

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO *ex rel.* Dave Yost,
Ohio Attorney General,

Plaintiff,

V.

ENERGY HARBOR CORP.

C/O CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219,

**ENERGY HARBOR NUCLEAR
GENERATION LLC**

C/O CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219,

ENERGY HARBOR NUCLEAR CORP.

C/O CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219,

And

ENERGY HARBOR LLC

C/O CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219,

Defendants;

And

**OHIO AIR QUALITY DEVELOPMENT
AUTHORITY**

50 W Broad St., Suite 1118
Columbus, OH 43215

Case No.

JUDGE _____

**COMPLAINT SEEKING
PRELIMINARY & PERMANENT
INJUNCTIVE RELIEF**

And

**OHIO TREASURER ROBERT
SPRAGUE**

30 East Broad Street, 9th Floor
Columbus, Ohio 43215

Necessary Parties / Nominal Defendants.

Plaintiff, the State of Ohio, by and through its Attorney General, Dave Yost, (hereinafter “Ohio” or “the State”), upon personal knowledge as to its own acts and beliefs, and upon information and belief as to all matters based upon the investigation of counsel and matters within the public sphere, alleges as follows as its Complaint against Defendants Energy Harbor Corp. and its wholly-owned subsidiaries, Energy Harbor LLC, Energy Harbor Nuclear Generation LLC and Energy Harbor Nuclear Corp., (collectively “Energy Harbor”), and Necessary Parties / Nominal Defendants, Ohio Air Quality Development Authority and Ohio Treasurer Robert Sprague (in his official capacity only):

INTRODUCTION

The people of Ohio are about to be shaken down for money they should not pay and will never be able to get back. This honorable Court has the power to stop it.

This matter stems from the same underlying facts as, and relates to, *State of Ohio, ex rel. Dave Yost vs. FirstEnergy Corp.*, No. 20 CV 006281 (the “Primary Action”). The Primary Action sets out a corrupt enterprise claim under Ohio Revised Code §2923.34 alleging major utility players and various political actors acted in concert to create House Bill 6, which includes a monthly charge to every ratepayer called a “nuclear generation fee.”

This ancillary action involves only a subset of the defendants in the Primary action, and adds two *pro forma* government defendants who were not part of the corrupt enterprise, but against whom injunctive relief is necessary in order to prevent Energy Harbor from receiving any nuclear generation credits or fees.

As set out below, the Attorney General seeks a *preliminary and permanent injunction against the collection or distribution of the nuclear generation fee* under the broad remedial powers granted to the Court under §2923.34.

The corrupt enterprise and its billion-dollar payout is no longer a theory, but an admitted fact. Recently, two members of the corrupt enterprise entered guilty pleas in federal court. Those actors were Energy Harbor’s H.B. 6 lobbyist, and the former Speaker’s consigliere. These two guilty pleas connected the utility and the Speaker.

FirstEnergy, Energy Harbor’s former parent, fired three top executives a few hours later—its CEO, its government relations coordinator, and another executive—citing violations of its policies and code of conduct. Just this week, FirstEnergy went further and fired its Chief Legal Counsel and its General Counsel/Chief Ethics Officer. In related SEC filings and public statements, FirstEnergy connected the firings to its involvement in the Nuclear Bailout Bribes; stated it will cut the strings of the fired executives’ golden-parachutes and potentially claw-back past payments to them; and announced plans to reduce capital expenditures to prepare to pay anticipated federal criminal and/or civil fines.

In short, the allegations in the Primary Action are now undeniable, and are no longer being denied by some defendants therein.¹

Pertinent to this action, starting on January 1, 2021, \$150 million per year will start be collected into, and as soon as April 2021, begin being paid out of, public funds administered by the Ohio Treasurer at the direction of AQDA to Energy Harbor. Critically to this request for injunctive relief, Ohio law does not permit a refund of a tariff improperly granted. *See In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶23, *construing* R.C. 4905.32. Injunctive relief is necessary to stop at least the distribution, and ideally the collection, of the corruptly enacted rate tariff.

This Court is granted broad authority by R.C. 2923.34 to stop, and rectify, corrupt enterprises. Because the Primary Action will likely not be resolved in the next few weeks (even though the

¹ As will be discussed in separate filings in the Primary Action, the guilty pleas estop those defendants from denying the allegations in the Primary Action.

likely result is knowable, and indeed, all but inevitable), the arcane regulatory structures at play require preliminary injunctive relief be granted against Energy Harbor, and two innocent State actors, to prevent the flow of bail-out cash from Ohio electric customers to Energy Harbor.

It is for these reasons that the Attorney General brings this lawsuit on behalf of the State of Ohio and its people.

I. PARTIES

A. PLAINTIFF:

1. Ohio Attorney General Dave Yost brings this action for and on behalf of the sovereign State of Ohio in his capacity as chief law officer for the State to protect the State and State entities as ratepayers, and on behalf of its citizens as *parens patriae* to remedy a generalized harm to the people of the State of Ohio.

