

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

_____, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

ENERGY HARBOR CORPORATION, JOHN
W. JUDGE, JOHN KIANI, and STEPHEN E.
BURNAZIAN,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants’ public documents, announcements made by Defendants, public filings, wire and press releases published by and regarding Energy Harbor Corp. (“Energy Harbor” or the “Company”), information readily obtainable on the Internet such as media reports about the Company, and filings in the following criminal cases: *USA v. Generation Now*, 1:20-MJ-00522 (S.D. Oh.); *USA v. Cespedes*, 1:20-MJ-00523 (S.D. Oh.); *USA v. Longstreth*, 1:20-MJ-00524 (S.D. Oh.); *USA v. Householder v. Householder*, 1:20-MJ-00525 (S.D. Oh.); *USA v. Borges*, 1:20-MJ-00526 (S.D. Oh.); and *USA v. Clark*, 1:20-MJ-00527 (S.D. Oh.) (together the “Criminal Proceedings”). Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded Energy Harbor securities between February 27, 2020 and July 27, 2020, inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the federal securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. During the Class Period, Defendants issued materially false and misleading statements regarding the Company’s business practices and prospects. Prior to Energy Harbor’s spin off when it began independently trading, over a years-long period, the Company and its affiliates, funneled more than \$60 million to prominent state politicians and lobbyists, including now-former Speaker of the Ohio House of Representatives, Larry Householder (“Householder”), in order to secure the passage of Ohio House Bill 6 (“HB6”), which provided a \$1.3 billion ratepayer-funded bailout to fund the Company’s nuclear facilities.

3. The Company and its affiliates’ unscrupulous tactics began to be revealed in dramatic fashion on July 21, 2020. That day, federal agents announced the arrest of Householder and four other people, including an Energy Harbor lobbyist, in connection with a \$60 million racketeering and bribery scheme. The complaints and affidavits filed in the Criminal Proceedings detail a clear pay-to-play scheme in which the Company and its affiliates brazenly corrupted every facet of the political process in order to ensure the passage of HB6. Prosecutors described the case as involving the “largest bribery, money-laundering scheme” in Ohio history.

JURISDICTION AND VENUE

4. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C. §78aa).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

7. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

8. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Energy Harbor securities during the Class Period and was damaged thereby.

9. Defendant Energy Harbor, through its subsidiaries, purports to operate as an independent power producer and an integrated retail energy provider. It owns and operates a portfolio of nuclear and fossil power stations throughout Ohio, Pennsylvania, and West Virginia.

10. Energy Harbor is incorporated in Delaware and its principal executive office is located at 341 White Pond Drive, Akron, Ohio. Energy Harbor's securities trade over-the-counter under the ticker symbol "ENGH." The Company was previously known as FirstEnergy Solutions

Corp. (sometimes referred to as “FirstEnergy Solutions”). Before February 2020, Energy Harbor operated as a wholly-owned subsidiary of FirstEnergy Corp. (the “Former Parent”).

11. Defendant John W. Judge (“Judge”) has served as the Company’s President and Chief Executive Officer (“CEO”) during the Class Period.

12. Defendant John Kiani (“Kiani”) has served as the Company’s Executive Chairman during the Class Period.

13. Defendant Stephen E. Burnazian (“Burnazian”) has served as the Company’s Executive Vice President and Chief Strategy Officer during the Class Period.

14. Defendants Judge, Kiani, and Burnazian are collectively referred to herein as the “Individual Defendants.”

15. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company’s internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or

(g) approved or ratified these statements in violation of the federal securities laws.

16. The Company is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because the wrongful acts complained of herein were carried out within the scope of their employment.

17. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to Energy Harbor under *respondeat superior* and agency principles.

18. Defendant Energy Harbor and the Individual Defendants are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background Information

19. Energy Harbor owns and operates two nuclear power plants in Ohio – the Perry Nuclear Generating Station and the Davis-Besse Nuclear Power Station. Maintenance costs have risen for the Company as the nuclear facilities aged while at the same time energy prices decreased for alternatives to nuclear energy and the Company’s service areas experienced decreasing demand, diminishing the revenue generating potentials of the two nuclear plants.

