3 Failure of Delivery. In the event that FES fails to deliver to the Member(s) electric generation sufficient to meet the needs of Member(s) as set forth herein and FES' failure is not due to a Force Majeure Event as defined hereunder, FES shall at its own expense procure replacement CRES Services, including replacement energy, to meet the needs of Member(s) without any increase in any rates, charges, or fees to Members and/or Governmental Aggregator. IN THE EVENT OF FES'S FAILURE TO PERFORM DUE TO A NON-FORCE MAJEURE EVENT, FES' OBLIGATION TO SUPPLY REPLACEMENT ENERGY AT THE AGGREGATION PROGRAM RATES SHALL BE THE MEMBER(S)'/GOVERNMENTAL AGGREGATOR'S SOLE REMEDY FOR FES' FAILURE TO DELIVER ENERGY PURSUANT TO THE TERMS OF THIS AGREEMENT AND THE MEMBER'S ELECTRIC SERVICE AND SUPPLY CONTRACT(S).

ARTICLE 4

Metering, Billing, and Payments

- 4.1 **Additional Equipment.** If additional metering or monitoring equipment is required by the EDU, such metering or monitoring equipment shall be installed at the Aggregation Program Member's sole expense and each Party shall cooperate as necessary with installation of additional metering or monitoring equipment.
- 4.2 **Additional Costs.** In addition to the Generation Charge described in the Pricing Schedule to Attachment A to Master Agreement, FES will charge Member for any and all fees, costs, and obligations imposed by a Regional Transmission Organization ("RTO"), such as the Midwest ISO, that are not otherwise reimbursed by the EDU to FES, regardless of whether such charges are greater than, less than, or equal to the charges Member currently pays for these services to the EDU ("Transmission and Ancillary Charges"). FES will pass these Transmission and Ancillary Charges, which may be variable, through to the Member and Member will receive no discount or percent-off of these Transmission and Ancillary Charges. Such pass through includes without limitation the cost of any capacity requirement imposed on FES by an ISO or RTO. No additional taxes, duties, fees or charges levied against FES by any governmental or regulatory entity or passed through to FES by capacity or energy suppliers, except as explicitly included in the Pricing Schedule to Attachment A to Master Agreement or as specifically allowed herein, shall be passed through by FES to the Governmental Aggregator or Members.
- 4.3 **Switching Fee.** Should the EDU charge FES a switching fee, FES will pay the switching fee on behalf of the Members.

- 4.4 Billing. Billing shall be provided by the EDU under a consolidated billing format pursuant to the EDUs tariff provisions and PUCO rules applicable to the Member(s). FES retains the right to assess late payment fees on, or terminate service to, any Member that fails to pay amounts due within the specified time period for said payments in accord with the EDU's tariff and PUCO regulations.

ARTICLE 5

Aggregation Program Development and Administrative Services

- 5.1 Program Development Administrative Services. The Governmental Aggregator has selected FES to perform certain Aggregation Program development and administrative services, as described in Attachment A hereto ("Pricing and Other Conditions to Retail Generation Service Offer"), in addition to the CRES Service set forth in Attachment A hereto. These Administrative Services are specifically incorporated herein and made a part hereof.

ARTICLE 6

Default and Remedies

- 6.1 Default. Any Party failing to comply with any material terms or conditions of this Agreement which non-compliance is not excused as a Force Majeure Event, as described in Article 7 herein, shall be in Default of this Agreement.
- 6.2 Notice and Remedies. Subject to other provisions of this Agreement, if a party believes that the other party is in material breach of this Agreement, the party claiming breach shall give notice in writing to the offending party believed to be in breach detailing the

alleged violations and requesting specific relief that is in accord with the terms and conditions of this Agreement. The party receiving the notice of violation shall respond in writing within five ("5") business days of receipt affirming or denying the alleged violation(s) and detailing how any such breach of this Agreement will be cured. If the party claiming breach is not satisfied that an alleged breach(s) of this Agreement has been cured within twenty-five ("25") business days from the notice of breach hereunder, the party claiming breach shall be free to seek legal redress and take such other actions, including termination, as it sees fit, without prejudice to any rights and remedies of the non-defaulting Party and any other remedies that a Party may have under the law or this Agreement.