B. DEFENDANTS:

2. **ENERGY HARBOR CORP.** is a Delaware corporation with its principal place of business in Akron, Ohio. Energy Harbor Corp. is the parent company of Energy Harbor LLC, Energy Harbor Nuclear Generation LLC, Energy Harbor Nuclear Corp. and multiple other subsidiaries (collectively “Energy Harbor”). Energy Harbor will be the direct beneficiary of House Bill 6 and the resulting nuclear subsidies. Energy Harbor stands to receive benefits in excess of \$1.3 billion as the result of statutory changes contained in House Bill 6 of the 133rd Ohio General Assembly. Prior to the FirstEnergy Nuclear Assets’ emergence from bankruptcy as subsidiaries of Energy Harbor, a number of key executives now within Energy Harbor held similar positions within FirstEnergy Solutions.
3. **ENERGY HARBOR NUCLEAR GENERATION LLC** is a Delaware limited liability company that does business in the State of Ohio and is a wholly-owned subsidiary of Energy Harbor Corp. Energy Harbor Nuclear Generation LLC was formerly known as FirstEnergy Nuclear Generation LLC.

4. **ENERGY HARBOR NUCLEAR CORP.** is a Delaware corporation that does business in the State of Ohio and is a wholly-owned subsidiary of Energy Harbor Corp. Energy Harbor Nuclear Corp. was formerly known as FirstEnergy Nuclear Operating Company. Energy Harbor Nuclear Corp. is the operator of the Davis-Besse and Perry nuclear power plants and associated spent fuel storage installation facilities.
5. **ENERGY HARBOR LLC** is a Delaware limited liability company that does business in the State of Ohio and a wholly-owned subsidiary of Energy Harbor Corp. Through bankruptcy proceedings, Energy Harbor LLC was formally known as FirstEnergy Solutions Corp.

C. NECESSARY PARTIES:

6. The Ohio Air Quality Development Authority (“AQDA”) is a necessary party to this matter as the primary administrator of the nuclear generation credit program established by H.B. 6 and codified at R.C. 3706.40 et seq.
7. Ohio Treasurer Robert Sprague is a necessary party to this matter as the custodian of the nuclear generation fund created by H.B. 6 and codified at R.C. 3706.49.

II. VENUE AND JURISDICTION

8. This Court has jurisdiction over this matter seeking injunctive relief.
9. This Court has personal jurisdiction over Defendants as they conduct business in Ohio, purposefully direct or directed their actions toward Ohio, and/or have the requisite minimum contacts with Ohio necessary to constitutionally permit the Court to exercise jurisdiction.
10. Venue is proper in Franklin County pursuant to Civ. R. 3(B)(2), Civ. R. 3(B)(3) and Civ. R. 3(B)(6).

III. FACTUAL ALLEGATIONS

11. Beginning in 2016 or 2017, Defendant **ENERGY HARBOR**, and others identified in the Primary Action engaged in conduct and relationships which, together, constituted an Enterprise in fact as that term is defined in R.C. Section 2923.31, and engaged in a pattern of corruption that continues to threaten the State of Ohio to this day.
12. Significant aspects of the Enterprise's conduct occurred in and/or was targeted at entities in Franklin County, Ohio.
13. The underlying facts are set forth in greater detail in the Primary Action and the related criminal complaint filed in the United States District Court for the Southern District of Ohio via an Affidavit in Support of Criminal Complaint² and subsequent Indictment³ (the "Federal Charging Documents"). Sufficient facts to establish the need for the injunctive relief sought herein are pleaded herein.
14. Energy Harbor owns the only two commercial nuclear generation assets, as defined in H.B. 6, in Ohio.
15. Energy Harbor's nuclear generation assets are long in the tooth, have experienced major past safety issues and coverups, and are no longer commercially competitive.
16. Some erstwhile supporters of the plants believe Energy Harbor's antiquated nuclear assets should be preserved for policy reasons and/or simply as alternative sources of electrical generation in Ohio.
17. However, prior to the enactment of H.B. 6, those supporters never gained sufficient traction in the General Assembly to obtain a legislative bailout.

² Affidavit in Support of Criminal Complaint filed July 17, 2020, in *United States of America v Larry Householder et al*, Case No. 1:20-MJ-00526, in the United States District Court for the Southern District of Ohio ("Charging Affidavit").

³ Indictment filed July 30, 2020, in *United States of America v. Larry Householder et al*, Case No. 1120CR077, in the United States District Court for the Southern District of Ohio ("Indictment").