20. While attempts to turnaround the Company’s nuclear power issues, the Company and its affiliates concealed was that the legislative solution involved an illicit campaign to corrupt the political process in Ohio in order to secure a massive ratepayer-funded bailout. The Company and its affiliates spearheaded an elaborate scheme to funnel tens of millions of dollars to state lawmakers, blanket media platforms with misleading messages, and illicitly thwart a citizens’ ballot initiative. The Company and its Former Parent’s senior executives were involved in and

oversaw these efforts, placing the Company and its shareholders at extreme risk of legal, reputational and financial harm.

21. Following its 2018 bankruptcy and later reorganization, FirstEnergy Solutions LLC and FirstEnergy Nuclear Operating Co. (“FENOC”) were renamed Energy Harbor LLC and Energy Harbor Nuclear Corp., respectively.

Overview of the Corruption Scheme

22. In January 2017, Householder, then-former Ohio House Speaker, met with the Company’s and its Former Parent’s representatives during a flight on one of the Former Parent’s jets. After more than a decade, Householder had won back his old seat in 2016 and was eager to re-ascend to his former Speakership. During or around the time of the flight, a corrupt bargain was struck between Householder and the Company and its affiliates. The Company and its affiliates agreed to funnel millions of dollars in payments to Householder for his personal enrichment and to support his bid for Speakership. In exchange, Householder promised to secure the passage of legislation that would provide a massive billion bailout of the Company’s nuclear power plants.

23. In February 2017, the corrupt conspiracy between Householder and the Company and its affiliates went into motion in earnest with the establishment of “Generation Now” and “Energy Pass-Through,” 501(c)(4) organizations used to systematically funnel dark money from Company coffers to Householder and his affiliates. The next month, Householder began receiving periodic \$250,000 payments, an amount that would steadily increase until it reached into the millions of dollars a month. In all, more than \$60 million was paid by the Company and its affiliates to Householder and his operatives in furtherance of the bribery scheme. As one of the alleged co-conspirators, lobbyist Neil Clark (characterized in the criminal complaint as Householder’s

political “hit man”) stated in a secretly recorded conversation: “Nobody knows the money goes to the Speaker’s account . . . it’s not recorded.”

24. The clandestine payments were used to fund the political campaigns of over 20 state legislative candidates. The enterprise managed these candidates’ campaigns, paid their staffs, and designed and paid for mailers and commercials. Most of these candidates won their elections. All who won voted for Householder as Speaker and all but two ultimately voted for the bailout despite its public unpopularity. In addition, Householder used a portion of the funds to personally enrich himself, including to buy a home in Florida and to settle a personal lawsuit against him.

25. The day Householder was elected Speaker he quickly moved to uphold his end of the bargain by pledging to create a standing subcommittee on energy generation. Householder followed through shortly thereafter, securing the votes for HB6 and defending the bill against a citizens’ ballot initiative. The law granted a \$9 per megawatt hour subsidy to “clean” energy generation. To pay for this generous subsidy, Ohio ratepayers would be assessed a monthly charge, increasing energy costs for consumers. The primary beneficiary of the bill was the Company.

26. The Company and its affiliates greased the bill’s passage by funneling millions of dollars through dark money political groups. These groups in turn paid for a massive media campaign in support of HB6 while concealing the Company’s involvement. The \$10 million media blitz was used to sway public opinion, including through highly misleading ads, and provide cover for politicians to vote in favor of the unpopular bill. Householder also personally pressured lawmakers to support the bill, threatening those who opposed him and developing a “hyper local” “Senator-by-Senator game plan” to get the votes necessary to secure passage.

