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 Services in the State of Ohio.	))))	Case No. 20-103-EL-AGG

JOINT MOTION TO SUSPEND FIRSTENERGY ADVISORS' CERTIFICATION APPLICATION AND JOINT MOTION FOR HEARING BY NORTHEAST OHIO PUBLIC ENERGY COUNCIL AND OFFICE OF THE OHIO CONSUMERS' COUNSEL

The PUCO should suspend the application of Suvon, LLC doing business as FirstEnergy Advisors ("Suvon" or "FirstEnergy Advisors"), before the application is automatically approved within 30 days of filing by operation of Ohio Admin. Code 4901:1-27-10. FirstEnergy Advisors proposes to offer competitive retail electric service (as a broker and aggregator) to retail customers throughout Ohio. FirstEnergy Advisors is an affiliate of the FirstEnergy electric distribution companies (the "FirstEnergy Utilities or "regulated utilities").[1] FirstEnergy Advisors will be managed and controlled by members of the same management team that controls FirstEnergy's regulated utilities. The three managers of FirstEnergy Advisors are the President of FE Utilities and CEO of FE Corp. (Chuck Jones), the President of the FE Ohio Utilities (Dennis Chack) and the Senior Vice President and CFO of FE Corp. (Steve Strah). Moreover, two of the managers (Mr. Jones and Mr. Strah) are directors of the regulated utilities. This commonality of management and

[1] The First Energy Electric Distribution Companies are Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

control is a ***per se*** violation of R.C. 4928.17(A), which requires that a competitive retail electric supplier be "fully separated" from its regulated utilities.

Additionally, the auditor also recommended that the "FirstEnergy" name be removed from FES's name, noting that "[u]sing 'FirstEnergy' in the Ohio Companies' CRES affiliate's name, 'FirstEnergy Solutions' implies an endorsement by the FirstEnergy Ohio Companies. Should FES continue to be a CRES provider in Ohio, it should have a different name that does not include 'FirstEnergy' or any other name that implies a connection to the Ohio Companies."[2] The Auditor's recommendation was intended to "eliminate affiliate bias."[3]

For good cause shown, the PUCO should suspend FirstEnergy Advisors' application, consistent with Ohio Adm. Code 4901:1-24-10(A)(1). Additionally, the PUCO should set this matter for hearing. There, the PUCO should determine (among other issues) whether FirstEnergy Advisors has the managerial capability to provide competitive retail electric service to consumers in this state, considering the extent to which it will be managed and controlled by the regulated utilities. Competitive retail electric service from FirstEnergy Advisors must be provided as a fully separated affiliate of the FirstEnergy Utilities, in compliance with the PUCO's orders, Ohio rules and Ohio law.[4]

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[2] Audit Report at 98.
[3] Audit Report at 46
[4] Ohio Admin. Code 4901:1-24-05(A).

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Introduction

Suvon currently does business in Ohio as FirstEnergy Home, and provides home energy repair service, home connections for cable and Internet, and home security systems (the "Non-Electric Products and Services").[5] With this application, Suvon seeks certification as a broker and aggregator and intends to do business in Ohio as FirstEnergy Advisors.

Ohio law requires that electric distribution utilities ("EDUs") provide competitive retail electric service through a "fully separated affiliate." That is intended to prevent the monopoly utilities from abusing their market power, to the detriment of competition and consumers.[6] This matters to consumers because consumers depend on the market to bring them reasonably priced electricity service.[7] And it is important to captive monopoly customers that they are protected against unlawfully subsidizing the activities of a utility's unregulated affiliate.

It will be difficult (and, in fact, impossible) for FirstEnergy Advisors to function as a fully separated affiliate of FirstEnergy's utilities[8] if, as its application discloses, it will be

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[5] Certification Application at Attachment A-13.
[6] R.C. 4928.17(A)(1) and (2); R.C. 4928.02..
[7] See Ohio Rev. Code 4928.02, 4928.17, and Ohio Admin. Code Chapter 4901:1-37.
[8] FirstEnergy Corp's Ohio EDU operating companies are Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

managed and controlled by the same people who manage the FirstEnergy utilities' operations. This commonality of management control appears to be so pervasive as to be per se unlawful.

