

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio Edison)	
Company, The Cleveland Electric)	Case No. 17-0974-EL-UNC
Illuminating Company, and the Toledo)	
Edison Company's Compliance with R.C.)	
4928.17 and Ohio Admin. Code Chapter)	
4901:1-37)	
)	

SUPPLEMENTAL COMMENTS OF VISTRA ENERGY CORP.

I. INTRODUCTION

In accordance with the Attorney Examiner's Entry in this case (the "Audit Case") on April 29, 2020, Vistra Energy Corp. ("Vistra" or "the Company") submits comments on the audit report of SAGE Management Consultants, LLC ("SAGE") filed with the Public Utilities Commission of Ohio ("Commission") on May 14, 2018 ("Report"). Vistra also submits these comments consistent with the Commission's order in Case No. 20-0103-EL-AGG, which directed Vistra and other stakeholders to address the consumer protection and corporate separation concerns raised by certification of Suvon, LLC d/b/a FirstEnergy Advisors ("FirstEnergy Advisors") as a power broker and aggregator in this Audit Case.

In the more than two years since SAGE issued the Report, FirstEnergy Corp. declined to bring its corporate operations and affiliate structure into compliance with the Ohio laws SAGE identified. Instead, FirstEnergy Corp. has continued its violative actions, even adding a new competitive retail affiliate that perpetuates the same concerns and deficiencies the Report noted and the Commission has repeatedly addressed.

Vistra submits these comments to provide feedback on utility and affiliate activities the Commission identified as necessitating “vigilant monitoring,”¹ because Vistra believes that a fully competitive retail market, where retail suppliers are able to compete with each other on a level playing field and provide customers with innovative products and services, benefits Ohioans and enhances the market. The Company is an integrated power company with a significant retail electric and gas business and electric generation assets across twenty states, including Ohio. Vistra is the largest competitive residential electricity provider in the country, and its retail brands serve approximately five million residential, commercial, and industrial customers. Vistra is also the largest competitive power generator in the U.S. with a capacity of approximately 39,000 megawatts (“MW”) powered by a diverse portfolio including natural gas, nuclear, solar, and battery energy storage facilities.

Ohio is one of the most important and diverse energy states, and Vistra is committed to providing Ohio’s residents with innovative, customer-centric retail electricity, along with safe, reliable, and efficient power generation. Vistra established operations in Ohio with its acquisition of Dynegy on April 9, 2018.² In Ohio, Vistra has approximately 5,132 MW of generating capacity with four gas, two coal, and two oil-fueled plants. The Company also provides retail electric and gas services to approximately 400,000 Ohioans through its retail brands. Along with its legacy Dynegy brand, Vistra serves all customer classes in the State: residential, small business, large commercial and industrial.

¹ *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI, FINDING AND ORDER at 16 (Mar. 26, 2014).

² Vistra’s competitive retail electric service (“CRES”) 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.

Finally, Vistra is in the process of growing its retail presence in Ohio. The Company is expanding its retail sales office located in Cincinnati and has opened new offices in Columbus and Cleveland. Vistra's generation and retail businesses employ almost 400 Ohioans and the Company is recruiting more retail sales professionals as it continues to demonstrate its commitment to providing competitive electric retail services in the State. Vistra appreciates the opportunity to participate in this Audit Case and respectfully requests that the Commission:

- Allow for a limited period of intervention given the new facts and circumstances that FirstEnergy Corp. has created since the initial period for intervention in this Audit Case closed on October 9, 2018, over a year and a half ago and well before FirstEnergy Advisors filed its certification application in Case No. 20-0103-EL-AGG.
- Adopt the Report recommendation to remove the "FirstEnergy" name from CRES) affiliates to avoid affiliate bias and non-competitive market power. Such action would ensure compliance with Ohio Admin. Code 4901:1-37 and 4901:1-21-05(C)(10).
- Adopt the Report recommendation to transfer key personnel involved in corporate strategy discussions and decisions that are shared between the regulated FirstEnergy Corp./FirstEnergy Service Company and an unregulated competitive affiliate to the CRES. This would require that there be no shared employees at this service level between FirstEnergy Corp. and FirstEnergy Advisors, or any future CRES or other competitive affiliate that FirstEnergy Corp. may create in the future to ensure compliance with Ohio Admin. Code 4901:1-37-04(A)(4).
- Require the revisions the Report outlined to bring the Corporate Separation Plan and associated Cost Allocation Manual ("CAM") into compliance with 4901:1-37-05(B) and 4901:1-37-08. The Commission should also require updates to both documents that reflect FirstEnergy Corp.'s and its affiliates' current operational and managerial activities. Once these crucial compliance documents are revised, they should be filed with the Commission and a subsequent review and comment period should be noticed.

Vistra discusses each of these recommendations in further detail, including support within Ohio law and the Report, in these comments.

II. COMMISSION DECISION IN CASE NO. 20-0103-EL-AGG

Vistra sought and was granted unopposed intervention in Case No. 20-0103-EL-AGG, where FirstEnergy Advisors sought certification as a CRES aggregator and power broker.³ Vistra and other intervenors raised concerns that approving certification of a wholly-owned and unregulated subsidiary of FirstEnergy Corp. using the “FirstEnergy” name would violate Ohio’s consumer protection laws and inhibit competition.⁴ These intervenors also identified that issuing the certification could result in numerous violations of Ohio’s corporate separation laws.⁵

The Commission approved FirstEnergy Advisors’ application on April 22, 2020.⁶ When it addressed the trade name and corporate separation concerns Vistra and others identified, the Commission found that these issues would be best addressed in this Audit Case: “[T]he Commission finds that issues regarding Suvon’s use of the trade name and compliance with corporate separation requirements by FirstEnergy Corp. affiliates are best raised in other proceedings, specifically the ongoing review of the corporate separation audit of the three FirstEnergy Utilities in the *Corporate Separation Audit Case*.”⁷ The Attorney Examiner subsequently entered a notice for comment in this Audit Case on April 29, 2020.