18. Generally, the opponents of the bailout believed that Ohio should not save Energy Harbor and its former corporate parent, FirstEnergy, from the market failure of the antiquated assets. This view was shared even by some who support the use of nuclear power.
19. Thus, Energy Harbor and its affiliates decided that in order to save the nuclear plants, they needed a corrupt legislator, which they found Larry Householder.
20. Householder was no stranger to Capital Square or allegations of public corruption, having previously served as a House member representing Ohio's 72nd District from 1997 to 2004 and as Speaker of the Ohio House of Representatives for four of those years.
21. During Householder's first stint as Speaker, he faced federal investigation, but was not indicted, for alleged money laundering and irregular campaign practices.
22. In 2016, Householder successfully sought reelection to his former seat as a representative and began working to regain the Speaker's chair.
23. FirstEnergy's corruption scheme attracted the power-hungry Householder like a moth to a nuclear-powered lightbulb.
24. Tellingly, FirstEnergy flew Householder and a family member to Washington, D.C. on one of its corporate jets to attend President Donald J. Trump's January 2017 inauguration.
25. Using millions of dollars routed through various entities, Energy Harbor and the Enterprise, in partnership with Householder, built and engaged a team of lobbyists, political strategists, 501(c)(4) entities, attorneys, consulting firms and media companies to create a machine that would allow Energy Harbor and FirstEnergy entities to covertly put over \$60 million into introducing, passing and protecting from referendum what would become known in 2019 as House Bill 6 ("H.B. 6"), the "Ohio Clean Air Program."
26. The Enterprise used the anonymity provided by Generation Now's status as an IRS 501(c)(4) and the routing of the money through Growth & Opportunity PAC to prevent the public and regulators from discovering their efforts to influence the outcome of the 2018 Ohio Primary Election, to make contributions to candidates in excess of allowable limits and to avoid reporting political activity, all in violation of RC 1315.55, Ohio's

Money Laundering statute. Federal Election Commission records reveal expenditures by Growth & Opportunity PAC in OH HD 06, OH HD 19, OH HD 21, OH HD 37, OH HD 42, OH HD 43, OH HD 47, OH HD 50, OH HD 61, OH HD 65, OH HD 67, OH HD 72, OH HD 80, OH HD 81, OH HD 83, OH HD 84, OH HD 86, OH HD 90 and OH HD 91 during the 2018 Primary season. Not coincidentally, Team Householder candidates were seeking the Republican nomination in Ohio House Districts 06, 19, 21, 37, 42, 43, 47, 50, 61, 67, 72, 80, 83, 86, 90 and 91 at the time those expenditures were made. Eleven of those sixteen candidates, including Householder himself, were successful. Ten would later vote to pass H.B. 6. These contributions and efforts were over and above all monetary contributions made directly to candidate committees through FirstEnergy Corp. PAC and FirstEnergy PAC.

27. The Enterprise continued its efforts to seize control of the Ohio legislature during the 2018 General Election.
28. Between September 25, 2018 and November 2, 2018, the Enterprise used Generation Now and a yet-undetermined entity to funnel \$1.17 million to Hardworking Ohioans.
29. The Enterprise used the anonymity provided by Generation Now's status as an IRS 501(c)(4) and the routing of the money through Hardworking Ohioans to prevent the public and regulators from discovering their efforts to influence the outcome of the election, to make contributions to candidates in excess of allowable limits and to avoid reporting political activity. This pattern of obfuscation and deceit, which is detailed in the federal indictment and Secretary LaRose's complaint with the Elections Commission, as well as in this Complaint, constitutes multiple violations of RC 1315.55, Ohio's Money Laundering statute.
30. Many Team Householder candidates were victorious. These victorious candidates, in turn, helped elect Householder as Speaker of the House in January 2019.
31. On April 12, 2019, two House members who had been backed by Householder and the Enterprise introduced H.B. 6. The Bill, described by Clark as a "nuclear power plant bailout," established a program under which the two Ohio nuclear power plants owned

and operated by FirstEnergy Nuclear Assets would become eligible for ratepayer-funded subsidies of \$9 per megawatt hour produced. The changes made by H.B. 6 had the potential to send over \$1 billion to FirstEnergy Corp. and its Nuclear Assets.

32. In a press conference held the day H.B. 6 was introduced, Householder stated that he had "crafted" the legislation with the two representatives who had introduced it. When asked where the amount of the subsidy contained in the proposed legislation came from, Householder responded with the following; *"It's based on our brains. For me, I look back, for two years I've had this in my head, and I've had various versions on that white board over the last several months."*
33. Once H.B. 6 was introduced, the work continued. FirstEnergy Service wired \$1.5 million for the FirstEnergy Entities to Generation Now on April 19, 2019, seven days after H.B. 6 was introduced. Generation Now received another \$8 million in transfers from FirstEnergy Service in May 2019. Generation Now used that money for mailers and media meant to pressure members of the Ohio House of Representatives to support the legislation, many of which suggested that voters "Call Representative ____ and tell him (or her) to have the courage to support House Bill 6..."
34. The Enterprise used that dynamic to secure support for Householder and H.B. 6. For example, Clark threatened legislators with loss of committee assignments and having their legislation stalled or killed outright if they did not vote the right way. Householder himself became involved in these intimidation tactics on at least one occasion, telling an individual referred to in the Federal Charging Documents as Rep. 7, *"I just want you to remember - when I needed you - you weren't there. Twice."*
35. Because these threats to "kill" legislation and terminate committee appointments and chairpersonships were made with a single purpose – securing the votes needed for H.B. 6 to pass - each act constitutes a violation or attempted violation of RC 2905.12, Extortion, and RC 2921.02, Bribery.
36. H.B. 6 was not the only important piece of legislation pending that Spring. House Bill 166 ("H.B. 166"), Ohio's Fiscal Year 2020-2021 biennial budget, was also in play. By

