



June 8, 2023

VIA eFILING

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Quantum Pleasants, LLC, ETEM Remediation Two LLC, Pleasants LLC and Energy Harbor LLC, Joint Application for Approval under Section 203 of the Federal Power Act and Request for Expedited Action, Docket No. EC23- -000

Dear Secretary Bose:

Enclosed for filing please find the application (the “Application”) pursuant to Section 203 of the Federal Power Act (the “FPA”)¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (the “Commission”)² of Quantum Pleasants, LLC (“Buyer”), ETEM Remediation Two LLC (“ER2”), Pleasants LLC (“Pleasants”) and Energy Harbor LLC (“Energy Harbor” and collectively with Buyer, ER2 and Pleasants, “Applicants”). Applicants request all FPA Section 203 approvals deemed to be required in connection with a transaction (the “Transaction”) whereby (1) Buyer will acquire all of the membership interests of ER2; (2) a lease that transfers control over the Pleasants Power Station and associated generator interconnection facilities from ER2 to Pleasants will be terminated and control will revert to ER2, the lessor; and (3) Energy Harbor will transfer the rate schedule setting forth the revenue requirement for reactive supply and voltage supply from the Pleasants Power Station to ER2. Upon closing of the transaction, Buyer intends to bring the Pleasants Power Station out of its current mothballed state and commence work to build a hydrogen production facility and to convert the Pleasants Power Station’s coal-fired boilers to hydrogen.

Applicants respectfully request that the Commission issue an order approving the Transaction *on or before July 24, 2023*. Approval by this date is essential to the consummation of the Transaction by the end of July, which will facilitate the conversion of the Pleasants Power Station to operate on clean-burning hydrogen and to return from mothball status on August 1, 2023.

¹ 16 U.S.C. § 824b (2018).

² 18 C.F.R. Pt. 33 (2022).

Applicants request confidential treatment of Exhibit I to the Application in accordance with Sections 33.8 and 388.112 of the Commission’s regulations.³ Exhibit I contains an executed term sheet (the “Term Sheet”). The Term Sheet contains highly sensitive and confidential commercial and financial information, and public disclosure of this information could hamper the parties’ negotiating positions in future transactions. The information for which confidential treatment is requested is not generally available to the public and is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (“FOIA”).⁴ In accordance with Section 388.112(b)(2)(i) of the Commission’s regulations,⁵ Applicants have provided, in Attachment 1 to the Application, a proposed protective order pursuant to which other parties will have access to the non-public materials. The proposed protective order is a modified version of the Commission’s Model Protective Order incorporating provisions, consistent with those in protective orders employed in other Commission proceedings,⁶ which provide additional protection for “Highly Sensitive Protective Materials.”⁷ Notwithstanding the proposed protective order, the non-public materials should be treated as privileged materials reviewable by Commission Staff. The non-public materials are marked “**CONTAINS PRIVILEGED INFORMATION**” and “**DO NOT RELEASE.**” In addition, in accordance with the Commission’s notice on labelling of non-public information,⁸ each page of the non-public version of this filing is marked “**CUI//PRIV.**”

The definitive transaction documents have not yet been finalized or executed. As required by the Commission’s Order No. 642,⁹ the undersigned counsel certifies that, to the best of his knowledge, the

³ 18 C.F.R. §§ 33.8, 388.112 (2022).

⁴ 5 U.S.C. § 552 (2018). *See also Food Mktg. Inst. v. Argus Leader Media*, 139 S.Ct. 2356, 2364-66 (2019) (rejecting the “substantial competitive harm” requirement articulated in *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), and stating that, “where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’” and thus exempt from disclosure under FOIA).

⁵ 18 C.F.R. § 388.112(b)(2)(i) (2022).

⁶ *See, e.g., Astoria Generating Co., L.P. v. New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,155 (2011).

⁷ Specifically, Applicants have modified the Model Protective Order by (1) adding a new subparagraph (ii) to paragraph 3.E in order to specify which Reviewing Representatives may have access to Highly Sensitive Privileged Materials; (2) amending paragraph 3 to include defined terms “Competitive Duties” (new paragraph 3.F) and “Competitive Duty Personnel” (new paragraph 3.G); and (3) attaching a separate “Non-Disclosure Certificate for Competitive Duty Personnel” and expanding the definition of “Non-Disclosure Certificate” in Section 3.D accordingly. The only other changes to the Model Protective Order are non-substantive.

⁸ *See* Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff (June 14, 2018) (unreported).

⁹ *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, 93 FERC ¶ 61,164, FERC Stats. & Regs. ¶ 31,111 at 31,876-77 (2000), *on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (codified at 18 C.F.R. Pt. 33).

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key terms of the final transaction documents will not deviate from those set forth in the Term Sheet in any respect material to the Commission's analysis under Section 203 of the FPA.¹⁰

Thank you for your consideration of this matter. Please do not hesitate to contact the undersigned counsel with any questions.

Very truly yours,

/s/ David G. Tewksbury

David G. Tewksbury

Counsel for **Quantum Pleasants, LLC**

Enclosures

cc: Amery Poré (Commission Staff)

¹⁰ 16 U.S.C. § 824b (2018).

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Quantum Pleasants, LLC)
ETEM Remediation Two LLC)
Pleasants LLC)
Energy Harbor LLC)

Docket No. EC23-____-000

**JOINT APPLICATION FOR APPROVAL UNDER SECTION 203 OF
THE FEDERAL POWER ACT AND REQUEST FOR EXPEDITED APPROVAL**

Pursuant to Section 203 of the Federal Power Act (“FPA”)¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (the “Commission”),² Quantum Pleasants, LLC (“Buyer”), ETEM Remediation Two LLC (“ER2”), Pleasants LLC (“Pleasants”) and Energy Harbor LLC (“Energy Harbor” and collectively with Buyer, ER2 and Pleasants, “Applicants”) hereby submit this application (this “Application”) requesting such FPA Section 203 approvals as may be deemed to be required for a transaction (the “Transaction”) whereby (1) Buyer will acquire all of the membership interests of ER2 (the owner of the Pleasants Power Station); (2) a lease (the “Pleasants Lease”) that transfers control over the Pleasants Power Station and associated generator interconnection facilities from ER2 to Pleasants will be terminated and control will revert to ER2;³ and (3) Energy Harbor will transfer the rate schedule setting forth the revenue requirement for

¹ 16 U.S.C. § 824b (2018).

² 18 C.F.R. Pt. 33 (2022).