III. REPORT FINDINGS AND RECOMMENDATIONS

The Commission established the audit process on March 26, 2014, recognizing “it is imperative that the utility and affiliate activities undergo vigilant monitoring in order to ensure their compliance with R.C. 4928.17 and Ohio Adm. Code 4901:1-37, and to further Ohio’s policies

³ *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio* (“*Suvon d/b/a FirstEnergy Advisors CRES Case*”), Case No. 20-0103-EL-AGG, FINDING AND ORDER (Apr. 22, 2020).

⁴ *See, e.g., Suvon d/b/a FirstEnergy Advisors CRES Case*, Vistra Energy Corp.’s Motion to Intervene, Motion to Deny or Suspend Application, and Motion for Expedited Treatment (Feb. 10, 2020).

⁵ *See, e.g., Suvon d/b/a FirstEnergy Advisors CRES Case*, 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 (Apr. 14, 2020).

⁶ *Suvon d/b/a FirstEnergy Advisors CRES Case*, FINDING AND ORDER (Apr. 22, 2020).

⁷ *Id.* at 6.

pursuant to R.C. 4928.02.”⁸ On May 17, 2017, the Commission directed Staff to issue a request for proposal for audit services to review FirstEnergy Corp.’s compliance with R.C. 4928.17 and Ohio Admin. Code Chapter 4901:1-37.⁹ SAGE was selected to perform the audit, and filed the Report on May 14, 2018. In relevant part, SAGE recommended:

- Developing an Ohio Corporate Separation Rules Compliance Program addendum to FirstEnergy Corp.’s Federal Energy Regulatory Commission (“FERC”) and North American Electric Reliability Corporation (“NERC”) Critical Infrastructure Protection (“CIP”) Compliance Programs.¹⁰ This recommendation was based on a finding that FirstEnergy Corp.’s Corporate Separation Plan filed in Case No. 09-0462-EL-UNC relied on FERC standards, rather than Ohio’s corporate separation rules, and that FirstEnergy Corp. also had an intensive program to comply with NERC CIP requirements.¹¹ There, SAGE found that the Corporate Separation Plan failed to cover “important compliance elements such as customer list access, CRES provider list access, CRES sales practices, and FirstEnergy Service Company (“Service Company”) personnel disclosures” subject to Ohio’s corporate separation rules.¹² SAGE also recommended that FirstEnergy Corp. name one of its current compliance staff members as the Ohio Corporate Separation Rules Compliance Manager.¹³
- Including all of the elements required by the Ohio Administrative Code in FirstEnergy Corp.’s CAM.¹⁴ SAGE found that the CAM FirstEnergy Corp. provided listed just two of the nine elements CAMs must include under Ohio Admin. Code 4901:1-37-08(D).¹⁵

SAGE also made recommendations regarding FirstEnergy Corp.’s CRES affiliate, FirstEnergy Solutions,¹⁶ including:

⁸ *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI, FINDING AND ORDER at 16 (Mar. 26, 2014).

⁹ *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 Admin. Code Chapter 4901:1-37*, Case No. 17-0974-EL-UNC (“*Audit Case*”), ENTRY (May 17, 2017).

¹⁰ Report at 36.

¹¹ *Id.* at 19–28.

¹² *Id.* at 36.

¹³ *Id.*

¹⁴ *Id.* at 121.

¹⁵ Report at 121.

¹⁶ At the time the Report was issued in May 2018, FirstEnergy Solutions was FirstEnergy Corp.’s only CRES. Although FirstEnergy Solutions declared and emerged from bankruptcy in the intervening period as Energy Harbor Corp. and is no longer a FirstEnergy Corp. affiliate, the issues associated with the way in which FirstEnergy Corp. names, operates, and supports its affiliates remain due to the recent certification of FirstEnergy Corp. affiliate FirstEnergy Advisors as a CRES power broker and aggregator. Vistra notes that on March 20, 2020, FirstEnergy Corp. filed a notice in this Audit Case, stating that “FES emerged from bankruptcy as Energy Harbor Corp.” (emphasis added). However, when Energy Harbor LLC applied for certification as a competitive retail natural gas supplier, its operating agreement stated that Energy Harbor Corp. is the sole member of Energy Harbor LLC, and describes Energy

- Transferring all Service Company personnel who support FirstEnergy Solutions' CRES sales and customer service in Ohio to FirstEnergy Solutions.¹⁷ SAGE identified that the assignment of FirstEnergy Solutions' CRES retail sales and service responsibility to the Service Company and the designation of FirstEnergy Solutions' CRES sales and services leaders as shared services employees made "separation of regulated and competitive information highly challenging."¹⁸ SAGE explained that this arrangement resulted in management accessing "both regulated and unregulated employee direct reports," which was "highly inappropriate."¹⁹
- Removing "FirstEnergy" from the name of FirstEnergy Solutions to eliminate "affiliate bias."²⁰ SAGE found that FirstEnergy Solutions' use of the "FirstEnergy" name violated the Corporate Separation Plan Code of Conduct provision contained in Ohio Admin. Code 4901:1-37-04(D)(7), which states:

The electric utility, upon request from a customer, shall provide a complete list of all competitive retail electric service providers operating on the system, but shall not endorse any competitive retail electric service providers, indicate that an electric services company is an affiliate, or indicate that any competitive retail electric service provider will receive preference because of an affiliate relationship.

SAGE reasoned that "it is impossible for the FirstEnergy Ohio Companies representatives to not 'indicate an electric service company is an affiliate' as they share the name 'FirstEnergy.'"²¹ Further, SAGE noted that "FirstEnergy works hard on its stand-alone branding in Ohio,"²² and that "FirstEnergy Solutions' successful competitive retail electric services in the Ohio Companies territories may be related to its FirstEnergy name."²³ SAGE explained that "[w]hen potential CRES customers are presented with a list of potential CRES providers, even if it is from the [Commission] website . . . it is natural that some would . . . give greater consideration to [FirstEnergy Solutions] in making their CRES supplier decisions."²⁴

SAGE reported that FirstEnergy Corp.'s CEO publicly announced "over the next 12 to 18 months we are going to exit competitive generation and become a fully regulated company."²⁵ The Report

Harbor LLC as "formerly known as FirstEnergy Solutions Corp." Case No. 00-1742-EL-CRS, Application at A-16 (Mar. 5, 2020). Vistra refers to these Energy Harbor entities collectively as "Energy Harbor."