law, Ohio must enact its biennial general fund budget by July 1 of each odd-numbered year. Failing to have a biennial budget in place by July 1 leads to one of the following two things: (1) an agreed temporary budget or (2) a total government shutdown. That would prove to be a key tool in the efforts to get H.B. 6 over the finish line.

37. It quickly became apparent to those around Capital Square that H.B. 6 and H.B. 166 were joined at the hip. The Senate passed its amended version of H.B. 166 on June 20, 2019. The House rejected the Senate's proposed amendments that same day. The Conference Committee assigned to H.B. 166 met on June 25, 2019, but the process immediately ground to a halt. The June 30th deadline for the operating budget came and went, and several weeks passed with no end to the impasse in sight. Then everything changed.
38. On July 16, 2019, the conference committee working on the voluminous budget bill finally agreed to a single version of that legislation, and both chambers passed it on July 17, 2019. It was signed into law the next day. On the same day that the budget impasse ended, the Senate also passed H.B. 6 and sent it back to the House for concurrence. The House soon concurred, and the bill was swiftly signed into law.
39. In a few short months, the Enterprise had taken an idea that received no serious consideration during the previous General Assembly and transformed it into a top legislative priority on par with the state operating budget. The reasons for this are clear: with a billion-dollar corporate bailout at stake for FirstEnergy, and millions of dollars of political influence at stake for Speaker Householder and his cohorts, H.B. 6 was the central purpose of the Enterprise.
40. Between June 19, 2019 and November 30, 2019, the Enterprise transferred over \$40 million into Generation Now to derail a proposed referendum of H.B.6.
41. Throughout late summer and fall of 2019, Generation Now, Longstreth, Householder, Clark, Borges and Cespedes, along with other members of the Enterprise, using money sourced from FirstEnergy Corp. and Energy Harbor, engaged in a continuous, well-funded and coordinated effort aimed at defeating the referendum, including, but not limited to: directing and funding massive, inflammatory direct mail campaigns and

extensive media outreach through third parties, causing individuals to engage in patterns of harassing and intimidating individuals hired to collect signatures supporting placing the referendum on the ballot, bribing individual signature collectors to leave their employment and abandon efforts aimed toward placing the anti-H.B. 6 referendum on the ballot, seeking to bribe individuals working for companies hired to collect signatures on behalf of H.B. 6 opponents and paying consultants and Enterprise members for their participation in anti-referendum efforts.

42. As early as June 23, 2019, the Enterprise began taking affirmative steps to impede the collection of signatures by paying signature collection companies tens of thousands of dollars to stay on the sidelines.
43. Clark and Cespedes led the efforts to hire signature collection companies away from referendum backers, together arranging for over \$500,000 in payments from Generation Now toward such efforts by end of July 2019.
44. Between August 1, 2019 and November 30, 2019, Generation Now paid Ohioans for Energy Security nearly \$23 million to embark on an expansive, inflammatory direct mail and media campaign designed to keep voters from signing onto efforts to put the referendum repealing H.B. 6 on the ballot.
45. Generation Now engaged Borges to facilitate other efforts to defeat the proposed referendum. Borges and his company, 17 Consulting Group, served as a conduit through which the Enterprise spent an additional \$1.62 million in its efforts to defeat the proposed referendum. In that capacity, Borges used accounts under his control to pass \$600,000 from Generation Now to Cespedes. Cespedes used that money to disrupt signature collection efforts, to engage others in anti-referendum efforts and to pay himself.
46. The benefit of passing the money through Coalition for Growth & Opportunity first was that Growth & Opportunity PAC listed Coalition for Growth & Opportunity as the source of the \$1,010,000 million in FEC filings, not Generation Now, which multiple media

sources had linked to the Alliance's multimillion-dollar effort to pressure legislators into voting in favor of H.B. 6.⁴

