

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Initial Certification Application of)	Case No. 20-103-EL-AGG
Suvon, LLC d/b/a FirstEnergy Advisors)	
to Provide Aggregation and Broker)	
Services in the State of Ohio.)	

**MOTION FOR LEAVE TO FILE COMMENTS INSTANTER
AND
COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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April 17, 2020

*Special Counsel for the
Office of the Ohio Consumers' Counsel*

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FirstEnergy Advisors' application to be certified as an aggregator and power broker, as supplemented, raises many questions and provides few satisfactory answers. Those questions relate to whether it can comply with PUCO rules, orders and Ohio law relating to the corporate separation laws and rules that safeguard electric competition (especially through government aggregation) for providing benefits to consumers. Most concerning is the fact that FirstEnergy Advisors will be managed and controlled by the same executives who manage and control the FirstEnergy regulated utilities. That makes no sense for fair competition. FirstEnergy Advisors also plans to do business under the "FirstEnergy" name, which a PUCO auditor concluded (regarding bankrupt FirstEnergy Solutions) "implies an endorsement by the FirstEnergy Ohio Companies."¹ The Auditor's recommendation was intended to "eliminate affiliate bias."² The FirstEnergy Advisors' application should be denied or, in the alternative, held in abeyance until the

¹ See *In the Matter of the Review of The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, SAGE Management Consultants, LLC Final Report for Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (May 14, 2018) ("Audit Report") at 98.

² Id. at 46.

PUCO renders a decision in the corporate separation case involving the FirstEnergy regulated utilities.

Pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-13(A), the Office of the Ohio Consumers' Counsel ("OCC") respectfully requests leave to file comments instanter on the Supplemental Application filed on April 1, 2020 and the Staff Report filed on April 7, 2020 in the above-captioned proceeding. The reasons for granting OCC's Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Suvon LLC d/b/a FirstEnergy Advisors (“FirstEnergy Advisors”), an affiliate of the FirstEnergy regulated utilities, filed an application with the Public Utilities Commission of Ohio (“PUCO”) to provide competitive power broker and aggregation services. FirstEnergy Advisors’ filed its initial certification application in the above-captioned proceeding on January 17, 2020.³ On February 11, 2020, the Attorney Examiner granted requests by OCC, the Northeast Ohio Public Energy Council (“NOPEC”), and Vistra Energy Corp. (“Vistra”) to suspend the automatic approval of FirstEnergy Advisors’ Application pursuant to Ohio Adm. Code 4901:1-24-10(A)(1).⁴

As an affiliate of the FirstEnergy regulated utilities and as a would-be participant in Ohio’s deregulated electricity markets, FirstEnergy Advisors (and the FirstEnergy utilities) must comply with Ohio law and the PUCO’s rules regarding corporate separation. Corporate separation is a common structure used to protect competition and the benefits it brings to consumers by separating regulated monopolies (such as the

³ FirstEnergy Advisors’ Initial Certification Application (January 17, 2020).

⁴ Entry (Feb. 11, 2020).

FirstEnergy utilities) from entities operating in the competitive market (such as FirstEnergy Advisors).

As explained in previous pleadings filed by OCC and several others, FirstEnergy Advisors' certification Application raised many questions (and provides few answers) regarding its ability to comply with PUCO rules, orders, and Ohio law relating to corporate separation (R.C. 4928.17)⁵ that safeguards electric competition (especially through government aggregation) for providing benefits to consumers. For instance, concerns were raised regarding the lawfulness of FirstEnergy Advisors being managed and controlled by the same executives who manage and control the FirstEnergy regulated utilities.⁶ Concerns were also raised regarding FirstEnergy Advisors' plans to do business under the "FirstEnergy" name, which could cause customer confusion and give FirstEnergy Advisors an unfair competitive advantage over other competitive brokers and aggregators in violation of the PUCO's rules.⁷

Approximately three months after filing its Application, FirstEnergy Advisors supplemented its Application on April 1, 2020.⁸ Six days after FirstEnergy Advisors

⁵ See Joint Motion to Suspend FirstEnergy Advisors' Certification Application and Joint Motion for Hearing of NOPEC and OCC (February 10, 2020) ("NOPEC/OCC Joint Motion"); Vistra's Motion to Suspend, Motion to Deny or Suspend, Application, Motion for Expedited Treatment (February 11, 2020); RESA Motion to Intervene (March 17, 2020) ("RESA Motion"); IGS Motion to Intervene and Establish a Procedural Schedule (March 25, 2020) ("IGS Motion"); NOPEC's Response to Supplemented Application and Staff Recommendation (April 14, 2020) ("NOPEC's Response"); Vistra Energy Corp.'s Response to Supplemental Exhibits B-2 and B-3 of the Application filed by Suvon, LLC d/b/a FirstEnergy Advisors (April 14, 2020) ("Vistra's Response").