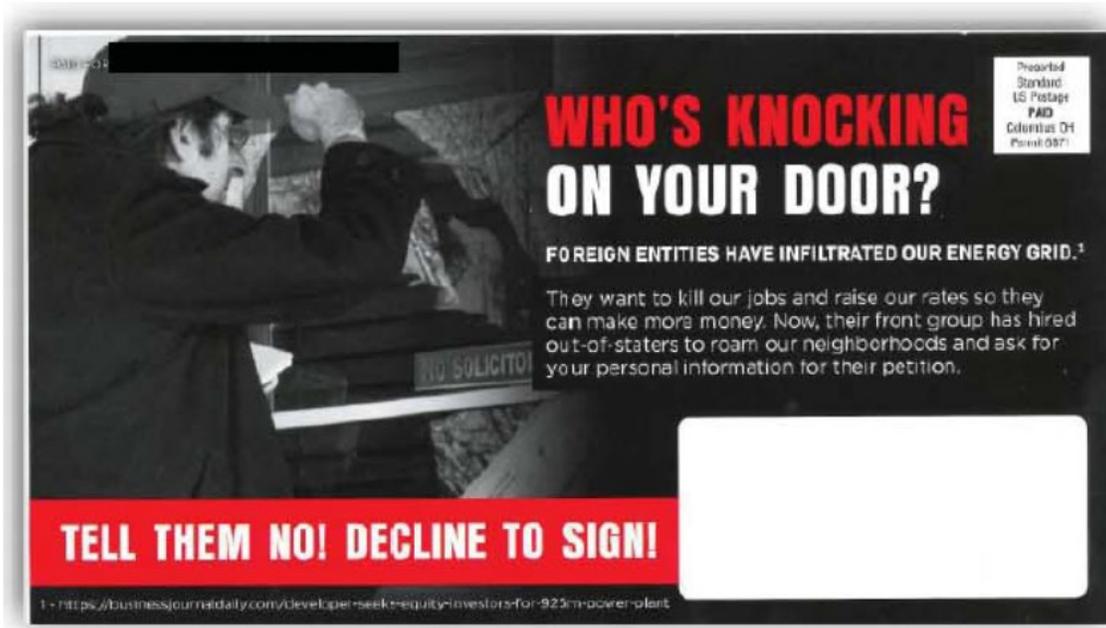
27. At all times, Householder worked hand-in-hand with the Company, its Former Parent, and its affiliates to closely coordinate the legislative and media strategy with high-ranking

Company representatives. There was only a short time between when Householder became Speaker in January 2019 and HB6 was signed into law in July 2019. At the same time that the conspiracy was receiving millions of dollars from the Company and its affiliates while taking overt steps to put the plans to corrupt the legislative process into action.

28. These illicit activities achieved their aim, and, in July 2019, HB6 passed and was signed into law. Almost immediately, public opposition began to mobilize and citizen groups worked to get on the ballot a voter referendum to repeal the law.

29. The Company and its affiliates went into overdrive to thwart this initiative, secretly funding yet another round of highly misleading political advertisements through its dark money network. At least \$38 million was wired through Generation Now, Inc. (“Generation Now”) into a front company that paid for a media blitz of commercials and fliers orchestrated by the illicit enterprise. These advertisements were intended to stoke fear among Ohio citizens by falsely claiming that China was using the petition drive to invade Ohio’s energy grid. The following examples are typical of that campaign:





30. The scheme went further, hiring top signature collection firms in order to prevent them from working on the ballot initiative by creating a conflict of interest – the Company and its affiliates used Generation Now to pay at least 15 such firms not to work. The Company and its affiliates also bribed an employee of the citizens’ ballot initiative for inside information that could be used against the campaign. That transaction was implemented by Matthew Borges, a criminal defendant in the Criminal Proceedings. Other operatives bribed signature collectors in order to subvert the ballot campaign’s efforts. In the end, Company and its affiliates’ massive resources and unscrupulous tactics successfully prevented the referendum from gathering the requisite signatures and HB6 remained in effect.

31. The illicit nature of these activities was well understood by Company and its affiliates. As one of the criminal defendants stated on a secretly recorded line, “everybody knows [Householder is] pay to play.” As this same criminal defendant, an industry lobbyist, later explained: “on HB 6 Company got \$1.3 billion in subsidies, free payments, . . . so what do they care about putting in \$20 million a year for this thing, they don’t give a sh*t.” For a time, the

Company was able to conceal its misdeeds from the public and the market, and Defendants' unabashed attitude towards breaking the law successfully inflated the price of its securities.