ARTICLE 7

Force Majeure

- 7.1 **Excused Failure to Comply.** Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly or indirectly from a Force Majeure Event. Despite its commercially reasonable efforts, if the Party is unable, wholly or in part, to meet its obligations under this Agreement due to a Force Majeure Event, the obligations of each Party, other than the obligation to make payments due for performance rendered hereunder, so far as they are affected by such Force Majeure Event, shall be suspended during such Force Majeure period. The Party claiming excuse due to a Force Majeure event shall exercise commercially reasonable efforts and due diligence to remove the inability to perform as soon as reasonably possible so that the affected period shall be no longer than that necessarily affected by the Force Majeure event and shall exercise commercially reasonable efforts and due diligence to mitigate the effects of the Force Majeure event.

Nothing contained in this section shall be construed as requiring a Party to settle any strike or labor dispute in which it may be involved.

7.2 Force Majeure Event. For purposes of this Agreement, a Force Majeure Event shall mean any non-economic cause beyond the reasonable control of the Party affected and shall include, but not be limited to, Acts of God, floods, earthquakes, storms, droughts, fires, pestilence, destructive lightning, hurricanes, washouts, landslides and other natural catastrophes; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbances or disobedience, sabotage, wars or blockades; the failure of facilities not owned by FES, governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority; or any other reasonably unplanned or non-scheduled occurrence, condition, situation or threat not covered above, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control of the Party claiming such inability. A change in economic electric power market conditions shall not constitute a Force Majeure Event. Failure or interruptions, including without limitation government ordered interruptions, on the systems of generation, transmission or distribution relied upon for supplying energy under this Agreement shall constitute a Force Majeure Event provided that FES has arranged for service on these systems at a level of firmness as required to provide the CRES Service agreed upon herein.

7.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, then said Party shall notify the other Party in writing as soon as possible, but no later than seventy-two ("72") hours after the start of

the Force Majeure Event. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

ARTICLE 8

Limitation of Liability

8.1.1 **LIABILITY.** EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER, TO AN AGGREGATION PROGRAM MEMBER OR TO A THIRD PARTY FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

8.1.2 **DISCLAIMER.** FES DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF FIRM ENERGY TO AGGREGATION GROUP MEMBERS DURING FORCE MAJEURE EVENTS. EXCEPT AS MAY BE SPECIFICALLY PROVIDED HEREIN, NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT.

ARTICLE 9

Confidential Information

9.1 Confidential Information. Any Confidential Information, as defined in Paragraph 9.2 herein, made available pursuant to this Agreement and conspicuously marked or stamped as “**Confidential**” shall be held in confidence by each of the Parties to protect the legitimate business needs and/or privacy interests of the Parties. With respect to multi-page documents that contain Confidential Information, the Parties may make such a designation by marking or stamping only the first page thereof. The Parties shall identify any matter deemed to be Confidential Information at the time the information is provided. Any information not designated, as Confidential Information shall not be covered by the protection contemplated herein, provided, however, that the inadvertent provision of information without a confidential designation shall not itself be deemed a waiver of the Party’s claim of confidentiality as to such information, and the Party may thereafter designate the same as confidential, if the information is deemed confidential as set forth herein.

9.2 Confidential Information Defined. “Confidential Information” means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one Party (the “Disclosing Party”) to the other Party (“the “Recipient”) regarding itself, its business, the business of its affiliates, and/or the Aggregation Program. Confidential Information does not include information that: (a) is in the public domain at the time of disclosure; (b) passes into the public domain after disclosure, except by a wrongful act of the Recipient; (c) is disclosed to the Recipient by another not under an obligation of confidentiality; or (d) is already in the Recipient’s possession prior to disclosure by the Disclosing Party.

