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IT IS SO ORDERED.

Dated: May 26, 2020



ALAN M. KOSCHIK
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

PLEASANTS CORP *et al.*,¹

Debtors.

Chapter 11

Case No.: 18-50757

Cases Jointly Administered under

Case No. 18-50757

Judge Alan M. Koschik

**ORDER APPROVING CLASS COUNSELS' PROFESSIONAL FEES
AND EXPENSE APPLICATION, INCLUDING CLASS REPRESENTATIVE
SCHWEBEL BAKING'S APPLICATION FOR A SERVICE AWARD**

This matter came on for hearing by telephone at 10:00 am on May 21, 2020 (the "Final Approval Hearing") on Class Counsel's motion to approve their Professional Fees and Expense

¹ 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 Corp. (1493), 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 Pond Dr., Akron, OH 44320.

Application. The Court having considered all matters submitted to it at the Final Approval Hearing and otherwise; and it appearing that customized Individual Notices of the Final Approval Hearing substantially in the form approved by the Court were mailed to each Class Member at their last known address, and that the more detailed Website Notice substantially in the form approved by the Court was duly published on www.polarvortexsettlement.com (the “Settlement Website”) in accord with the Court’s prior Preliminary Approval Order (Dkt. #3546); and the Court having considered and determined the fairness and reasonableness of (i) the requested award to Class Counsel of attorneys’ fees and reimbursement of out-of-pocket litigation expenses; (ii) the requested payment to the Class’s testifying expert, Matthew Brakey of Brakey Energy LLC; (iii) the requested payment of the professional fees and expenses of the Class’s financial advisor, Dundon Advisers LLC, and (iv) the application for an award to Class Representative Schwebel Baking Company (“Schwebel Baking”) for its services on behalf of the Class,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated November 29, 2019 (Dkt. #3401-2) (the “Stipulation”), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members, pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

3. Notice of Class Counsel’s motion for approval of the Professional Fees and Expense Application, including for approval of service award to Schwebel, was given to all Settlement Class Members who could be identified with reasonable effort. The form and method

of notifying the Settlement Class of the requests for such awards satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”) (which is applicable to these proceedings pursuant to the Court’s prior Orders at Dkt. #3456 and Dkt. #1451 directing application of Bankruptcy Rule 7023 to these proceedings), due process, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Class Counsel are hereby awarded attorneys’ fees in the amount of 33⅓% of the Settlement Fund, which fees and expenses shall be payable from the Settlement Fund from such portions of the Settlement Fund’s assets as may be converted to cash from time to time in accordance with the terms of the Stipulation and ¶10 below. The Court finds such award to be fair and reasonable. Class Counsel shall allocate the attorneys’ fees awarded between their two firms in such manner which they, in good faith, believe reflects the contributions of each Class Counsel firm to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys’ fees to be paid from the Settlement Fund, the Court has considered and found that:

- a. The Settlement has created a common Settlement Fund to be funded with at least 159,607 shares of FES New Common Stock (ticker symbol: “ENGH”), with the potential for additional shares to be added to that Fund upon resolution of remaining unresolved disputed claims proceedings in Debtors’ Chapter 11 proceedings. Although one cannot yet determine what the cash value of the Settlement Fund will be when the FES New Common Stock is ultimately converted to cash, the market value of the 159,607 shares initially allocated to the Settlement fund (without assuming any additional distribution of shares) -- based on over-the-counter trading prices during March 2020 (a period of exceptional market volatility) that ranged between a high of \$27.50 per share and a low of roughly \$15.00 per share -- ranged between a high of roughly \$4.4 million and a low of roughly \$2.4 million. More recently, based on over-the-counter trading prices during the first three weeks of May 2020, the FES New Common Stock have ranged between a high of roughly \$38.00 per share and a low of roughly \$32.00 per share – which would result in a higher current market value for the Settlement ranging between a high of

roughly \$6 million and a low of roughly \$5 million. The Court therefore further finds that numerous Settlement Class Members will benefit from the Settlement that occurred because of Class Counsel's efforts and diligence;

