

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MOTION TO INTERVENE OF PALMER ENERGY COMPANY, INC.  
AND MEMORANDUM IN SUPPORT**

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Pursuant to Section 4903.221, Revised Code, and Rules 4901-1-11, Ohio Administrative Code, Palmer Energy Company, Inc. moves for intervention in the above-styled proceeding. The reasons supporting the intervention are contained in the accompanying Memorandum in Support.

WHEREFORE, Palmer Energy respectfully requests that the Commission grant this motion to intervene.

Respectfully submitted,

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*Counsel for Palmer Energy Company, Inc.*

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**MEMORANDUM IN SUPPORT OF THE  
MOTION TO INTERVENE**

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Suvon, LLC, d/b/a FirstEnergy Advisors is an affiliate of various FirstEnergy Corporation affiliates operating as Ohio electric distribution utilities (the “FirstEnergy EDUs”). Suvon seeks certification from the Commission in this proceeding to provide competitive retail electric service (“CRES”) as a broker/aggregator and will do business as “FirstEnergy Advisors.” Palmer Energy has a number of concerns with FirstEnergy Advisors’ application including the lack of adequate information on multiple key considerations, such as the ability of FirstEnergy Advisors to follow Commission Rule 4901:1-21-03 on prohibitions on engaging in unfair, misleading and deceptive acts or practices and the potential for unfair competition that is presented by the commonality of management and the undemonstrated adherence to corporate separation that is important, in part, to prevent FirstEnergy EDU personnel from promoting or supporting FirstEnergy Advisor services (Rule 4901:1-37-04 and ORC 4928.17).

Section 4903.221, Revised Code, and OAC Rule 4901-1-11 set forth the standard for intervention in cases before the Commission. Rule 4901-1-11(B) states:

- (B) In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner shall consider:
  - (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.

- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

Applying these considerations, it is clear that Palmer Energy satisfies the standard for intervention in this proceeding. First, Palmer Energy has a significant interest in this proceeding. Palmer Energy is a certificated aggregator and broker, has contracts in place with existing customers and operates throughout Ohio including in the service areas of FirstEnergy's EDUs. Palmer Energy also provides consulting services (non-CRES services) to clients including local governments. Palmer Energy's contracts and business will be negatively impacted if FirstEnergy Advisors is successful in obtaining Commission approval to utilize the FirstEnergy name while providing competitive "energy brokering and aggregation services to business and residential customers" with the additional advantage of being under common management with the FirstEnergy EDUs, sharing the same office address and sharing the same email domain (@firstenergycorporation.com).<sup>1</sup>

Palmer Energy interests are significant because aggregation and broker services are much different in nature than the supply of electricity by a supplier like FirstEnergy Solutions. Customers look to a broker and/or aggregator like Palmer Energy for advice, evaluation and ongoing market analysis, all of which create a relationship of trust and reliance between the customer and the broker/aggregator. Palmer Energy would be at a disadvantage if a broker/aggregator is able to utilize the FirstEnergy name, which is synonymous with the FirstEnergy EDUs, because that broker/aggregator will immediately benefit from the existing relationship that a customer already has with the FirstEnergy EDUs. That is exactly what Suvon

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<sup>1</sup> See Application by FirstEnergy Advisors, Exhibits A12 and A13.

proposes by intending to operate as FirstEnergy Advisors and why allowing a broker to utilize the FirstEnergy name is a much greater concern than a supplier affiliate using a utility name (such as FirstEnergy Solutions).

Just as troubling is the lack of any physical and managerial separation between FirstEnergy Advisors and the FirstEnergy EDUs, and that lack of separation can easily result in unfair, misleading and deceptive practices. As noted above, FirstEnergy Advisors and the FirstEnergy EDUs will be under common management, will share the same office address and also share the same email domain (@firstenergycorporation.com).<sup>2</sup> FirstEnergy Advisors also intends to establish a toll-free telephone number for customer inquiries and complaints, all under the FirstEnergy moniker.<sup>3</sup> Palmer Energy's concerns are valid and establish that Palmer Energy has a real and substantial interest in this proceeding.