9.3 Obligation of Confidentiality. Each Party agrees, for itself and its authorized representatives, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes in connection with this Agreement, except to the extent that the Recipient determines that release of Confidential Information is required by law or regulation. The Recipient shall make commercially reasonable efforts to notify the Disclosing Party if it intends to release any Confidential Information to afford the Disclosing Party an opportunity to seek a protective order prior to disclosure. The obligations for Confidentiality set forth in this Agreement, including but not limited to the non-disclosure obligations and the duty to return Confidential Information upon written request, shall survive the termination of this Agreement for a period of one (1) year thereafter.

9.4 Proprietary Rights. Neither Party makes any representation as to the accuracy or completeness of the Confidential Information, but shall make reasonable efforts to ensure that all Confidential Information disclosed to Recipient is accurate and not misleading. Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information.

9.5 Press Releases. FES shall control the timing and content of all press releases and public statements relating to this Agreement without the need for prior approval by Governmental Aggregator due to the nature of the *Powering Our Communities* program and the funding that will be provided to participating communities.

- 9.6 Data. All raw data, reports, data aggregations and analyses, product and service ideas, and other information, without limitation, collected and/or generated by Governmental Aggregator pursuant to this Agreement shall remain the sole and exclusive property of the Governmental Aggregator. All reports, data aggregations and analyses, product and service ideas, and other information, without limitation, collected and/or generated by FES pursuant to this Agreement shall remain the sole and exclusive property of FES. Each Party may use all such information furnished by the other Party solely for purposes of this Agreement.

ARTICLE 10

Dispute Resolution

- 10.1 Dispute Resolution. Prior to litigation, the Parties shall mutually attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement or the transactions contemplated hereby ("Dispute(s)") promptly, by negotiations between FES and Governmental Aggregator, including but not limited to through non-binding formal dispute resolution methods, such as non-binding mediation, if agreeable to both Parties. The Parties may mutually modify these requirements herein and select any manner of dispute resolution that is agreeable to both Parties, including but not limited to binding formal dispute resolution methods, such as binding arbitration. If the Parties choose to be referred to Arbitration, the arbitration shall be in accordance with the American Arbitration Association Arbitration Rules in effect at the time of the dispute resolution, unless the Parties mutually select some other rules. The place of arbitration shall be at a place agreeable to both Parties. The arbitrator(s) shall be empowered to order specific performance of this Agreement, but shall not be empowered to award punitive damages. The arbitrator(s) function shall be limited to the functions mutually agreeable to both Parties; however, the arbitrator(s) shall not have the power to change, add to, subtract, or

amend or modify in any way any provision(s) of this Agreement, unless otherwise agreed to by the parties.

10.2 Service of Process. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Each of the Parties hereby consents to the service of process by certified, registered, or overnight express mail, return receipt requested, postage prepaid, addressed to the parties designated in Paragraph 11.1 this Agreement.

10.3 Parties to Continue Performance. Subject to the other provisions of this Agreement, including but not limited to the termination and early termination provision, the Parties shall in good faith continue to perform their respective obligations under this Agreement while the Parties attempt to resolve the Dispute(s) as set forth in this Article 10. Notwithstanding the foregoing, but subject to Section 1.4 herein, both Parties shall continue to abide by all applicable statutes, administrative rules, tariffs, and codes of conduct during the term of this Agreement.

ARTICLE 11

Miscellaneous

11.1 Notices. Any notices, requests or demands regarding the Services provided under this Agreement or the ancillary agreements shall be deemed to be properly given or made five (5) business days after postmark date if sent by U.S. Postal Service mail to the other Party at the address shown below. The address of a party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party according to the terms set forth in Paragraph 10.2, Service of Process.