¹⁷ Report at 36.

¹⁸ *Id.* at 34.

¹⁹ *Id.*

²⁰ *Id.* at 98.

²¹ *Id.*

²² Report at 98.

²³ *Id.* at 97.

²⁴ *Id.* at 98.

²⁵ *Id.* at 19.

also observed that “[c]urrent competitive energy issues could lead to bankruptcy of [FirstEnergy Solutions],” and concluded that “[t]he FirstEnergy exit of the competitive generation business and competitive retail electric services business in Ohio will reduce the risk to Ohio ratepayers from affiliate relationships and transactions with the Ohio Companies’ affiliates.”²⁶ Further, with the exception of the FirstEnergy entities, all of the stakeholders submitting comments in this Audit Case identified violations of Ohio law and risks to Ohio ratepayers stemming from use of the “FirstEnergy” brand. FirstEnergy Solutions subsequently filed for Chapter 11 bankruptcy and dropped “FirstEnergy” from its name to emerge as Energy Harbor, no longer a FirstEnergy Corp. affiliate.²⁷

While FirstEnergy Corp. may claim that the violations of Ohio law the Report identified with respect to FirstEnergy Solutions are resolved because that entity no longer operates with a “FirstEnergy” name, the certification of FirstEnergy Advisors as a CRES power broker and aggregator now raises directly comparable problems.²⁸ FirstEnergy Corp. has failed to address any of the problems SAGE identified. It also appears that FirstEnergy Corp. has not even considered addressing them. FirstEnergy Corp.’s inaction and failure to prove that these problems are meritless indicate that the Commission must take immediate action.

IV. COMPETITIVE ADVANTAGE AND THREATS TO CONSUMER PROTECTION FROM THE FIRSTENERGY NAME

While Energy Harbor f/k/a FirstEnergy Solutions no longer bears the “FirstEnergy” name, FirstEnergy Advisors’ “FirstEnergy” branding raises comparable consumer protection and

²⁶ *Id.*

²⁷ On May 6, 2020, the Commission granted Energy Harbor’s applications for certification to provide retail electric generation and power marketer services and retail natural gas marketer services. *In the Matter of the Application of Energy Harbor LLC for Certification as a Competitive Retail Electric Service Provider*, Case No. 00-1742-EL-CRS, FINDING AND ORDER (May 6, 2020); *In the Matter of the Application of Energy Harbor LLC for Certification as a Competitive Retail Natural Gas Service Provider*, Case No. 20-0550-GA-CRS (May 6, 2020).

²⁸ *Suvon d/b/a FirstEnergy Advisors CRES Case*, FINDING AND ORDER (Apr. 22, 2020).

competitive advantage concerns SAGE and all of the non-FirstEnergy participants identified in this Audit Case.

1. Competitive Advantage: Ohio Admin. Code Chapter 4901:1-37

Just as the name “FirstEnergy” in FirstEnergy Solutions violated the Corporate Separation Plan Code of Conduct provision in Ohio Admin. Code 4901:1-37-04(D)(7), so too does the use of “FirstEnergy” in FirstEnergy Advisors. As noted above, this section prohibits an electric utility from indicating that “an electric service company is an affiliate.” Just as SAGE concluded for FirstEnergy Solutions, “it is impossible for the FirstEnergy Ohio Companies representatives to not ‘indicate an electric service company is an affiliate’ as they share the name ‘FirstEnergy.’”²⁹

FirstEnergy Advisors also benefits from the same “affiliate bias” SAGE identified for FirstEnergy Solutions, contradicting the purpose of the Commission’s corporate separation rules in Ohio Admin. Code Chapter 4901:1-37, and violating Ohio Admin. Code 4901:1-37-04(D)(8). Ohio Admin. Code 4901:1-37-02 states that the purpose of this chapter is to “require all of the state’s electric utilities to meet the same standards so a competitive advantage is not gained solely because of corporate affiliation,” and to “prohibit the abuse of market power.” Ohio Admin. Code 4901:1-37-04(D)(8) specifically requires electric utilities to “use reasonable efforts to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power.” As SAGE concluded when it evaluated FirstEnergy Solutions’ abuse of market power, FirstEnergy Advisors’ “successful competitive retail electric services in the Ohio Companies territories may be related to its FirstEnergy name.”³⁰

By again entering the CRES market in 2020 with an entity using the “FirstEnergy” name, FirstEnergy Corp. is taking advantage of its name recognition and overall customer familiarity.

²⁹ Report at 98.

³⁰ *Id.* at 97.

FirstEnergy Corp.’s website identifies that FirstEnergy’s regulated distribution companies form “one of the nation’s largest investor-owned electric systems.”³¹ This wide-reaching recognition of the “FirstEnergy” brand provides FirstEnergy Advisors with an unfair competitive advantage among CRES providers and allows FirstEnergy to abuse its market power. SAGE quoted FirstEnergy brand executives touting the importance of using the FirstEnergy name because the “FirstEnergy brand is prominent.”³² This prominence is undeniably present and on full display at FirstEnergy Stadium, home of the Cleveland Browns and “many other events including: concerts, international soccer games, high school and college football games, and much more.”³³

FirstEnergy Corp.’s repeated efforts to use “FirstEnergy” branding for a CRES despite multiple contested cases on the issue further illustrate its recognition of the competitive advantage this name use provides. After all, FirstEnergy Corp. must, itself, attribute significant competitive advantage to using the “FirstEnergy” brand for its CRES affiliate since it sought permission for “Suvon, LLC d/b/a FirstEnergy Advisors” instead of using “Suvon” or another non-FirstEnergy name for the certification as a CRES power broker and aggregator in 2020. FirstEnergy Corp. has also never offered an affirmative statement that no advertising materials or any shared service representatives/employees will use either the FirstEnergy logo or solely “FirstEnergy” when soliciting business on behalf of, or representing, FirstEnergy Advisors or any other “FirstEnergy” branded CRES affiliate. As SAGE concluded, it is only natural that CRES customers would give greater consideration to a “FirstEnergy” branded CRES.³⁴

Crucially, none of the FirstEnergy entities addressed these concerns in this Audit Case or Case No. 20-0103-EL-AGG. Because it is the electric utility that has the burden of proof to show

³¹ See **Attachment 1**.