⁶ See Joint Motion to Suspend FirstEnergy Advisors' Certification Application and Joint Motion for Hearing of NOPEC and OCC (February 10, 2020) ("NOPEC/OCC Joint Motion") at 1-2, 10-15.

⁷ Audit Report at 46, 98-99.

⁸ FirstEnergy Advisors' Letter Supplementing Exhibits B-2 and B-3 of FirstEnergy Advisors' original certification application (April 1, 2020) ("Supplemental Application").

filed its Supplemental Application, the Staff of the PUCO filed its one-page Staff Report,⁹ recommending approval of FirstEnergy Advisors' Application as supplemented.

The Supplemental Application recently filed by FirstEnergy Advisors and the Staff Report do nothing to alleviate the concerns raised by OCC and other intervening parties – concerns that should result in a PUCO denial of the Application. Further, FirstEnergy Advisors' has refused to provide intervenors with discovery responses, including any information it provided to the PUCO Staff. FirstEnergy Advisors has claimed that, despite discovery rules and PUCO precedent to the contrary, discovery is premature and parties are not entitled to it because the PUCO has not set a hearing in this case. Both NOPEC and OCC have moved to compel FirstEnergy Advisors to respond to discovery. The PUCO should act to stop the gaming of its discovery rules and stop the continual gaming of R.C. 4903.082 that, decades ago, was intended to reform PUCO discovery processes.¹⁰ It can do so by expeditiously ruling on parties' motions to compel discovery and requiring FirstEnergy Advisors to respond to discovery now.

Ohio Adm. Code 4901:1-24-10(C) requires an applicant seeking to provide competitive electric services to demonstrate that it is “managerially, financially, and technically fit and capable of performing the service it intends to provide” and “managerially, financially, and technically fit and capable of complying with all applicable commission rules and orders.”¹¹ The rule also requires the applicant to be

⁹ Staff Review and Recommendation (April 7, 2020) (“Staff Report”).

¹⁰ See OCC's letter regarding FirstEnergy Advisors' Motion for Protective order where OCC explains that FirstEnergy Advisors requested a broad exemption from the discovery rules. OCC Letter (April 1, 2020) at 1 and n.1 (citing FirstEnergy Advisors' Motion for Protective Order).

¹¹ Ohio Adm. Code 4901:1-24-10(C)(1) and (2).

“able to provide reasonable financial assurances sufficient to protect electric distribution utility companies and the customers from default.”¹² See also R.C. 4928.08(B).

When a certification application has been suspended, Ohio Adm. Code 4901:1-24-10(A)(2)(b) permits the PUCO to set the matter for hearing. It is important for the PUCO to hear responses to the Supplemental Application filed by FirstEnergy Advisors and the subsequently filed Staff Report. The PUCO should have such information in order to determine whether the Application, as supplemented, satisfies (it does not) R.C. 4928.08(B) and Ohio Adm. Code 4901:1-24-10.

For the reasons provided herein, OCC respectfully requests the Motion for Leave to file Comments Instantly be granted and OCC's Comments be accepted.

Respectfully submitted,

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¹² Ohio Adm. Code 4901:1-24-10(C)(3).

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**COMMENTS
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I. INTRODUCTION

Suvon LLC d/b/a FirstEnergy Advisors (“FirstEnergy Advisors”) seeks to be certified as an aggregator and power broker, a would-be participant in Ohio’s deregulated electricity markets. FirstEnergy Advisors, as well as the FirstEnergy utilities, must comply with Ohio law and the Public Utilities Commission of Ohio’s (“PUCO”) rules regarding corporate separation. These rules and laws exist to protect customers by protecting the market so that the market can bring lower prices and greater innovation to customers.¹³

FirstEnergy Advisors’ certification application,¹⁴ as supplemented,¹⁵ raises many questions and provides few satisfactory answers regarding its ability to comply with PUCO rules, orders and Ohio law relating to corporate separation.¹⁶ Those questions

¹³ See, e.g., R.C. 4928.17, Ohio Adm. Code Chapter 4901:1-3.