³ The Commission previously authorized a transaction whereby the Pleasants Power Station was sold by Pleasants to ER2 and leased back by ER2 to Pleasants for a short period of time before the planned deactivation of the facility. *Energy Harbor Generation LLC*, 181 FERC ¶ 62,173 (2022). The sale of the Pleasants Facility to ER2 was consummated on December 14, 2022. *See* Notice of Consummation, Docket No. EC23-5-000 (filed Dec. 30, 2022). Accordingly, Applicants include the transfer of Pleasants Power Station and associated generator interconnection facilities from Pleasants (the lessee) to ER2 (the lessor) at the termination of the lease out of an abundance of caution and ask the Commission to address that step in the Transaction without making a finding as to its jurisdictional nature under FPA Section 203. *See Ocean State Power*, 47 FERC ¶ 61,321 (1989).

reactive supply and voltage supply from the Pleasants Power Station (the “Reactive Rate Schedule”) to ER2.⁴ As demonstrated herein, the Transaction satisfies the requirements of Section 203 of the FPA and the Commission’s Part 33 regulations, because it is consistent with the public interest and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.⁵

Applicants respectfully request that the Commission issue an order approving this Application *on or before July 24, 2023* (46 days from filing), and request expedited action and a comment period of 21 days in order to facilitate approval by that date. Buyer is entering into the Transaction in order to use the existing plant infrastructure and the plant’s valuable workforce to facilitate conversion of the coal-fired boilers to clean-burning hydrogen to be produced at the site. The Pleasants Power Station is currently mothballed and was scheduled to be permanently deactivated, but this baseload resource is expected to return to service on August 1, 2023 if the Transaction is consummated. The term sheet among the parties (the “Term Sheet”) provides that the purchase agreement relating to the Transaction will be terminable if the Transaction is not consummated by July 31, 2023. Failure to obtain FPA Section 203 approval in time for a July 31, 2023 closing will, therefore, jeopardize Buyer’s ability to move forward with its innovative plan. Pursuant to Sections 33.11(b) and (c) of the Commission’s regulations,⁶ expedited consideration

⁴ Specifically, Applicants seek Commission approval under Sections 203(a)(1)(A) and 203(a)(1)(B), 16 U.S.C. §§ 824b(a)(1)(A), 824b(a)(1)(B) (2018), for the transfer of control over Commission-jurisdictional interconnection facilities associated with the Pleasants Power Station from Pleasants to ER2 and the transfer of the Reactive Rate Schedule from Energy Harbor to ER2 and under Section 203(a)(1)(D), 16 U.S.C. §§ 824b(a)(1)(D) (2018), for any deemed acquisition by ER2 of the Pleasants Power Station. The Transaction should not require approval under Section 203(a)(2) of the FPA, 16 U.S.C. § 824b(a)(2) (2018), because, among other things, Buyer is not currently a holding company. *See FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at n.48 (2007) (the “*Supplemental Policy Statement*”).

⁵ *See* 18 C.F.R. § 2.26 (2022).

⁶ 18 C.F.R. §§ 33.11(b), (c) (2022).

is appropriate provided this Application is not contested,⁷ because it is consistent with Commission precedent and does not require an analysis under Appendix A of the *Merger Policy Statement*.⁸ A 21-day comment period is likewise consistent with Commission policy, because this Application does not require an Appendix A analysis and does not present cross-subsidization concerns.⁹

I. BACKGROUND

A. Description of Applicants and Other Relevant Entities

1. Pleasants and Energy Harbor

Each of Pleasants and Energy Harbor is a direct or indirect wholly owned subsidiary of Energy Harbor Corp.¹⁰ Funds affiliated with Nuveen Asset Management LLC (“Nuveen Asset Management”) own more than 10 percent of the outstanding common stock of Energy Harbor Corp. and Avenue Capital Management II, L.P. (“Avenue”), a fund affiliated with Avenue Capital Group, also owns more than 10 percent of the outstanding common stock of Energy Harbor Corp. No other entity owns, controls, or holds with power to vote 10 percent or more of the outstanding voting equity of Energy Harbor Corp.

⁷ Applicants do not expect that this Application will be contested.

⁸ *Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 77 FERC ¶ 61,263, FERC Stats. & Regs. ¶ 31,044 (1996) (the “*Merger Policy Statement*”), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

⁹ *See Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 at P 194 (2005), *on reh’g*, Order No. 669-A, 115 FERC ¶ 61,097, *on reh’g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

¹⁰ Under a proposed transaction, a newly formed subsidiary of Vistra Corp. (“Vistra Vision”) will acquire all of the voting interests of Energy Harbor Corp. *See* Application for Authorization of Transaction Under Section 203 of the Federal Power Act and Requests for Confidential Treatment and Waivers of Certain Filing Requirements, Docket No. EC23-74-000 (filed Apr. 17, 2023). As indicated in the pending FPA Section 203 application relating to that transaction, the Pleasants Power Station will not be owned, leased or operated by Pleasants as of closing that transaction, and the Pleasants Power Station will not be owned, leased or affiliated by, or affiliated with, Vistra Vision. *See id.* at 7. In addition, the Vistra Vision purchase of Energy Harbor will occur after the Transaction.

Pleasants is an exempt wholesale generator (“EWG”) that leases and operates the Pleasants Power Station, an approximately 1,278 MW (summer rating) coal-fired generation facility in Pleasants County, West Virginia, within the PJM Interconnection, L.L.C. (“PJM”) market.¹¹ Pleasants currently leases and controls the Pleasants Power Station pursuant to the Pleasants Lease, into which Pleasants and ER2 entered as part of a sale/leaseback arrangement.¹² Pleasants previously announced its intention to permanently deactivate the Pleasants Power Station and mothballed the facility on June 1, 2024. The Pleasants Lease is to be terminated as part of the Transaction.

Energy Harbor is a market-regulated public utility that, including through its affiliates, develops, owns, and operates electric generating facilities and markets power in competitive wholesale and retail markets. Energy Harbor has market-based rate authorization and is not a franchised public utility with captive customers.¹³ Energy Harbor currently holds the Reactive Rate Schedule, a rate schedule on file with the Commission that sets forth the revenue requirement for reactive supply and voltage support provided by the Pleasants Power Station pursuant to Schedule 2 to the PJM Open Access Transmission Tariff (the “PJM Tariff”).¹⁴

¹¹ See Notice of Self-Certification of Exempt Wholesale Generator Status of Pleasants LLC, Docket No. EG20-70-000 (filed Jan. 27, 2020); *Wilderness Line Holdings, LLC*, Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status, Docket Nos. EG20-61-000, *et al.* (Apr. 2, 2020) (unreported); *Pleasants LLC*, Docket No. ER20-879-000 (Mar. 20, 2020) (unreported) (granting market-based rate authority).

¹² Pleasants is the former owner of the Pleasants Power Station and sold the facility to ER2. That transaction included a short-term sale/leaseback arrangement. See *supra* note 3.