³² Report at 98.

³³ See www.firstenergystadiumn.com/stadium-info/about-us.

³⁴ *Id.*

compliance with Ohio Admin. Code Chapter 4901:1-37 and demonstrate that it is not gaining a competitive advantage, creating competitive inequality, or abusing its market power through the use of a CRES affiliate—something FirstEnergy Corp. has not done—the Commission should prohibit the use of “FirstEnergy” branded competitive services on these grounds alone.³⁵

2. Consumer Protection: Ohio Admin. Code 4901:1-21-05(C)(10)

Branding an affiliated CRES with the “FirstEnergy” name is also misleading and in violation of the Commission’s consumer protection rules. Ohio Admin. Code 4901:1-21-05(C) provides that no CRES 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.” Here, “unfair, 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.”³⁶

A CRES provider’s use of the “FirstEnergy” name clearly conflicts with these consumer protections where this entity’s name could easily be construed as synonymous with FirstEnergy Corp. or any other “FirstEnergy” branded entity. As Vistra explained in Case No. 20-0103-EL-AGG, this likelihood for confusion is exacerbated by FirstEnergy Corp.’s pervasive “FirstEnergy” branding efforts that SAGE found “FirstEnergy works hard on.”³⁷ FirstEnergy Corp.’s use of “FirstEnergy” as its logo,³⁸ in the stadium naming in Cleveland, in its own marketing materials, and in the “firstenergycorp.com” domain used for CRES employee email addresses³⁹ indicates that

³⁵ Ohio Admin. Code 4901:1-37-02(E).

³⁶ Ohio Admin. Code 4901:1-21-05(C)(10).

³⁷ Report at 98.

³⁸ See **Attachment 1**.

³⁹ *Suvon d/b/a FirstEnergy Advisors CRES Case*, FirstEnergy Advisors Application at A-7 (Jan. 17, 2020) (identifying that the email address for the CRES applicant is firstenergyadvisors@firstenergycorp.com with no proposed end date); *In the Matter of the Application of Energy Harbor LLC for Certification as a Competitive Retail Electric Service Provider*, Case No. 00-1742-EL-CRS, Energy Harbor Renewal Application at Sections A-5 and A-6 (Mar. 23, 2020) (identifying that staff should be contacted at their “firstenergycorp.com” email address until May 2020).

the company seeks to be known as all things “FirstEnergy.” This can even be observed in the company’s filings with the Commission⁴⁰ or the firstenergycorp.com webpage where the entity is simply referred to throughout as “FirstEnergy,” thereby capitalizing on the recognition of the regulated utility name in even competitive services.

FirstEnergy Advisors’ ostensible efforts to address this confusion in Case No. 20-0103-EL-AGG instead further illustrate the problem. In its *Correspondence Supplementing Application Exhibits B-2 and B-3*, FirstEnergy Advisors committed to providing the following 115-word disclosure “or one very similar,” in marketing materials, stating the following:

Suvon, LLC, d/b/a FirstEnergy Advisors, is an unregulated subsidiary of FirstEnergy Corp. Suvon, LLC d/b/a FirstEnergy Advisors, is not the same company as FirstEnergy Corp. The prices of Suvon, LLC, d/b/a, FirstEnergy Advisors, products and services are not regulated by the state utility commissions. You do not have to purchase any product and/or service from Suvon, LLC, d/b/a FirstEnergy Advisors, in order to receive the same regulated services from FirstEnergy Corp.’s regulated electric utilities – Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, West Penn Power Company, Pennsylvania Power Company, Metropolitan Edison Company, Jersey Central Power & Light Company, Monongahela Power Company, the Potomac Edison Company, and American Transmission Systems, Incorporated.⁴¹

FirstEnergy Advisors provided no description of the font size or location it would use for such a lengthy disclosure. Additionally, the disclosure includes FirstEnergy Corp.’s non-Ohio entities, which would be completely unfamiliar to Ohio customers, resulting in an elongated disclaimer that hides the relevant information in unnecessary text. Further, none of the language in the disclosure addresses the central Report finding that CRES customers would give greater consideration to a FirstEnergy-branded CRES.

⁴⁰ See *Suvon d/b/a FirstEnergy Advisors CRES Case*, Correspondence Supplementing Application Exhibits B-2 and B-3 at 3 (Apr. 1, 2020).

⁴¹ *Id.* at 4.

Beyond the disclosure itself, FirstEnergy Advisors’ efforts to describe the FirstEnergy corporate structure in the same supplemental filing in Case No. 10-0103-EL-AGG highlight the difficulty of differentiating between the FirstEnergy entities, where four iterations of “FirstEnergy” appear in two lines of a paragraph. There, FirstEnergy Advisors states that as a subsidiary of FirstEnergy Corp., “[i]ndirect costs for products or services provided by FirstEnergy Service Company to [FirstEnergy Advisors] will be allocated in accordance with FirstEnergy’s CAM”⁴² This part of the supplemental filing also uses the shorthand “FirstEnergy” in a pair of sentences that actually refers to three different FirstEnergy entities.⁴³ Although those familiar with the detailed corporate structure, affiliations, and subtleties in certain names might understand the intended meaning, these statements illustrate just how easily customers could be confused by a CRES using the “FirstEnergy” name. This risk for confusion is particularly acute when the parent entity itself frequently falls into its own “FirstEnergy” shorthand.

Because a CRES affiliate’s use of the FirstEnergy name violates both Ohio Admin. Code 4901:1-37 and 4901:1-21-05(C)(10), Vistra requests that the Commission adopt the Report’s recommendation to remove the “FirstEnergy” name from any such affiliate and prohibit any similar future use by FirstEnergy Corp.