FES:
Brenda Fargo
Manger, Government Aggregation
FirstEnergy Solutions Corp.
341 White Pond Drive Bldg. B-3
Akron, OH 44320

Phone: 330-315-6898
Fax: 330-436-1906

GOVERNMENTAL AGGREGATOR
City of Vermilion
5511 Liberty Avenue
Vermilion, OH 44089

Phone: - 440 204 2400
Fax: - 440 204 2411

- 11.2 Entire Agreement. This Agreement, including all Attachments hereto, contains all of the terms and conditions of this Agreement reached by the Parties, and supercedes all prior oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by all Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver.
- 11.3 Waivers. Any request for a waiver of the requirements and provisions of this Agreement shall be in writing and must be approved in writing by the nonwaiving Party. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.
- 11.4 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio

- 11.5 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of the Attachments hereto, the provisions of this Agreement shall control.
- 11.6 Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.
- 11.7 Authorization. Each Party to this Agreement represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants that he or she has full and complete authority to do so and that such Party will be bound by the Agreement.
- 11.8 Recitals. The Parties hereto agree and acknowledge that the prefatory statements and recitals in this Agreement are intended to be and shall be a part of the provisions of this Agreement.
- 11.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective
on the date first written above.

FirstEnergy Solutions Corp.:

Signed: 

Printed

Typed Name: Arthur Yuan

Title: Senior V.P. Sales & Marketing

Date: June 10, 2011

City of Vermilion:

Signed: 

Printed

Typed Name: Eileen Duban

Title: Mayor

Date: 6-8-11

ATTACHMENT A:

**Pricing and Other Conditions
to Retail Generation Service Offer**

Attachment A to Master Agreement

GV000257

Between

The City of Vermilion, Ohio and FirstEnergy Solutions Corp.

The program discounts are as follows:

Term: June 2011 – June 2020

Residential Rates

Standard Residential Rate (RS)

2011 – 6% Discount*
2012 - 6% Discount*
2013 - 6% Discount*
2014 - 6% Discount*
2015 - 6% Discount*
2015 - 6% Discount*
2017 - 6% Discount*
2018 - 6% Discount*
2019 - 6% Discount*
June 2020 – 6% Discount*

Commercial Rates

General Service (GS) to 199 KWd

2011 – 4% Discount*
2012 - 4% Discount*
2013 - 4% Discount*
2014 - 4% Discount*
2015 - 4% Discount*
2016 - 4% Discount*
2017 - 4% Discount*
2018 - 4% Discount*
2019 - 4% Discount*
June 2020 – 4% Discount*

Residential Water and/or Space Heating

Or Load Management Rates (RS) (Eligible for credits under Rider EDR.)

June 2011 through May 2012 - 4% Discount*

June 2012 – June 2020 - 6% Discount*

Powering Our Communities one time grant to the City will be a minimum **\$137,100.00**. The actual grant payment will be \$30.00 per enrolled customer following the opt-out period but no less than the estimate provided above. There are no restrictions on these monies and no re-payment requirement in the future.

National accounts (e.g. McDonald's, BP, Dollar General) as well as eligible commercial accounts with annual usage over 700,000 will be offered the above discounts but they must "opt-in" to the program.

*For the term referenced above, the generation pricing under this Agreement will be calculated as the specified percentage off the Electric Utility Price to Compare ("PTC") for transmission, generation and generation related charges as set forth in the EDU's applicable tariff. However, any bypassable riders not included in the PTC will be billed at their full rate. FES reserves the right to terminate service and return members to standard offer service for the period June 2011 – June 2020 if the EDU standard service offer pricing and or tariff structure is modified. As described above, no discount will be given on such charges as transmission, ancillary services and renewable / alternative energy resources if they are identified in a separate tariff approved by the PUCO and are not included in the PTC.

