

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Initial Certification)
Application for Electric Aggregators/) Case No. 20-103-EL-AGG
Power Brokers Suvon, LLC d/b/a)
FirstEnergy Advisors.)

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential consumers, moves to intervene in this case where an unregulated affiliate of FirstEnergy utilities, Suvon LLC, wants to use the FirstEnergy name ("FirstEnergy Advisors") to supply electricity to customers through power brokering and aggregating customers' load.¹ Additionally, the application of FirstEnergy Advisors potentially raises concerns for resolving under law and rule for protecting captive monopoly customers against (among other things) subsidizing the unregulated activities of a utility affiliate.²

The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

² OCC will be filing with another party a Motion to Suspend FirstEnergy Advisors' Application under Ohio Adm. Code 4901:1-24-10(A)(1).

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Angela D. O'Brien
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MEMORANDUM IN SUPPORT

The electric brokering and aggregation services that FirstEnergy Advisors seeks to provide are competitive retail electric services under R.C. 4928.03. FirstEnergy Advisors is an unregulated affiliate of the FirstEnergy utilities. The brokering and aggregation services FirstEnergy Advisors seeks to offer customers cannot be provided as an affiliate of the FirstEnergy utilities unless it operates under a PUCO-approved corporate separation plan per R.C. 4928.17. FirstEnergy’s corporate separation plan is currently under review in Case No. 17-974-EL-UNC, where an audit has been conducted, with comments and reply comments filed.

Corporate separation between electric monopolies and their unregulated affiliates provides protection for captive monopoly consumers against (among other things) subsidizing the unregulated activities of utility affiliates. And corporate separation protects the competitive electric markets that benefit Ohio consumers.

In this regard, the Ohio General Assembly set forth this policy that protects consumers: “Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric

service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.”³

OCC has authority under law to represent the interests of Ohio’s residential utility customers under R.C. Chapter 4911. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case. That is especially so if the customers were unrepresented in a proceeding where an affiliate of FirstEnergy utilities may be inappropriately using its relationship and name to obtain a competitive advantage over other non-affiliated brokers and aggregators. In this regard in Case No. 17-974-EL-UNC, the Auditor noted that FirstEnergy Solutions’ use of the FirstEnergy name was creating an affiliate bias that may be contributing to its success in competitive retail electric service. Such a competitive advantage could be to the detriment of FirstEnergy’s 1.9 million residential customers who rely on the competitive market to deliver lower prices and greater innovation. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;

³ R.C. 4928.02(H).

- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing and protecting Ohio residential customers from, among other things, the potential harm that could arise if the applicant is being subsidized by captive monopoly customers or is being provided a competitive advantage (like name recognition) not otherwise afforded other non-affiliated brokers. This interest is different than that of any other party and especially different than that of FirstEnergy Advisors whose advocacy interest is for the financial interests of its shareholders and not retail customers.

Second, OCC's advocacy for residential customers will include, among other things, advancing the position that FirstEnergy Advisors must abide by Ohio law (R.C. 4928.17 and R.C. 4928.02(H)) and the PUCO's rules (O.A.C. 4901:1-37-04), regarding corporate separation. OCC's position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control of electric brokering and aggregation services offered to customers in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To

intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where customers could be harmed if they are made to subsidize FirstEnergy Advisors or if FirstEnergy Advisors is provided with an unfair, competitive advantage that could be detrimental to the competitive market.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B), which OCC already has addressed, and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider “The extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.⁴

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

⁴ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via electronic transmission, this 10th day of February 2020.

/s/ Angela D. O'Brien
Angela D. O'Brien
Assistant Consumers' Counsel

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

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of O'Brien, Angela D.