- b. Copies of the Individual Notice were mailed to over 36,000 Settlement Class Members stating that Class Counsel would submit a Professional Fees and Expense application, and directing them to the Website Notice that expressly advised them that Class Counsel would (1) apply for attorneys' fees of 33⅓% of the Settlement Fund, and payment of Plaintiffs' Counsel's litigation and expert fees and expenses in an amount not to exceed \$75,000; (ii) seek fees for its financial and strategic advisor (Dundon Advisers) equal to \$50,000 plus 5% of that portion of the Class's gross recovery that exceeds \$500,000; and (iii) apply for an award of \$15,000 to Class Representative Schwebel for its service to the Class. The Court further finds that the Claims Administrator took reasonable steps to forward any Individual Notices that were returned as undeliverable, and that the Notice Plan and its implementation satisfied the requirements of due process, Bankruptcy Rule 7023 and Fed. R. Civ. P. 7023;
- c. Class Counsel conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy, and the scope of the work conducted involved litigation not only in this Bankruptcy Court, but also predecessor litigation of the claims at issue in the U.S. District Court;
- d. The requested fee and expense award will cover all work performed in the Action, including all work yet to be performed in connection with supervising the administration of the Settlement;
- e. The Action raised a number of complex issues, both in this Court and in the District Court;
- f. Had Class Counsel not achieved the Settlement there would remain a significant risk that Schwebel and the other members of the Class would have recovered substantially less, or nothing at all, from Debtors;
- g. Class Counsel devoted roughly 3000 hours, with a lodestar value of approximately \$1.973 million, to achieve the Settlement;
- h. The fee awarded (even if the price of the New Common Stock increases significantly) will likely result in a "negative" lodestar multiplier of 1.0 or less on the value of Class Counsel's total lodestar;
- i. No objections (timely or otherwise) to either the Settlement or the Professional Fees and Expenses Application were submitted by any Class Members, and no objectors appeared at the Hearing despite notice of the Hearing (and how to participate telephonically through Court-Solutions) being

prominently posted on the dedicated settlement website, www.polarvortexsettlement.com; and

- j. The amount of attorneys' fees awarded (33⅓ %) is fair and reasonable, consistent with awards in similar cases, and consistent with the Court's review of additional relevant factors set forth in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974).

6. Class Counsel are also awarded reimbursement of their out-of-pocket expenses, which the Court finds to be fair and reasonable and of a type customarily reimbursed in securities class actions, as follows:

- (a) to Scott+Scott Attorneys at Law LLP, the sum of \$17,737.72; and
- (b) to Meyers, Romans, Friedberg & Lewis, the sum of \$8,951.16.

7. Class Counsel's request for payment from the Settlement Fund on the outstanding invoice of the Class's testifying industry expert, Matthew Brakey of Brakey Energy LLC, is hereby approved in the amount of \$10,620;

8. Class Counsel's request for payment from the Settlement Fund of the fees and expenses of the Class's financial and strategic expert, Dundon Advisers LLC, is hereby approved in the amount of fees of equal to 10% of the first \$500,000 recovered, plus 5% of that portion of the Class's gross recovery that exceeds \$500,000, plus reimbursement of Dundon's out-of-pocket expenses in the amount of \$2,034.55;

9. The Court approves the award of \$15,000 to Class Representative Schwebel Baking for its services in representing the Class;

10. To the extent that payments of fees or expenses are authorized from the Settlement Fund to Class Counsel or other professionals under this Order, unless otherwise permitted by the Court such payments shall be made in cash from the proceeds of the ultimate sale of the New Common Stock used to fund Settlement Fund, subject to the proviso that, in

allocating any percentage based award of fees, no Class Counsel or other professional shall be compensated in a manner that would result in them receiving better pricing or other sale terms, as compared to the members of the Settlement Class, in connection with the conversion to cash of their percentage interest in the New Common Stock that is used to fund the Settlement Fund. In other words, for the avoidance of doubt and by way of example, Class Counsel may not separately direct the sale of any of its percentage interest in New Common Stock at price X for its own account, while crediting the Settlement Class's share of the New Settlement Fund with a lower price, and instead shall take its share only from its portion of sales made on behalf of the Settlement Fund as whole (under which all persons, including Class Members, with an interest in the Settlement Fund will receive the benefit of the same sale price).

11. Any appeal or any challenge affecting this Court's approval of any aspect of this order awarding Professional Fees and Expenses (including any service award to the Class Representative) shall in no way disturb or affect the finality of the Court's Final Approval Order with respect to the Settlement.

12. Exclusive jurisdiction is hereby retained over the Parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

13. In the event that the Settlement is terminated, or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

14. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

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Prepared by:

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