Materially False and Misleading

Statements Issued During the Class Period

32. On February 27, 2020, the Company issued a press release entitled "FirstEnergy Solutions Successfully Completes Financial Restructuring, Emerges as Energy Harbor" which stated the following regarding the Company's financial stability and quoted Defendants Kiani and Judge:

Energy Harbor Corp. announced today that the company has successfully completed its chapter 11 restructuring process and has emerged as a premier power producer and retail supplier well positioned for a low carbon future. The company proudly serves nearly one million residential, commercial and industrial customers *with a focus on best-in-class safety and operations with unmatched financial stability.*

* * *

John Kiani, Executive Chairman of Energy Harbor said, "With our industry-leading nuclear fleet focused on safe and resilient production of substantial carbon-free electricity, *Energy Harbor is in an excellent industry position for a future focused on environmental, social and sustainability goals.* Combined with our rapidly growing retail business and *dependable clean air credit support*, the majority of and scarce attributes for our shareholders, employees, local communities and other stakeholders."

"Energy Harbor customers will benefit from our skilled and agile workforce, extensive infrastructure, and industry-leading plant and retail operations. *In addition, our strong balance sheet* and dependable baseload portfolio allow us to provide our retail customers and local communities with safe and reliable power, which is critical for grid stability," added Energy Harbor President and Chief Executive Officer John Judge.

Kiani further added, "*I want to thank our employees, elected officials, advisors and other stakeholders for their tireless effort that brought us to this important milestone.* In addition, *we appreciate the thoughtful support from our former parent company FirstEnergy Corp. throughout the restructuring, recapitalization and separation process. This tremendous collective*

accomplishment will position Energy Harbor for future success as an independent company operating in a challenging and evolving environment.”

(Emphasis added.)

33. On February 28, 2020, the Company issued a press release entitled “Energy Harbor Receives Investment Grade Rating from Moody’s” which touted its rating from Moody’s and stated the following regarding the Company’s financial stability:

Energy Harbor Corp. announced today that the company has received a Baa3 rating ***with a Stable outlook*** from Moody’s Investor Service. Moody’s report stated, “The Baa3 rating reflects Energy Harbor’s stable cash flow generated from power sales and capacity revenue in PJM as well as the Clean Air Credit revenue for its nuclear power plants in Ohio.” In addition, Moody’s added “Medium term, greater than 95% of Energy Harbor’s cash flow is ‘carbon-free’. In addition, over 60% of its cash flow is derived from its visible and carbon free clean air credits and retail business, with an additional 35% from its inherently carbon free nuclear assets. Thus, Moody’s views Energy Harbor’s carbon transition risk to be low, benefiting the company’s overall risk profile.”

John Kiani, executive chairman of Energy Harbor said, “We are grateful that Moody’s appreciates Energy Harbor’s low leverage, visible cash flow and low carbon footprint.” ***We expect to set the independent power industry standard in balance sheet strength, cash flow quality and visibility.*** An investment grade Energy Harbor is a ***financially secure*** independent power producer and fully integrated retail energy provider ***focused on safe and best-in-class operations and financial performance.*** With its fleet of reliable generating resources, including substantial carbon-free generation, Energy Harbor is well positioned for long-term value creation and competitiveness in a low-carbon future and is focused on enabling a growing customer and stakeholder base to meet their environmental, social and sustainability goals.

(Emphasis added.)

34. On March 27, 2020, the Company issued a press release entitled “Davis-Besse Nuclear Power Station Returns to Service from Scheduled Refueling Outage” which stated that following regarding the Company’s financial stability:

Energy Harbor is a financially secure independent power producer and fully integrated retail energy provider focused on safe and best-in-class operations and financial performance. With its fleet of reliable generating resources, including substantial carbon-free generation, Energy Harbor is well positioned for long-term

value creation and competitiveness in a low-carbon future and *is focused on enabling a growing customer and stakeholder base to meet their environmental, social and sustainability goals.*

(Emphasis added.)