3. Responses to FirstEnergy’s Objections to Limits on Name Use

Instead of addressing SAGE’s findings or the concerns of Vistra and other stakeholders in this Audit Case or Case No. 20-0103-EL-AGG in a meaningful way, the FirstEnergy entities make the same tenuous arguments in both Cases. First, that the Commission has previously allowed similar name usage between an electric distribution utility (“EDU”) and an affiliated CRES. Second, that that any restriction on trade name use is a “constitutional violation.”

⁴² *Id.* at 2.

⁴³ *Id.* at B-2.

In both Cases, the FirstEnergy entities mischaracterize the same Commission decisions regarding AEP Energy Inc., Duke Energy Retail Sales, Dominion Retail Inc., Vectren Retail, LLC, and the combined cases 00-1862-EL-CSS and 00-1742-EL-CRS (“FirstEnergy Service Corp. Cases”) to support their first argument.⁴⁴ Similar name usage was not a disputed issue in the available filings in these cases with the exception of the combined FirstEnergy Service Corp. Cases pending in 2000. Further, the Commission did not promulgate a version of Ohio Admin. Code 4901:1-21-05(C)(10) until 2008,⁴⁵ *after* the Ohio Consumers’ Counsel raised the issue in the FirstEnergy Service Corp Cases.⁴⁶ Thus, none of the cases the FirstEnergy entities repeatedly cite involved the Commission affirmatively deciding that an affiliated CRES using an EDU name did not violate Ohio Admin. Code 4901:1-21-05(C)(10) and other relevant consumer protection rules.

Turning to the second argument regarding constitutionality of trade name limitations, the FirstEnergy entities appear to agree that the issue cannot be decided in a vacuum.⁴⁷ The concerns SAGE, Vistra, and other Case participants raise relate to customer confusion or instances where a consumer could be misled in violation of Ohio Admin. Code 4901:1-37-04(D)(7) or 4901:1-21-05(C)(10) based on FirstEnergy Corp.’s existing marketing. As described above, FirstEnergy Corp. chose to use “FirstEnergy” as its logo, in the stadium naming in Cleveland, in its own

⁴⁴ *Suvon d/b/a FirstEnergy Advisors CRES Case*, FirstEnergy Solutions Corp. Reply Comments at 5-6 (Jan. 7, 2019); *Suvon d/b/a FirstEnergy Advisors CRES Case*, FirstEnergy Advisors Memorandum in Opposition to Motions to Suspend at 6-7 (Feb. 18, 2020).

⁴⁵ *In the Matter of the Commission’s Review of Chapters 4901:1-9, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*, Case No. 06-0653-EL-ORD, FINDING AND ORDER, PART 2 OF 2, at 21 (Nov. 5, 2008). The Commission did not promulgate the current version of Ohio Admin. Code 4901:1-21-05(C)(10) until 2013. *In the Matter of the Commission’s Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD, FINDING AND ORDER, at 16 (Dec. 18, 2013). Both versions of Ohio Admin. Code 4901:1-21-05(C)(10) prohibited a CRES from engaging in any solicitation that would lead a customer to believe that the CRES was soliciting on behalf of an Ohio electric utility.

⁴⁶ The Commission had just proposed its first round of rules implementing competitive retail electric service standards that spring. *Re Promulgation of Rules for Minimum Competitive Retail Electric Service Standards*, Case No. 99-1611-EL-ORD, FINDING AND ORDER (Apr. 6, 2000).

⁴⁷ *See, e.g., Audit Case*, FirstEnergy Solutions Corp. Reply Comments at 5 (Jan. 7, 2019).

marketing materials, and now in its branding of FirstEnergy Advisors, while also using an email with the “firstenergycorp.com” domain name for that affiliate.

In the rulemaking case the FirstEnergy entities rely on to assert that limiting trade name usage is unconstitutional, the Commission articulated the same analysis that Vistra asserts here: That the issue turns on circumstances beyond the trade name alone.⁴⁸ The Commission observed that “*absent other circumstances* indicating that the use of the name and/or logo is unfair, misleading, or deceptive,” the Commission “did not believe that an unaffiliated CRES supplier should necessarily be prohibited from using the incumbent utility’s name and/or logo.”⁴⁹ Because SAGE, Vistra, and other Audit Case participants have identified numerous “other circumstances” indicating “FirstEnergy” branding of a CRES affiliate is misleading—including the extensive “FirstEnergy” marketing efforts described above—this rulemaking case supports the conclusion that FirstEnergy should be prohibited from using the “FirstEnergy” name for competitive services. Finally, the U.S. Supreme Court recognizes the fundamental concept that trade name usage can be limited to restrict false, deceptive, and misleading commercial speech.⁵⁰ Multiple courts have also specifically rejected challenges to public utility commission limits on misleading utility/affiliate commercial speech.⁵¹

⁴⁸ *In the Matter of the Commission’s Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD, FINDING AND ORDER at 14 (Dec. 18, 2013).

⁴⁹ *Id.* (emphasis added).

⁵⁰ *Friedman v. Rogers*, 440 U.S. 1, 9 (1979) (holding that a prohibition on the practice of optometry under a trade name is constitutionally permissible where used to protect the public from “false, deceptive, and misleading commercial speech.”); *See also Matal v. Tam*, 582 U.S. 1, 6 (2017) (“It is well settled, for instance, that to the extent a trademark is confusing or misleading the law can protect consumers . . .”).

⁵¹ *Indus. Retail Ltd. Partnership v. Pub. Util. Com’n of Texas*, 436 S.W.3d 890, 923–24 (Tex. App. 2014) (upholding Public Utilities Commission of Texas’ order denying shared use of the AEP name and logo and concluding that the government may freely regulate misleading commercial speech); *Illinois Power Co. v. Illinois Commerce Comm’n*, 316 Ill.App.3d 254, 261 (Ill. App. 2000) (holding “[s]ince the ban on [utility/affiliate] joint advertising and marketing passes muster under the intermediate level of scrutiny for the regulation of commercial speech, we reject [the utilities’] claims that the ban is unconstitutional.”).