FirstEnergy Advisors' application is also factually and legally deficient. OAC Rule 4901:1-24-10(C) requires FirstEnergy Advisors to show that it "is managerially, financially, and technically fit and capable of complying with all applicable commission rules and orders." FirstEnergy Advisors, however, has not made that showing. It only vaguely refers in its application to "individuals" who will support FirstEnergy Advisors<sup>4</sup> and has identified members of FirstEnergy's leadership team as being key members of FirstEnergy Advisors – leadership that has concurrent oversight and ultimate control over the FirstEnergy EDUs. That fact alone brings into question the ability of FirstEnergy Advisors to show that it is capable of complying with Ohio Administrative Rule 4901:1-21-03, which prohibits FirstEnergy Advisors from engaging in unfair, misleading and deceptive acts or practices. And as noted above, FirstEnergy Advisors intends to use the FirstEnergy name as a broker and aggregator (a different relationship

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<sup>2</sup> See Application by FirstEnergy Advisors, Exhibit A12 and A13.

<sup>3</sup> *Id.* at Exhibit B-2.

<sup>4</sup> *Id.* at Exhibits B-2 and B-3.

than a supplier like FirstEnergy Solutions). All of this brings into question FirstEnergy Advisors' capability as a CRES provider to avoid violations of Ohio Administrative Code Rule 4901:1-21-03.

The limited facts known about FirstEnergy Advisors also raise the issue of whether FirstEnergy Advisors' business activities will result in a violation of Ohio Revised Code Section 4928.17 and OAC Rules 4901:1-37-04(D)(7) and (9). In addition to the sharing of offices and management control with FirstEnergy Advisors, Palmer Energy is aware that the FirstEnergy EDUs maintain Regional External Affairs Managers who develop business relationships with "FirstEnergy" customers including municipal governments, key business and civic leaders. Through those relationships, the FirstEnergy EDU managers could easily discuss FirstEnergy Advisors creating an undue preference for FirstEnergy Advisors. Those discussions could also easily lead to customer confusion over whether the customer is receiving broker and aggregation advice from a separate company with separate management, offices and support (and not the FirstEnergy EDUs) or from a line of business that is part of the FirstEnergy EDUs.

Given the issues with FirstEnergy Advisor's application and proposed operations, a Commission investigation of FirstEnergy Advisor's managerial and technical plans is warranted to ensure FirstEnergy Advisors is capable of complying with Commission statutes and rules before any certificate is granted. FirstEnergy Advisors should also be required to utilize a different name for its business and to show how it intends to create a management structure that is separate and independent from the FirstEnergy EDUs. This includes establishing in detail how personnel of the FirstEnergy EDUs will be 100% separated from the business of FirstEnergy Advisors on a daily basis. Absent a thorough examination, renaming of the entity's d/b/a and

reconsideration of FirstEnergy Advisors' proposed structure for operation, the application should not be approved as presented.

And while other parties have intervened in this proceeding, no other party can protect Palmer Energy's interests in this proceeding. Palmer Energy is a small business with existing customers, contracts and concerns about the undue preference and unfair practices that could result if FirstEnergy Advisors' application is approved as presented. No other party can represent Palmer Energy's direct interest in this proceeding, which include Palmer Energy's concerns over the interactions that FirstEnergy EDU personnel currently have with Palmer Energy's existing customers. Moreover, granting Palmer Energy's intervention will not unduly delay this proceeding as the Commission has suspended FirstEnergy Advisors' application and no procedural schedule has issued.

Lastly, Palmer Energy's participation in the proceeding will significantly contribute to the full development and equitable resolution of the issues in this case. Palmer Energy has significant experience in the relationships formed between consultant or brokers/aggregators and their clients for the provision of energy supply advice and CRES services. Palmer Energy has conducted business in the FirstEnergy EDU territories for many years and is well positioned to provide the Commission with information on how unfair competition will and can result if FirstEnergy Advisors' application is approved as presented.

WHEREFORE, Palmer Energy respectfully requests that the Commission grant its

motion to intervene so that Palmer Energy can protect its interests in this proceeding.

Respectfully submitted,

By: /s/ Michael J. Settineri

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on February 21, 2020 upon all persons/entities listed below:

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Summary: Motion To Intervene of Palmer Energy Company, Inc. and Memorandum In Support electronically filed by Mr. Michael J. Settineri on behalf of Palmer Energy Company, Inc.