

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S
MOTION TO INTERVENE**

Pursuant to R.C. 4903.221, and O.A.C. 4901-1-11, the Northeast Ohio Public Energy Council ("NOPEC") respectfully requests that the Public Utilities Commission of Ohio grant its motion to intervene in this proceeding. The reasons supporting NOPEC's motion to intervene are contained in the accompanying Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The applicant in this proceeding, Suvon, LLC, d/b/a FirstEnergy Advisors, is an affiliate of the FirstEnergy electric distribution utilities operating in Ohio (the “EDUs”¹). Suvon filed this initial application to provide competitive retail electric service (“CRES”) as a broker/aggregator. It seeks to provide service under the trade name “FirstEnergy Advisors,” which is the same brand name used by the EDUs, as well as other members of the FirstEnergy Corp. (“FEC”) family. Suvon’s application is unprecedented before this Commission because its provision of competitive electric services will be managed and controlled by the same senior executive management team that controls the EDUs’ provision of non-competitive electric distribution services. This commonality of management control is so complete and pervasive as to be a per se violation of Ohio Rev. Code 4928.17. This proceeding presents a matter of first impression for the Commission. It will determine whether a CRES provider that is so completely controlled by its affiliated EDUs has the “managerial capability” required by R.C. 4928.08(B) to provide fully separated competitive retail electric service.

The Northeast Ohio Public Energy Council (“NOPEC”) is a regional council of governments established under R.C. Chapter 167, and is the largest governmental retail energy

¹ The EDUs are The Cleveland Electric Illuminating Company (“CEI”), Ohio Edison Company (“OE”) and The Toledo Edison Company.

aggregator in Ohio. It is made up of approximately 235 member communities in nineteen (19) Ohio counties. NOPEC provides retail electric aggregation service to approximately 500,000 retail electric customers in its member communities. These customers predominantly reside in the CEI and OE electric service territories and pay CEI's and OE's electric distribution charges as well. NOPEC seeks to intervene in this proceeding to ensure that its customers continue to receive meaningful benefits from electric deregulation, as the General Assembly intended when it enacted R.C. 4928.20.

NOPEC moves to intervene in this proceeding. R.C. 4903.221(B) and OAC Rule 4901-1-11(A)(2) govern intervention in Commission proceedings. Substantially similar in substance, these provisions provide that the Commission may consider the following in determining whether to grant intervention:

- (1) The nature and extent of the person's interest;²
- (2) The legal position of the person seeking intervention and its relation to the merits of the case;³
- (3) Whether intervention would unduly delay the proceeding or unjustly prejudice any existing party;⁴
- (4) The person's potential contribution to full development and equitable resolution of the issues involved in the proceeding;⁵ and
- (5) The extent to which the person's interest is represented by existing parties.⁶

NOPEC has a real and substantial interest in this proceeding. Suvon's application lists three "managers" of its limited liability company. Managers of a limited liability company are responsible for its management, and have substantially the same responsibilities and authority as the directors of a corporation. The three managers of the Suvon limited liability company are:

² R.C. 4903.221(B)(1) and OAC 4901-1-11(B)(1).

³ R.C. 4903.221(B)(2) and OAC 4901-1-11(B)(2).

⁴ R.C. 4903.221(B)(3) and OAC 4901-1-11(B)(3).

⁵ R.C. 4903.221(B)(4) and OAC 4901-1-11(B)(4).

⁶ O.A.C 4901-1-11(B)(5).

1. the President of the FirstEnergy Utilities and CEO of FEC (Chuck Jones),
2. the President of the Ohio EDUs (Dennis Chack), and
3. the Senior Vice President and CFO of FEC (Steve Strah).

Managers Jones and Chack also serve as directors of each of the three Ohio EDUs, and hold senior positions in FirstEnergy Service Company. NOPEC's interest is in creating and maintaining a level playing field in Ohio's competitive retail market. That goal is recognized as the formal policy of this state (R.C. 4928.02) and is threatened when a competitive CRES such as Suvon is controlled by its non-competitive EDU affiliates. In this case, the control over the Ohio EDUs and Suvon is so consolidated in so few people that the identity and interests of each entity is nearly undistinguishable, to the point where each uses the same brand name "FirstEnergy." NOPEC is concerned that this consolidation of power will lead to abuses whereby the joint managers take actions to benefit one entity to the detriment of the other, and justify it internally as benefitting the corporate good as a whole.