47. Between February 6, 2017 through July 21, 2020, the Enterprise caused over \$400,000 in benefits to be transferred to Householder. Moneys transferred through Generation Now to JPL & Associates and other accounts controlled by Longstreth were used to pay attorneys working on a private legal matter for Householder, to satisfy a civil judgment that was levied against Householder in his personal capacity, to pay Householder's campaign expenses, to pay the taxes on and improve a residence owned by Householder in the State of Florida and to pay credit card bills on Householder's behalf. All of this was done in a manner designed to conceal the source and amount of the benefits to Householder and to shield his acceptance of the proceeds of his unlawful acts from discovery, all in violation of RC 1315.55, Ohio's Money Laundering statute.
48. During the course of the Enterprise, Generation Now transferred a total of \$10.5 million to JPL & Associates, Longstreth's political consulting company. Additionally, Generation Now transferred over \$4.4 million to Ohioans for Energy Security, which was subsequently passed on by Ohioans for Energy Security to Constant Content, another business owned by Longstreth. Together, those businesses paid Longstreth over \$5 million, including \$1 million that was placed in a brokerage account for Longstreth's benefit in January 2020, for his service to the Enterprise, all in violation of RC 1315.55, Ohio's Money Laundering statute.
49. Other Enterprise members benefitted directly, as well. Clark, Householder's self-proclaimed proxy and emissary, received over \$290,000 from his work for the Enterprise. Borges' company, 17 Consulting Group, received \$1.62 million from the Enterprise between August 1, 2019 and October 21, 2019. Three hundred fifty thousand dollars

⁴ See, e.g., Laura A. Bischoff, *Big Money Pushes for Energy Bill; Consumer Groups Oppose It*, DAYTON DAILY NEWS, May 8, 2019, <https://www.daytondailynews.com/news/local/big-money-pushes-for-energy-bill-consumer-groups-oppose/ciWTL5gLpNVxpt3b03dxLP/>; Josh Goad, *Who Paid All That Money to Buy All Those Nuclear Bailout Ads Raining on Ohio?*, CINCINNATI ENQUIRER, July 12, 2019, <https://www.cincinnati.com/story/news/2019/07/02/who-paid-all-money-buy-all-those-nuclear-bailout-ads-ohio-house-bill-6/1443145001/>.

(\$350,000) of that was paid directly to Borges for his efforts to derail the proposed referendum.

50. The acts set forth above are only the beginning. The full breadth of the Enterprise has yet to be revealed. What has come to light thus far reveals a long running scheme that co-opted Ohio's legislative and referendum processes through coercion, intimidation, bribery and collusion. Energy Harbor and the Enterprise have attacked and harmed our system of government. The Ohio Constitution created a government designed to distribute powers and responsibilities to three branches of government, not to benefit the government or those in it, but to safeguard the liberty and rights of Ohioans. Energy Harbor's bribery of Householder, its illegal assistance of helping the election of members of Team Householder, its illegal assistance to make Householder the Speaker, all designed to facilitate the enactment of a bill to benefit Energy Harbor to over \$1.3 billion from Ohio citizens is an appalling frontal assault on our State's government.

51. Defendants' violations of law and their pattern of racketeering activity have directly and proximately caused damage to Ohio's residential, commercial and large industrial electric utility customers, all of whom will be subject to a new monthly-fixed charge due to the passage of H.B. 6 which, in the aggregate, is expected to approach \$1.3 billion.

52. The State of Ohio is itself a retail electric consumer which will be subject to the rate tariff.

53. Defendants' violations of law and their pattern of racketeering activity have directly and proximately caused damage to Ohio's reputation for good government and fair dealings with business interests, harm which will impede Ohio's ability to attract business opportunities.

IV. RECENT FACTUAL DEVELOPMENTS

54. On or about October 29, 2020, Cespedes and Longstreth appeared in open court before U.S. District Court Judge Tim Black and pleaded guilty to violating 18 U.S.C. 1962(d), i.e., participating in a RICO conspiracy as charged in Count One of the respective Indictments.

55. Cespedes and Longstreth admitted, beyond a reasonable doubt, that funds received from FirstEnergy and/or Energy Harbor “were for the benefit of the Defendants and others in return for specific official action by Householder relating to the passage and preservation of legislation that would go into effect and save the operation of two nuclear power plants in Ohio”.
56. The conduct Cespedes and Longstreth admitted, beyond a reasonable doubt, included conspiring to perform multiple acts that constitute “racketeering activity” as defined in 18 U.S.C. 1961(1)(B).
57. The conduct admitted by Cespedes and Longstreth that constitute racketeering activity as defined in 18 U.S.C. 1961(1)(B) meet the definition of “corrupt activity” as defined by R.C. 2923.31(I)(1).
58. The conduct Cespedes and Longstreth admitted, beyond a reasonable doubt, included conspiring to perform multiple acts involving bribery in violation of R.C 2921.02.
59. The conduct admitted by Cespedes and Longstreth that included multiple acts involving bribery in violation of R.C 2921.02 meet the definition of “corrupt activity” as defined by R.C. 2923.31(I)(2)(a).
60. Cespedes and Longstreth face up to 20 years in prison as a result of their guilty pleas.
61. Based on their guilty pleas, Cespedes and Longstreth are estopped from denying the claims against them in the Primary Action.
62. Throughout the course of the Enterprise, Cespedes was contracted to perform lobbying services on behalf of Energy Harbor (f/k/a FirstEnergy Solutions).
63. Cespedes admitted that he facilitated the flow of funds from Energy Harbor to Partners for Progress, Inc. and Generation Now for criminal purposes.
64. Cespedes and Longstreth admitted in their pleas that Energy Harbor money was used to bribe Householder in order to enact H.B. 6 so as to save the operations of the Davis-Besse and Perry nuclear power plants owned by Energy Harbor.

