

**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' MEMORANDUM IN OPPOSITION
TO INTERSTATE GAS SUPPLY, INC.'S MOTION TO INTERVENE AND
REQUEST TO ESTABLISH A PROCEDURAL SCHEDULE**

I. INTRODUCTION

Interstate Gas Supply, Inc. ("IGS") seeks intervention in FirstEnergy Advisors' Application case, claiming a broad interest in protecting Ohio's competitive marketplace, and to address issues that have already been raised by other parties seeking intervention. Because IGS fails to establish a real and substantial interest in this case, granting intervention to IGS should be denied. Further, IGS' request to establish a procedural schedule so stakeholders can engage in discovery and submit comments on FirstEnergy Advisors' Application should also be denied because it would unduly prolong and delay this proceeding. Because the application review process is determined by the Commission and its Staff, not by parties generally interested in the Ohio market like IGS, establishing a procedural schedule is unnecessary. Accordingly, IGS' requests should be denied.

II. ARGUMENT

A. IGS' Motion to Intervene should be denied.

To be granted intervention, the person seeking intervention must show it "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 Because IGS has not met this standard, IGS' Motion to Intervene should be denied.

1. IGS fails to have a real and substantial interest in this case.

IGS claims that, “[b]ecause Suvon is an affiliate of the FirstEnergy Ohio EDUs,” it is seeking intervention “to ensure the appropriate safeguards are in place to avoid cross-subsidization of resources and preferential access to information through system access or conduit employees.”² It is unclear how IGS' intervention would ensure appropriate safeguards are in place, since this is a job for the Commission—not IGS. Indeed, IGS' intervention would do nothing to further this, as the current rules already protect against this.³

IGS also states that it needs to intervene “to protect its interest in a competitive retail marketplace in Ohio that is free from unfair advantages or subsidies flowing between the distribution utilities and its unregulated affiliates.”⁴ Simply protecting an interest in a competitive retail marketplace is too broad an interest to warrant intervention. Indeed, if this were the standard for granting intervention, then essentially anyone would be entitled to seek intervention in any case they so desire, so long as the case concerned Ohio's competitive marketplace. Such a broad interest is insufficient to warrant intervention, and “[t]o grant intervention on this basis would render the Commission's rule on intervention meaningless.”⁵

Moreover, in this case, there are no unfair advantages or subsidies flowing between the distribution utilities and FirstEnergy Advisors that would support granting intervention. As noted in FirstEnergy Advisors' amended Exhibit B-2, there is no financial mechanism that exists by

¹ Ohio Admin. Code 4901-1-11(A)(2).

² IGS Motion to Intervene at 5.

³ The specific rules are further discussed in Section B of this Memorandum in Opposition. *See* Section B, *infra*.

⁴ Motion at 5.

⁵ *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP, *et al.*, Entry (Mar. 23, 2000).

which subsidies can flow from the Ohio operating companies to FirstEnergy Advisors.⁶ FirstEnergy Advisors is a separate and distinct corporate entity from all affiliates and FirstEnergy Corp., the parent.⁷ FirstEnergy Advisors maintains its own books and records, separate accounting, has separate insurance, and is a member of a separate unregulated money pool.⁸ As such, there is simply no mechanism for money to be shared between the distribution utilities and FirstEnergy Advisors.

Similarly, there is no possibility of information being improperly shared between the regulated entities and FirstEnergy Advisors. As stated in the Amended Application:

To ensure that the Company does not have access to any information about the transmission or distribution systems that is not available to nonaffiliated competitors, employee access to information and information systems is restricted based on FERC employee classification. Sales or customer-facing services will be performed by individuals classified as marketing function employees working on behalf of the Company. Employees with market employee classifications do not have access to transmission or distribution systems, facilities, or related information. Marketing and regulated employees do not have access to each other's market useful information systems. The access restriction is ensured through a limitation on both physical access and information technology access. Access is consistently reviewed and monitored in accordance with FirstEnergy corporate policy. *See* Corporate Separation Plan pp. 3-4 (discussing employee classification system and structural safeguards to prevent improper access to customer data), p. 7 (making customer information available on a nondiscriminatory basis). The Company will maintain all customer-specific information in a dedicated database or system, accessible only by certain employees and protected by Company-approved cybersecurity tools. Annually, all employees are required to review and certify his or her understanding of Ohio's Corporate Separation Rules. In addition, employees are regularly required to take information technology and FERC Standards of Conduct training.

