

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of Suvon, LLC,)	
d/b/a FirstEnergy Advisors for Certification)	Case No. 20-0103-EL-AGG
as an Aggregator and Power Broker)	

**VISTRA ENERGY CORP.’S MOTION TO INTERVENE,
MOTION TO DENY OR SUSPEND APPLICATION, AND
MOTION FOR EXPEDITED TREATMENT**

Vistra Energy Corp. and its subsidiaries¹ (collectively, “Vistra”) respectfully move the Public Utilities Commission of Ohio (“Commission”) for leave to intervene in the above-captioned matter pursuant to Ohio Rev. Code § 4903.221 and Ohio Admin. Code 4901-1-11. Vistra also requests that the Commission deny or suspend the application of Suvon, LLC d/b/a FirstEnergy Advisors (“FirstEnergy Advisors”) for certification as an electric aggregator and power broker (“Application”).

As the attached Memorandum in Support shows, the Vistra entities are licensed competitive retail electric service providers in Ohio. As such, Vistra has a real and substantial interest in this proceeding, and the Commission’s disposition of this proceeding may impair or impede Vistra’s ability to protect that interest. Further, Vistra’s interests cannot be adequately represented by any other existing parties. Thus, Vistra satisfies the standard for intervention set forth in Ohio Rev. Code § 4903.221 and Ohio Admin. Code 4901-1-11.

Additionally, the Application should be denied because the name FirstEnergy Advisors is misleading and likely to be confusing to the public, in violation of the Commission’s consumer

¹ Vistra’s competitive retail electric service providers in Ohio include Dynegy Energy Services (East), LLC (d/b/a Dynegy; d/b/a Brighten Energy; d/b/a Better Buy Energy; d/b/a True Fit Energy; d/b/a Honor Energy); Ambit Northeast, LLC; Cincinnati Bell Energy, LLC; Energy Services Providers, Inc. d/b/a Ohio Gas & Electric; Everyday Energy, LLC d/b/a Value Power & Gas; Public Power, LLC; TriEagle Energy LP; and Viridian Energy PA LLC.

protection rules. The Application should also be denied because the relationship between FirstEnergy Advisors and its distribution holding company, FirstEnergy Corp., would inhibit retail electric market competition in the State of Ohio, resulting in harm to both customers as well as Vistra and other Ohio competitive retail electric service providers.

If the Commission declines to deny the Application at this stage, it should suspend it. As noted above and set forth in additional detail in the accompanying Memorandum, the Application raises significant concerns for consumer protection and retail electric market competition. Thus, if it does not deny the Application the Commission should suspend it to allow the Commission and parties to fully evaluate the Application's impact in these areas.

Finally, because of the 30-day automatic approval process under Ohio Admin. Code 4901:1-24-10(A), Vistra respectfully requests that these Motions be granted on an expedited basis in accordance with Ohio Admin. Code 4901-1-12(C). Vistra cannot certify that all parties do not oppose this request.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

On January 17, 2020, Suvon, LLC d/b/a First Energy Advisors (“FirstEnergy Advisors”) applied for initial competitive retail electric service (“CRES”) ¹ certification as an electric aggregator and power broker (“Application”). According to the Application, Suvon, LLC is a subsidiary of FirstEnergy Corp., a company that also holds multiple electric distribution utilities and related assets, transmission facilities, and generation facilities in numerous states, including Ohio. *Application*, at 32.

Vistra Energy Corp. is a premier, integrated, Fortune 350 energy company combining an innovative, customer-centric approach to retail with safe, reliable, diverse, and efficient power generation. The company operates in 20 states and the District of Columbia, including six of the seven competitive markets in the U.S. and markets in Canada and Japan. Vistra Energy Corp.’s retail entities have offices and operations in multiple states, including multiple CRES providers licensed in Ohio² (collectively, “Vistra”). Serving nearly five million residential, commercial, and industrial retail customers with electricity and gas, Vistra is the largest competitive residential electricity provider in the country.

¹ Ohio Admin. Code 4901:1-21-01(F) defines a competitive retail electric service (“CRES”) provider as including “an electric services company, retail electric generation providers, power marketers, power brokers, aggregators, and governmental aggregators.”

² Vistra’s competitive retail electric service providers in Ohio include Dynegy Energy Services (East), LLC (d/b/a Dynegy; d/b/a Brighten Energy; d/b/a Better Buy Energy; d/b/a True Fit Energy; d/b/a Honor Energy); Ambit Northeast, LLC; Cincinnati Bell Energy, LLC; Energy Services Providers, Inc. d/b/a Ohio Gas & Electric; Everyday Energy, LLC d/b/a Value Power & Gas; Public Power, LLC; TriEagle Energy LP; and Viridian Energy PA LLC.