¹⁴ FirstEnergy Advisors’ Initial Certification Application (January 17, 2020).

¹⁵ FirstEnergy Advisors’ Letter Supplementing Exhibits B-2 and B-3 of FirstEnergy Advisors’ original certification application (April 1, 2020) (“Supplemental Application”).

¹⁶ See Ohio Admin. Code 4901:1-24-10(C), which requires an applicant seeking to provide competitive electric services to demonstrate that they are “managerially, financially, and technically fit and capable of performing the service it intends to provide” and “managerially, financially, and technically fit and capable of complying with all applicable commission rules and orders.” The rule also requires the applicant to be

relate to whether it can comply with PUCO rules, orders, and Ohio law relating to the corporate separation that safeguards electric competition (especially through government aggregation) for providing benefits to consumers.

Most concerning is the fact that FirstEnergy Advisors will be managed and controlled by the same executives who manage and control the FirstEnergy regulated utilities.¹⁷ That makes no sense for fair competition. FirstEnergy Advisors also plans to do business under the “FirstEnergy” name, which could cause customer confusion and give FirstEnergy Advisors an unfair competitive advantage over other competitive brokers and aggregators in violation of the PUCO’s rules.¹⁸

Recently the PUCO-approved Auditor in FirstEnergy’s corporate separation plan case, recommended against use of the “FirstEnergy” name in providing competitive services.¹⁹ Corporate separation is a common structure used to protect competition and the benefits it brings to consumers by separating regulated monopolies (such as the FirstEnergy utilities) from entities operating in the competitive market (such as FirstEnergy Advisors).

“able to provide reasonable financial assurances sufficient to protect electric distribution utility companies and the customers from default.”

¹⁷ See Joint Motion to Suspend FirstEnergy Advisors’ Certification Application and Joint Motion for Hearing of NOPEC and OCC (February 10, 2020) (“NOPEC/OCC Joint Motion”) at 1-2, 10-15.

¹⁸ Id. at 2, 15-17.

¹⁹ See *In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Admin. Code Chapter 4902:1:37*, Case No. 17-974-EL-UNC, SAGE Management Consultants, LLC Final Report for Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (May 14, 2018) (“Audit Report”).

The Supplemental Application²⁰ recently filed by FirstEnergy Advisors and the Staff Report²¹ do nothing to alleviate the concerns raised by the intervenors. The lack of discovery provided to the intervenors in this case, including what, if any, additional information was provided to Staff through discovery does nothing to alleviate the concerns or demonstrate justification for the recommendation set forth in the Staff Report. FirstEnergy Advisors seems intent on keeping secret all of the details regarding how it will provide service to Ohioans.²²

Instead, questions remain unanswered as to whether FirstEnergy Advisors can comply with PUCO rules, orders, and Ohio law relating to the corporate separation that safeguards electric competition (especially through government aggregation) for providing benefits to consumers. Again, most concerning is the fact that FirstEnergy Advisors will be managed and controlled by the same executives who manage and control the FirstEnergy regulated utilities. That makes no sense for fair competition. FirstEnergy Advisors also plans to do business under the “FirstEnergy” name, which a PUCO auditor concluded (regarding bankrupt FirstEnergy Solutions) “implies an endorsement by the FirstEnergy Ohio Companies.”²³ The Auditor’s recommendation was intended to “eliminate affiliate bias.”²⁴

²⁰ See Supplemental Application.

²¹ Staff Review and Recommendation (April 7, 2020) (“Staff Report”).

²² See OCC’s letter regarding FirstEnergy Advisors’ Motion for Protective order where OCC explains that FirstEnergy Advisors requested a broad exemption from the discovery rules. OCC Letter (April 1, 2020) at 1 and n.1 (citing FirstEnergy Advisors’ Motion for Protective Order).

²³ Audit Report at 98.

²⁴ Id. at 46.