Program Development/Administration – To be provided by FirstEnergy Solutions

- Design, print and mail the Opt-out letter to all eligible participants including a sheet of Frequently Asked Questions to provide assistance
- Administer the Opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation
- Provide a call center to handle information calls
- Provide the required information for PUCO reports on behalf of the City.

The occurrence and ongoing continuation throughout the term of the Agreement of the following conditions must be met or FES shall have the right to declare this Agreement null and void:

1. EDU rate plan and EDU's PTC is instituted in such a manner that government aggregation programs can provide savings to members.
2. The Electric Security Plan (ESP), Market Rate Offer (MRO) and/or Competitive Bid Process (CBP), or other generation procurement process results in a PTC that is greater than or equal to the comparable annualized generation and transmission rates & riders in effect on June 1, 2009 (reflecting a monthly average rate including a seasonal adjustment).
3. Any PUCO approved phase-in credit for generation charges can be financed by FES at its discretion if commercially reasonable rates and terms are available for such financing and FES elects to do so.
4. A government aggregation program can be reasonably and practicably offered in such a manner which does not conflict with PUCO Orders or Entries or Ohio Administrative Code (OAC) rules and regulations or Ohio Revised Code (ORC) provisions related to governmental aggregation.
5. The EDU will provide percent off pricing calculation and consolidated billing consistent with previous practice.

IN WITNESS WHEREOF, the Parties have duly executed this agreement to be effective on the date first written above.

FirstEnergy Solutions Corp:

Signed: 

Printed

Typed Name: Arthur Yuan

Title: Senior V.P. Sales & Marketing

City of Vermilion

Signed: 

Printed

Typed Name: Eileen Bulan

Title: Mayor

**FIRST AMENDMENT
TO THE MASTER AGREEMENT TO PROVIDE
SERVICES TO AN AGGREGATED GROUP BETWEEN**

CITY OF VERMILLION, OHIO

AND

FIRSTENERGY SOLUTIONS CORP.

This First Amendment ("Amendment") is entered into this 22nd day of ~~September~~ ^{October/aem}, 2019 ("Effective Date"), by and between **The City of Vermillion, Ohio** ("City of Vermillion" or "Government Aggregator"), an Ohio municipality organized and existing under the laws of the State of Ohio and **FirstEnergy Solutions Corp.** ("FES"), an Ohio corporation with its principal place of business at 341 White Pond Drive, Akron, Ohio (the "Parties").

RECITALS

WHEREAS, FES and the City of Vermillion are parties to a certain Master Agreement to Provide Services to an Aggregated Group dated June 10th, 2011 ("Agreement");

WHEREAS, the Parties have mutually agreed to renew the Agreement for the Term beginning with June 2020 meter read dates through June 2023 meter read dates ("Renewal Term");

WHEREAS, the Parties mutually agree to amend the Agreement by revising paragraph 2.5 Non-Assignability;

WHEREAS, the Parties mutually agree to amend the Agreement by replacing paragraph 4.2 Additional Costs in its entirety describing the pass through of additional costs imposed by an ISO or a RTO on FES that are not otherwise reimbursed by the EDU to FES or included in the EDU's Price to Compare.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. During the Renewal Term, Participating Customers shall be billed in accordance with the Pricing provisions contained in the Renewal Term's **First Amendment Attachment A to Master Agreement Between City of Vermillion, Marion County, Ohio and FirstEnergy Solutions Corp.** ~~September 2019~~ ^{October/aem} attached ("Attachment A").
2. The Parties agree to amend the Agreement by replacing paragraph 2.5 Non-Assignability in its entirety, as follows:

2.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party or the Participating Customers (and without relieving itself from liability hereunder) transfer or assign this Agreement

to an affiliate of such Party, or to an entity into which the Party is merged or otherwise combined or reorganized. In addition to the foregoing, FES may transfer or assign this Agreement without the consent of the Community or Participating Customers and without approval of the United States Bankruptcy Court for the Northern District of Ohio, to a purchaser of all, substantially all or a material portion of FES' competitive retail energy business. In each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall provide written notice of the assignment to the other Party prior to or simultaneous with such assignment.