¹³ See *FirstEnergy Servs., Inc.*, 94 FERC ¶ 61,052 (2001); *FirstEnergy Solutions Corp.*, Docket Nos. ER01- 2968-001, *et al.* (Oct. 24, 2001) (unreported) (accepting notice of succession and tariff revisions to implement name change); *Energy Harbor LLC*, Docket Nos. ER20-1436-000, *et al.* (May 21, 2020) (unreported) (accepting most recent tariff revisions and notice of succession to implement name change).

¹⁴ The Reactive Rate Schedule is designated as Energy Harbor’s Rate Schedule FERC No. 2, and the currently effective version of the rate schedule was accepted in *Energy Harbor LLC*, Docket No. ER20-1435-000 (May 21, 2020) (unreported).

2. ER2

ER2 currently owns, but does not control or operate, the Pleasants Power Station. It currently leases the Pleasants Power Station to Pleasants pursuant to the Pleasants Lease. The Pleasants Lease transfers control over the Pleasants Power Station and associated generator interconnection facilities from ER2 to Pleasants, and, as a purely passive owner-lessor, ER2 is not currently a “public utility” under Section 201(e) of the FPA.¹⁵ In connection with the planned termination of the Pleasants Lease as part of the Transaction, ER2 is filing an application for market-based rate authorization and a self-certification of EWG status. ER2 will be a “public utility” under Section 201(e) of the FPA¹⁶ upon the effectiveness of its proposed market-based rate tariff.

All of the membership interests of ER2 are currently owned by Energy Transition and Environmental Management LLC (“ETEM”). ETEM specializes in acquiring and retiring fossil-fired generating facilities and completing associated environmental remediation activities. ETEM’s membership interests are owned by: (1) ETEM, LLC (50 percent) and (2) HSE ETEM Holdco, LLC (50 percent).

The membership interests of ETEM, LLC are owned by two individuals, Daniel McDevitt and Matthew Blake.

HSE ETEM Holdco LLC is wholly and indirectly owned by affiliates of Hull Street Energy, LLC (“HSE”). HSE is a private equity firm headquartered in Bethesda, Maryland, that is primarily involved in the development and acquisition of, and investment in, energy infrastructure

¹⁵ 16 U.S.C. § 824(e) (2018).

¹⁶ 16 U.S.C. § 824(e) (2018).

assets, and related ownership, operation, and management of these assets, including electric generation. HSE is controlled by Sarah Wright, an individual.

3. Buyer and Relevant Affiliates

All of the membership interests of Buyer are owned by Omnis Fuel Technologies, LLC (“Omnis Fuel”), all of whose voting securities are owned by Omnis Global Technologies, LLC (“Omnis Global”).¹⁷ All of the membership interests of Omnis Global are owned by Hodson Investment, LLC, all of whose voting securities are owned by Simon Hodson, an individual, and his wife, Peggy Hodson.¹⁸

Omnis Global and its affiliates specialize in developing, licensing, and commercializing innovative technologies to aid in the areas of clean and sustainable energy, affordable housing, organic farming, and biodegradable plastics. The technologies deployed by Omnis Global and its affiliates have been used in the construction of One World Trade Center, to further the clean corporate clean coal initiatives, and to revitalize farmland in the United States and China. These technologies have also been used to develop biodegradable containers.

¹⁷ Omnis Fuel currently has passive owners possessing only limited consent rights consistent the rights of the passive investors in *AES Creative Resource, L.P.*, 129 FERC ¶ 61,239 (2009), and its progeny and that do not have any rights to appoint non-independent directors to its board. It is possible that additional third-party investors, not affiliated with Omnis Global, will acquire interests in Quantum Pleasants or Omnis Fuel prior to the consummation of the Transaction. None of those investors will acquire interests such that it, collectively with its affiliates, would own, control or hold with power to vote 10 percent or more of Quantum Pleasants’ or Omnis Fuel’s voting securities, and none of those investors would have the right to appoint non-independent directors to either entity’s board. Moreover, none of these investors or its affiliates will (1) own or control electric generation, transmission or distribution facilities in the United States, (2) own or control “inputs to electric power production,” as defined in Section 35.36(a)(4) of the Commission’s regulations, 18 C.F.R. § 35.36(a)(4) (2022), or other “inputs to electricity power production,” as that term is used in Section 33.4(a)(1) of the Commission’s regulations, 18 C.F.R. § 33.4(a)(1) (2022), in the United States, or (3) be a franchised public utility in the United States.

¹⁸ Other members of Mr. and Mrs. Hodson’s immediate family own passive, non-voting interests.

None of Buyer or its affiliates (1) owns or controls electric generation, transmission or distribution facilities in the United States, (2) owns or controls “inputs to electric power production,” as defined in Section 35.36(a)(4) of the Commission’s regulations,¹⁹ or other “inputs to electricity power production,” as that term is used in Section 33.4(a)(1) of the Commission’s regulations,²⁰ in the United States, or (3) is a franchised public utility in the United States. Mr. Hodson does not currently hold any officer or director positions in the energy industry as it pertains to any of the foregoing.

B. The Transaction

The principal terms of the Transaction are set forth in the Term Sheet, a copy of which is provided, on a non-public basis, in Exhibit I hereto. As relevant here, the Term Sheet contemplates that Buyer (as Omnis Fuel’s designee) will acquire all of the membership interests of ER2, and the Pleasants Lease will be terminated and control over the Pleasants Power Station and associated generator interconnection facilities will revert to ER2. As part of the Transaction, Energy Harbor will also transfer the Reactive Rate Schedule to ER2. Upon the consummation of the Transaction, ER2 will own, control and operate the Pleasants Power Station and will hold the Reactive Rate Schedule.²¹

II. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Section 203(a)(4) of the FPA provides that the Commission “shall approve” a proposed transaction “if it finds that the proposed transaction will be consistent with the public interest, and will not result in the cross-subsidization of a non-utility associate company or the pledge or

¹⁹ 18 C.F.R. § 35.36(a)(4) (2022).

²⁰ 18 C.F.R. § 33.4(a)(1) (2022).

²¹ Following the consummation of the Transaction, ER2 will file a notice of succession for the Reactive Rate Schedule.

encumbrance of utility assets for the benefit of an associate company. . . .”²² In determining whether a proposed transaction is in the public interest, the Commission considers whether it will have an adverse impact on (1) competition, (2) rates, or (3) regulation.²³ The Transaction satisfies the requirements of FPA Section 203, because it will not have an adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of any associate company.