As an unregulated entity, the Company does not and will not have control over what access is provided to any competitive provider—including the Company itself. Therefore, the Company will not be able to obtain any preferential treatment. The Company also notes that Ohio Administrative Code 4901:1-37-04 (D)(10) requires the electric utility to ensure that all nonaffiliated competitors have comparable access to products and services and that affiliates do not get

⁶ *See* Amended Exhibit B-2 at 4.

⁷ *Id.*

⁸ *Id.*

preferential treatment. The Company has not and will not seek treatment different from nonaffiliated competitors. That is not only ensured by Ohio law, it is also an essential element of the Corporate Separation Plan. *See* Corporate Separation Plan, p. 7 (prohibiting improper disclosure of information to an affiliate).

In light of these clear commitments by FirstEnergy Advisors there is no chance of improper information disclosure.

2. IGS' claimed interest in a competitive retail marketplace has already been raised by other parties seeking intervention.

IGS claims “it would be inappropriate to determine this proceeding without IGS’ participation, as the other parties in the case cannot adequately represent and protect the interests of IGS in the case.”⁹ However, IGS never explains what its unique interest in this case is beyond a general interest in the Ohio competitive marketplace. Indeed, IGS raises the same concerns with possible competitive issues that the substantive comments of others seeking intervention have raised.¹⁰ Specifically, IGS wants to “ensure that Suvon does not obtain a competitive advantage merely by virtue of its relationship to the FirstEnergy Ohio EDUs.”¹¹ Several intervenors, such as Palmer Energy, OCC and NOPEC, whose motions to intervene are currently pending and FirstEnergy Advisors has not opposed, have raised this same issue. Therefore, granting intervention to another party raising the same issues is duplicative and unnecessary since IGS would not be impacted in any way by this proceeding.

3. Granting intervention to IGS will unduly prolong or delay the proceedings.

Despite claiming that its intervention will not unduly prolong or delay these proceedings, IGS nullifies its own argument by requesting the establishment of a procedural schedule in this

⁹ Motion at 6.

¹⁰ *See* 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.

¹¹ Motion at 5.

application case.¹² Applications are governed by OAC 4901:1-24-10, which contains an automatic approval provision if the Commission does not act upon the application within thirty days of filing,¹³ and further requires the Commission to rule on the application within 90 calendar days if the application was suspended (this Application was filed on January 17, 2020).¹⁴

As further discussed *infra*, IGS' recommended procedural schedule proposes to extend this application case out at least another 80 days, and seeks to include a period for discovery, initial and reply comments, and testimony and an evidentiary hearing.¹⁵ That would increase further by the amount of any gap between the hearing date and the ultimate Commission decision. IGS' recommendation to establish such a schedule makes clear that if granted intervention, IGS would undoubtedly prolong and delay this proceeding, as the rules require the Commission to rule on FirstEnergy Advisors' Application in a timely manner. As it has already been almost 90 days since the Application was filed there is simply no justification for delaying a Commission decisions by at least another three months, and more realistically longer to provide for briefing and Commission decision, to provide IGS Energy with its preferred schedule. That is particularly true when Staff has already made its recommendation in this case. Accordingly, IGS' intervention should be denied as it would unduly delay this proceeding.

B. IGS' request to establish a procedural schedule is unnecessary and should be denied.

IGS also seeks to establish a procedural schedule in this proceeding so stakeholders can engage in discovery and submit comments on FirstEnergy Advisors' Application.¹⁶ While IGS claims a stakeholder comment period is needed "to assist the Commission in making its

¹² See Motion at 6.

¹³ Ohio Admin. Code 4901:1-24-10(A).

¹⁴ Ohio Admin. Code 4901:1-24-10(A)(2)(b).

¹⁵ Motion at 6–7.

¹⁶ Motion at 6–9.

determination in this proceeding,” this is unnecessary for an application proceeding.¹⁷ Application review and granting of such is reserved for the Commission and its Staff, not IGS or any other “stakeholder.”¹⁸ Staff has already completed its review. If the Commission believes it needs more information to properly review FirstEnergy Advisors’ Application, then it will seek such information directly from the applicant, as is standard in application proceedings. Establishing a procedural schedule with discovery and a comment period is not needed to accomplish this.

Likewise, what IGS believes to be the issues in this case does not govern this proceeding, nor does it warrant establishing a procedural schedule to address these claimed issues. IGS claims an issue in this proceeding is whether the Commission, based on the information submitted in the Application, is able to assess FirstEnergy Advisors’ ability to comply with rules concerning corporate separation.¹⁹ Each concern raised by IGS does not warrant establishing a procedural schedule, however, as these issues are already governed by rules that FirstEnergy Advisors is very familiar with and is committed to complying with.