Through the company's retail and generation subsidiaries, Vistra provides retail electric and natural gas products to Ohio consumers as well as delivers electric generation through our eight generation facilities located across the state. Vistra is committed to investing in the states where it operates and has sales offices in both Columbus and Cincinnati. Vistra has at least one licensed CRES provider in each service territory in Ohio with the majority of licensed entities operating in all service territories. For the foregoing reasons, Vistra respectfully requests that the Public Utilities Commission of Ohio ("Commission") grant Vistra's motion to intervene, motion to deny or suspend Application, and motion for expedited treatment ("Motions").

I. Intervention

Vistra satisfies the standard for intervention set forth in Ohio statutes and Commission rules. Ohio Rev. Code § 4903.221 provides that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. Further, under Ohio Rev. Code § 4903.221(B), the Commission must consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings, and whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues. Finally, Ohio Admin. Code 4901-1-11 permits intervention by a party who demonstrates a real and substantial interest in the proceeding and is situated such that the disposition of the proceeding may impair or impede its ability to protect that interest where the interest is not adequately represented by an existing party.

As explained in greater detail below, FirstEnergy Advisors' Application for certification as an electric aggregator and power broker raises serious concerns for Ohio's competitive marketplace because FirstEnergy Advisors has a significant competitive advantage by virtue of its

relationship with FirstEnergy Corp. and the name they share. Therefore, the Commission's ruling on the Application could have a serious and adverse impact on Vistra's ability to offer competitive services in Ohio.

Additionally, granting Vistra's intervention will not unduly prolong or delay these proceedings. Vistra respectfully requests that the Commission expedite its Motions, avoiding delay of the proceeding. As discussed below, in the event that the Commission declines to deny the Application, Vistra requests that the Commission suspend the Application for the 90-day period permitted by Ohio Admin. Code 4901:1-24-10(A). Vistra is prepared to participate within this timeframe and is not requesting additional delay. Vistra merely requests the Commission grant Vistra's motion to intervene and motion to suspend, as discussed in more detail below, to allow full examination of the Application and to ensure that Ohio retail customer interests are protected.

Finally, to date, no other retail electric market participants have filed to intervene in the Application docket. As a result, Vistra will provide a voice to an interest that is not represented by an existing party and will contribute to full development of a record that will further aid the Commission in resolution of the factual issues related to the Application. Because Vistra meets all the requirements for intervention, the Commission should grant Vistra's Motion to Intervene pursuant to Ohio Rev. Code § 4903.221 and Ohio Admin. Code 4901-1-11.

II. Vistra's Request to Deny or Suspend Application

The Commission will approve an application if it finds that the applicant is managerially, financially, and technically fit and capable of performing the services it intends to provide while complying with Commission rules and orders. Ohio Admin. Code 4901:1-24-10(C). The applicant must also provide reasonable financial assurances sufficient to protect electric distribution utility companies and the customers from default. *Id.* The Commission should deny the Application because it would violate the Commission's consumer protection and competition rules and

contravene Ohio public policy. If the Commission declines to deny the Application it should, at a minimum, suspend the automatic approval process for the Application to allow for a comprehensive review.

a. The name FirstEnergy Advisors is misleading in violation of the Commission’s consumer protection rules.

Under Ohio law, no CRES provider—including aggregators and power marketers—may “engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES.” Ohio Admin. Code 4901:1-21-05(C). “[U]nfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to . . . Engaging in any solicitation that will lead a customer to believe that the CRES provider is soliciting on behalf of or is an agent of any entity other than the CRES provider.” Ohio Admin. Code 4901:1-21-05(C)(10).

Suvon, LLC’s proposal to do business as FirstEnergy Advisors clearly runs afoul of these consumer protections. First, Suvon, LLC, is an existing subsidiary of FirstEnergy Corp., but has filed the Application to operate the newly-proposed business not as “Suvon, LLC,” but as “FirstEnergy Advisors,” thereby greatly increasing the likelihood that a customer could believe that FirstEnergy Advisors and FirstEnergy Corp. are the same entity or that FirstEnergy Advisors is soliciting on behalf of FirstEnergy Corp. in violation of Ohio Admin. Code 4901:1-21-05(C)(10).³ This likelihood for confusion is emphasized by FirstEnergy Corp.’s use of a corporate logo that only uses the “FirstEnergy” text, indicating the holding company desires to be known, broadly, merely as all things “FirstEnergy.” *See* Attachment 1.⁴ This is further emphasized when

³ Suvon, LLC, already operates a business unit carrying the “FirstEnergy” name through FirstEnergy Home. This is distinct from the present Application, as FirstEnergy Home providing non-retail/non-electric service; instead providing cable, home repair, and home security services in Ohio.