35. On May 19, 2020, the Company issued a press release entitled “Energy Harbor Receives Investment Grade Rating from Standard and Poor’s” which quoted Defendant Burnazian stating: “*We believe the combination of balance sheet strength,* focus on our local communities where we consistently re-invest in our reliable, grid critical baseload generation and our focus on best-in-class service for our more than one million retail customers will maximize value for all stakeholders.”

36. The statements contained in ¶¶ 32-35 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the Company and its affiliates orchestrated a \$60 million campaign to corrupt the political process in order to secure the passage of legislation favoring the Company and its affiliates; (2) the Company and its affiliates secretly funneled tens of millions of dollars to Ohio politicians to bribe those politicians in order to secure votes in favor of HB6, a \$1.3 billion ratepayer bailout for the Company’s nuclear plants; (3) the Company and its affiliates conducted a massive, misleading advertising campaign in support of HB6 and in opposition to a ballot initiative to repeal HB6 by passing millions of dollars through an intricate web of dark money entities and front companies in order to conceal the Company’s involvement; (4) as a result of the foregoing, the Company would face increased scrutiny; (5) as a result of the foregoing, the Company was subject to an extreme, undisclosed risk of reputational, legal and financial harm; (6)

as a result of the foregoing, the Company was not fiscally secure or strong; and (7) as a result of the foregoing, Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

THE TRUTH EMERGES

37. On July 21, 2020, the U.S. Attorney's Office for the Southern District of Ohio issued a press release entitled "Ohio House Speaker, former chair of Ohio Republican Party, 3 other individuals & 501(c)(4) entity charged in federal public corruption racketeering conspiracy involving \$60 million" which announced the following, in pertinent part, regarding the bribery scheme:

COLUMBUS, Ohio – The Ohio Speaker of the House was arrested this morning and charged in a federal racketeering conspiracy involving approximately \$60 million paid to a 501(c)(4) entity to pass and uphold a billion-dollar nuclear plant bailout.

It is alleged that **Larry Householder**, 61, of Glenford, Ohio, and the enterprise conspired to violate the racketeering statute through honest services wire fraud, *receipt of millions of dollars in bribes* and money laundering.

Four other individuals were also arrested and charged. They include:

- **Mathew Borges**, 48, of Bexley, a lobbyist who previously served as chair of the Ohio Republican Party;
- **Jeffrey Longstreth**, 44, of Columbus, Householder's longtime campaign and political strategist;
- **Neil Clark**, 67, of Columbus, a lobbyist who owns and operates Grant Street Consultants and previously served as budget director for the Ohio Republican Caucus; and
- **Juan Cespedes**, 40, of Columbus, a multi-client lobbyist.

Generation Now, a corporate entity registered as a 501(c)(4) social welfare organization, was also charged.

* * *

According to the 80-page criminal complaint unsealed today, from March 2017 to March 2020, the enterprise received millions of dollars in exchange for

Householder's and the enterprise's help in passing House Bill 6, a billion-dollar bailout that saved two failing, Ohio nuclear power plants from closing.

The defendants then also allegedly worked to corruptly ensure that HB 6 went into effect by defeating a ballot initiative to overturn the legislation. ***The Enterprise received approximately \$60 million into Generation Now from an energy company and its affiliates during the relevant period.***

As alleged, in February 2017, Longstreth incorporated Generation Now as a 501(c)(4) social welfare entity purporting to promote energy independence and economic development; however, the entity was secretly controlled by Householder. As Clark stated in a recorded conversation, ***“Generation Now is the Speaker's (c)(4).” Pursuant to federal law, the names and addresses of contributors to 501(c)(4)s are not made available for public inspection.***

In March 2017, Householder began receiving quarterly \$250,000 payments from the related-energy companies into the bank account of Generation Now. The defendants allegedly spent millions of the company's dollars to support Householder's political bid to become Speaker, to support House candidates they believed would back Householder, and for their own personal benefit. When asked how much money was in Generation Now, Clark said, “it's unlimited.”