65. Following the announcement of the Cespedes and Longstreth guilty pleas, FirstEnergy terminated Charles Jones, its CEO.
66. Following the announcement of the Cespedes and Longstreth guilty pleas, FirstEnergy terminated Dennis M. Chack, the company's senior vice president of product development, marketing and branding.
67. Following the announcement of the Cespedes and Longstreth guilty pleas, FirstEnergy terminated Michael J. Dowling, its senior vice president of external affairs.
68. Following the announcement of the Cespedes and Longstreth guilty pleas, FirstEnergy terminated Robert Reffner, its senior vice president and chief legal officer.
69. Following the announcement of the Cespedes and Longstreth guilty pleas, FirstEnergy terminated Ebony Yeboah-Amankwah, its vice president, general counsel, and chief ethics officer.
70. FirstEnergy fired Jones, Chack, Dowling, Reffner, and Yeboah-Amankwah because of the bribery scandal.
71. FirstEnergy is refusing to pay stock benefits to the fired executives. An independent review committee of its board is looking at whether any recoupment, reductions or forfeiture of other grants, awards and compensation may be warranted.
72. Energy Harbor is facing ongoing federal investigation in connection with the Enterprise and criminal charges against it cannot be ruled out at this time.
73. FirstEnergy is facing ongoing federal investigation in connection with the Enterprise and criminal charges against it cannot be ruled out at this time.
74. Cespedes and Longstreth's criminal admissions to the conduct alleged in the Primary Action and herein, and FirstEnergy's responses thereto, and tacit admission of the same, mean the Attorney General is highly likely to prevail on the merits in both cases.

COUNT ONE: INJUNCTIVE RELIEF

75. Plaintiff incorporates and realleges the preceding paragraphs as if fully restated herein.
76. Injunctive relief is available under R.C. 2923.34.
77. As required by H.B. 6, AQDA received Energy Harbor's application to qualify its two Ohio nuclear generation assets as eligible for nuclear generation credits, per R.C. 3706.41, and approved them, per R.C. 3706.43.
78. As required by H.B. 6 and per R.C. 3706.45, AQDA has been issuing nuclear resource credits to Energy Harbor quarterly since April 2020.
79. As required by H.B. 6 and per R.C. 3706.46, beginning on January 1, 2021, each retail electric consumer in the State of Ohio will begin being charged a fee to fund a "nuclear generation fund" totaling \$150,000,000 annually.
80. The nuclear generation fund shall be in the custody of Necessary Party / Nominal Defendant Treasurer, per H.B. 6 and codified at R.C. 3706.49, but "shall not be part of the state treasury".
81. The Treasurer, per H.B. 6 and codified at R.C. 3706.49, is required to distribute the funds as directed by the Ohio Air Quality Development Authority.
82. H.B. 6 similarly creates a system of renewable generation credits and a corresponding renewable generation fund in the custody of the Treasurer and distributed as directed by the AQDA. R.C. 3706.46 requires the renewable generation fund to total \$20,000,000 per year.
83. Upon information and belief, no entity is currently qualified to accumulate renewable energy credits or will receive distributions from the renewable energy fund in 2021.
84. Although R.C. 3706.46 and .49 treat the nuclear and renewable funds as separate and distinct, R.C. 3706.53 contemplates that the money to fund the accounts may come to the Treasurer commingled, and contains a mechanism to separate them.

85. Specifically, R.C. 3706.53 reads, in toto: “Subject to section 3706.61 of the Revised Code: (A) Eighty-eight and twenty-five hundredths per cent of the charges collected under section 3706.46 of the Revised Code shall be deposited to the credit of the nuclear generation fund created under section 3706.49 of the Revised Code. (B) Eleven and seventy-five hundredths per cent of the charges collected under section 3706.46 of the Revised Code shall be deposited to the credit of the renewable generation fund created under section 3706.49 of the Revised Code.”
86. As required by H.B. 6 and per R.C. 3706.55, the Ohio Air Quality Development Authority is required to “direct the treasurer of state to remit money ... from the nuclear generation fund to [Energy Harbor]” quarterly beginning in April 2021.
87. Specifically, and in relevant part, R.C. 3706.55 reads: “(A) For the period beginning with April of 2021 and ending with January of 2028, the Ohio air quality development authority shall, in April of 2021 and every three months thereafter through the end of the period, and not later than the twenty-first day of the month, direct the treasurer of state to remit money from the funds created under section 3706.49 of the Revised Code as follows: (1) Subject to sections 3706.59 and 3706.61 of the Revised Code, from the nuclear generation fund to the owner or operator of a qualifying nuclear resource, in the amount equivalent to the number of credits earned by the resource during the quarter that ended twelve months prior to the last day of the previous quarter multiplied by the credit price, and as directed by the authority in accordance with section 3706.61 of the Revised Code”.
88. Under existing Ohio law, no refund is available for recovered rates unless the tariff applicable to the rate sets forth a refund mechanism. *See In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶23, *construing* R.C. 4905.32.
89. The only refund mechanism available under H.B. 6 for the nuclear generation fund is limited to excess funds at the end of the repayment period, i.e., “any amounts remaining in the nuclear generation fund ... as of December 31, 2027.” R.C. 3706.55(B).