The Northeast Ohio Public Energy Council ("NOPEC") and the Office of the Ohio Consumers' Counsel ("OCC") (collectively, "Consumer Groups") respectfully request that the Commission: (1) suspend FirstEnergy Advisors' certification application; (2) investigate FirstEnergy's Advisors' management and control structure and operations to determine if they comply with the corporate separation rules and Ohio law. (3) hold a hearing on whether FirstEnergy Advisors possesses the management capability to provide service to Ohioans and comply with Ohio rules and laws. Consumer Groups request that a hearing be held as expeditiously as possible.

II. Ohio law requires that monopoly electric distribution companies be fully separated from competitive affiliates to protect captive monopoly customers from (among other things) subsidizing utility affiliates' unregulated activities.

The Ohio General Assembly enacted Amended Substitute Senate Bill 3 ("SB 3") in 1999 to open Ohio's monopoly electricity market to competitive retail generation service. It recognized that, for deregulation to work for the benefit of consumers, customers should have access to reasonably priced electric service with a diversity of supply.[9] To achieve that goal, captive monopoly consumers must be protected against subsidizing utility affiliates' unregulated activities.[10]

To prevent abuse impacting the market and consumers, the General Assembly directed each utility to file a corporate separation plan for the PUCO's approval. The plan was to achieve each of the following:

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[9] Ohio Rev. Code 4928.02(C).

[10] Ohio Rev. Code 4928.02(I).

> (1) The provision of the CRES and Non-Electric services or products through a ***fully separated affiliate*** of the utility, and the plan includes separate accounting requirements, the code of conduct as ordered by the commission pursuant to a rule it shall adopt under division (A) of section 4928.06 of the Revised Code, and such other measures as are necessary to effectuate the policy specified in section 4928.02 of the Revised Code.[11]
>
> (2) Satisfy the public interest in preventing unfair competitive advantage and ***preventing the abuse of market power***.
>
> (3) Ensure that the utility will not extend any ***undue preference or advantage to any affiliate***, division, or part of its own business engaged in the business of supplying the CRES or Non-Electric product or service,

Ohio Rev. Code 4928.17(A) (emphasis supplied).

The PUCO has yet to thoroughly scrutinize whether the FirstEnergy Utilities are fully complying with Ohio's corporate separation requirements. Indeed, their current separation plan is under investigation in Case No. 17-974-EL-UNC and awaiting the PUCO's consideration of many of the same issues presented by the application in this proceeding.

A. The FirstEnergy Utilities' corporate separation plans have not been scrutinized by the PUCO.

The FirstEnergy Utilities first separation plan was filed with its electric transition plan in 1999 at the outset of retail electric competition. The plan provided only for "functional" separation and was approved only on an interim basis.[12] That "interim" plan was in place for nine years.

Under the requirements of Substitute Senate Bill 221 ("SB 221"), the FirstEnergy Utilities filed another corporate separation plan in an attempt to comply with the PUCO's corporate separation rules promulgated in 2009 under Ohio Admin. Code Chapter 4901:1-37.

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[11] There was a limited exception allowing utilities, for good cause shown, to have a functional separation plan on an interim basis. See R.C. 4928.17(C).

[12] *See* Case No. 99-1212-EL-ETP, Opinion and Order (July 19, 2000).

FirstEnergy's plan, however, escaped scrutiny because it was summarily approved "as filed," under a Settlement in the FirstEnergy Utilities' first electric security plan ("ESP").[13]

Finally, as a part of its Investigation of Ohio's Retail Electric Service Market ("*Market Investigation*"), the PUCO found that "it is imperative that utility and affiliate activities undergo vigilant monitoring in order to ensure their compliance with Ohio Rev. Code 4928.17 and Ohio Adm. Code 4901:1-37, and in order to further Ohio's policies pursuant to Ohio Rev. Code 4928.02."[14] The PUCO ordered that each electric distribution utility undergo an audit to ensure compliance with Ohio law.

B. The purchase power agreement proposed in the FirstEnergy Utilities' ESP IV proceeding demonstrated that they and their competitive affiliates are not fully separated.

The PUCO's Market Investigation was prescient. Approximately three months after the Market Investigation Order was issued, the FirstEnergy Utilities filed their fourth ESP.[15] In their application, the FirstEnergy Utilities sought to subsidize their affiliate-owned power plants through a purchase power agreement ("PPA"), the cost of which was to be charged to captive monopoly customers under a Retail Rate Stability Rider ("Stability Charge Rider "). Under the agreement, the FirstEnergy Utilities would purchase electricity produced from certain FES power plants and sell it into the competitive market. The FirstEnergy Utilities would collect the full cost of the power plants from customers, regardless of the price it received in the market. The power agreement assured FES that it would be made whole for its power plants, no matter what market price it received for the power.