Based upon the information filed in the Application, as supplemented, the Application on its face violates Ohio law and fails to satisfy Ohio Adm. Code 4901:1-24-10. FirstEnergy Advisors have not demonstrated how it satisfies the certification requirements to become a competitive retail electric service (“CRES”) provider, including whether FirstEnergy Advisors is managerially, technically, and financially capable to perform the services it intends to provide, comply with applicable PUCO rules and orders, and has financial assurances sufficient to protect the distribution utility and customers from default as required in Ohio Adm. Code 4901:1-24-10(C) and R.C. 4928.08(B).

The FirstEnergy Advisors’ Application should be outright denied. If the PUCO does not deny the application, it should, at a minimum, hold its decision in abeyance until the PUCO renders a decision in the corporate separation case involving the FirstEnergy utilities. In the meantime, the PUCO should allow discovery to go forward so that parties can actively participate in this matter and assist the PUCO in developing a full and complete record upon which to base its decision. An evidentiary hearing, as requested numerous times, by numerous parties, should also be scheduled.

II. COMMENTS

A. To protect consumers, FirstEnergy Advisors Application, as supplemented, violates Ohio law and the PUCO’s rules and should be denied.

Ohio law requires regulated electric distribution utilities to be fully separated from competitive affiliates to protect consumers from subsidizing any affiliate’s

unregulated activities.²⁵ To ensure adherence with affiliate restrictions and to prevent the abuses of market power, R.C. 4928.17(A) required regulated utilities to create, file, and implement corporate separation plans approved by the PUCO. Ohio Adm. Code 4901:1-37 detailed the minimum content of the regulated utilities' corporate separation plans.

The FirstEnergy utilities have filed two corporate separation plans, the latest one was approved in 2010.²⁶ FirstEnergy's current corporate separation proposal is being reviewed in a case pending before the PUCO.²⁷ In that case, the PUCO retained an independent auditor to review the corporate separation plan. The Auditor's report was released on May 14, 2018. The Auditor, SAGE Management Consultants, LLC, criticized the FirstEnergy regulated utilities' co-mingling of senior officers of regulated and non-regulated affiliates and determined that it violated the corporate separation plan.²⁸ Also, as described in many pleadings, the Audit Report criticized the use of the "FirstEnergy" name by the utilities' non-regulated affiliate, concluding that it violated the EDUs' corporate separation plan.²⁹

As explained in great detail by NOPEC and Vistra, FirstEnergy Advisors' Supplemental Application failed to adequately address corporate separation requirements

²⁵ R.C. 4928.02(H).

²⁶ See *In re FirstEnergy*, Case No. 99-1212-EL-ETP, Opinion and Order (July 19, 2000); *In re FirstEnergy*, Case No. 10-388-EL-SSO, Opinion and Order (August 27, 2010) at 16, 27, approving the Corporate Separation Plan filed in Case No. 09-462-EL-UNC.

²⁷ See *In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Admin. Code Chapter 4902:1:37*, Case No. 17-974-EL-UNC.

²⁸ Audit Report at 39. See, also., NOPEC's Response to Supplemented Application and Staff Recommendation (April 14, 2020) ("NOPEC's Response") at 2-4; RESA Motion to Intervene (March 17, 2020) ("RESA Motion") at 3, 13-14.

²⁹ See, e.g., NOPEC/OCC Joint Motion at 4-5; RESA Motion at 3, 7-8. IGS Motion to Intervene and Establish a Procedural Schedule (March 25, 2020) ("IGS Motion") at 8-9.

and further highlighted concerns raised with regard to common ownership and the use of the “FirstEnergy” name.³⁰ The Supplemental Application provides general explanations and descriptions of FirstEnergy Advisors’ experience and plans; however, the information still fails to contain “sufficient information to enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer and its ability to comply with commission rules or orders adopted pursuant to Chapter 4928. of the Revised Code” as required by Ohio Adm. Code 4901:1-24-05. The additional information provided does not explain how FirstEnergy Advisors will satisfy R.C. 4928.17 and 4928.02(H). So as to not repeat the arguments already raised in great detail, OCC hereby supports the arguments raised by NOPEC and Vistra regarding the deficiency of FirstEnergy Advisors’ Supplemental Application. And OCC requests the PUCO deny FirstEnergy Advisors’ Application, as supplemented.