90. H.B. 6 does not afford a statutory/regulatory mechanism for refunding amounts distributed from the nuclear generation fund to Energy Harbor.
91. H.B. 6 does not afford a statutory/regulatory mechanism for refunding any funds in the nuclear generation fund prior to December 31, 2027.
92. However, H.B. 6, as codified at R.C. 3706.61, does afford a statutory mechanism for the AQDA to “cease or reduce payments for nuclear resource credits” under certain circumstances.
93. Specifically, and in relevant part, R.C. 3706.61(D) reads: “the Ohio air quality development authority ... may cease or reduce payments for nuclear resource credits under section 3706.55 of the Revised Code if the authority determines any of the following: ... (2) That either requirement under division (A) or (B)(2) of section 3706.43 of the Revised Code is no longer being met”.
94. Should this Court grant the Attorney General’s request to revoke the approval of Energy Harbor’s application under R.C. 3706.43, then R.C. 3706.61(D)(2) would be triggered, allowing AQDA to cease payments to Energy Harbor.
95. The ceasing of payments to Energy Harbor would then trigger R.C. 3706.61(E)(1), which reads: “If the authority determines it necessary to make reductions under division (D) of this section, the commission shall do all of the following, as necessary: (a) Reduce the revenue requirement under division (A)(1)(a) of section 3706.46 of the Revised Code; (b) Except when the authority has applied the credit price adjustment under division (D)(4) of this section, reduce the price of a nuclear resource credit under section 3706.45 of the Revised Code, in accordance with a reduced revenue requirement; (c) Reduce the charge or charges under section 3706.46 of the Revised Code, to conform with a reduced revenue requirement; (d) Adjust the percentages under section 3706.53 of the Revised Code in accordance with a reduced revenue requirement.”
96. Thus, the ceasing of payments to Energy Harbor would then trigger a process to stop the collection of the nuclear generation fee.

97. In the Primary Action, Plaintiff seeks relief against Energy Harbor, FirstEnergy, and the Enterprise for violating R.C. 2923.34.
98. Two defendants in the Primary Action, including Energy Harbor's lobbyist, pleaded guilty to a Federal RICO charge for conspiring to bribe Householder to enact H.B. 6 for the express purpose of bailing out Energy Harbor's antiquated, uncompetitive nuclear plants.
99. The guilty pleas also serve as admissions of the corrupt activity claims against those defendants in the Primary Action.
100. Under R.C. 2923.34(B), this court "may grant relief by entering any appropriate orders to ensure that the violation will not continue or be repeated."
101. Several forms of injunctive relief under R.C. 2923.34(B) are available only to the Attorney General, the plaintiff herein. For example, only the Attorney General may seek "the dissolution or reorganization of any enterprise;" "the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any department or agency of the state;" or "the dissolution of a corporation" See R.C. 2923.34(B)(3)-(5).
102. The Attorney General has special standing to bring claims under R.C. 2923.34 when "in the attorney general's opinion, the proceeding is of general public interest." R.C. 2923.34(C).
103. It is the opinion of the Attorney General that this proceeding and the Primary Action are of general public interest because, *inter alia*, this matter involves a bevy of multibillion-dollar corporations conspiring to use illegal means to install and bribe a corrupt Speaker of the Ohio House and enact H.B. 6 in order to fleece Ohioans of \$150 million per year.
104. "[T]he court may grant injunctive relief without a showing of special or irreparable injury" per R.C. 2923.34(D).