A CRES provider's use of the FirstEnergy name violates numerous consumer protection laws and creates an impermissible competitive advantage that the FirstEnergy entities are unable to defend. Further, the FirstEnergy entities have not articulated why its competitive services must bear the "FirstEnergy" brand. As the Report concluded, a CRES provider's use of the FirstEnergy name resulted in "affiliate bias" in violation of Ohio Admin. Code 4901:1-37-04(D)(7) by creating the appearance of FirstEnergy Corp.'s endorsement of a CRES provider (FirstEnergy Advisors, in the present instance).⁵² Further, the Report explained that when viewing a list of CRES providers, it was natural that some CRES customers would "give greater consideration to [the FirstEnergy-branded CRES provider] in making their CRES supplier decisions."⁵³ Because FirstEnergy Corp. continues to use the FirstEnergy name in a manner that violates Ohio law and defies the Report, the Commission should prohibit use of the "FirstEnergy" name for competitive services.

V. SHARED EMPLOYEES AND UNFAIR COMPETITION

Ohio Admin. Code 4901:1-37-04(A)(4) provides: "An electric utility may not share employees and/or facilities with any affiliate, if the sharing, in any way, violates [the code of conduct]." Such sharing is prohibited if the shared employee has access to pricing and capability information not otherwise contemporaneously and readily available.⁵⁴ The sharing of employees between the regulated FirstEnergy Corp. and unregulated affiliates was an area of significant review, culminating in SAGE recommending: "Transfer all Service Company personnel who support [FirstEnergy Solutions] CRES sales and customer service in Ohio to FirstEnergy Solutions."⁵⁵ While FirstEnergy Solutions may no longer exist, this recommendation applies to the sharing of key strategic employees between FirstEnergy Corp. and FirstEnergy Advisors.

⁵² Report at 98.

⁵³ *Id.*

⁵⁴ Ohio Admin. Code 4901:1-37-04(D)(3).

⁵⁵ Report at 36.

FirstEnergy Advisors shares three manager-level employees with FirstEnergy Corp./Service Company (where those three hold CEO, president, and vice president positions), and two of those three employees also hold director positions with regulated FirstEnergy Corp. utilities.⁵⁶ These key strategic positions within both regulated FirstEnergy Corp. and unregulated FirstEnergy Advisors—specifically in the financial and marketing areas—raise the same issues the Report identified for the employees FirstEnergy Corp. and FirstEnergy Solutions shared.⁵⁷ While FirstEnergy Advisors has stated that “[e]mployees with market employee classifications do not have access to transmission or distribution systems, facilities, or related information,” this does not explain how those shared managers will ensure that none of the information they learn in their roles within FirstEnergy Corp./Service Company or the regulated utilities will ever influence any decision or directive they make in their roles within FirstEnergy Advisors.

FirstEnergy Corp. has the burden of proof to show compliance with Ohio Admin. Code Chapter 4901:1-37. It fails to carry this burden by never explaining how the same managers who run both the regulated operations and an unregulated competitive affiliate can separate their knowledge of the regulated utility’s business, operations, and market information on a daily basis, and even a decision-by-decision basis, from their knowledge of the FirstEnergy Advisor’s unregulated and competitive business, operations, and market information. The Commission should adopt the Report’s recommendation to fully segregate key unregulated and regulated employees between FirstEnergy Corp. and competitive retail affiliates.

⁵⁶ See firstenergycorp.com/investor/corporate_governance/officers_and_directors.html; investors.firstenergy.com; *Suvon d/b/a FirstEnergy Advisors CRES* Case, FirstEnergy Advisors’ Application at A-12 (January 17, 2020); and the Ohio Companies’ Annual Reports, 2019 4Q FERC Form 1. These documents show that Charles Jones is President and CEO of FirstEnergy Corp., Director of the regulated utilities, and Manager of FirstEnergy Advisors; Steven E. Strah is Sr. Vice President and CEO of “FirstEnergy,” Director of the regulated utilities, and Manager of FirstEnergy Advisors; and Dennis Chack is Sr. Vice President, Product Development, Marketing and Branding of Service Company and Manager of FirstEnergy Advisors.

⁵⁷ Report at 36 and 39.

VI. CORPORATE SEPARATION PLAN AND COST ALLOCATION MANUAL DEFICIENCIES

The Corporate Separation Plan and CAM that SAGE audited raise a multitude of concerns regarding their completeness and compliance with Ohio law, which the FirstEnergy Advisors certification only magnifies.

Prominently among these problems, the CAM FirstEnergy Advisors relied on to support its CRES application does not comply with Ohio's corporate separation plan requirements. Ohio Admin. Code 4901:1-37-05(B)(7) states that a corporate separation plan must, at a minimum, include provisions related to maintaining a CAM. Ohio Admin. Code 4901:1-37-08(D) outlines nine elements that the CAM must include:

- (1) An organization chart of the holding company, depicting all affiliates, as well as a description of activities in which the affiliates are involved.
- (2) A description of all assets, services, and products provided to and from the electric utility and its affiliates.
- (3) All documentation including written agreements, accounting bulletins, procedures, work order manuals, or related documents, which govern how costs are allocated between affiliates.
- (4) A copy of the job description of each shared employee.
- (5) A list of names and job summaries for shared consultants and shared independent contractors.
- (6) A copy of all transferred employees' (from the electric utility to an affiliate or vice versa) previous and new job descriptions.
- (7) A log detailing each instance in which the electric utility exercised discretion in the application of its tariff provisions.
- (8) A log of all complaints brought to the electric utility regarding this chapter.
- (9) A copy of the minutes of each board of directors meeting, where it shall be maintained for a minimum of three years.

