

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

	)	Chapter 11
In re:	)	
PLEASANTS CORP., <i>et al.</i> , <sup>1</sup>	)	Case No. 18-50757;
Reorganized Debtors.	)	Cases Jointly Administered under
	)	Case No. 18-50757 (AMK)
	)	Hon. Judge Alan M. Koschik
	)	

**SUPPLEMENTAL DECLARATION OF MICHAEL E. HAMER  
OF THE SETTLEMENT CLAIMS ADMINISTRATOR (HEFFLER  
CLAIMS GROUP, LLC) (A) CONFIRMING IMPLEMENTATION OF  
COURT-ORDERED NOTICE PLAN and (B) REPORTING ON  
REQUESTS FOR EXCLUSION**

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

1. I am a Project Manager for Heffler Claims Group, LLC (“Heffler”). Our business address is 1515 Market Street, Suite 1700, Philadelphia, PA 19102. Our main telephone number is (215) 665-8870. I am over twenty-one years of age and am authorized to make this Declaration on behalf of Heffler and myself. This Declaration is based upon my personal knowledge as well as information provided to me by my associates and staff. I submit this Declaration to supplement and

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<sup>1</sup> The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: FE Aircraft Leasing Corp. (9245), case no. 18-50759; Energy Harbor Generation, LLC (0561), case no. 18-50762; Pleasants Corp. (5914), case no. 18-50763; Energy Harbor Nuclear Generation, LLC (6394), case no. 18-50760; Energy Harbor Nuclear Corp. (1483), case no. 18-50761; Energy Harbor LLC (0186), case no. 18-50757; and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors’ address is: 341 White Pond Dr., Akron, OH 44320.

update my previous Declaration Confirming Implementation of Court-Ordered Notice Plan (Docket No. 3927-2) (the “First Hamer Declaration”).

2. As stated in my First Hamer Declaration, Heffler received the Class List, which contained 89,041 separate billing account records with associated customer names and last known mailing addresses of Settlement Class Members.<sup>2</sup> Recognizing that certain accounts for the same customer were billed to separate locations (e.g., company with three offices might have a separate bill sent to each office), or that separately established accounts in the name of the same Settlement Class Member might all be sent to one central office, Heffler worked to eliminate and consolidate as many billing records as was practicable to eliminate redundancies. Following this consolidation process – and erring on the side of ensuring that all Settlement Class Members would receive at least one Individual Notice at each separate address that they had used for billing purposes – Heffler identified 50,803 billing addresses associated with approximately 36,000 separate Settlement Class Members. The resulting list of 50,083 Settlement Class Member addresses was then processed, standardized and updated (“the NCOA Processing”)

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<sup>2</sup> Capitalized terms not specifically defined herein have the same meaning as defined in the First Hamer Declaration, the Parties’ Stipulation of Settlement, or the Order Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 7023 (A) Preliminarily Approving Proposed Settlement; (B) Certifying Settlement Class for Settlement Purposes Only; (C) Appointing Class Representative and Class Counsel; (D) Approving the Form and Manner of Notice to Settlement Class Members; and (E) Scheduling a Fairness Hearing to Consider Final Approval of the Settlement, dated December 24, 2109 (Docket No. 3546) (the “Preliminary Approval Order”).

utilizing the National Change of Address Database (“NCOA”) that is maintained by the U.S. Postal Service (“USPS”).

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

4. Through May 15, 2020, Heffler has received a total of 9,108 Individual Notices returned by the USPS as undeliverable. Heffler submitted these undeliverables to LexisNexis, obtained 1,135 updated addresses, and promptly re-mailed the Notice to the updated addresses.

5. Heffler also reviewed the Class List information for the remaining undeliverables for which no updated addresses were identified using LexisNexis. Within those undeliverables, Heffler identified twenty-six (26) Settlement Class Members with multiple billing records for multiple locations or mailing addresses that had not been previously consolidated. Heffler provided this list of 26 Settlement Class Members to Energy Harbor (the “Reorganized Debtor”), a reorganized debtor in the above-captioned Chapter 11 cases. The Reorganized Debtor reviewed its business records and was able to provide additional contact information for fifteen (15) of these 26 Settlement Class Members. After performing additional research using the information provided by the Reorganized

Debtor, Heffler was able to use updated mailing addresses for eleven (11) of these entities, and email addresses for four (4) of these entities in an effort to provide additional notice. On May 4, 2020, Heffler mailed the Notice with a letter (the “Record Roll Up Request”) (sample copy attached at **Exhibit A**) to the 11 entities informing the entities of the undeliverable issue with prior mailings and providing them with a schedule of the Recognized Claim Amount(s) associated with the undeliverable mailing addresses. For the other four entities, Heffler emailed the Record Roll Up Request on May 13, 2020.

6. After diligently conducting these best efforts to provide notice to and maximize recovery for Settlement Class Members, 6,717 Notices remain undeliverable.<sup>3</sup> Because Heffler has been advised that the Settlement Class in this matter consists entirely of former commercial or industrial customers of the former Debtor FirstEnergy Solutions Corporation (“FES”)—and that membership in the Settlement Class has been determined based on the payment of certain “polar vortex surcharges” that FES invoiced *in 2014*—it seems certain that at least some

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<sup>3</sup> This number of undeliverables amounts to, at most, approximately 13.2% of the 50,803 initially mailed Notices, meaning approximately 86.8% of the Notices reached Settlement Class Members. (Although there were 6,717 “undeliverable addresses”, at least some Class Members will likely have received a Notice at one of the other addresses for that Class Member on the Class List). The actual reach obtained by implementing the Notice Plan here is therefore consistent with other effective court-approved notice programs that have been designed to meet both due process requirements and the Federal Judicial Center’s guidance, which considers 70-95% reach among class members reasonable. *See* Federal Judicial Center, *Judge’s Class Action Notice and Claims Process Checklist and Plain Language Guide* (January 2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>, at 3; Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed. 2010), available at <https://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf>, at 27.