Moreover, without more support, the abbreviated Staff Report, filed days after the Supplemental Application, should be rejected. As explained previously, the supplemented Application on its face violates Ohio law and fails to satisfy Ohio Adm. Code 4901:1-24-10. FirstEnergy Advisors has not demonstrated how it satisfies the certification requirements to become a CRES provider. And it has not demonstrated how it is managerially, technically, and financially capable to perform services, comply with applicable PUCO rules and orders, and have financial assurances sufficient to protect the distribution utility and customers from default as required in Ohio Adm. Code 4901:1-24-10(C) and R.C. 4928.08(B).

³⁰ See, e.g., NOPEC’s Response at 2-4; Vistra Energy Corp.’s Response to Supplemental Exhibits B-2 and B-3 of the Application filed by Suvon, LLC d/b/a FirstEnergy Advisors (April 14, 2020)(“Vista’s Response”) at 4-5.

The one-page PUCO Staff Report does not explain how the Application, as supplemented, meets the statutory or administrative code requirements. It merely states that FirstEnergy Advisors completed all sections of the form and provided the requisite exhibits. And it states that the PUCO Staff reviewed and evaluated the application, exhibits, and amendments and believes the application complies with the Ohio Administrative Code. The PUCO Staff Report does not reveal what data requests it made and received nor any additional information it relied upon in reaching its conclusion.

The PUCO Staff Report also did not explain how the Application satisfies Ohio law or the Ohio Administrative Code requirements. Further, the Staff Report did not address any of the concerns raised by the intervening parties. The lack of an explanation as to how the PUCO Staff believes FirstEnergy Advisors will satisfy the corporate separation law and rules belies the PUCO Staff's conclusion that the Application should be approved. Without more, the Staff Report is insufficient to demonstrate compliance with Ohio law and the PUCO's rules. Accordingly, the PUCO should reject the PUCO Staff Report recommendation.

B. If FirstEnergy Advisors' Application is not denied on its face (which it should be), the PUCO should protect consumers by first ruling on the FirstEnergy utilities' corporate separation plan in the Audit Proceeding.

If the PUCO does not deny FirstEnergy Advisors' Application, the PUCO should not act on the application until it decides the issues raised by the Auditor regarding the FirstEnergy utilities' corporate separation plan (that is supposed to prevent abuse of

corporate affiliate relationships).³¹ As explained previously, the PUCO needs to address the sufficiency of FirstEnergy Utilities corporate separation plan and the issues the Auditor raised concerning affiliated entities of the FirstEnergy utilities with regard to (ultimately bankrupt) FirstEnergy Solutions. Although FirstEnergy Advisors was not in existence during the audit period, the PUCO should investigate the failure of the FirstEnergy regulated utilities to comply with the corporate separation laws and rules in Ohio law with respect to other affiliates like FirstEnergy Advisors. To protect the public interest, it is imperative that the PUCO eliminate any affiliate abuses that have occurred, are currently occurring, and may occur in the future.

Enforcing the corporate separation laws and rules and/or strengthening the corporate separation plan is particularly important with regard to the sharing or co-mingling of senior management in the instant case. Neither the FirstEnergy utilities or FirstEnergy Advisors explain how the same managers who run the regulated utilities and unregulated competitive affiliate, FirstEnergy Advisors, can separate their knowledge of the regulated business, operations, and market information from their knowledge of the affiliate's business, operations, and market information. In fact, it seems clear that real separation cannot occur to protect competitive markets. Additionally, the corporate separation law and rules need to be enforced to protect captive customers from subsidizing competitive affiliates and to ensure that FirstEnergy is not providing an affiliated CRES provider an unfair preference. Allowing FirstEnergy Advisors to use the "FirstEnergy" brand offers that unfair advantage, as noted by the Auditor.

³¹ See *supra* n.17.

Requiring the PUCO to rule on FirstEnergy's corporate separation plan before ruling on FirstEnergy Advisors' Application will allow the PUCO to establish the appropriate guidelines for the interactions between the regulated FirstEnergy utilities and FirstEnergy Advisors, if the PUCO decides to certify FirstEnergy Advisors. Setting such guidelines prior to FirstEnergy Advisors receiving a certificate to operate and begin operations will provide needed assurance that customers can likely be protected from market power abuses as outlined in the Audit Report.

C. If FirstEnergy Advisors' Application is not denied on its face (which it should be), the PUCO should protect consumers by scheduling the matter for hearing.