A. The Transaction Will Not Have an Adverse Effect on Competition

1. The Transaction Presents No Horizontal Market Power Concerns

The Transaction presents no horizontal market power concerns. Under Section 33.3(a)(2) of the Commission’s regulations,²⁴ Section 203 applicants are not required to submit a horizontal market power analysis performed in accordance with Appendix A to the Commission’s *Merger Policy Statement* where the combining “entities do not currently conduct business in the same geographic markets or . . . the extent of the business transactions in the same geographic markets is *de minimis*”²⁵ The only potentially relevant geographic market is the PJM market, where the Pleasants Power Station is located. There is no overlap in this market, because Buyer and its affiliates do not currently own or control any generation facilities in the PJM market. Accordingly,

²² 16 U.S.C. § 824b(a)(4) (2018).

²³ See generally *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, 93 FERC ¶ 61,164 (2000) (“Order No. 642”), *on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

²⁴ 18 C.F.R. § 33.3(a)(2) (2022).

²⁵ 18 C.F.R. § 33.3(a)(2)(i) (2022). See also Order No. 642, 93 FERC ¶ 61,164, FERC Stats. & Regs. ¶ 31,111 at 31,902 (stating that an Appendix A analysis will not be required if “the applicant demonstrates that the merging entities do not currently operate in the same geographic markets”).

the Transaction presents no horizontal market power concerns, and no Appendix A analysis is required.²⁶

2. The Transaction Presents No Vertical Market Power Concerns

The Transaction does not raise any vertical market power concerns. The Transaction does not involve any electric transmission facilities, other than interests in limited facilities used solely to interconnect the Pleasants Power Station with the transmission grid, or any other upstream inputs to electricity products. Similarly, Buyer and its affiliates do not own or control any electric transmission facilities in or into the PJM market or any other upstream inputs to electricity products in the PJM market. Accordingly, the Transaction presents no vertical market power concerns, and no vertical market power analysis is required.²⁷

B. The Transaction Will Not Have an Adverse Effect on Rates

The Transaction will not adversely affect rates. In assessing the effect of a proposed transaction on rates, the Commission's primary concern is "the protection of wholesale ratepayers and transmission customers,"²⁸ and, in particular, "whether the transaction could result in an adverse effect on rates to wholesale requirements or transmission customers."²⁹ None of Buyer or Buyer's affiliates provides third-party jurisdictional transmission service or has any captive wholesale requirements customers in the United States. All wholesale sales of electric energy, capacity, and ancillary services of the output of the Pleasants Power Station are made at market-

²⁶ See 18 C.F.R. § 33.3(a)(2) (2022).

²⁷ See 18 C.F.R. § 33.4(a)(2) (2022).

²⁸ *New England Power Co.*, 82 FERC ¶ 61,179 at 61,659, *on reh'g*, 83 FERC ¶ 61,275 (1998). See also *Merger Policy Statement*, 77 FERC ¶ 61,263, FERC Stats. & Regs. ¶ 31,044 at 30,123 (noting that the Commission's concern is to protect ratepayers from rate increases because of a merger).

²⁹ *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 at P 5 (2016).

based rates or at cost-based rates pursuant to Schedule 2 to the PJM Tariff based on the revenue requirement set forth in the Reactive Rate Schedule, and that will continue to be the case following the consummation of the Transaction.³⁰ The Commission has found that the need to provide rate protection does not extend to market-based rate customers, who freely engage in power sales at rates negotiated in competitive generation markets,³¹ and has similarly recognized that reactive rate schedules, such as the Reactive Rate Schedule, and Schedule 2 to the PJM Tariff provide no opportunity for the pass-through of transaction-related costs without Commission authorization under Section 205 of the FPA.³² Accordingly, the Transaction will not have any adverse effect on wholesale rates.

C. The Transaction Will Not Impair the Effectiveness of Regulation

The Transaction will not have an adverse effect on the effectiveness of federal or state regulation. Wholesale sales of the output of the Pleasants Power Station will continue to be subject to the Commission’s ratemaking jurisdiction, just as they are today. Similarly, the Transaction will not affect the ability of any state authority to regulate retail rates.

³⁰ The only difference is that market-based rate sales will be made under ER2’s market-based rate tariff, rather than Pleasants’ market-based rate tariff.

³¹ See, e.g., *NorAm Energy Servs., Inc.*, 80 FERC ¶ 61,120 at 61,382-83 (1997).

³² See *Calpine Corp.*, 162 FERC ¶ 61,148 at P 32 (2018) (finding that rate schedules of this kind and Schedule 2 to the PJM Tariff “provide no mechanism through which [transaction-related] costs . . . could be passed through to customers without a separate filing under FPA section 205”). See also, e.g., *Panda Stonewall LLC*, 177 FERC ¶ 61,048 at P 29 (2021) (holding that “reactive rate schedules . . . have stated rates that provide no opportunity for the pass-through of transaction-related costs”); *Exelon Generation Co., LLC*, 176 FERC ¶ 61,121 at P 31 (2021) (stating that “reactive power tariffs do not contain any mechanism that would allow for the pass-through of transaction-related costs”); *Energy Ctr. Dover LLC*, 170 FERC ¶ 61,174 at P 36 (2020) (same); *Bayou Cove Peaking Power, LLC*, 165 FERC ¶ 61,226 at P 105 (2018) (same).

D. The Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets as to Any Associate Company

Pursuant to Section 203(a)(4) of the FPA³³ and Section 2.26(f) of the Commission’s regulations,³⁴ the Commission evaluates whether a proposed transaction will result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Commission has recognized three classes of transactions that are unlikely to present cross-subsidization concerns and, accordingly, has adopted three “‘safe harbors’ for meeting the Section 203 cross-subsidization demonstration, absent concerns identified by the Commission or evidence from interveners that there is a cross-subsidy problem based on the particular circumstances presented.”³⁵ The Transaction falls squarely within the safe harbors for transactions that do not involve a franchised public utility with captive customers³⁶ and for “transactions involving only non-affiliates.”³⁷ The Commission has recognized that such transactions are “not likely to result in inappropriate cross-subsidization”³⁸

III. INFORMATION REQUIRED BY THE COMMISSION’S REGULATIONS

In support of this Application, the following information is provided as required by Section 33.2 of the Commission’s regulations.³⁹ Applicants respectfully request that the

³³ 16 U.S.C. § 824b(a)(4) (2018).

³⁴ 18 C.F.R. § 2.26(f) (2022).

³⁵ *See Supplemental Policy Statement*, 120 FERC ¶ 61,060 at P 16.

³⁶ *See id.* at P 17.

³⁷ *Id.* at P 19.

³⁸ *Id.* at P 15.

³⁹ 18 C.F.R. § 33.2 (2022).