In Case No. 20-0103-EL-AGG, FirstEnergy Advisors attempted to address concerns regarding EDU and affiliate cross subsidization by referencing its CAM: “Proper cost allocation is also ensured through a Cost Allocation Manual (CAM) that is created and maintained with clear documentation of how costs are allocated [between] the utility and its affiliates and between regulated and nonregulated operations.”⁵⁸ FirstEnergy Advisors also explained that there is “an internal review of the CAM to ensure that costs are being properly allocated.”⁵⁹

Despite FirstEnergy Advisors’ confidence in its CAM, the Report identified that the CAM included just two of the nine elements Ohio Admin. Code 4901:1-37-08(D) requires: Elements 2 and 3.⁶⁰ Thus, the CAM not only violates Ohio corporate separation plan requirements under Ohio Admin. Code 4901:1-37-05(B)(7) and 4901:1-37-08(D), but also fails to provide complete information that is crucial to evaluating the FirstEnergy entities’ compliance with other corporate separation rules. For instance, if the Company included a “copy of the job description of each shared employee,” as required by Ohio Admin. Code 4901:1-37-08(D)(4), those with access to the CAM could better evaluate whether the FirstEnergy entities were complying with the shared service employee requirements specifically structured to address impermissible cross subsidization under Ohio Admin. Code 4901:1-37-04(A) and (D).

The FirstEnergy Advisors certification also underscores the need to develop an Ohio corporate separation rules compliance program addendum to FirstEnergy Corp.’s FERC and NERC CIP compliance programs as SAGE recommended.⁶¹ Through a side-by-side comparison of the code of conduct requirements for corporate separation plans with FirstEnergy Corp.’s

⁵⁸ *Suvon d/b/a FirstEnergy Advisors CRES Case*, Correspondence Supplementing Application Exhibits B-2 and B-3 at 2 (Apr. 1, 2020).

⁵⁹ *Id.* at 3.

⁶⁰ Report at 121.

⁶¹ *Id.* at 36.

FERC-based compliance programs, SAGE identified that corporate separation plan code of conduct sections 2, 7, 8, and 11 are not covered by the existing programs.⁶² Under Ohio Admin.

Code 4901:1-37-04(D), these required sections state:

(2) On or after the effective date of this chapter, the electric utility shall make customer lists, which include name, address, and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail electric service providers transacting business in its service territory, unless otherwise directed by the customer. This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services. This information shall not be used by the certified retail electric service providers for any other purpose than the marketing of electric service to the customer...

(7) The electric utility, upon request from a customer, shall provide a complete list of all competitive retail electric service providers operating on the system, but shall not endorse any competitive retail electric service providers, indicate that an electric services company is an affiliate, or indicate that any competitive retail electric service provider will receive preference because of an affiliate relationship.

(8) The electric utility shall use reasonable efforts to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power and the electric utility's compliance officer shall promptly report any such unreasonable sales practices, market deficiencies, and market power to the director of the utilities department (or their designee)...

(11) Shared representatives or shared employees of the electric utility and affiliated electric services company shall clearly disclose upon whose behalf their public representations are being made when such representations concern the entity's provision of electric services.

As SAGE identified, these missing areas in the Corporate Separation Plan's code of conduct cover "important compliance elements such as customer list access, CRES provider list access, CRES sales practices, and Service Company personnel disclosures."⁶³

As with the CAM, FirstEnergy Advisors relied on these exact missing protections to wave away Vistra and other intervenors' concerns regarding cross subsidization in Case No. 20-0103-

⁶² *Id.*

⁶³ *Id.*

EL-AGG. Citing Ohio Admin. Code 4901:1-37-04, FirstEnergy Advisors stated: “Vistra should be aware of the exhaustive protections in place, including but not limited to the prohibition of cross-subsidies, the requirement to maintain separate accounting, strict financial arrangement requirements, and the code of conduct.”⁶⁴ Because the FirstEnergy entities failed to comply with the very protections relied on to support the FirstEnergy Advisors certification, it is more crucial than ever to address these violations of Ohio law. FirstEnergy Corp.’s lack of transparency by not providing its CAM and Corporate Separation Plan publicly in either Case No. 20-0103-EL-AGG or in this Audit Case highlights its efforts to obfuscate stakeholders’ understanding of the “exhaustive protections” that FirstEnergy Corp. insists these documents provide.

Finally, FirstEnergy Corp. also needs to bring its Corporate Separation Plan up to date. For instance, FirstEnergy Corp. should provide an updated Corporate Separation Plan that includes a list of its current affiliates. Ohio Admin. Code 4901:1-37-05(B)(3) provides that a “corporate separation plan shall be a stand-alone document that, at a minimum, includes . . . [a] list of all current affiliates identifying each affiliate’s product(s) and/or service(s) that it provides.” The current Corporate Separation Plan still lists FirstEnergy Solutions as an affiliate,⁶⁵ makes no mention of Suvon, LLC despite that company’s formation on September 25, 2017,⁶⁶ and certainly does not address FirstEnergy Advisors, which was certified as a CRES on April 22, 2020.⁶⁷ The same likely holds true for FirstEnergy Corp.’s current CAM.

In sum, the Corporate Separation Plan, including the CAM, fails to comply with numerous provisions of Ohio law and requires material updating. Because the FirstEnergy Advisors

⁶⁴ *Suvon d/b/a FirstEnergy Advisors CRES Case*, Suvon, LLC d/b/a FirstEnergy Advisors’ Memorandum in Opposition to the Motions to Suspend at 9 (Feb. 18, 2020).

⁶⁵ Corporate Separation Plan first filed in Case No. 09-0462-EL-UNC at 28.

⁶⁶ *Suvon d/b/a FirstEnergy Advisors CRES Case*, FirstEnergy Advisors Application at A-13 (Jan. 17, 2020).

⁶⁷ *Suvon d/b/a FirstEnergy Advisors CRES Case*, FINDING AND ORDER (Apr. 22, 2020).

certification raised concerns in these exact deficient areas, it is imperative that these problems are fully investigated and corrected. Thus, Vistra requests that Commission require revisions and updates to these documents to bring them into compliance. The Commission should then require filing of current versions of the Corporate Separation Plan and CAM in this Audit Case and notice a period for review and comment.