Moreover, two of the officers of FirstEnergy Advisors, Vice-President Brian Farley and Director of Sales Lorraine Rader, had virtually identical positions with FirstEnergy Solutions Corp. (FES) where they headed the sales, marketing and aggregation functions of FirstEnergy's competitive affiliate, FES. In that capacity, they obtained highly proprietary information about the Ohio competitive retail electric market. This competitive information, which should not be shared with regulated utilities, will necessarily be shared with the management team of FirstEnergy Advisors, which are senior officers of the FirstEnergy utilities. This is a per se violation of the corporate utility separation rules of this State.

NOPEC's concern with this proposed management structure of the applicant is that those actions, and anti-competitive sharing of competitive market information between the regulated

utilities, certainly will affect other aggregators and brokers in the State, such as NOPEC, who will not be privy to the same improperly shared utility information that Suvon gains. The sharing of such information that should be kept separate will be made easier, since both the FE regulated Ohio utilities and FirstEnergy Advisors share the same offices at 76 South Main Street, Akron, Ohio. No way exists to separate the senior managers' and officers' knowledge, thoughts and ideas, especially when they share offices every day in the same building.

NOPEC's legal position is straightforward and dispositive of the "management capability" issue. It is a per se violation of R.C. 4928.17 to have the same management and control of the EDUs and their competitive CRES affiliate. The shared employee exceptions in the applicable code of conduct (O.A.C. 4901:1-37-04(D)) do not apply when management and control are incapable of separation. As stated previously, the knowledge, ideas and thoughts of each common manager cannot be separated between the competitive and non-competitive entities. R.C. 4928.17(A)(1) recognizes as much by requiring that Suvon, d/b/a FirstEnergy Advisors, must be operated as a fully separated affiliate, and the Commission's rules state so. See Ohio Admin. Code 4901:1-37-04(A)(1), which provides that "[e]ach electric utility and its affiliates that provide services to customers within the electric utility's service territory shall function independently of each other." See, also, Ohio Admin. Code 4901:1-37-04(A)(3), which requires that "[a]n electric utility's operating employees and those of its affiliates shall function independently of each other."² These provisions establish a threshold test that Suvon, with its consolidated management and control, cannot pass. Suvon's management cannot function separately from its affiliated EDUs and, therefore, does not have the capability as required by R.C. 4928.08(B) to provide fully separated competitive retail electric service.

² See, also, Ohio Admin. Code 4901:1-37-04(A)(2) and (4) related to shared facilities and shared employees, service and facilities, which provide that the structural safeguards may be waived if the sharing does not violate the code of conduct. Ohio Admin. Code 4901:1-37-04(A)(1) and (3) do not provide for this waiver.

In addition, Suvon, LLC, d/b/a FirstEnergy Advisors intends to use the “FirstEnergy” trade name in providing competitive retail electric service in Ohio. NOPEC believes that this brand name issue, determined to be inappropriate by the independent auditor in FirstEnergy’s corporate separation audit, is improper and that this application should be suspended awaiting decision by the Commission in the audit case.

NOPEC’s intervention will not unduly delay this proceeding. Suvon’s application is so lacking in disclosure of its consolidated management and control that the Commission should sua sponte suspend the application for further review of these relationships. Once suspended, the Commission must make its determination within 90 days. R.C. 4928.08(B). By any standard, a 90 day delay is not “undue.”

NOPEC’s intervention will not unjustly prejudice any existing party. NOPEC will work cooperatively with others in the case in order to maximize case efficiency, where practical, to reach an equitable resolution of all issues.

Finally, NOPEC submits that no current party represents its interests. NOPEC’s position is unique as a certified governmental aggregator that will be directly affected by Suvon’s certification as an aggregator and broker controlled by the regulated utilities. NOPEC also has an interest in assuring that the electric market design in Ohio, which affects its member customers, are lawful, in accordance with Ohio laws, rules and orders and not anti-competitive. Disposition of this proceeding without its participation will impair or impede NOPEC’s ability to protect those interests.

WHEREFORE, NOPEC respectfully request that its motion to intervene be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with O.A.C. 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion to Intervene* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 10th day of February 2020.



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Summary: Motion to Intervene of Northeast Ohio Public Energy Council electronically filed by
Teresa Orahod on behalf of Dane Stinson