Commission grant certain waivers of these requirements consistent with those granted under similar circumstances.⁴⁰

A. Section 33.2(a) – The Exact Name of Applicants and Their Principal Business Addresses

Buyer’s exact legal name and the address of its principal business office are:

Quantum Pleasants, LLC
130 S. Patterson Avenue, #878
Santa Barbara, CA 93111

ER2’s exact legal name and the address of its principal business office are:

ETEM Remediation Two LLC
440 Louisiana Street, Suite 900
Houston, TX 77002

Pleasants’ and Energy Harbor’s exact legal names are: Pleasants LLC and Energy Harbor LLC. The address of their principal business office is:

168 E Market Street
Akron, Ohio 44308

B. Section 33.2(b) – Names and Addresses of Persons Authorized to Receive Notices and Communications Regarding the Application

Applicants request that the names of the following persons be placed on the official service list compiled by the Secretary in this proceeding:

⁴⁰ See, e.g., *FirstEnergy Solutions*, 170 FERC ¶ 61,096 at n.111 (granting waivers of various informational requirements because applicants had provided information sufficient “for the Commission to conduct its public interest analysis”); *Empire Generating Co, LLC*, 169 FERC ¶ 61,043 at P 40 & nn.55, 56 (2019) (rejecting objections to applicants’ request to waive the requirements to file certain information); *Northeast Generation Co.*, 117 FERC ¶ 61,068 at P 17 (2006) (same).

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1. Exhibit A – Description of Applicants’ Business Activities

A description of Applicants’ business activities is provided above in Section I.A. Applicants respectfully request waiver of Section 33.2(c)(1) of the Commission’s regulations⁴¹ to the extent it would require the submission of additional information in Exhibit A.

⁴¹ 18 C.F.R. § 33.2(c)(1) (2022).

2. Exhibit B – List of Energy Subsidiaries and Affiliates

The Transaction will affect only Applicants and those other entities described above in Section I.A. Applicants respectfully request waiver of Section 33.2(c)(2) of the Commission’s regulations⁴² to the extent it would require the submission of additional information regarding Applicants’ energy affiliates in Exhibit B.⁴³ Applicants note that the existing affiliates of ER2, Pleasants and Energy Harbor will no longer be affiliated with ER2 or the ownership of the Pleasants Power Station following the Transaction.

3. Exhibit C – Organizational Charts

Organizational charts depicting the pre- and post-Transaction ownership of ER2 are provided in Exhibit C. Applicants respectfully request partial waiver of Section 33.2(c)(3) of the Commission’s regulations⁴⁴ to the extent necessary to permit Applicants to include on the organizational charts only Applicants and those parent companies, energy subsidiaries, and energy affiliates that are relevant to the Transaction and the pre- and post-Transaction ownership of ER2. In particular, Applicants request partial waiver to the extent necessary to permit them to exclude intermediate holding companies, service companies, and similar subsidiaries and affiliates not involved in, or relevant to, the Transaction.

4. Exhibit D – Description of Joint Ventures, Strategic Alliances, Tolling Arrangements or Other Business Arrangements

The Transaction will have no other effect on any joint ventures, strategic alliances, tolling arrangements, or other business arrangements of Applicants separate from the Transaction.

⁴² 18 C.F.R. § 33.2(c)(2) (2022).

⁴³ See, e.g., *Sunoco Power Generation LLC*, 138 FERC ¶ 62,255 (2012); *Cottonwood Energy Co. LP*, 118 FERC ¶ 62,151 (2007); *National Power of Am., Inc.*, 109 FERC ¶ 62,214 (2004).

⁴⁴ 18 C.F.R. § 33.2(c)(3) (2022).

Applicants, therefore, request waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations⁴⁵ to file Exhibit D.⁴⁶

5. Exhibit E – Identity of Common Officers

There are currently no common officers or directors shared between Buyer, on the one hand, and ER2, Pleasants or Energy Harbor, on the other hand. Following the consummation of the Transaction, there may be common officers or directors shared between Buyer and ER2, as one would expect given that the latter will be a wholly owned subsidiary of the former. There will continue to be no common officers or directors shared between Buyer, on the one hand, and Pleasants or Energy Harbor, on the other hand. Applicants respectfully request waiver of the requirement of Section 33.2(c)(5) of the Commission's regulations⁴⁷ to the extent it would require the submission of additional information in Exhibit E.

6. Exhibit F – Wholesale Power Sales and Transmission Customers

Applicants respectfully request waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations⁴⁸ to submit Exhibit F. As discussed above, the Transaction will not have any detrimental impact on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

⁴⁵ 18 C.F.R. § 33.2(c)(4) (2022).

⁴⁶ See, e.g., *FirstEnergy Solutions*, 170 FERC ¶ 61,096 at P 83 (granting waiver of the requirement to file Exhibit D on the grounds that applicants had provided information sufficient “for the Commission to analyze the Proposed Transaction’s effect on competition, rates, regulation and cross-subsidization”).

⁴⁷ 18 C.F.R. § 33.2(c)(5) (2022).

⁴⁸ 18 C.F.R. § 33.2(c)(6) (2022).

C. Section 33.2(d) – Description of Jurisdictional Facilities

The only jurisdictional facilities involved in the Transaction are: (1) ER2’s proposed market-based rate tariff, (2) contracts and books and records under ER2’s proposed market-based rate tariff, (3) the Reactive Rate Schedule, and (4) the limited transmission facilities used to interconnect the Pleasants Generating Station with the transmission grid. Applicants respectfully request waiver of Section 33.2(d) of the Commission’s regulations⁴⁹ to the extent it would require submission of additional information in Exhibit G.

D. Section 33.2(e) – Description of the Transaction

A description of the Transaction has been provided above in Section I.B. Applicants request waiver of Section 33.2(e)(2) of the Commission’s regulations⁵⁰ to the extent it would require submission of additional information in Exhibit H.

E. Section 33.2(f) – All Contracts Related to the Transaction

A copy of the Term Sheet is provided, on a non-public basis, in Exhibit I. Applicants request waiver of the requirements of Section 33.2(f) of the Commission’s regulations⁵¹ to the extent that it would require the filing of the definitive agreement relating to the Transaction⁵² or of other contracts and written instruments that may be entered into by the parties, none of which will be inconsistent with the Term Sheet or the description of the Transaction set forth in this Application.

⁴⁹ 18 C.F.R. § 33.2(d) (2022).

⁵⁰ 18 C.F.R. § 33.2(e)(2) (2022).

⁵¹ 18 C.F.R. § 33.2(f) (2022).

⁵² Buyer’s counsel has provided the representation required by Order No. 642 in the transmittal letter to this Application.

F. Section 33.2(g) – Facts Relied Upon to Show That the Transaction Is Consistent with the Public Interest

The facts upon which Applicants rely to show that the Transaction is consistent with the public interest are set forth above in Section II. Because such information is provided in the body of this Application, Applicants request waiver of the requirement of Section 33.2(g) of the Commission’s regulations⁵³ to provide such information in Exhibit J. In the unlikely event that any material changes occur after the date this filing is made with the Commission, but before final Commission action, Applicants will supplement this Application promptly to reflect such changes in their analysis.