⁴ Attachment 1 includes both a visual reproduction of the FirstEnergy Corp. webpage under the “About Us” section, showing the corporate logo and a reproduction of the content of that page, demonstrating how the holding company has adopted the use of using the shortened version, “FirstEnergy” throughout the text.

considering future customer outreach efforts by the entities, whether a phone call or other customer correspondence, identifying the entity as “FirstEnergy” is virtually certain to create reasonable confusion among customers about whether the outreach is from the “Corp.” or the “Advisors.”

Indeed, Commission Staff has already identified similar approaches as violations. *See e.g., In the Matter of Switch Energy LLCs Compliance with the Ohio Administrative Code Regarding its Marketing and Enrollment Practices*, No. 19-593-EL-UNC, FINDING AND ORDER, at *1 (Ohio P.U.C. May 1, 2019). In *Switch*, the Commission investigated customer complaints that Switch Energy, LLC used the name of the customer’s current electric distribution utility in phone calls to persuade the customer to move to its competitive retail electric service. *Id.* Commission Staff alleged that by using the name of a current electric distribution utility in these calls, customers were misled to believe certain discounted services were available. *Id.* FirstEnergy Advisors could engage in similarly misleading and prohibited conduct by operating under a name that is virtually identical to its holding company FirstEnergy Corp., a holding company that uses only “FirstEnergy” in its logo. These facts could easily result in customers being misled or other confusion as they may not be as aware of the intricacies of the overall corporate structure as the Commission, and believe FirstEnergy Corp. and FirstEnergy Advisors are one in the same, or not even know with which entity they are interacting.

In fact, while the Application was filed by Suvon, LLC, the “Applicant’s” email address is provided in Section A-7 as “FirstEnergyAdvisors@firstenergycorp.com.” This further demonstrates the close relationship intended between the two entities and additional potential to mislead Ohio residents that FirstEnergy Advisors is FirstEnergy Corp., in violation of the State’s regulations.⁵ The Commission should deny the Application on these concerning grounds alone.

⁵ In fact, Suvon, LLC, has not explained in the Application why it must do business as an aggregator/power broker as “FirstEnergy Advisors” and not another, less potentially misleading, name.

b. Approving the application will inhibit the competition the Ohio Legislature tasked the Commission with protecting.

When it established retail competition, the Ohio Legislature declared it State policy to ensure “diversity of electricity . . . suppliers” and provide “retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power.” Ohio Rev. Code § 4928.02(C), (H). It is also State policy to ensure “effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service.” Ohio Rev. Code § 4928.02(H). The Commission is responsible for effectuating these policies. Ohio Admin. Code § 4928.06(A); *See also*, 4901:1-24-13(E)(9) (giving the Commission the power to suspend or rescind an existing certification if it finds that the CRES provider “has engaged in an anticompetitive act.”).

Approving the Application would result in the exact threat to competition the Commission must prevent. The relationship between FirstEnergy Corp. and FirstEnergy Advisors positions FirstEnergy Advisors to exercise disproportionate market power; by sharing the name of a major distribution utility holding company in the State (FirstEnergy Corp.), FirstEnergy Advisors has instant name recognition that other CRES providers lack and a much greater opportunity to mislead customers as to which entity they are interfacing with for their retail electric service. Likewise, FirstEnergy Corp. has a ready-made market for FirstEnergy Advisors via its current distribution utility customers and service territories. In addition to creating potential confusion among, and harm to, utility customers in Ohio, if the Commission approves the Application, the decision is likely to cause harm to Vistra and other CRES providers, as FirstEnergy Advisors will have the above-mentioned competitive advantage with the use of the FirstEnergy name, creating unequal competition among those of equivalent service in Ohio.

Further, by allowing a holding company to simultaneously possess distribution utilities and a CRES provider, particularly one of a nearly identical name, the Commission would effectively authorize FirstEnergy and other holding companies to recreate a vertically integrated utility, emphasizing the need for careful scrutiny of this relationship dynamic.