3. The Parties agree to amend the Agreement by replacing paragraph 4.2 Additional Costs in its entirety, as follows:

4.2 Additional Costs. In the event that (1) the PUCO approves or implements a phase-in credit for generation and/or transmission charges of the EDU or takes any other action which affects the Price To Compare ("PTC") or otherwise does not allow the EDU to reflect the full cost to procure generation and transmission in the PTC or other regulatory action; or (2) there is any change in any statute, rule, regulation, order, law, or tariff promulgated by any court, governmental authority, utility, Independent System Operator ("ISO"), Regional Transmission Organization ("RTO") or other service provider, or any change in operating procedure, which alters to the detriment of FES its costs to perform under this Agreement, Participating Customers may receive a notification from FES. This notification will include a description of one or more of the situations described above. FES may offer Participating Customers new Terms and Conditions. Participating Customers must indicate affirmative consent to the new Terms and Conditions as specified in the notices. If Participating Customers do not contact FES to accept the new terms, the Participating Customer(s) individual terms and conditions with FES will terminate on the date specified in the notices, and Participating Customer(s) may be returned to the EDU for Retail Electric Service. Alternatively, FES may decide to terminate this Agreement, and Participating Customers will receive at least 30 days' prior written notice of the termination, after which Participating Customers may be returned to the EDU for Retail Electric Service. Whether FES offers Participating Customers new terms or terminates this Agreement under this provision, Participating Customers will not be responsible for the cancellation/termination fee (if any) set forth in the Pricing Attachment. Participating Customers must still pay all FES charges through the date they are returned to their EDU or switched to another CRES provider for service.

4. All other provisions of the original Master Agreement shall remain unchanged.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be duly executed as of the Effective Date.

FIRSTENERGY SOLUTIONS CORP.
FirstEnergy Solutions Corp.:

Signed: [Signature]
Printed: Brian Farley
Title: EVP, Retail Sales & Comm. Ops
Date: 10-24-19

CITY OF VERMILLION, OHIO

Signed: [Signature]
Printed: James Forester
Title: Mayor
Date: 10.18.19

**First Amendment Attachment A to Master Agreement
Between
City of Vermillion, Ohio
and *October 1st 2019*
FirstEnergy Solutions Corp. ~~September~~ 2019
Pricing and Other Conditions to Retail Generation Service Offer**

Renewal Term:

Beginning with June 2020 meter read dates through June 2023 meter read dates

Renewal Pricing:

Opt-Out Program:

4.60 ¢ per kWh

Opt-In Program:

1% off the Price to Compare

EDU:

Ohio Edison (OE)

Eligible Rate Codes:

Standard Residential Rate (RS)

General Service Commercial Rate (GS)

National accounts (e.g. McDonald's, BP, Dollar General) as well as any eligible commercial accounts with annual usage over 700,000 must "opt-in" to the program.

Termination Fee:

None

Civic Grant:

FES shall pay a grant to the City on an annual basis in the amount equal to \$7.00 per customer enrolled in the program. The grant shall be payable beginning in September 2020 after completion of enrollments and annually thereafter throughout the above Term.

Administrative Services:

- Design, print and mail the Opt-out letter to all eligible participants including a sheet of Frequently Asked Questions to provide assistance.
- Administer the Opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation.
- Provide a call center to handle information calls.
- Prepare the required PUCO reports and on-going certification documents.
- Conduct supplemental opt-out mailings on a periodic basis throughout the above Term.

Alexander, Trevor

Subject: FW: Electric aggregation question - NOPEC?

From: Anne Maiden <AnneMaiden@vermilion.net>

Sent: Thursday, January 23, 2020 3:08 PM

To: Pastier, Rebecca (Rader, Lorraine M) <rpastier@firstenergycorp.com>

Subject: [EXTERNAL] RE: Electric aggregation question - NOPEC?