G. Section 33.2(h) – Map of Physical Property

Applicants respectfully request waiver of the requirement of Section 33.2(h) of the Commission’s regulations⁵⁴ to provide maps identifying the physical property owned by Applicants in Exhibit K, because the Transaction does not involve any combination of utilities with franchised service territories.

H. Section 33.2(i) – Licenses, Orders, or Other Approvals Required from Other Regulatory Bodies in Connection with the Proposed Transaction and the Status of Other Regulatory Actions

Applicants identify all licenses, orders, and other approvals from other regulatory bodies required in connection with the Transaction in Exhibit L. In accordance with Section 33.2(i) of the Commission’s regulations,⁵⁵ Applicants will supplement this Application with copies of any orders of such regulatory bodies pertaining to the Transaction that may be issued while this Application is pending.

⁵³ 18 C.F.R. § 33.2(g) (2022).

⁵⁴ 18 C.F.R. § 33.2(h) (2022).

⁵⁵ 18 C.F.R. § 33.2(i) (2022).

I. Section 33.2(j) – Explanation that the Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets as to Any Associate Company

Applicants provide the required verification in Exhibit M.

IV. PROPOSED ACCOUNTING ENTRIES

Applicants have not included proposed accounting entries showing the effect of the Transaction, because they are not required to maintain their books and records in accordance with the Commission's Uniform System of Accounts.

V. VERIFICATION

Pursuant to Section 33.7 of the Commission's regulations,⁵⁶ signed verifications of Applicants' authorized representatives are provided in Attachment 2 hereto.

⁵⁶ 18 C.F.R. § 33.7 (2022).

VI. CONCLUSION

For the reasons set forth in this Application, Applicants respectfully request that the Commission issue an order on or before July 24, 2023, granting all FPA Section 203 approvals required in connection with the Transaction.

Respectfully submitted,

QUANTUM PLEASANTS, LLC

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PLEASANTS LLC ENERGY HARBOR LLC

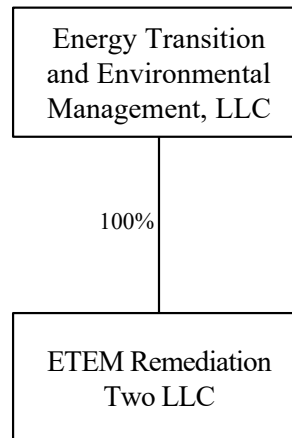
By: /s/ J. Daniel Skees
J. Daniel Skees
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Washington, DC 20004

Counsel for **Pleasants LLC and
Energy Harbor LLC**

Dated: June 8, 2023

Exhibit C
Organizational Charts

Pre-Transaction Organizational Chart



Post-Transaction Organizational Chart

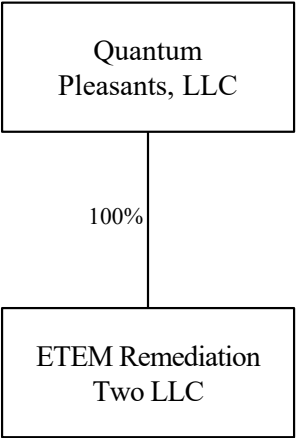


Exhibit I

Agreement Related to the Proposed Transaction

PUBLIC VERSION

PRIVILEGED INFORMATION
HAS BEEN REMOVED

Exhibit L

Other Regulatory Approvals

Applicants will be filing with the Federal Communications Commission concerning the transfer of certain wireless communication licenses. Pleasants will also be making a notice filing with the Public Service Commission of West Virginia in connection with the Transaction.

Exhibit M

Cross-Subsidization and Encumbrance of Utility Assets

Based on the facts and circumstances known to Applicants or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Transaction does not involve a franchised public utility with captive customers and, therefore, falls within one of the safe harbors set forth in the *Supplemental Policy Statement*.¹ The Commission has recognized that “the detailed explanation and evidentiary support required by Exhibit M may not be warranted” for safe harbor transactions,² and that, as a general matter “there is no potential for harm to customers” in the case of such transactions.³

Furthermore, in accordance with Section 33.2(j)(1)(ii) of the Commission’s regulations,⁴ Applicants verify that the Transaction will not result in: (1) transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) new issuances of securities by traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service

¹ *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007) (the “*Supplemental Policy Statement*”).

² *Id.* at P 15.

³ *Id.* at P 17.

⁴ 18 C.F.R. § 33.2(j)(1)(ii) (2022).

over jurisdictional transmission facilities, for the benefit of an associate company; or (4) new affiliate contracts between non-utility associate companies and traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review pursuant to FPA Sections 205 and 206.

Attachment 1

Proposed Protective Order

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Quantum Pleasants, LLC
ETEM Remediation Two LLC
Pleasants LLC
Energy Harbor LLC

)
)
)
)

Docket No. EC23-____-000

PROTECTIVE ORDER

(Issued: _____)

1. Participants in this proceeding(s) may exchange documents or materials that are deemed to contain Privileged Material and/or Critical Energy/Electric Infrastructure Information (“CEII”), as those terms are defined herein. Accordingly, IT IS ORDERED THAT this Protective Order shall govern the use of all such material produced by, or on behalf of, any Participant in the above-captioned proceeding(s).

2. The Commission’s regulations and its policy governing the labelling of controlled unclassified information (“CUI”), establish and distinguish the respective designations of Privileged Material and CEII. As to these designations, this Protective Order provides that a Participant:

A. may designate as Privileged Material any material which customarily is treated by that Participant as commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and

B. must designate as CEII, any material that meets the definition of that term as provided by 18 C.F.R. §§ 388.113(a), (c).

3. For the purposes of this Protective Order, the listed terms are defined as follows:

A. “Participant”: As defined at 18 C.F.R. § 385.102(b).

B. “Privileged Material”:

i. Material (including depositions) provided by a Participant in response to discovery requests or filed with the Commission, and that is designated as Privileged Material by such Participant;

ii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Privileged Material by such Participant;

- iii. Any information contained in or obtained from such designated material;
- iv. Any other material which is made subject to this Protective Order by the Presiding Administrative Law Judge (“Presiding Judge”) or the Chief Administrative Law Judge (“Chief Judge”) in the absence of the Presiding Judge or where no presiding judge is designated, the Federal Energy Regulatory Commission (“Commission”), any court, or other body having appropriate authority, or by agreement of the Participants (subject to approval by the relevant authority);
- v. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material); or
- vi. Copies of Privileged Material.
- vii. Privileged Material does not include:
 - a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;
 - b. Information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order; or
 - c. Any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630.
- viii. Additional Subcategories of Privileged Material in Oil Pipeline Proceedings:
 - a. “Section 15(13) Privileged Material”: Any materials, permitted to be produced by this Protective Order, concerning the nature, kind, quantity, destination or routing of any products tendered or delivered to a Participant for interstate transportation by or on behalf of a specific shipper, when the identity of the shipper is contained in or may be discerned from the material to be provided. This subcategory shall not apply if the shipper to whom such information pertains consents that the information be categorized as Privileged Material under the other provisions of this Protective Order or produced outside the scope of this Protective Order.
 - b. “Highly Confidential Privileged Material”: A Participant may use this designation for those materials that are of such a commercially

sensitive nature among the Participants or of such a private, personal nature that the producing Participant is able to justify a heightened level of confidential protection with respect to those materials.

