

FirstEnergy Cites Potential of More Probes as Risk Factor

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FirstEnergy listed the prospect of further House Bill 6-related investigations as among several lingering near-term uncertainties in a new regulatory filing.

The utility's prior risk assessments in reports to the U.S. Securities and Exchange Commission largely focused on existing investigations, including the Department of Justice investigation that led to the company's deferred prosecution agreement and an ongoing investigation by the SEC.

But the company's 10-K filing submitted late Monday showed the company contemplating the potential for additional investigations and penalties – both civil and criminal – in relation to the 2019 energy law at the heart of an ongoing criminal trial against Larry Householder and Matt Borges.

"We are unable to predict the potential for any additional investigations or litigation, any of which could exacerbate these risks or expose us to potential criminal or civil liabilities, sanctions or other remedial measures, and could have a material adverse effect on our reputation, business, financial condition, results of operations, liquidity or cash flows," the company's filing reads.

The utility's agreement with the DOJ saw it admit seeking to bribe public officials and agree to a \$230 million penalty. The company has also continued to traverse a rash of shareholder lawsuits – a factor it noted in its disclosure. (See Gongwer Ohio Report, July 22, 2021)

"The investigations and litigation related to HB6 could divert management's focus and have resulted in, and could continue to result in substantial investigation expenses, and the commitment of substantial corporate resources," according to the utility.

"The outcome, duration, scope, result or related costs of the investigations and related litigation of the government investigations, particularly the SEC investigation and the securities class action lawsuit...are inherently uncertain," it continued. "Therefore, any of these risks could impact us significantly beyond expectations."

The company's earnings report came at the outset of week four of the criminal trial where Messrs. Householder and Borges have pleaded not guilty to racketeering.

Jurors continued hearing from FirstEnergy Solutions lobbyist Juan Cespedes Tuesday as he faced cross-examination by the defense. The witness had earlier pleaded guilty to the same charge.

Four investigations by the Public Utilities Commission of Ohio are also among uncertainties facing the utility after they were paused at the request of federal prosecutors pending the conclusion of the trial. (See Gongwer Ohio Report, August 24, 2022)

"We are unable to predict the potential for any additional regulatory actions, any of which could exacerbate these risks or expose us to adverse outcomes in pending or future rate cases and could have a material adverse effect on our reputation, business, financial condition, results of operations, liquidity or cash flows," the company wrote.

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