

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Suvon, LLC d/b/a FirstEnergy Advisors	)	
For Certification as a Competitive Retail	)	Case No. 20-0103-EL-AGG
Electric Service Power Broker and	)	
Aggregator in Ohio.	)	

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**SUVON, LLC D/B/A FIRSTENERGY ADVISORS' MEMORANDUM IN OPPOSITION  
TO THE MOTION TO INTERVENE FILED BY THE ENERGY PROFESSIONALS OF  
OHIO**

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**I. INTRODUCTION**

The Commission should deny the Energy Professionals of Ohio's ("EPO") motion to intervene because the EPO cannot establish that it has a real and substantial interest in this proceeding which is not adequately represented by the existing parties. Importantly, the EPO fails to address—much less satisfy—the statutory and regulatory criteria necessary to grant intervention because the EPO fails to provide any context regarding who the EPO is, what the EPO does, or how the EPO would be affected by the outcome of this proceeding. Because of these numerous failures, denial of the EPO's motion to intervene is warranted.

**II. ARGUMENT**

The standard for intervention in cases before the Commission is set forth in R.C. 4903.221 and Ohio Administrative Code ("OAC") 4901-1-11(A), which provides that "[u]pon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that . . . [t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to

protect that interest, unless the person's interest is adequately represented by existing parties.”<sup>1</sup> In deciding whether to permit intervention, the Commission must consider the following:

- (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.<sup>2</sup>

As further set forth below, the EPO fails to provide any arguments or support that would bolster its claim that it has a real and substantial interest in this proceeding sufficient to warrant granting its motion to intervene.

**A. The nature and extent of the prospective intervenor's interest.**

The EPO claims that it “has a unique interest in this case because it is the only group representing businesses whose primary role is to serve retail customers through interpretation and consultation of products offered by Competitive Retail Electric Service (CRES) providers.”<sup>3</sup> Who these alleged businesses are, however, remains a mystery as the EPO does not disclose any specific businesses it purports to represent in this case. EPO's website provides a list of brokers and CRES providers, but it is unclear whether any of those entities specifically approved this filing, and whether EPO's actions in this proceeding would be on behalf of the brokers or CRES providers.

EPO's claim to represent Ohio brokers is particularly confusing because some of EPO's members regularly participate in PUCO proceedings on their own behalf or through other groups

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<sup>1</sup> Ohio Admin. Code 4901-1-11(A)(2).

<sup>2</sup> Ohio Admin. Code 4901-1-11(B).

<sup>3</sup> EPO Motion at 2.

like the Retail Energy Supply Association. In fact, a review of the Commission’s DIS system indicated this is the first time EPO has ever attempted to intervene as a party. These inconsistencies and EPO’s failure to provide substantive information in support of its intervention calls into question the nature and extent of EPO’s interests.

Nor does the EPO provide any context regarding what exactly its primary role of “interpretation and consultation of products offered by [CRES] providers” entails. The interpretation of contracts is a legal function, and the EPO does not claim to be representing customers or acting as legal counsel for these brokers. Similarly, it is unclear what “consultation of products” is or how it possibly relates to this case.

The EPO’s claim that “Ohio’s competitive marketplace has not had a participant with the direct and overlapping employment ties to a regulated utility such as the case before us” is somehow a legitimate reason for the EPO to claim an interest in this proceeding is incorrect.<sup>4</sup> Ohio law clearly authorizes the use of shared service employees, as is seen by the numerous competitive affiliates utilizing shared service employees. Even if that fact were possibly in dispute, a disputed factual or legal position does not address the nature and extent of EPO’s interests. Without the EPO explaining the nature and extent of its interest in this case intervention is not warranted.

**B. The legal position advanced by the prospective intervenor and its probable relation to the merits of the cases.**

The EPO also fails to advance any argument regarding its legal position and probable relation to the merits of this case. Although it is unclear from the EPO’s motion, to the extent that the EPO’s legal position is that FirstEnergy Advisors’ application “presents new and unique considerations that will have a lasting effect on Ohio’s competitive retail marketplace directly

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<sup>4</sup> EPO Motion at 2–3.

affecting existing brokers and aggregators,” the EPO does not state what the alleged “new and unique considerations” are.<sup>5</sup> As EPO has failed to provide any context regarding the legal positions advanced by the EPO, or its relation to the merits of this case, the Commission simply cannot conclude that the EPO has a real and substantial interest that warrants intervention in this proceeding.

**C. Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.**

With respect to the third factor, the EPO provides no explanation beyond the EPO’s barebones assertion that “[t]he EPO will not unduly prolong or delay the proceedings.”<sup>6</sup> Again, this conclusion cannot be reached by the Commission when it is entirely unclear who the EPO is, what the EPO does, what its alleged interests are, and any potential legal positions advanced by the EPO.

**D. Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.**

The EPO also fails to provide any specifics regarding how the EPO will significantly contribute to full development and equitable resolution of the factual issues. Instead, the EPO simply claims that “[t]he EPO’s membership is comprised of individuals whose collective experience in electric utility issues spans decades” and implies that this alone somehow qualifies the EPO as being able to significantly contribute to the resolution of this case.<sup>7</sup> Again, without providing any specifics regarding who these alleged individuals are or what their experience in electric utility issues actually entails, the EPO’s unsupported contention is insufficient to warrant granting intervention in this proceeding.

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<sup>5</sup> EPO Motion at 3.

<sup>6</sup> EPO Motion at 3.

<sup>7</sup> EPO Motion at 3.

**E. The extent to which the person’s interest is represented by existing parties.**

Finally, the EPO claims that “as the sole statewide representative of licensed power brokers and aggregators, existing parties do not represent the EPO’s interest.”<sup>8</sup> It is unclear how the EPO’s interests are not represented by existing parties, as the EPO fails to explain its interest or provide any support for this contention.<sup>9</sup>

In addition to being unsupported, it appears EPO’s position is factually incorrect. NOPEC, OCC, NOAC, Vistra Energy Corp., and Palmer Energy Company, Inc. have all sought intervention in this proceeding. Their substantive comments have all addressed the possible competitive issues impacting brokers. In fact, some current intervenors are active Ohio brokers. As such, any interest that EPO has is fully represented by existing parties.

**III. CONCLUSION**

EPO has not articulated much of any coherent interest beyond generic regurgitations of the criteria set forth in OAC 4901-1-11(B). If the Commission intends to retain any standard on which to judge intervention this halfhearted effort cannot be enough to meet that standard. For the foregoing reasons, FirstEnergy Advisors respectfully requests that the Commission deny the motion to intervene filed by the Energy Professionals of Ohio in its entirety.

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<sup>8</sup> EPO Motion at 3.

<sup>9</sup> See EPO Motion at 3.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 9th day of March 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander  
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Summary: Memorandum Suvon, LLC d/b/a FirstEnergy Advisors' Memorandum in Opposition to the Motion to Intervene filed by the Energy Professionals of Ohio electronically filed by Ms. Kari D Hehmeyer on behalf of Suvon, LLC d/b/a FirstEnergy Advisors