C. “Critical Energy/Electric Infrastructure Information” or “CEII”: As defined at 18 C.F.R. §§ 388.113(a), (c).

D. “Non-Disclosure Certificate”: The term “Non-Disclosure Certificate” means, as applicable:

i. The certificate attached to this Protective Order, by which individuals granted access to Privileged Material, including Highly Confidential Privileged Material, and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for this proceeding.

ii. The certificate attached to this Protective Order, by which Competitive Duty Personnel granted access to Privileged Material, excluding Highly Confidential Privileged Material, and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it.

All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for this proceeding.

E. “Reviewing Representative”: A person who has signed a Non-Disclosure Certificate and who is:

i. For purposes of reviewing Privileged Materials not covered by Paragraph 3(B)(viii)(b), who is:

- a. Commission Trial Staff designated as such in this proceeding;
- b. An attorney who has made an appearance in this proceeding for a Participant;
- c. An attorney, paralegal, or other employee associated for purposes of this case with an attorney who has made an appearance in this proceeding on behalf of a Participant;
- d. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;

- e. A person designated as a Reviewing Representative by order of the Presiding Judge, the Chief Judge, or the Commission; or
 - f. An employee or other representative of a Participant appearing in this proceeding with significant responsibility for this docket.
- ii. For purposes of reviewing Highly Sensitive Privileged Materials covered by Paragraph 3.B(viii)(b), who is:
- a. A member or staff of any state or local utilities commission which is a Participant;
 - b. An outside attorney who has made an appearance in this proceeding for a Participant;
 - c. An attorney, paralegal, or other employee of the firm of the outside attorney described in Paragraph 3.E(ii)(b) working with such outside attorney for purposes of this case;
 - d. An outside expert or an employee of an outside expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding who is working under the direction of an attorney described in Paragraph 3.E(ii)(b) or 3.E(ii)(c) and who is an unaffiliated expert (or employees thereof) not engaging in Competitive Duties or other activities or transactions of a type with respect to which the disclosure of Highly Sensitive Privileged Materials may present an unreasonable risk of harm;
 - e. If, after a good faith effort, parties fail to agree on designating a specifically-named inside employee(s) of a non-governmental Participant as a Reviewing Representative for the review of specific Highly Sensitive Privileged Material(s) or all Highly Sensitive Privileged Material(s), a party may request that the Presiding Judge, the Chief Judge, or the Commission so designate such a specifically-named inside employee(s) who, for example, is not directly involved in, or having direct or supervisory responsibilities over, the purchase, sale, or marketing of electricity (including transmission service) at retail or wholesale, the negotiation or development of participation or cost-sharing arrangements for transmission or generation facilities, or other activities or transactions of a type with respect to which the disclosure of Highly Sensitive Privileged Materials may present an unreasonable risk of harm; or
 - f. A person designated as a Reviewing Representative by order of the Presiding Judge, the Chief Judge, or the Commission specifically ruling on and indicating each such person by name.

F. “Competitive Duties”: Involvement in, or direct or supervisory responsibilities over, the purchase, sale, or marketing of electricity (including transmission service) at retail or wholesale, the negotiation or development of participation or cost-sharing arrangements for transmission or generation facilities, or similar activities or transactions.

G. “Competitive Duty Personnel”: Persons having Competitive Duties.

4. Privileged Material and/or CEII shall be made available under the terms of this Protective Order only to Participants and only to their Reviewing Representatives as provided in Paragraphs 6-10 of this Protective Order. The contents of Privileged Material, CEII or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this specific proceeding.

5. All Privileged Material and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7-9 of this Protective Order.

6. Privileged Material and/or CEII must be handled by each Participant and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Protective Order. Privileged Material and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they (or the substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person’s responsibilities in this proceeding. Reviewing Representatives may make copies of Privileged Material and/or CEII, but such copies automatically become Privileged Material and/or CEII. Reviewing Representatives may make notes of Privileged Material, which shall be treated as Notes of Privileged Material if they reflect the contents of Privileged Material.

7. If a Reviewing Representative’s scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Privileged Material and/or CEII obtained in this proceeding for a commercial purpose (e.g. to give a Participant or competitor of any Participant a commercial advantage):

A. Energy marketing;

B. Direct supervision of any employee or employees whose duties include energy marketing; or

C. The provision of consulting services to any person whose duties include energy marketing.

8. In the event that a Participant wishes to designate a person not described in Paragraph 3.E above as a Reviewing Representative, the Participant must seek agreement from the Participant providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3.D of this Protective Order with respect to those materials. If no agreement is reached, the matter must be submitted to the Presiding Judge, the Chief Judge, or the Commission for resolution.

9. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Privileged Material and/or CEII pursuant to this Protective Order until three business days after that Reviewing Representative first has executed and served a Non-Disclosure Certificate. However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order, and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for the proceeding.

10. Any Reviewing Representative may disclose Privileged Material and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed a Non-Disclosure Certificate. In the event any Reviewing Representative to whom Privileged Material and/or CEII are disclosed ceases to participate in this proceeding, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3.E of this Protective Order, access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate for as long as the Protective Order is in effect.

11. All Privileged Material and/or CEII in this proceeding filed with the Commission, submitted to the Presiding Judge, or submitted to any Commission personnel, must comply with the Commission's Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff. Consistent with those requirements:

A. Documents that contain Privileged Material must include a top center header on each page of the document with the following text: "CUI//PRIV." Any corresponding electronic files must also include this text in the file name.

B. Documents that contain CEII must include a top center header on each page of the document with the following text: "CUI//CEII." Any corresponding electronic files must also include this text in the file name.

C. Documents that contain both Privileged Material and CEII must include a top center header on each page of the document with the following text: "CUI//CEII/PRIV." Any corresponding electronic files must also include this text in the file name.