[13] See Case No. 10-388-EL-SSO, Opinion and Order (August 27, 2010) at 16, 27, approving the CSP filed in Case No. 09-462-EL-UNC.

[14] See Case No. 12-3151-EL-COI, Finding and Order (March 26, 2014) at 16.

[15] See Case No. 14-1297-EL-SSO filed August 4, 2014 ("ESP IV").

Several parties (including OCC) filed at FERC to protect consumers from the FirstEnergy Utilities' power agreement, and FERC ordered the FirstEnergy Utilities to submit the purchase power agreement for federal review before it could be implemented in Ohio. In its order, FERC strongly signaled that the purchase power agreement would unlawfully require the Companies' captive customers to subsidize the Companies' unregulated affiliates and shareholders.[16] Specifically, FERC stated that the costs to be charged to distribution customers would "present the potential for the inappropriate transfer of benefits from [captive] customers to the shareholders of the franchised public utility."[17]

The Utilities' purchase power agreement demonstrates that the FirstEnergy Utilities have had significant issues in separating from their competitive affiliates. ESP IV and the FERC Order also show the significant harm that can be done to consumers. And they show the anti-competitive benefits that can be bestowed on competitive affiliates, contrary to fair competition, in the absence of a fully functioning corporate separation plan.

C. FirstEnergy's current corporate separation plan is flawed as found in the PUCO Market Investigation Audit Report, as to intermingling of executives and use of the FirstEnergy name.

The PUCO opened the audit of the FirstEnergy Utilities' separation plan as directed by the PUCO's Market Investigation, on April 12, 2017. The independent auditor filed its report on May 14, 2018.[18] Among other defects, the auditor found that it was improper to comingle management from the FES' sales division as part of the senior leadership team of FirstEnergy's

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[16] *Elec. Power Supply Ass'n v. FirstEnergy Solutions Corp.*, 155 F.E.R.C, P61, 101, 2016 FERC LEXIS 686 (F.E.R.C. April 27, 2016) ("*FERC Order*").

[17] FERC Order at ¶ 55, quoting Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 198.

[18] See 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 98-99.

Service Company. The auditor found that FirstEnergy Service Company "primarily serves the FirstEnergy regulated operating companies," and that it was "problematic" for the FES vice president to attend Service Company executive meetings with other Service Company executives who were focused on the regulated utility operations.[19] The auditor also recommended that the "FirstEnergy" name be removed from FES's name, noting that "[u]sing 'FirstEnergy' in the Ohio Companies' CRES affiliate's name, 'FirstEnergy Solutions' implies an endorsement by the FirstEnergy Ohio Companies. Should FES continue to be a CRES provider in Ohio, it should have a different name that does not include 'FirstEnergy' or any other name that implies a connection to the Ohio Companies."[20] The Auditor's recommendation was intended to "eliminate affiliate bias."[21]

The auditor was aware of the likelihood that FirstEnergy Corp would fully divest FES in the near future and that FirstEnergy Corp's organizational structure could change dramatically. Several parties commented on the Audit Report raising the same corporate separation issues at play in this proceeding. Many commenters explained how the regulated utilities' provision of competitive Non-Electric Products and Services and FES's use of the "FirstEnergy" brand name violated the Companies' corporate separation plan. To date, the PUCO has not issued a ruling in that proceeding.

As foretold in the Audit Report, FirstEnergy Corp's corporate structure has changed, or is about to change, dramatically with the divestiture of FES and the establishment FirstEnergy Advisors. The scant application FirstEnergy Advisors filed in this proceeding offers little – indeed no – assurance that it will operate separately from the regulated utilities. Available

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[19] Audit Report at 39.
[20] Audit Report at 98.
[21] Audit Report at 46

information shows that FirstEnergy Advisors is to be managed and controlled by the same key directors and officers that hold positions on either the FirstEnergy Service Company or the FirstEnergy Utilities.