VII. SIGNIFICANT CHANGES IN FIRSTENERGY CORP. OPERATIONS AND AFFILIATES SUPPORT REOPENING A LIMITED PERIOD FOR INTERVENTION

As discussed throughout these comments, facts have arisen since the Commission previously provided a time period for intervention under R.C. 4903.221. Since that period, which closed on October 9, 2018, FirstEnergy Solutions declared bankruptcy in 2019 and emerged as Energy Harbor in 2020 and an unaffiliated CRES. In 2020, FirstEnergy Advisors was also granted certification as a CRES power broker and aggregator. In that power broker and aggregator certification case, the Commission directed Vistra and other parties to voice their concerns regarding trade name use and corporate separation in this Audit Case: “[T]he Commission finds that issues regarding Suvon’s use of the trade name and compliance with corporate separation requirements by FirstEnergy Corp. affiliates are best raised in other proceedings, specifically the ongoing review of the corporate separation audit of the three FirstEnergy Utilities in the *Corporate Separation Audit Case*.”⁶⁸

When the Commission previously provided an intervention period in this case, Vistra was less than six months into its CRES activities in Ohio and still evaluating the overall competitive retail landscape. Since then, FirstEnergy Solutions entered bankruptcy and reemerged as a non-affiliate, Energy Harbor. Additionally, FirstEnergy Corp. created a wholly-owned affiliate,

⁶⁸ *Id.* at 6.

FirstEnergy Advisors, to offer CRES power broker and aggregator services. These two actions significantly impacted the overall CRES landscape in Ohio. In light of these changes and the Commission determining that the concerns Vistra raised in Case No. 20-0103-EL-AGG are best addressed in this Audit Case,⁶⁹ Vistra respectfully requests that the Commission open a limited period for intervention in this Audit Case.

VIII. CONCLUSION

Vistra appreciates the opportunity to submit comments in this Case in furtherance of a fully competitive retail market that serves Ohio consumers' best interests. Vistra respectfully requests that the Commission consider the Report's recommendations and FirstEnergy Corp's ongoing disregard for these recommendations as it perpetuates its operations and management in the same manner that the Report called into question over two years ago.

As discussed extensively above, a CRES affiliate's use of the FirstEnergy name violates both Ohio Admin. Code 4901:1-37 and 4901:1-21-05(C)(10). Thus, Vistra requests that the Commission adopt the Report's recommendation to remove the "FirstEnergy" name from any such affiliate. Further, FirstEnergy Corp. fails to show how key employees involved in corporate strategy that are shared between the regulated FirstEnergy Corp./Service Company and an unregulated affiliate are capable of separating their knowledge of the regulated utilities' business from their knowledge of the unregulated affiliate's business. As a result, the Commission should require that there be no shared employees between FirstEnergy Corp. and FirstEnergy Advisors, or any future competitive affiliate that FirstEnergy Corp. may create that holds a key strategy position within FirstEnergy Corp. or its regulated utilities.

⁶⁹ *Id.* at ¶ 20.

Because FirstEnergy Corp.'s Corporate Separation Plan and CAM fail to comply with numerous components of Ohio law, the Commission should require revisions and updates to these documents to bring them into compliance. The Commission should then require filing of current versions of the Corporate Separation Plan and the CAM in this Audit Case and notice a subsequent period for review and comment.

Finally, there have been a number of significant changes to FirstEnergy Corp.'s operations and management since the Report was issued: FirstEnergy Corp. both removed and added affiliate CRES providers and the Commission directed Vistra to raise its concerns regarding certification of FirstEnergy Advisors as a CRES provider in this Audit Case. Because of these changes, a limited period of intervention in this Audit Case is appropriate.

Respectfully submitted,



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Welcome to FirstEnergy

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



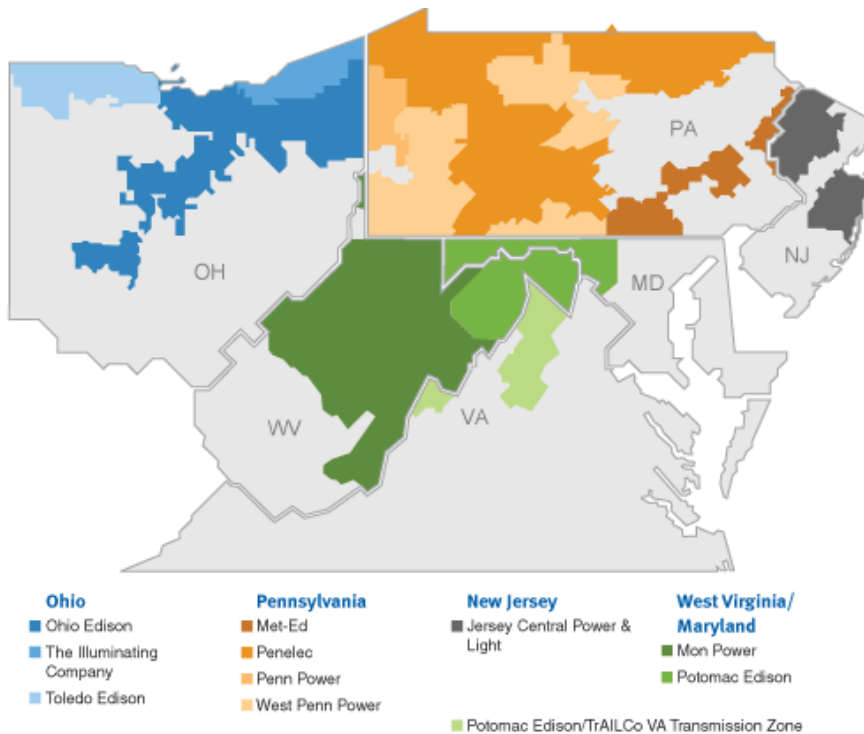
We are a forward-thinking electric utility powered by a diverse team of employees committed to making customers' lives brighter, the environment better and our communities stronger.

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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.



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](#)



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



[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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Akron, Ohio 44308

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I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 29th day of May 2020. The Commission's e-filing system will serve notice of the filing of this document on the parties who have electronically subscribed to this case.



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Summary: Comments Supplemental Comments of Vistra Energy Corp. electronically filed by Ina Avalon on behalf of Vistra Energy Corp.