The affidavit filed in support of the criminal complaint also alleges:

- In 2018, the enterprise spent energy company-to-Generation Now money on approximately 21 different state candidates – 15 (including Householder) in the primary, and six additional candidates in the general election. The Enterprise spent more than one million in fall 2018 alone to flood the airways with negative ads against enterprise opponents. Most of these candidates won the 2018 general election. All who won voted for Householder as Speaker.
- Money passed from the energy company through Generation Now was used to pay for Householder campaign staff, which would otherwise have been paid by Householder's candidate committee, Friends of Larry Householder.
- Householder received more than \$400,000 in personal benefits as a result of the payments into Generation Now, including funds to settle a personal lawsuit, to pay for costs associated with his residence in Florida, and to pay off thousands of dollars of credit card debt.
- The enterprise paid \$15,000 to an individual to provide insider information about the ballot initiative and offered to pay signature collectors for the ballot initiative \$2,500 cash and plane fare to stop gathering signatures.

* * *

“It takes courage for citizens to assist law enforcement in the ways detailed in the affidavit,” U.S. Attorney David M. DeVillers said. “We are grateful to those who felt a moral duty to work together with agents in bringing to light this alleged, significant public corruption.”

“All forms of public corruption are unacceptable,” stated FBI Cincinnati Special Agent in Charge Chris Hoffman. “***When the corruption is alleged to reach some of the highest levels of our state government, the citizens of Ohio should be shocked and appalled.***”

(Emphasis added.)

38. The criminal complaints and affidavits were filed that same day in the Criminal Proceedings. These documents detailed a brazen scheme by the Company, its affiliates and representatives to corrupt the political process and undermine democratic institutions in the State of Ohio in order to secure passage of HB6. The allegations contained in the criminal complaints and affidavits were supported by detailed transcripts of phone calls, recorded conversations, text messages, bank records and contemporaneous documentary evidence.

39. On this news, shares of Energy Harbor shares fell \$7.35 per share, or 20%, to close at \$28.00 per share on July 21, 2020, damaging investors.

40. On July 22, 2020, Cleveland.com published an article entitled, “FirstEnergy was relentless in quest to have Ohio legislature bail out the utility’s nuclear plants,” which provided the following additional details, in pertinent part, regarding the Company’s illicit activities:

FirstEnergy Corp. tried and failed more than once to convince state lawmakers to subsidize the company’s two Ohio nuclear power plants, but was unable to achieve its goal until Larry Householder became speaker of the Ohio House of Representatives in 2019.

As speaker, Householder wasted little time pushing through House Bill 6, legislation that included the \$1 billion nuclear plant bailout at the center of racketeering charges leveled against Householder and four others on Tuesday.

Householder is accused of heading up a criminal enterprise dating back to early 2017 that ***took in \$60 million from FirstEnergy to put Householder and his***

supporters in power and to ram the bailout legislation through the General Assembly.

House Bill 6 was imminently important to FirstEnergy. It culminated years of work by the struggling Akron-based utility to get out from under crushing debt. But with the federal charges Tuesday surrounding the lobbying effort behind the bailout, some organizations are already calling for its repeal.

“Ohio House Bill 6 was an ugly corporate bailout from the beginning, and it hasn’t gotten any prettier,” the conservative Buckeye Institute, a Columbus-based think tank, stated on Tuesday. “The Buckeye Institute calls upon policymakers to rectify the previous error and take decisive action to move the state forward and away from subsidizing crony companies while sticking ordinary Ohioans with higher energy bills.”

Early calls for help

FirstEnergy let it be known as far back as 2016 that it wanted relief for Perry nuclear plant in Lake County and Davis-Besse nuclear plant east of Toledo.

During an annual energy conference in early 2017, Rep. Bill Seitz, a Cincinnati Republican, revealed that First Energy was in “substantial financial trouble.” FirstEnergy proposed something called “zero emission credits,” which would allow the utility to charge extra on electric bills because it was generating carbon-free nuclear power.

The credits would allow FirstEnergy to collect \$300 million a year in perpetuity.

