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IT IS SO ORDERED.

Dated: January 9, 2019



ALAN M. KOSCHIK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	Chapter 11
)	
FIRSTENERGY SOLUTIONS CORP., <i>et al.</i> , ¹)	Case No. 18-50757 (AMK)
)	(Jointly Administered)
Debtors.)	
)	
)	Hon. Judge Alan M. Koschik
)	

SCHEDULING ORDER REGARDING THE MOTION OF CREDITOR SCHWEBEL BAKING CO. FOR ENTRY OF AN ORDER APPLYING BANKRUPTCY RULE 7023 TO THE CLAIMS OF A CLASS OF DEBTOR FES’S CUSTOMERS ARISING FROM ITS “POLAR VORTEX SURCHARGES” [DOCKET NO. 1179]

On September 24, 2018, the Court held a telephonic status conference (the “Status Conference”) on the *Motion of Creditor Schwebel Baking Co. for Entry of an Order Applying Bankruptcy Rule 7023 to the Claims of a Class of Debtor FES’s Customers Arising from Its*

¹ The 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; FirstEnergy Generation, LLC (0561), case no. 18-50762; FirstEnergy Generation Mansfield Unit 1 Corp. (5914), case no. 18-50763; FirstEnergy Nuclear Generation, LLC (6394), case no. 18-50760; FirstEnergy Nuclear Operating Company (1483), case no. 18-50761; FirstEnergy Solutions Corp. (0186); and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors’ address is: 341 White Pond Dr., Akron, OH 44320.



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“*Polar Vortex Surcharge*” [Docket No. 1179] (the “Motion”), pursuant to which Schwebel Baking Co. (“Schwebel”) requests that the Bankruptcy Court enter an order applying Bankruptcy Rule 7023 and Federal Rule of Civil Procedure 23, pursuant to Bankruptcy Rule 9014, to certify a proposed putative class, allow Schwebel to file an unliquidated proof of claim on behalf of a putative class, and appoint Schwebel as the named representative of the putative class and Schwebel’s counsel as putative class counsel for all matters relating to the proposed proof of claim. Counsel for the above-captioned debtors and debtors in possession (the “Debtors”), Schwebel, and the Official Committee of Unsecured Creditors of FirstEnergy Solutions Corp., et al. (the “Committee”) appeared at the Status Conference.

On September 25, 2018, the Court entered the *Stipulation and Agreed Order by and among the Debtors, the Official Committee of Unsecured Creditors, and Schwebel Baking Co. Regarding the Motion of Creditor Schwebel Baking Co. for Entry of an Order Applying Bankruptcy Rule 7023 to the Claims of a Class of Debtor FES’s Customers arising from Its “Polar Vortex Surcharges”* [Docket No. 1451] (the “Stipulation”), which set forth, among other things, a period of 65 days for discovery (the “Discovery Period”), a briefing schedule, and dates for the final evidentiary hearing (the “Final Hearing”).

As discussed at the Status Conference and in paragraph 5 of the Stipulation, the parties agreed to negotiate a more detailed discovery schedule within the Discovery Period, and to seek a further order of the Bankruptcy Court with respect thereto.

Accordingly, on December 21, 2018, the parties jointly proposed a more detailed discovery schedule, and the Court finds it appropriate to set the following deadlines in advance of the Final Hearing.

IT IS HEREBY ORDERED THAT:

1. The Final Hearing on the Motion shall be held on **April 1 and 2, 2019 at 10:00 a.m.** **prevailing Eastern Time**, in Courtroom 260 of the John F. Seiberling Federal Building & U.S. Courthouse, 2 South Main Street, Akron, Ohio.
2. The parties have already exchanged **requests for the production of documents** (“Document Requests”), **interrogatories** (“Interrogatories”), **and/or requests for admissions** (“Requests for Admissions”), and together with Document Requests and Interrogatories, “Discovery Requests”), as well as responses thereto.
3. The parties have also made **productions of documents** responsive to the Document Requests. Documents exchanged in discovery and deposition testimony, if any, shall be subject to, and governed by, the terms of the Protective Order filed with the Court on September 10, 2018 [Docket No. 1322]. The parties shall confer regarding the use of any Confidential, Highly Confidential, or Attorneys’ Eyes Only information in public filings or at the Final Hearing.
4. The parties shall conduct **fact depositions** between **January 10, 2019 and February 8, 2019**. The parties shall **begin to serve deposition notices and deposition subpoenas** for fact depositions on **December 26, 2018**. Notwithstanding these deadlines, the parties shall be afforded an opportunity to depose any witnesses that submit declarations in connection with the Motion or any briefing set forth herein, following the service of such declarations.
5. Fact discovery shall close on **February 8, 2019**.
6. Rule 26 of the Federal Rules of Civil Procedure will apply to this matter. Pursuant to Rule 26(a)(2), **the parties must identify any testifying expert(s), if any, and serve**

expert report(s) on or before **February 11, 2019**, and **the parties must identify any testifying rebuttal expert(s), if any, and serve rebuttal expert report(s)** on or before **February 22, 2019**. All expert reports must satisfy the requirements of Rule 26(a)(2)(b), and are expressly subject to the protections in Rule 26(b)(4). Simultaneously with the service of any expert report, the party serving the report must produce copies of any documents or data that were relied on by the expert witness in forming his or her opinions.

7. The parties shall conduct **expert depositions** between **February 25, 2019 and March 1, 2019**.
8. The Court will hold a **status conference** on the Motion on **March 12, 2019 at 10:00 a.m. prevailing Eastern Time**. Parties wishing to appear by telephone may do so by registering with Court Solutions, a private vendor, at www.court-solutions.com.
9. The parties shall reach an agreement on and file with the Bankruptcy Court any **joint stipulated facts** on or before **March 5, 2019 at 5:00 p.m. prevailing Eastern Time**.
10. No later than **March 12, 2019 at 5:00 p.m. prevailing Eastern Time** the Debtors and/or the Committee will file any **responsive pleadings to the Motion**.
11. No later than **March 25, 2019 at 5:00 p.m. prevailing Eastern Time**, Schwebel shall file its **reply brief in further support of the Motion**.
12. No later than **March 25, 2019 at 5:00 p.m. prevailing Eastern Time**, the parties shall exchange with each other a list and electronic copies of all documents they intend to introduce into evidence at the Final Hearing. The parties shall **meet and confer** between **March 25 and 27, 2019** regarding any objections to such documents being admitted into evidence in an effort to resolve such objections prior to the evidentiary hearing.

13. Direct testimony for witnesses shall be by written witness declarations to be filed with the Bankruptcy Court simultaneously with the parties' respective briefs in accordance with paragraphs 10 and 11 of this Order. Any expert reports exchanged pursuant to paragraph 6 of this Order shall serve as each expert's direct testimony. Unless the parties agree otherwise, all witnesses shall be available for live cross examination at the Final Hearing.
14. No later than **March 28, 2019 at 5:00 p.m. prevailing Eastern Time**, the parties shall provide one (1) copy to the Clerk's Office and two (2) copies to Chambers of a set of **hearing exhibits**, in binders, tabbed, clearly identified, and noting any outstanding objections to any documents included therein.

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SUBMITTED BY:

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