

DIS Case Number: 00-1742-EL-CRS

Section A: Application Information

Section B: Applicant Managerial Capability and Experience

B-3. Disclosure of liabilities and investigations

For the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant, describe all existing, pending or past rulings, judgments, findings, contingent liabilities, revocation of authority, regulatory investigations, judicial actions, or other formal or informal notices of violations, or any other matter related to competitive services in Ohio or equivalent services in another jurisdiction..

Liability and Investigations Disclosures: As explained below, Energy Harbor was formerly known as FirstEnergy Solutions Corp. (FES) prior to emerging from bankruptcy. FES, and its affiliates, filed for Chapter 11 bankruptcy on March 31, 2018. See in re FirstEnergy Solutions Corp., et al., Case No. 18-50757 (AMK)(Jointly Administered), United States Bankruptcy Court, Northern District of Ohio, Eastern Division (Bankruptcy Proceeding). On February 27, 2020, FES successfully emerged from bankruptcy, was converted to a Delaware limited liability company, and was renamed Energy Harbor LLC. Further, after emerging from bankruptcy, Energy Harbor, nor any of its affiliates (including Energy Harbor LLC), are affiliated with or owned by FirstEnergy Corp. or its affiliates. For docketing or other information or documentation related to the Bankruptcy Proceeding, please visit <https://cases.primeclerk.com/FES/>.

In response to the filing of the bankruptcy, the Public Utilities Commission of Ohio (PUCO) opened a proceeding in Case No. 18-569-EL-UNC to ascertain the potential impact of FES' decision to file for Chapter 11 bankruptcy on retail electric customers and electric distribution utilities (EDUs) in Ohio, as well as regional transmission organizations (RTOs) and other market stakeholders (PUCO Inquiry). Specifically, the PUCO Inquiry required FES to file a report explaining how, if at all, the Bankruptcy Proceeding would impact its ability to serve customers in Ohio. In response, FES publicly filed several letters with the PUCO explaining that its decision to file for Chapter 11 bankruptcy would have no impact on its ability to reliably and effectively serve customers, nor would the bankruptcy impair FES' ability to honor its obligations to customers or meet financial requirements of RTOs or Ohio utilities in whose territories FES operates. After FES emerged from Chapter 11 bankruptcy as Energy Harbor LLC on February 27, 2020, Energy Harbor LLC filed its final status report in the PUCO Inquiry, explaining that it had successfully emerged from bankruptcy and reaffirmed that the Bankruptcy Proceeding had



no adverse impact on customers and other market stakeholders. Importantly, neither the Bankruptcy Proceeding nor the PUCO Inquiry had any adverse impact on Energy Harbor's operational status or its ability to provide competitive retail electric service to customers in Ohio. Nevertheless, Energy Harbor has disclosed the prior PUCO Inquiry and the Bankruptcy Proceeding in the interest of full transparency.

Applicant Energy Harbor has amended its initial response to Section B-3 of its renewal certification application as follows:

Energy Harbor is currently a named defendant in four pending civil proceedings – all of which are public knowledge but none of which will materially impair Energy Harbor's ability to operate as a CRES provider in Ohio. Energy Harbor is not a defendant in any criminal proceedings.

1. Michael Emmons. v. FirstEnergy Corp., et al., Case No. CV-20-935557 (Court of Common Pleas, Cuyahoga County, Ohio) (class action);
2. Jacob Smith v. FirstEnergy Corp. et al., Case No. 2:20-CV-03755 (U.S. District Court, Southern District of Ohio); James Buldas v. FirstEnergy Corp. et al., Case No. 2:20-CV-03987 (U.S. District Court, Southern District of Ohio); Brian Hudock and Cameo Countertops, Inc. v. FirstEnergy Corp. et al., Case No. 2:20-CV-03954 (U.S. District Court, Southern District of Ohio) (consolidated class action);
3. State of Ohio ex rel. Yost v. FirstEnergy Corp. et al., Case No. 20-CV-006281 (Court of Common Pleas, Franklin County, Ohio); State of Ohio ex. rel. Yost v. Energy Harbor Corp., et al., Case No. 20-CV-007386 (Court of Common Pleas, Franklin County, Ohio) (consolidated); and
4. Complaint Referral by Secretary of State Frank LaRose to Ohio Elections Commission, Case No. 2020-003.

Based on all known information available at the time of this submission, Energy Harbor states the following: Energy Harbor believes that the class action proceedings and the Complaint Referral referenced above will have no material impact on Energy Harbor's ability to operate as a certified CRES provider, even if an adverse judgment in any of these proceedings was obtained which is not probable. With respect to the civil RICO Complaint, Energy Harbor believes it will have no material impact on Energy Harbor's ability to operate as a certified CRES provider. While injunctive relief is available, Energy Harbor does not believe an adverse judgment or an injunction affecting its ability to operate as a CRES provider is probable. Energy Harbor intends to vigorously defend its rights in all of these civil actions.

In sum, none of the proceedings disclosed herein will materially impair Energy Harbor's ability to operate and meet its statutory and regulatory obligations as a CRES provider in Ohio.

Section C: Applicant Financial Capability and Experience

Section D: Applicant Technical Capacity



Public Utilities
Commission

Application Attachments

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in

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Summary: In the Matter of the Application of Energy Harbor LLC