Bills that would have created the Zero-Emissions Nuclear Resource (ZENR) Program were introduced in the House and Senate in April 2017 and they drew plenty of testimony.

The bill “would enable Ohio to take control of a critical component of its energy future by ensuring our nuclear plants are compensated for the many benefits they provide,” then First Energy CEO Charles Jones said in a statement to the House Public Utilities Committee.

A legislative failure

Testifying before the same committee, Ned Hill, a professor in the John Glenn College of Public Affairs at Ohio State University, referred to FirstEnergy financial engineering as “fanciful.”

“The Committee members have heard that energy markets are complex. And the Committee has been presented with a complex, Rube Goldberg-like financial instrument,” Hill testified. “My advice to you: Protect your constituents’ wallets

whenever an issue is advertised as being complex, and the person offering testimony does not try to provide clarity and simplicity.”

The House bill and the companion Senate bill never made it out of the committee. Changes were made and a new bill was introduced in the House in October of 2017, but it too languished in committee.

The Ohio Consumers’ Counsel and the Ohio Manufacturers’ Association were among those who opposed idea as did then-House Speaker Cliff Rosenberger.

A new plan of attack

FirstEnergy wasn’t about to give up. ***In March of 2018, First Energy announced plans to get out of the nuclear power business within three years by closing Davis-Besse in 2020, and the Perry and Beaver Valley plant near Pittsburgh in 2021.***

Shortly after the announcement, FirstEnergy Solutions Corp, which was the nuclear division of First Energy, filed for bankruptcy protection. It now operates under the name Energy Harbor.

The company set about lobbying the state legislature for the nuclear subsidies it had failed to obtain. That strategy, according to the federal prosecutors, included funneling millions of dollars to an organization, Generation Now, controlled by Householder.

Householder used some of that money to position himself to become the next speaker. After Rosenberger resigned in April amid a scandal of his own, Rep. Ryan Smith, another bailout opponent, assumed the speaker’s job. But Householder courted a number of Democrats and built a coalition to win the power struggle.

Approving the bailout

The push for House Bill 6 took off in earnest. ***After the bill was introduced, FirstEnergy stepped up payments to Generation Now, which paid for mailings and media advertisements to pressure lawmakers into supporting the bill.***

The utility financed Ohio Clean Energy Jobs Alliance, which included mayors, school officials, labor unions an economic development officials, to promote the idea of saving the nuclear plants and the jobs they provided.

What was missing was any concrete explanation from FirstEnergy of why it needed the bailout. The company never provided specifics about the plant’s profitability, but it didn’t matter.

In July 2019, only six months into Householder’s term as speaker, HB 6 passed 51-38 and cleared the Ohio Senate. Gov. Mike DeWine did not hesitate to sign it into law.

Tapping customers for cash

The bill was a huge boost to FirstEnergy as it required every residential electricity customer in Ohio to pay a monthly surcharge of 85 cents and for large industrial plants to pay an additional \$2,400 a month, starting in 2021 and extending through 2027.

* * *

A failed referendum

It was a crushing blow to consumer watchdogs and to renewable energy advocates who quickly mounted a drive to overturn the law by referendum only to be met by fierce opposition.

The same forces that conspired to get the bill enacted, moved against the opposition.

TV and radio ads alleged that signing the petition to overturn HB 6 “equated with ceding control of Ohio energy to China,” according to federal prosecutors. Workers attempting to get signatures were accosted while doing their job.

The petition drive failed to gain the required number of signatures to be placed on the ballot.

(Emphasis added.)

41. On this news, shares of Energy Harbor shares fell \$4.50 per share, or 16%, to close at \$23.50 per share on July 22, 2020, further damaging investors.

42. On July 27, 2020, news outlets reported on Moody’s revising Energy Harbor’s outlook to negative. Specifically citing the Criminal Proceedings, Moody’s stated, in pertinent part, the following:

"The Criminal complaint may be a potential sign of higher corporate governance risk. We think the investigation may result in a more lasting negative impact on Energy Harbor's overall credit profile due to its concentration of nuclear assets in Ohio," stated Jairo Chung, Moody's analyst.