With respect to IGS’ concern whether FirstEnergy Advisors’ call center will be shared with other FirstEnergy affiliates and if so, how costs will be allocated,²⁰ this is not a credible issue. Ohio law has structural safeguards in place that require electric utilities and their affiliates to function independently of each other, maintain separate accounting, and adhere to a specific code of conduct.²¹ FirstEnergy Advisors ensures proper cost allocation through a cost allocation manual that is created and maintained with clear documentation of how costs are allocated between the utility and its affiliates and between regulated and nonregulated operations.²²

¹⁷ Motion at 7.

¹⁸ See Ohio Admin. Code 4901:1-24-10(B).

¹⁹ Motion at 7.

²⁰ Motion at 8.

²¹ See Ohio Admin. Code 4901:1-37-04(A) (structural safeguards); 4901:1-37-04(B) (separate accounting); 4901:1-37-04(D) (code of conduct).

²² Amended Exhibit B-2 at 2–3.

Similarly, any concerns regarding whether agents will be properly separated from agents serving FirstEnergy Ohio EDUs and whether customer information that is otherwise restricted will be protected are also non-issues because Ohio has adopted rules that address both. Ohio has adopted OAC 4901:1-37-04(A)(5) and OAC 4901:1-37-08, which specifically address how shared service employees should be accounted for under a cost allocation manual. Likewise, OAC 4901:1-37-04(D) lays out the code of conduct that must be followed, which includes provisions addressing protection of customer information and prohibitions on any preferential treatment.²³ FirstEnergy Advisors does not have access to any information about the transmission or distribution systems that is not available to nonaffiliated competitors, and employee access to information and information systems is restricted based on FERC employee classification.²⁴ All customer-specific information will be maintained in a dedicated database or system, accessible only by certain employees and protected by cybersecurity tools.²⁵ Additionally, FirstEnergy Advisors does not and will not have control over what access is provided to any competitive provider, including itself, thus preventing any preferential treatment.²⁶

IGS' concern about FirstEnergy Advisors operating under the "FirstEnergy" trade name²⁷ is not an issue, as the Commission has already analyzed and ruled that unregulated entities can use names affiliated with regulated entities.²⁸ Further, Ohio law expressly requires that customers be informed of an affiliate relationship with an Ohio utility²⁹ and that employees disclose the entity

²³ See, e.g., Ohio Admin. Code 4901:1-37-04(D)(1), (4), (10).

²⁴ Amended Exhibit B-2 at 3.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Motion at 8–9.

²⁸ See *In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD, Finding and Order (Dec. 18, 2013).

²⁹ See Ohio Admin. Code 4901:1-21-05(C)(8)(g) (stating that it is inherently deceptive to "[f]ail to conspicuously disclose an affiliate relationship with an existing Ohio electric utility" when advertising or marketing).

the employee is representing.³⁰ Because FirstEnergy Advisors will comply with all Commission rules, including the rules that require an affiliate disclaimer and the requirement that employees disclose the entity the employee is representing,³¹ there is no concern that any competitive advantage would result, as claimed by IGS.³²

IGS itself has used the name and logo of a regulated utility only a few years ago (Columbia Retail Energy) and so IGS should be well aware this is permitted under Ohio law.³³ Indeed, in response to IGS' spirited defense of this practice the Commission rejected RESA's claim. "We do not believe that the evidence of record substantiates the joint complainants' allegation that the use of the [Columbia Retail Energy] trade name gives IGS an unfair competitive advantage in Columbia's territory."³⁴

Simply put, none of the issues IGS raises warrant an entry establishing a procedural schedule, much less warrant allowing parties to engage in discovery and a prolonged comment period in this application proceeding. Accordingly, IGS' request to establish a procedural schedule must be denied.

III. CONCLUSION

IGS' reasons for seeking intervention in this case are too broad to warrant granting intervention and the issues raised by IGS are duplicative of issues raised by other parties seeking intervention. IGS also fails to raise any arguments that warrant setting a procedural schedule to allow for discovery, comments, and a hearing prior to granting FirstEnergy Advisors' Application. Accordingly, FirstEnergy Advisors' respectfully requests that the Commission deny IGS' Motion

³⁰ See Ohio Admin. Code 4901:1-37-04(D)(11).

³¹ See Amended Exhibit B-2 at 3-4.

³² See Motion at 9.

³³ Case No. 10-2395-GA-CSS, August 15, 2012 Opinion and Order.

³⁴ *Id.* at 17.

to Intervene and Request to Establish a Procedural Schedule and approve FirstEnergy Advisors' Application.

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 April 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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Summary: Memorandum In Opposition to IGS Energy Motion to Intervene electronically filed by Mr. Trevor Alexander on behalf of Suvon, LLC