Finally, FirstEnergy Corp. has an existing advertising infrastructure, including websites and customer bills that FirstEnergy Advisors could easily use, resulting in impermissible cross-subsidization in violation of Ohio Rev. Code § 4928.02(H). *See also, Indus. Energy Users-Ohio v. Pub. Util. Comm’n*, 885 N.E.2d 195, 197 (Ohio 2008) (affirming that such cross-subsidization between regulated and unregulated entities is prohibited).

c. Alternatively, if the Commission declines to deny the Application, it should suspend it.

If the Commission does not act on the Application, it will be deemed automatically approved 30 days after the official filing date. Ohio Admin. Code 4901:1-24-10(A).⁶ For “good cause shown,” the Commission may suspend the Application for 90 days. *Id.* During this period, the Commission can direct the applicant to provide additional information as the Commission deems necessary and hold a hearing on the matter. *Id.*

Even if the Commission declines to deny the Application, it should suspend the Application to allow the Commission and parties to perform a full review. This Memorandum in Support raises two key concerns that are worthy of further investigation: consumer protection and competition. The contents of the Application do not directly address either of these concerns. For instance, while

⁶ The 30-day time period ends on Sunday, February 16, 2020, when counted from the Application’s filing date. Because this period ends on a weekend day, and following Monday is President’s Day, a legal holiday, the period ends on Tuesday, February 18, 2020. Ohio Admin. Code 4901-1-07(A). (“In computing any period of time prescribed or allowed by the commission, the date of the event from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or legal holiday, in which case the period of time shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Unless otherwise noted, time is measured in calendar, not business, days.”).

the Application provides a general description of FirstEnergy Corp.'s corporate structure, it does not provide any documentation showing how the holding company will prevent cross-subsidization from occurring with FirstEnergy Advisors. *Application*, at 32. Similarly, it does not explain why the Commission should allow a holding company to simultaneously own distribution utilities and CRES providers in the same state, let alone under virtually identical names.

III. Expedited Grant of Motions

Given the 30-day automatic approval process of the Application under Ohio Admin. Code 4901:1-24-10(A), absent action by the Commission, Vistra respectfully requests that the Commission grant its Motions on an expedited basis in accordance with Ohio Admin. Code 4901-1-12(C).⁷

IV. Conclusion

Although the basic requirements in the Application FirstEnergy Advisors filed may leave the impression this is a routine application, additional scrutiny is necessary in light of the relationship between FirstEnergy Advisors and FirstEnergy Corp. and the name they share. Thus, Vistra respectfully requests that the Commission grant its motion to intervene, either its motion to suspend or motion to deny, and motion to proceed on an expedited basis.

⁷ Vistra now seeks involvement in the proceeding because it wanted to pursue participation only after a thorough review of the Application and out of consideration for judicial efficiency if that review determined that the concerns identified herein were addressed by the Application.

Respectfully submitted,



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Transmission Projects

Generation System

Company History

Board of Directors

Leadership Team

Standards of Conduct and

Affiliate Restrictions

Speakers Bureau

Brighter Future



We are a forward-thinking electric utility powered by a diverse team of employees committed to making customers' lives brighter, the environment better and our communities stronger.

FirstEnergy (NYSE: FE) is dedicated to safety, reliability and operational excellence. Headquartered in Akron, Ohio, FirstEnergy includes one of the nation's largest investor-owned electric systems, more than 24,500 miles of transmission lines that connect the Midwest and Mid-Atlantic regions, and a generating fleet with a total capacity of more than 5,000 megawatts.

Our company has invested \$10 billion in environmental efforts since 1970, and we have a continuing commitment to cleaner energy resources, smarter technology and a more sustainable planet.