Energy Harbor receives approximately \$150 million of ZEC revenue, representing approximately 9% of the company's total expected annual revenue. Energy Harbor owns and operates two nuclear power plants in Ohio, the 908 MW Davis Besse and the 1,268 MW Perry nuclear power plants. Ohio is a deregulated state, where the generation business was separated from the transmission and distribution business. ***Given the low power prices in the regional markets***

environment and uncertainty related to the PJM capacity market formation, the absence of the ZEC revenue will put financial pressure and will negatively impact Energy Harbor's EBITDA.

* * *

Rating outlook

The negative outlook reflects our view that there is growing uncertainty around Energy Harbor's corporate governance risk, and its lack of track record and small size could pressure on the company's credit profile. We expect Energy Harbor will continue to operate its nuclear power plants with high availability and capacity factors, thereby generating stable cash flow while maintaining low leverage.

Factors that could lead to a downgrade

A rating downgrade could be considered if Energy Harbor's corporate governance risk is higher than we understood through the ongoing investigation of the criminal complaint filed on 21 July or the company is found to be engaged in illegal activities described, resulting in significant financial pressure. If Energy Harbor's cash flow decreases or if leverage increases significantly such that its CFO pre-WC to debt ratio falls to the low 30% range, or low 20% range on a nuclear fuel adjusted basis; or significant deterioration in its nuclear plant operations, increasing its operating costs, a downgrade could also be considered.

(Emphasis added.)

43. On this news, shares of Energy Harbor shares fell \$3.55 per share, or 15%, over the next three days, to close at \$19.50 per share on July 30, 2020, further damaging investors.

44. As a result of Defendants' wrongful acts and omissions, and the decline in the market value of the Company's common shares, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

45. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than Defendants who acquired Energy Harbor securities publicly traded during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of Energy

Harbor and the Former Parent, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants and the Former Parent have or had a controlling interest.

46. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company's securities were actively traded publicly. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands, of members in the proposed Class.

47. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

48. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

49. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the Exchange Act was violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the financial condition and business of Energy Harbor;

- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Defendants caused Energy Harbor to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of Energy Harbor securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

50. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

51. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Energy Harbor shares were listed and actively traded;
- Energy Harbor regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;

- Energy Harbor's securities were liquid during the Class Period; and
- Energy Harbor was followed by a number of analysts who wrote reports that were widely distributed and publicly available.

52. Based on the foregoing, the market for Energy Harbor securities promptly digested current information regarding the Company from publicly available sources and reflected such information in the prices of the shares, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

53. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

COUNT I

For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder

Against All Defendants

54. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

55. This Count is asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

56. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

57. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Energy Harbor securities during the Class Period.

58. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of the Company, their control over, and/or receipt and/or modification of the Company's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

59. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and

disclose the true facts in the statements made by them or other Energy Harbor personnel to members of the investing public, including Plaintiff and the Class.

60. As a result of the foregoing, the market price of the Company's securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of the Company's securities during the Class Period in purchasing Energy Harbor securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

61. Had Plaintiff and the other members of the Class been aware that the market price of Energy Harbor securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased Energy Harbor securities at the artificially inflated prices that they did, or at all.

62. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

63. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of Energy Harbor securities during the Class Period.

COUNT II

Violations of Section 20(a) of the Exchange Act

Against the Individual Defendants

64. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

65. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of Energy Harbor's business affairs.

66. The Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and results of operations, and to correct promptly any public statements issued by the Company which had become materially false or misleading.

67. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the press releases which the Company disseminated in the marketplace during the Class Period concerning Energy Harbor's operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Energy Harbor securities.

68. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by the Company.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

(c) awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.
Phillip Kim, Esq.
Laurence M. Rosen, Esq.
275 Madison Avenue, 40th Floor
New York, NY 10016
Telephone: (212) 686-1060
Fax: (212) 202-3827
Email: pkim@rosenlegal.com
lrosen@rosenlegal.com

Counsel for Plaintiff