Good Afternoon,

There seems to be some confusion.

We signed up for gas aggregation with Nopec, Electric Aggregation with First Energy.

Thanks,

Anne Maiden

Administrative Assistant

5511 Liberty Ave.

Vermilion, OH 44089

440-204-2402

f: 440-204-2411

From: Pastier, Rebecca (Bolender, Lance R.) <rpastier@firstenergycorp.com>

Sent: Monday, November 11, 2019 9:17 AM

To: Anne Maiden <AnneMaiden@vermilion.net>; Jim Forthofer <JimForthofer@vermilion.net>

Subject: Electric aggregation question - NOPEC?

Good morning, all,

I am just following up with you regarding the electric aggregation program that we just renewed with the City of Vermilion.

It came to my attention that you might have enrolled with NOPEC, too? Please let me know as soon as you can!

Thanks so much.

Becki Pastier

FirstEnergy Solutions

Government Aggregation Account Manager

341 White Pond Dr. B3

Akron, Ohio 44320

(330) 436-1402

rpastier@firstenergycorp.com

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to

THE CITY OF VERMILION



James Forthofer, Mayor

April 1, 2020

Via Email to lrader@fes.com

Lorraine Rader
Manager, Government Aggregation
341 White Pond Drive
Akron, Ohio 44320

Re: Void First Amendment to the Master Agreement
City of Vermilion/FirstEnergy Solutions Corp.

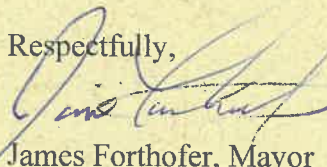
Dear Ms. Rader:

This serves as formal notice that the City of Vermilion deems the First Amendment to the Master Agreement to Provide Services to an Aggregated Group between the City of Vermilion, Ohio and FirstEnergy Solutions Corp. (nka Energy Harbor LLC) void ab initio and of no force or effect. The basis for this notice is that Ohio Revised Code §4928.20, requires that the Amendment be adopted by ordinance of Vermilion City Council. No such action was taken by Vermilion City Council. Further grounds for this notice is that Energy Harbor, contrary to various commitments, failed to return a countersigned copy of the Amendment. Thus, there was no legally binding Amendment/Agreement.

The City of Vermilion has been notified that Energy Harbor LLC filed opt-out notices with the PUCO to provide electricity aggregation service for Vermilion residents for the period starting in June 2020. Inasmuch as there is no valid Amendment to the Master Agreement and as the Master Agreement terminates June 2020, Energy Harbor LLC should immediately withdraw its filing with the PUCO. Further, based on the facts set forth above, in no event shall Energy Harbor LLC mail the opt-out notices to Vermilion residents. Such opt-out notice from Energy Harbor LLC would cause confusion with Vermilion residents inasmuch as Vermilion opted to join Northeast Ohio Public Energy Counsel's ("NOPEC") electric aggregation program commencing June 2020. Vermilion City Council passed an ordinance on August 5, 2019 authorizing the City to join NOPECs electricity aggregation program. That legislative action was in conformance with ORC 4928.20. Thereafter, on October 19, 2019, NOPEC filed with the PUCO the City's ordinance to have Vermilion added to NOPECs PUCO certificate.

Please provide written verification, by email, that Energy Harbor LLC acknowledges that the above referenced Amendment is null and void and of no effect and that Energy Harbor LLC will no longer provide electricity aggregation services commencing June 2020. The City of Vermilion is proceeding on the basis set forth herein. Please respond to this notice no later than close of business April 2, 2020.

Respectfully,



James Forthofer, Mayor

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/6/2020 3:38:10 PM

in

Case No(s). 11-3545-EL-GAG

Summary: Notice of Withdrawal of Opt-Out Notice electronically filed by Mr. Trevor Alexander on behalf of Energy Harbor LLC