

**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.)

**SUVON, LLC D/B/A FIRSTENERGY ADVISORS’ MOTION TO STRIKE PORTIONS
OF THE MOTION TO INTERVENE FILED BY RETAIL ENERGY SUPPLY
ASSOCIATION**

I. INTRODUCTION

The motion to intervene filed by Retail Energy Supply Association (“RESA”) goes well beyond the proper scope of a motion to intervene and should be stricken. RESA’s motion to intervene includes thirteen pages of additional briefing which includes several recommendations and requests that have nothing to do with intervention. Rather, RESA’s brief contains general comments discussing how the Commission should consider corporate separation issues, relies almost exclusively on a report issued in another case, and urges nullification of FirstEnergy Advisors’ right to a fair decision on the Application’s merits. RESA’s motion to intervene improperly treats this case as an opportunity to file comments regarding issues that are pending in other cases. Because RESA’s arguments and additional briefing presented in its Motion to Intervene have nothing to do with seeking intervention, pages three through fifteen of RESA’s Motion to Intervene should be stricken.

Alternatively, the Commission could simply reject RESA’s intervention, as separately requested by FirstEnergy Advisors.

II. ARGUMENT

The standard for intervention 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.”¹ A party seeking intervention must establish 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; and (5) the extent to which the person’s interest is represented by existing parties.²

Only the first two pages of RESA’s brief are focused on those grounds, and FirstEnergy Advisors will address the merits of RESA’s intervention separately.³ However, RESA’s brief goes well beyond explaining its purported grounds for seeking intervention. Beginning at page three, RESA spends the next thirteen pages of its brief providing substantive comments and recommendations to the Commission regarding FirstEnergy Advisors’ Application.⁴ For example, RESA makes clear that it is actually concerned with the Commission’s ruling in two other cases—not seeking intervention in this case—by reiterating arguments concerning the corporate separation

¹ Ohio Admin. Code 4901-1-11(A)(2).

² Ohio Admin. Code 4901-1-11(B).

³ See FirstEnergy Advisors’ Memorandum in Opposition to RESA’s Motion to Intervene filed April 1, 2020.

⁴ See Motion at 3–15.

audit and the Sage Report that RESA previously raised in a separate proceeding.⁵ RESA then, unsolicited, recommends that the Commission should dismiss the Application and make FirstEnergy Advisors refile the Application after the Commission addresses these issues in another proceeding.⁶ Further, RESA also recommends that in ruling on FirstEnergy Advisors' Application, the Commission should make clear that any decision to grant or deny the certificate is not binding or conclusive as to any issue raised in the audit proceeding or RESA complaint.⁷ These comments and recommendations clearly have nothing to do with the standard for intervention, and instead are RESA's attempt to inject comments into this application case where none have been requested by the Commission.

Ohio law makes clear that irrelevant material may be stricken from the record.⁸ For example, comments have been struck in their entirety where they were irrelevant to the proceeding,⁹ and better suited to be addressed in another proceeding.¹⁰ This is particularly true here, where the information sought to be submitted is not only irrelevant, better suited to be (and has been) addressed in other proceedings and, importantly, has not been invited by the Commission.

Indeed, there can be no reasonable dispute that pages three through fifteen of RESA's brief should be stricken. Despite RESA's wishes to the contrary, Ohio law does not allow intervenors

⁵ See Motion at 3, 5, 7, 13–14.

⁶ Motion at 4.

⁷ Motion at 4.

⁸ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Rider AU for 2016 Grid Modernization Costs*, Case No. 17-690-GA-RDR, Entry (Sept. 14, 2017) (striking in their entirety OCC's comments on Duke's future plans to replace its AMI technology because they were irrelevant in the context of the Rider AU proceeding); see also *In re Section 276 of the Telecommunications Act*, Case No. 96-1310-TP-COI, Entry (Aug. 15, 2003) (noting "it is appropriate to strike as irrelevant any testimony" not related to issues of case).

⁹ *In re Ohio Power Co.*, Case No. 98-101-EL-EFC, *et al.*, Entry on Rehearing (July 15, 1999) (granting motion to strike information and arguments in memorandum that were irrelevant to intervenors' stated purpose of countering companies' application for rehearing and served only to bolster intervenors' position relative to their own application for rehearing).

¹⁰ Case No. 17-690-GA-RDR, Entry (Sept. 14, 2017) at ¶ 17.

to determine when broker applications should be granted. Broker applications are instead subject to review by the Commission and its Staff. The Commission has not invited any intervenor participation in this proceeding and has certainly not invited comments or rank speculation from those intervenors. Accordingly, pages three through fifteen of RESA's brief should be stricken.

III. CONCLUSION

RESA's motion to intervene goes well beyond the scope of any appropriately filed motion to intervene, and improperly treats this case as an opportunity to file comments and recommendations on FirstEnergy Advisors' Application which have never been requested by the Commission. Because RESA's arguments and additional briefing presented in its motion to intervene have nothing to do with seeking intervention, pages three through fifteen of RESA's brief should be stricken.

Date: April 1, 2020

Respectfully submitted,

/s/ N. Trevor Alexander

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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 1st day of April 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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Case No(s). 20-0103-EL-AGG

Summary: Motion to Strike Portions of RESA Motion to Intervene electronically filed by Mr. Trevor Alexander on behalf of Suvon, LLC