As requested in its Joint Motion to Suspend and as requested by other parties, the PUCO should adopt a procedural schedule that allows for the full development of a factual record for the benefit of the PUCO's decision-making. That schedule should include conducting a hearing on whether FirstEnergy Advisors possesses the management, financial and technical capability to provide service and comply with Ohio law, rules, and orders. Parties should have the opportunity to conduct discovery on the issues raised in the Application, as supplemented, and provide testimony and evidence demonstrating how the Application does not satisfy Ohio law or the PUCO's rules for certification to operate in the state of Ohio.

Specifically, OCC and NOPEC requested an evidentiary hearing on February 10, 2020 and February 25, 2020,³² NOPEC again requested a hearing on April 14, 2020,³³ Vistra requested a hearing on February 11, 2020, April 1, 2020, April 14, 2020,³⁴ the Northwest Ohio Aggregation Coalition (“NOAC”) requested a hearing on February 17, 2020,³⁵ and Interstate Gas Supply, Inc. (“IGS”) requested a hearing on March 25, 2020.³⁶ The PUCO has yet to rule on the pending motions for a hearing and procedural schedule or motions to compel discovery.

Under Ohio Adm. Code 4901:1-24-10(A)(2)(c), the PUCO should conduct a hearing in this matter with a schedule that provides ample opportunity to conduct discovery. Further, the schedule should allow for appropriate due process in this case by allowing discovery to be conducted as required by R.C. 4903.082, testimony to be filed, and a public hearing to be held to develop a complete record that will assist the PUCO in a full and fair consideration of the Application.³⁷ The PUCO routinely relies on testimony in contested cases and a hearing is an important part of any contested matter before the PUCO. As such, the PUCO should set a hearing to consider the positions of

³² NOPEC/OCC Joint Motion at 2, 5, 17; NOPEC-OCC Reply to FirstEnergy Advisors’ Memorandum Contra the NOPEC-OCC Motions to Suspend the Certification Application and for a Hearing (February 25, 2020) at 2, 12.

³³ NOPEC Response at 4, 12.

³⁴ Vistra’s Motion to Suspend, Motion to Deny or Suspend, Application, Motion for Expedited Treatment (February 11, 2020) at 7; Vistra’s Memorandum in Support of Interstate Gas Supply, Inc.’s Request to Establish Procedural Schedule (April 1, 2020) at 1; Vistra’s Response at 2, 8.

³⁵ NOAC’s Motion to Intervene and Motion to Hold a Hearing in this Matter (February 17, 2020) at 2.

³⁶ IGS Motion at 7.

³⁷ See R.C. 4903.09 (providing that the PUCO must include “a transcript of all testimony” in its written opinion in a contested case).

all parties in determining whether the Application is in the public interest (it's not) and whether it should be approved (it shouldn't).

III. CONCLUSION

FirstEnergy Advisors have failed to demonstrate how it satisfies the certification requirements to offer competitive services. FirstEnergy Advisors has also failed to demonstrate that it is managerially, technically, and financially capable to perform the services it intends to provide, comply with applicable PUCO rules and orders, and has financial assurances sufficient to protect the distribution utility and customers from default as required in Ohio Adm. Code 4901:1-24-10(C) and R.C. 4928.08(B). Based upon the information filed in the Application, as supplemented, the Application on its face violates Ohio law and fails to satisfy Ohio Adm. Code 4901:1-24-10 and should be denied.

Alternatively, OCC respectfully requests that the PUCO not act on the Application until it rules on FirstEnergy utilities' corporate separation plan which is under review in a separate PUCO case (Case No. 17-974-EL-UNC). In the meantime, the PUCO should afford parties ample discovery rights, as provided under Ohio law to allow the issues associated with the Application to be fully vetted. Once the PUCO's ruling in the corporate separation case is released, it should set this matter for hearing. In any event, an approval of the Application should not occur prior to the PUCO's resolution of its audit of FirstEnergy utilities' corporate separation plan in Case No. 17-974-EL-UNC.

Respectfully submitted,

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*Special Counsel for the
Office of the Ohio Consumers' Counsel*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to File Comments Instantly and Comments were served via electronic transmission upon the parties this 17th day of April 2020.

/s/ Kimberly W. Bojko
Kimberly W. Bojko
Special Counsel for OCC

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Case No(s). 20-0103-EL-AGG

Summary: Motion for Leave to File Comments Instantly and Comments electronically filed by Mrs. Kimberly W. Bojko on behalf of The Ohio Consumers' Counsel