Settlement Class Members are no longer in business today (approximately six years later) due to the passage of time. Accordingly, it is not surprising that the 6,717 undeliverable Notices remain undeliverable, despite Heffler's best efforts to identify valid mailing addresses for them.<sup>4</sup>

7. On or about April 7, 2020, Heffler caused copies of Class Claimant Schwebel Baking Company's Motion To: (A) Enter Final Order approving Class Action Settlement Under Bankr. Rule 7023 and Fed. R. Civ. P. 23 and (B) Approve Class Counsel's Application for An Award of Professional Fees and Expenses, together with the Joint Declaration of William Fredericks and David Neumann (with exhibits) in support thereof, to be posted on the Settlement Website, [www.polarvortexsettlement.com](http://www.polarvortexsettlement.com).

8. Heffler is responsible for receipt and logging of all written Requests for Exclusion from the Settlement. Pursuant to the Preliminary Approval Order, to be valid any Requests for Exclusion had to have been *received* no later than April 21, 2020. Through May 15, 2020, Heffler has received one (1) Request for Exclusion (**Exhibit B**). The Polar Vortex Surcharge (and hence the "Recognized Claim Amount" for this one "opt-out" was \$19.87.

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<sup>4</sup> In this regard, I further note that, of the 6,717 undeliverable Notices, a total of 5,427 (or over 80%) were associated with "Recognized Claim Amounts" of *less* than \$100, which would suggest that they were likely smaller businesses. According to information published by the U.S. Small Business Administration in 2012, only about half of all small businesses survive more than 5 years. See "Small Business Facts" dated June 2012, available at <https://www.sba.gov/sites/default/files/Business-Survival.pdf>.

9. Heffler is not responsible for receipt and logging of any written Objections to the Settlement. Pursuant to the Preliminary Approval Order, to be valid any Objections must have been *received* no later than May 1, 2020 by the Clerk of the Court and Class and Defense Counsel. However, it is not uncommon for Heffler to receive Objections in cases it administers. Through May 15, 2020, Heffler has not received any Objections to any aspect of the Settlement.

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

Executed this 18th day of May 2020, in Springfield, Pennsylvania.

  
Michael E. Hamer

# **EXHIBIT A**

FES Bankruptcy Settlement  
c/o Claims Administrator  
Heffler Claims Group  
P.O. Box 58234  
Philadelphia, PA 19102-8234

May 4, 2020



«REFNUM»

«Company\_»  
«First\_Name\_» «Last\_Name\_»  
«Address» «Address\_2»  
«City\_», «State\_» «Zip\_»

Re: *In re: In re FirstEnergy Solutions Corp Bankruptcy*  
No. 18-50757 (Bkcty. N.D. Ohio)

**Record Roll Up Request**

Dear «First\_Name\_» «Last\_Name\_»:

You are receiving this letter because, based on information provided by FirstEnergy Solutions Corp. (“FES”), your business is a member of a class of FES business customers that has been certified by the U.S. Bankruptcy Court for the Northern District of Ohio (the “Court”) for a proposed settlement (the “Settlement”) pending before the Court.

We are the Claims Administrator for the above referenced Settlement. On March 20, 2020, we sent Notice of the Settlement and of the amount of your company’s “Recognized Claim Amount(s)” to your company using multiple mailing addresses (the multiple addresses may have been the product of your company having different FES account numbers associated with different locations). Some of the mailed notices were returned as undeliverable. Specifically, we mailed («Notice\_») notices to your company; a break-down of the addresses and associated claims for your review is attached as **Exhibit A**.

As the Court-appointed claims administrator in this matter, we are reaching out in a further attempt to ensure that you are aware of the full amount of these potential claim(s) your company may have pursuant to the Settlement.

We also write to advise you that, unless we hear otherwise from you within the next 60 days – and assuming that the Settlement becomes final and that your company otherwise qualifies for a payment – we will **aggregate** your company’s multiple claims and mail you **one check** at the above-listed address that would cover all of your company’s “polar vortex” claims as referenced in Exhibit A.



A notice that discusses the case and Settlement in more detail is attached as **Exhibit B** (you may have received a similar notice last month which references only a "non-aggregated" Recognized Claim Amount for the portion of Polar Vortex Surcharges associated with your company's facilities at the address to which this letter is being sent). You are also advised to view the more detailed "Website Notice" at [www.PolarVortexSettlement.com](http://www.PolarVortexSettlement.com).

If you believe that any claim amounts referenced in the attached Exhibit A do not relate to your company, or if you would prefer that any aggregated check be mailed to your company at a different address, please send a letter to the Heffler Group at the above address, or send an e-mail to [maria.kent@duffandphelps.com](mailto:maria.kent@duffandphelps.com). Please identify yourself as a *FirstEnergy Solutions Corp Bankruptcy* Class Member with your reference number.

Sincerely,

Heffler Claims Group  
Claims Administrator

## **EXHIBIT B**

31085

COR0000002




COR0000002

3-30-20

In re First Energy Solutions Corp Bankruptcy  
% Heffler Claims Group, Claims Administrator

Dear Sirs,

As sole owner of the  
retail shop: Memories 'N' More  


I am requesting exclusion from  
the Class.

Thank you,  
Frances A. Lewis  
March 30th, 2020  
Frances A. Lewis