D. The specific content on each page of the document that constitutes Privileged Material and/or CEII must also be clearly identified. For example, lines or individual words or numbers that include both Privileged Material and CEII shall be prefaced and end with "BEGIN CUI//CEII/PRIV" and "END CUI//CEII/PRIV".

12. The Secretary shall place any Privileged Material and/or CEII filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination concerning any claim of privilege or CEII status. The Commission

retains the right to make determinations with regard to any privilege or CEII claim, as well as the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff, the notification procedures specified at 18 C.F.R. § 388.112 must be followed before making public any Privileged Material.

13. If any Participant desires to include, utilize, or refer to Privileged Material or information derived from Privileged Material in testimony or other exhibits during the hearing in this proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Participant first must notify both counsel for the disclosing Participant and the Presiding Judge, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority, to find this Protective Order should not apply to all or any materials previously designated Privileged Material pursuant to this Protective Order. The Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each Participant governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority.

17. Subject to Paragraph 18, the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), or the Commission shall resolve any disputes arising under this Protective Order pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to the Presiding Judge, the Chief Judge or the Commission, the Participants to the dispute shall employ good faith best efforts to resolve it.

A. Any Participant that contests the designation of material as Privileged Material shall notify the Participant that provided the Privileged Material by specifying in writing the material for which the designation is contested.

B. In any challenge to the designation of material as Privileged Material, the burden of proof shall be on the Participant seeking protection. If the Presiding Judge, the Chief Judge, or the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 18 shall apply.

C. The procedures described above shall not apply to material designated by a Participant as CEII. Material so designated shall remain subject to the provisions of this

Protective Order, unless a Participant requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

18. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Privileged Material. Should the Presiding Judge, the Chief Judge, or the Commission, as appropriate, determine that the information should be made public, the Presiding Judge, the Chief Judge, or the Commission will provide notice to the designator no less than five (5) days prior to the date on which the material will become public. This Protective Order shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the designator files a motion with the Presiding Judge, the Chief Judge, or the Commission, as appropriate, with supporting affidavits, demonstrating why the material should continue to be privileged. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, .715. No Participant waives its rights to seek additional administrative or judicial remedies after a Presiding Judge or Chief Judge decision regarding Privileged Material or the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Material and/or CEII in the files of the Commission.

19. Privileged Material and/or CEII shall remain available to Participants until the later of (1) the date an order terminating this proceeding no longer is subject to judicial review, or (2) the date any other Commission proceeding relating to the Privileged Material and/or CEII is concluded and no longer subject to judicial review. After this time, the Participant that produced the Privileged Material and/or CEII may request (in writing) that all other Participants return or destroy the Privileged Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Privileged Material, or Notes of Privileged Material, may be retained if they are maintained in accordance with Paragraph 5 of this Protective Order. If requested, each Participant also must submit to the Participant making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Privileged Material and/or CEII. To the extent Privileged Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Order.

20. Regardless of any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Judge, the Chief Judge, or the Commission. All CEII designations shall be subject to the "[d]uration of the CEII designation" provisions of 18 C.F.R. § 388.113(e).

21. Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Quantum Pleasants, LLC)
ETEM Remediation Two LLC)
Pleasants LLC)
Energy Harbor LLC)

Docket No. EC23-__-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Material and/or Critical Energy/Electric Infrastructure Information (“CEII”) is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I further certify that my duties and responsibilities do not include “Competitive Duties” as described in the Protective Order. I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Title: _____

Representing: _____

Date: _____

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Quantum Pleasants, LLC)
ETEM Remediation Two LLC)
Pleasants LLC)
Energy Harbor LLC)

Docket No. EC23-__-000

NON-DISCLOSURE CERTIFICATE FOR COMPETITIVE DUTY PERSONNEL

I hereby certify my understanding that access to Privileged Material and/or Critical Energy/Electric Infrastructure Information (“CEII”) is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Order. I acknowledge that my duties and responsibilities include “Competitive Duties” as described in the Protective Order, and, as such, I understand that I shall neither have access to, nor disclose, the contents of the Privileged Materials that are marked “Highly Confidential Privileged Material,” any notes or other memoranda, or any other form of information that copies or discloses Privileged Materials that are marked as “Highly Confidential Privileged Material.” I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Title: _____

Representing: _____

Date: _____

Attachment 2

Verifications

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Quantum Pleasants, LLC
ETEM Remediation Two LLC
Pleasants LLC
Energy Harbor LLC

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)
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)

Docket No. EC23-____-000


VERIFICATION OF APPLICATION

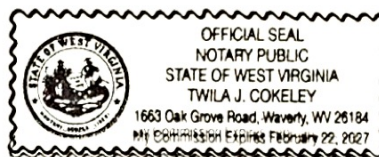
The undersigned, being duly sworn, states that he is the authorized representative of Quantum Pleasants, LLC; that he has read said application and knows the contents thereof; and that all of the statements contained therein solely with respect to the foregoing entity and its affiliates are true and correct to the best of his knowledge, information, and belief.



Subscribed and sworn to before me

this 8th day of June 2023


Notary Public
for the State of West Virginia



My Commission expires: 2/22/2027

My Commission expires: N/A

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Quantum Pleasants, LLC
ETEM Remediation Two LLC
Pleasants LLC
Energy Harbor LLC**

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)

Docket No. EC23-__-000

VERIFICATION OF APPLICATION

The undersigned, being duly sworn, states that is the authorized representative of ETEM Remediation Two LLC; that he has read said application and knows the contents thereof; and that all the statements contained therein solely with respect to the foregoing entity and its affiliates are true and correct to the best of his knowledge, information, and belief.



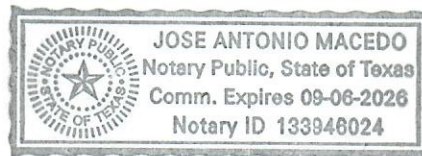
Daniel D. McDevitt

Subscribed and sworn to before me

this 6th day of June 2023



Notary Public
for the State of Texas



My Commission expires: 09/06/26

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Quantum Pleasants, LLC
ETEM Remediation Two LLC
Pleasants LLC
Energy Harbor LLC**

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Docket No. EC23-__-000

VERIFICATION OF APPLICATION

The undersigned, being duly sworn, states that he is the authorized representative of Pleasants LLC and Energy Harbor LLC; that he has read said application and knows the contents thereof; and that all of the statements contained therein solely with respect to the foregoing entities and their affiliates are true and correct to the best of his knowledge, information, and belief.



Rick C. Giannantonio
Executive Vice President and General Counsel
Energy Harbor Corp.

Subscribed and sworn to before me

this 8th day of June 2023



Notary Public
for the State of Ohio



KELLIE L. SIGLER
Notary Public, State of Ohio
My Commission Expires
7-14-2024

My Commission expires: 7/14/2024