As recognized in the PUCO's Market Investigation, it is imperative that the Commission investigate whether FirstEnergy Utilities' new corporate structure, after the divestiture of FES and with the establishment of FirstEnergy Advisors, could ever comply with Ohio Rev. Code 4928.17 and Ohio Adm. Code 4901:1-37. That compliance is required prior to authorizing FirstEnergy Advisors to provide competitive retail electric services to Ohioans as an aggregator and broker.

III. FirstEnergy Advisors will be managed and controlled by the same key officers and directors that control the FirstEnergy Utilities.

FirstEnergy Advisors has the burden to show that it has the managerial capability to provide retail electric service to Ohioans and that its certification is in the public interest. Ohio Rev. Code 4928.08(B). It has failed its burden because it has not shown that it is fully separated from its regulated affiliate, FirstEnergy Utilities, as required by law. The *FERC Order* warned of dangers posed to consumers when a monopoly Electric Distribution Utility acts in lockstep with its competitive affiliate.

As dangerous for markets as the regulated utilities relationship was with FES, their relationship with FirstEnergy Advisors is even closer, to the point where management and operational control is blurred. As reflected in the chart below, while FES had no directors in common with FirstEnergy Corp., FirstEnergy Service Company, all of FirstEnergy Advisors' managers hold the highest level executive positions with FirstEnergy Corp and FirstEnergy Services Company. Moreover, two of FirstEnergy Advisors' managers also are directors of the regulated utilities:

COMMON MEMBERS/DIRECTORS/EXECUTIVE OFFICERS			
FirstEnergy Solutions[22]	FirstEnergy Corp/FirstEnergy Service Company[23]	FirstEnergy Advisors[24]	Regulated Utilities[25]
J.C. Blickle Director	Charles Jones, CEO, Pres FE Utilities (FEC)	Charles Jones, Manager	Charles Jones Director
J.C. Boland Director	D.M. Chack, Pres. FE Ohio Utilities (FEC) Sr. VP Mkting/Branding (FESC)	D.M. Chack, Manager	
J.M. Gingo Director	S.E. Strah, Sr. VP (FEC) CFO (FESC)	S.E. Strah, Manager	S.E. Strah Director
			J.E. Pearson Director
			S.L. Belcher Director

The concerns about operational control are further exacerbated by the commonality of the most senior key officials in each affiliate. As reflected in the chart below, the senior officers of FirstEnergy Corp and FirstEnergy Service Company are nearly identical to those of the regulated utilities. And FirstEnergy Advisors shares three of the most senior officers of FirstEnergy Corp. and FirstEnergy Service Company.

COMMON KEY SENIOR OFFICERS			
FirstEnergy Solutions [26]	FirstEnergy Corp/ FirstEnergy Serv. Co. [27]	FirstEnergy Advisors [28]	Regulated Utilities [29]
	Charles Jones, CEO, Pres. Ohio Utilities (FEC)		Charles Jones Director

[22] See FES Renewal Certification Application Case No. 00-1742-EL-CRS, Exhibit A-10 (October 1, 2018).

[23] See firstenergycorp.com/investor/corporate_governance/officers_and_directors.html; investors.firstenergy.com

[24] See Suvon Initial Certification Application, Case No. 20-103-EL-CRS, Exhibit A-12 (January 17, 2020).

[25] See Companies' Annual Reports, 2018 4Q FERC Form 1.

[26] See FES Renewal Certification Application Case No. 00-1742-EL-CRS, Exhibit A-10 (October 1, 2018).

[27] See firstenergycorp.com/investor/corporate_governance/officers_and_directors.html; investors.firstenergy.com

[28] See Suvon Initial Certification Application, Case No. 20-103-EL-CRS, Exhibit A-12 (January 17, 2020).

[29] See Companies' Annual Reports, 2018 4Q FERC Form 1.