Our Electric Companies

About Us

<https://firstenergycorp.com/about.html>

About Us



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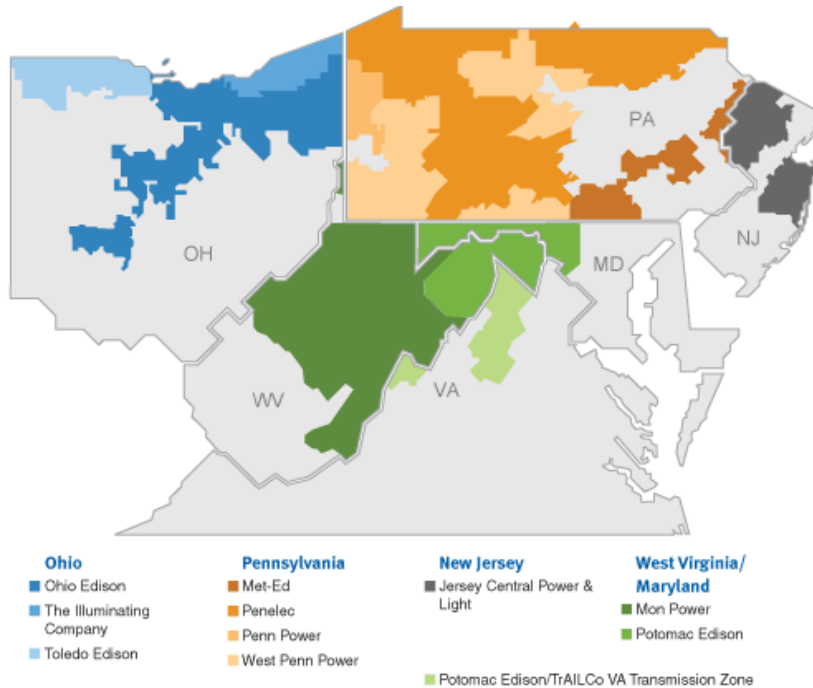
Our company has invested \$10 billion in environmental efforts since 1970, and we have a continuing commitment to cleaner energy resources, smarter technology and a more sustainable planet.

Our Electric Companies

FirstEnergy's 10 regulated distribution companies form one of the nation's largest investor-owned electric systems, based on serving 6 million customers in the Midwest and Mid-Atlantic regions. Stretching from the Ohio-Indiana border to the New Jersey shore, the companies operate a vast infrastructure of more than 269,000 miles of distribution lines and are dedicated to providing customers with safe, reliable and responsive service.

About Us

<https://firstenergycorp.com/about.html>



Transmission Operations

FirstEnergy's transmission operations include more than 24,500 miles of lines and two regional transmission operation centers. Since 2014, the company has upgraded or replaced existing power lines, incorporated new, smart technology into the grid, and upgraded dozens of substations with new equipment and enhanced security features. This "[Energizing the Future](#)" transmission program has produced reliability improvements across our transmission system. FirstEnergy is continuing these investments with planned spending totaling \$4.2 to \$5.8 billion between 2017 and 2021.

Generation Business

FirstEnergy controls approximately [3,780 megawatts](#) from regulated scrubbed coal and hydro facilities in West Virginia, New Jersey and Virginia.

Products and Services

FirstEnergy and its subsidiaries offer innovative solutions for home and business that are designed to meet the demands of today.

We're [expanding our product and service offering](#) to provide you with even more proven, practical and affordable solutions for your home. In addition, [BETA Lab](#) offers businesses a one-source solution for calibration, analytical testing, and safety and health training needs.

Learn More

[Read FirstEnergy's 5-Year Strategic Plan](#)

About Us

<https://firstenergycorp.com/about.html>



FirstEnergy's 2019 Strategic Plan, "Energized by Possibility," articulates our vision for the next five years. It includes our approach to the rapid changes in the electric utility industry fueled by evolving customer expectations, emerging technologies and a lower-carbon economy. The plan outlines key initiatives related to our core values, including:

- Providing customer with reliable electricity and innovative programs, products and services;
- Fostering a culture of innovation and embracing forward-thinking perspectives and emerging technologies;
- Helping customers and communities thrive while making the environment better;
- Creating a diverse and inclusive workplace;
- Leveraging teamwork to create thoughtful, innovative solutions that bring value to customers;
- Keeping safety first every day to protect our communities, employees and assets;
- Achieving operational excellence and strong financial performance to meet our commitments to stakeholders.

Review our Corporate Responsibility Report

About Us

<https://firstenergycorp.com/about.html>



[FirstEnergy's Corporate Responsibility Report](#), published in November 2019, is aligned with the five pillars of our mission statement and includes extensive detail on our Environmental, Social and Governance (ESG)-related efforts to achieve sustainable performance.

The report addresses our work to reduce the environmental impact of our operations, including progress on our carbon dioxide reduction goal, as we continue to build, strengthen and modernize our transmission and distribution system. The report also describes FirstEnergy's high standards for corporate governance and our work to improve lives in our communities, while providing safe, reliable electric service to our customers.



FirstEnergy's mailing address is:

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Last Modified: November 8, 2019

About Us

<https://firstenergycorp.com/about.html>

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**NOTICE OF APPEARANCE OF COUNSEL
FOR
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Please be advised that Michael K. Wagner and Ina O. Avalon will appear in the above-captioned proceeding as counsel for Vistra Energy Corp. Contact information for Mr. Wagner and Ms. Avalon is as follows:

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via FedEx overnight mail on February 10, 2020, to the following:



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