105. “[T]he court may issue a temporary restraining order or a preliminary injunction upon a showing of immediate danger or significant injury to the plaintiff, including the possibility that any judgment for money damages might be difficult to execute” per R.C. 2923.34(D).
106. Because of R.C. 4905.32, a judgment for money damages against Energy Harbor might be difficult to execute, particularly in a way that returns the funds to the ratepayers.
107. In the Primary Action, Plaintiff seeks, *inter alia*, the revocation of the prior approval given to Energy Harbor under R.C. 3706.43 of its application as an owner and/or operator of a qualifying nuclear resource under R.C. 3706.41.
108. The result of the revocation of the prior approval of the qualifying nuclear resource application will be to disqualify Energy Harbor from receiving qualifying nuclear resource credits and distributions from the nuclear generation fund.
109. Because no other entity owns a qualifying nuclear resource under the statute, or met the deadline for filing an application, the effect of revoking Energy Harbor’s application will be to dissolve the nuclear generation fund per R.C. 3706.61(F).
110. Permanently enjoining payments from the nuclear generation fund to Energy Harbor is necessary in order to “ensure that the violation will not continue.”
111. Preliminarily and permanently enjoining the collection of the H.B. 6 nuclear tariff is necessary to protect the ratepayers from being fleeced as a result of the corrupt activity Energy Harbor’s lobbyist has pleaded guilty to, and in which Energy Harbor participated, and which is designed to deliver over \$1,000,000,000 to Energy Harbor from the pockets of Ohioans.
112. Preliminarily and permanently enjoining the distribution of any funds deposited into the nuclear generation fund is necessary to protect the State of Ohio and all ratepayers

because the statutory scheme does not authorize a refund of funds distributed to Energy Harbor.

113. Because the Treasurer is the custodian of the nuclear generation fund, an injunction is needed ordering him to refuse to receive any funds into the nuclear generation fund from any retail electric customer or any electric distribution utility. An injunction is also needed ordering him not to distribute any funds to Energy Harbor to redeem any nuclear generation credits.
114. An injunction is needed against Energy Harbor enjoining it from seeking nuclear generation credits, taking any steps to apply for, receive, or facilitate its receipt or transfer of nuclear generation credits or remittances from the nuclear generation fund.
115. Because AQDA is the entity responsible for directing the State Treasurer to make distributions to Energy Harbor, an injunction is necessary against AQDA to prevent it from so directing the State Treasurer.
116. Because AQDA is the entity responsible for approving Energy Harbor's application, an injunction is necessary against AQDA requiring it to revoke its prior approval of the application, which was procured through criminal conduct.
117. Because AQDA has the statutory authority under R.C. 3706.61 to cease payments for nuclear resource credits to Energy Harbor, a mandatory injunction is necessary to compel it to do so. Further, AQDA should be required to notify PUCO that the payments have been ceased, so that PUCO may then take the steps that will be required of it under R.C. 3706.61(E).
118. This Court should also enter a mandatory injunction against Energy Harbor ordering it to rescind its application to qualify as an owner and/or operator of a qualifying nuclear resource.
119. The granting of any preliminary relief to Plaintiff will not irreparably harm Energy Harbor, because in the increasingly unlikely event that Energy Harbor were to prevail on

the merits, R.C. 3706(C) provides a mechanism for both the collection of the fee and the payments to Energy Harbor to extend beyond 2027 as needed to fully compensate Energy Harbor.

WHEREFORE, Plaintiff respectfully prays this court grant relief as follows:

- a. That judgment be entered against Energy Harbor in favor of Plaintiff;
- b. That this Court issue orders that the acts alleged herein be adjudged and decreed to be unlawful in violation of R.C. 2923.34 and that the Court enter a judgment declaring them to be so;
- c. That, pursuant to RC. 2923.34(B)(4) this court recognize that the Preliminary Action will likely result in an order revoking and nullifying the Ohio Air Quality Development Authority's approval of any application filed by any Defendant in this case to receive the proceeds of funds collected pursuant to the utility surcharge provided for in House Bill 6;
- d. Granting preliminary and permanent injunctive relief ordering Necessary Party / Nominal Defendant Ohio Air Quality Development Authority not to direct the Ohio Treasurer to make any disbursements from the nuclear generation fund to Energy Harbor;
- e. Granting preliminary and permanent injunctive relief ordering Necessary Party / Nominal Defendant Ohio Air Quality Development Authority to revoke its approval of Energy Harbor's application;
- f. Granting preliminary and permanent injunctive relief ordering Necessary Party / Nominal Defendant Ohio Air Quality Development Authority to determine that the requirements of R.C. 3706.43 are no longer being met and to cease directing the Treasurer to make payments to Energy Harbor;

- g. Granting preliminary and permanent injunctive relief ordering Necessary Party / Nominal Defendant Ohio Air Quality Development Authority to inform PUCO that payments to Energy Harbor have ceased;
- h. Granting preliminary and permanent injunctive relief ordering Necessary Party / Nominal Defendant Ohio Treasurer Robert Sprague to refuse to receive any funds into the nuclear generation fund from any retail electric customer or any electric distribution utility;
- i. Granting preliminary and permanent injunctive relief ordering Necessary Party / Nominal Defendant Ohio Treasurer Robert Sprague not to distribute any funds to Energy Harbor to redeem any nuclear generation credits;
- j. That the Energy Harbor Defendants be ordered to pay Plaintiff reasonable attorneys' fees and costs and expenses of litigation as provided by law; and,
- k. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

DATED: November 13, 2020

Respectfully submitted,

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