COMMON KEY SENIOR OFFICERS			
FirstEnergy Solutions [26]	FirstEnergy Corp/ FirstEnergy Serv. Co. [27]	FirstEnergy Advisors [28]	Regulated Utilities [29]
D.R. Schneider Chair/Pres	D.M. Chack, Pres. Ohio Utilities (FEC) Sr. VP Mkting/Branding (FESC)	D.M. Chack, President	
D.A. Moul Pres. FES Gen	S.E. Strah, Sr. VP (FEC) CFO (FESC)	B.W. Reynolds, VP Mkt/Energy Eff.	S.E. Strah CFO
J.G. Mellody VP Fuel/Dispatch	S.L. Belcher Sr VP		S.L. Belcher President
K.T. Warvell VP, Sec., CFO	E.L. Yeoah-Amankwah Secretary, Ethics FESC	E.L. Yeoah-Amankwah VP Dep. Gen. Counsel	E.L. Yeoah-Amankwah VP Dep. Gen. Counsel
	J.J. Lisowski, Controller Chief Accounting Officer (FESC)	T.M. Ashton Controller	J.J. Lisowski, VP /Controller
	R.P., Reffner Gen Counsel FESC		R.P., Reffner Gen Counsel
	K.J. Taylor VP, Operations FE Utilities		K.J. Taylor VP
		S.R. Staub VP/Treasurer	S.R. Staub VP/Treasurer
			J.F. Pearson Ex. VP Finance
		L.R. Rader, Director of Sales	
		B.A.Farley V.P. Sales	

The PUCO Audit Report was correct that it was inappropriate to comingle management from the FES sales division as part of the senior leadership team of FirstEnergy Service Company. That is because the officers would be privy to the regulated utilities' information through FirstEnergy Service Company. That same situation is present here and compounded by the fact that the persons holding the highest level positions with FirstEnergy Corp and FirstEnergy Services Company are nearly identical to those holding the same or similar positions with the FirstEnergy Utilities. All three of FirstEnergy Advisors' members will interact with all of these officials through FirstEnergy Service Company, at a minimum. Under this proposed management and control structure, FirstEnergy Advisors cannot operate as a fully separated affiliate.

In addition, FirstEnergy Advisors' application lists Brian A. Farley as its Vice President of Sales, and Lorraine M. Rader as its Director of Sales. Mr. Farley and Ms. Rader previously served as key members of FirstEnergy Solutions' aggregation team where they obtained significant competitive retail electric market information.[30] It is impossible under the corporate structure proposed in the application to separate this information from senior FirstEnergy Utility executives who are controlling FirstEnergy Advisors as the three managers of the limited liability company. This is the type of information-sharing about Ohio's competitive retail electric market that the corporate separation statute intended to preclude.

IV. FirstEnergy Advisors and the regulated utilities' common management and control violates Ohio Rev. Code 4928.17(A)(1).

Ohio Rev. Code 4928.17(A)(1) requires the "provision of the competitive retail electric services and nonelectric product or service through a ***fully separated affiliate*** of the utility." (Emphasis supplied.) The Consumer Groups are aware that structurally separate affiliates are permitted to share employees and services in some instances. But that sharing is only allowed if the employees' activities do not violate the code of conduct per Ohio Admin. Code 4901:1-37-04(D) and are properly accounted for in the cost allocation manual per Ohio Admin. Code 4901:1-37-04(A)(5). Sharing of employees and services would not be allowed in this situation, under the rules.

Ohio Rev. Code 4928.17(A)(1) requires that the utilities' competitive affiliate must pass the threshold test of being "fully separated." As recognized in the PUCO Audit Report, code of

[30] See FirstEnergy Advisors' application at Exhibit B-2 and B-3.

conduct provisions or proper cost allocation will not remedy the fatal corporate separation deficiency in FirstEnergy Advisors' case. That is because the violation concerns the sharing of information between the management of the regulated utilities and FirstEnergy Advisors that other marketers, aggregators and brokers, or Non-Electric competitors are not privy to. A competitive affiliate that is not fully separated from an EDU is unlawful ***per se***, as confirmed by the Commission's rules. Ohio Admin. Code 4901:1-37-04(A)(1) 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." Also applicable is 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." [31]

FirstEnergy Advisors is not structurally separate from the regulated utilities because of their common control and management. As shown in the above chart, the three managers of FirstEnergy Advisors are the President of FE Utilities and CEO of FE Corp. (Chuck Jones), the President of the FE Ohio Utilities (Dennis Chack) and the Senior Vice President and CFO of FE Corp. (Steve Strah).

Managers of a limited liability company (like FirstEnergy Advisors) are responsible for management of the limited liability company and are similar to directors of a corporation. FirstEnergy Advisors' operation under such utility company management is per se unlawful under Ohio Rev. Code 4928.17(A)(1). It cannot be permitted.

Further, there is nothing in the scant FirstEnergy Advisors' certification application that states who is (or are) the member(s) of this LLC. Moreover, the regulated utilities and

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[31] See, also, Ohio Admin. Code 4901:1-37-04(A)(2) and (4) related to shared facilities and shared employees, service and facilities, which provides 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.

FirstEnergy Advisors are located physically at the same FirstEnergy Ohio Utilities headquarters office: 76 South Main Street, Akron, Ohio. Because its management and control structure appears to be unlawful per se, the PUCO should investigate whether FirstEnergy Advisors lack the managerial capability to provide competitive retail electric service in this state and to comply with Ohio rules and Ohio law.[32]

V. Doing business as FirstEnergy Advisors violates Ohio Admin. Code 4901:1-37-04(D)(7) and (9).

FirstEnergy Advisors' application also should be suspended because it seeks to operate under the same trade name as the regulated utilities. The Auditor investigating FirstEnergy's corporate separation recommended that FES not be permitted to use the FirstEnergy brand in its name because it violates the code of conduct rules contained Ohio Admin. Code 4901:1-37-04(D). Audit Report at 46, 98-99. Likewise, FirstEnergy Advisors' use of the FirstEnergy brand also violates these same provisions.

To support its recommendation, the Audit Report noted that FE Corp. works hard to promote its brand name in Ohio. For example, it acquired the naming rights for the Cleveland Browns' stadium, re-naming it "FirstEnergy Stadium." These stand-alone corporate brandings then are applied to FirstEnergy Corp.'s subsidiaries either as a part of their names (*e.g.*, FirstEnergy Solutions; FirstEnergy Products, and now FirstEnergy Advisors), or in the descriptions of the regulated utilities (*e.g.*, Ohio Edison, A FirstEnergy Company). Audit Report at 97-98.

The regulated utilities provided vertically integrated monopoly service (generation, distribution and transmission services) to their customers for decades before the advent of

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[32] Ohio Rev. Code 4928.08.

competitive retail generation service in Ohio in 2000. They continue to provide monopoly distribution service to all consumers in their service territories. As the Audit Report found, the widespread use of the "FirstEnergy" name connotes to customers that the competitive affiliate is a part of the FirstEnergy family that has been providing "trusted utility service" for years. The natural result of this branding is that customers will give greater consideration to the FirstEnergy affiliate in making their decisions about which supplier to choose. Audit Report, at 98.

The PUCO Auditor concluded that use of the "FirstEnergy" name violated Ohio Admin. Code 4901:1-37-04(D)(7), which provides:

> (7) The electric distribution utility, upon request from a customer, will provide a complete list of all competitive retail electric service providers operating on the system, but ***may not endorse any competitive retail electric service providers, indicate that an electric services company is an affiliate*** unless specifically and independently asked by a customer or other third party, or indicate that any competitive retail electric service provider will receive preference because of an affiliate relationship. [Emphasis supplied.]

The Audit Report concluded that, by virtue of using the name "FirstEnergy Solutions," it is impossible for the regulated utilities'' representatives ***not*** to "indicate" that FES is an affiliate, because they share a common name. (Audit Report, at 98.) Indeed, by virtue of their widespread branding program the regulated utilities effectively are "endorsing" their competitive CRES affiliate over other CRES suppliers. *Id.*

FirstEnergy Advisors' use of the "FirstEnergy" name violates the Ohio Admin. Code 4901:1-34-04(D)(7) (quoted above), as well as 4901;1-37-04(D)(9) ("[e]employees of the electric utility or persons representing the electric utility shall not indicate a preference for an affiliated electric services company"). Accordingly, granting FirstEnergy Advisors a certificate to do business would be contrary to the PUCO's rules.

FirstEnergy Advisors' application also must be suspended based on its use of the FirstEnergy brand name, consistent with the recommendations of the Auditor in FirstEnergy's pending corporate separation case. Moreover, Consumer Groups note that the application also is deficient because it fails to provide any information evidencing its registration with the Ohio Secretary of State as required by Attachment A-15 to the application.

VII. Conclusion

For the foregoing reasons, Consumer Groups respectfully request the Commission to (1) suspend FirstEnergy Advisors' certification application; (2) investigate the failure of FirstEnergy Utilities to comply with the corporate separation laws and rules in Ohio law with respect to this application, and (3) conduct a hearing (as expeditiously as possible) on whether FirstEnergy Advisors possesses the management capability to provide service and comply with Ohio rules, orders and law.

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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.

Dane Stinson

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