

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY IN SUPPORT OF MOTION TO INTERVENE AND REQUEST TO ESTABLISH
A PROCEDURAL SCHEDULE AND MEMORANDUM IN SUPPORT OF INTERSTATE
GAS SUPPLY, INC.**

I. INTRODUCTION

The memorandum contra filed by Suvon, LLC, d/b/a FirstEnergy Advisors (“Suvon”), seeks to deprive Interstate Gas Supply, Inc. (“IGS”) of its right to participate in this case by arbitrarily narrowing the standard for intervention in Public Utilities Commission of Ohio (“PUCO” or “Commission”) proceedings.

Suvon claims that IGS cannot satisfy the intervention standard set forth in Ohio Adm. Code 4901-1-11, because its stated interests are too “broad” and duplicative of the issues raised by other prospective intervenors to establish a real and substantial interest necessary for intervention in this case.¹ Suvon also argues that IGS’ Motion to Intervene and supporting memorandum fails because its request to establish a procedural schedule will unduly prolong and delay the proceeding.² Indeed, Suvon regards IGS’ request to

¹ 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, Case No. 20-0103-EL-AGG at 1 (April 9, 2020) (hereinafter “Suvon Memo Contra”).

² *Id.*

establish a procedural timeline and include record evidence to aid the Commission in its review of Suvon's contested application in this case as simply "unnecessary."³

Suvon's memorandum contra mischaracterizes the Commission's liberal intervention standard, ignores past precedent, and unreasonably seeks to deprive IGS of its right to participate in this proceeding. For the reasons set forth below, the Commission should reject Suvon's attempt to arbitrarily impose a narrow intervention standard and grant IGS' Motion to Intervene and request to establish a procedural schedule in this case.

II. ARGUMENT

A. IGS' Stated Interest Is Sufficient to Justify Intervention.

Suvon, an affiliate of the FirstEnergy Ohio distribution companies ("FirstEnergy utilities")⁴, opposes IGS' Motion to Intervene arguing that IGS failed to establish a real and substantial interest necessary to justify intervention in this case. Specifically, Suvon argues that IGS' stated interest in preserving competitive market conditions by ensuring that the utility/affiliate relationship complies with all applicable corporate separation requirements under Ohio law and the Commission's rules⁵ is "too broad . . . to warrant intervention."⁶ Suvon also implies that the substance of IGS' Motion to Intervene is similar to other motions to intervene that the Commission denied, and cautions that a

³ *Id.* at 6.

⁴ See Entry at ¶ 3-6 (Feb. 11, 2020).

⁵ See Motion to Intervene and Request to Establish a Procedural Schedule and Memorandum in Support of Interstate Gas Supply, Inc., at 5 (March 25, 2020) (hereinafter "IGS' Motion to Intervene").

⁶ Suvon Memo Contra at 2.

Commission decision to grant IGS' motion based upon its stated interests 'would render the Commission's rules on intervention meaningless.'⁷

Under the Commission's liberal intervention standard and past precedent, IGS' Motion to Intervene should be granted. Precedent holds that retail suppliers have been granted intervention in Commission proceedings that may impact retail choice programs, customers, and the competitive market. For example, the Commission granted IGS' Motion to Intervene in a GCR proceedings over Duke Energy Ohio's ("Duke") objection and held:

The thrust of [Duke's] argument is that IGS does not have a real and substantial interest in this GCR proceeding. The examiner finds that issues related to the competitive market, competitive suppliers, and their customers may arise in this proceeding. Such issues have been a part of the utility's prior GCR cases before the Commission.⁸

Moreover, the Commission—over FirstEnergy's opposition—previously granted IGS intervention in the audit to evaluate FirstEnergy's corporation separation practices, including the manner in which FirstEnergy interacts with its affiliates.⁹

The issues IGS raised in its Motion to Intervene in this proceeding also involve the competitive market, corporate separation requirements, competitive suppliers, and their customers. Here, IGS expressed serious concern about the ability for Suvon and its

⁷ Suvon Memo Contra at 2, citing: *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).

⁸ *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Cincinnati Gas & Electric Company and Related Matters*, Case No. 05-218-GA-GCR, Entry at 2 (Nov. 15, 2005).

⁹ *In the Matter of the Review of Ohio Edison, The Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at 4 (Sep. 20, 2018).

affiliates, FirstEnergy utilities, to comply with Ohio law and the Commission's rules regarding corporate separation requirements.¹⁰ In many respects, this case is an extension of the yet to be decided corporate separation audit proceeding inasmuch as the application raises new issues and facts not considered by the auditor in that proceeding. Although Suvon claims that IGS has no interest in ensuring that corporate separation rules are followed,¹¹ the rules themselves are clearly designed to protect the competitive market and its participants (e.g. IGS and its customers) from affiliate abuses. And the Commission clearly recognized this fact when it granted IGS intervention in FirstEnergy's corporate separation audit proceeding.

Despite Suvon's arguments to the contrary, the standard for intervention in Commission proceedings is broad. As IGS referenced in its original motion, the Ohio Supreme Court, in *Ohio Consumers' Counsel v. Public Utilities Commission*, stated unequivocally that "intervention ought to *liberally allowed* so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."¹² (emphasis added). Although Suvon attempts to draw a nexus between IGS' interests in its Motion to Intervene to those of two prospective intervenors that were denied intervention in a different case,¹³ IGS' interest in this proceeding is not speculative;

¹⁰ IGS Motion to Intervene at 5.

¹¹ Suvon Memo Contra at 2.

¹² *Ohio Consumers' Counsel v. Pub. Util Com'n of Ohio* (2006), 111 Ohio St. 3d 384, 38, 2006 Ohio 5853, 856 N.E.2d 940.

¹³ Suvon Memo Contra at 2, citing: *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).

nor does it seek intervention to establish or prevent new precedent. Rather, IGS is a CRES provider in Ohio and, therefore, seeks intervention to guard against unlawful subsidies and unfair advantages that may flow between FirstEnergy utilities and its affiliate, Suvon to ensure a level playing field.

While Suvon claims “there are no unfair advantages or subsidies flowing between the distribution utilities and [Suvon] that would support granting intervention[.]”¹⁴ its assertion remains a question of fact. The notion that Suvon maintains separate books and records, accounting, insurance, etc. does not fully address whether it is appropriately siloed to eliminate the potential flow of unlawful subsidies and preferential treatment between Suvon and its affiliates. Maintenance of separate books and accounting is irrelevant if the information recorded is exaggerated based upon flawed or unreasonable methodologies.

For example, to the extent that Suvon and FirstEnergy utilities use common employees (e.g. employees that work directly for both entities or service company employees), the possibility exists that FirstEnergy utilities could subsidize the overhead expense associated with Suvon’s unregulated activities. IGS sufficiently addressed its concerns regarding unlawful subsidies in its Motion to Intervene, and in doing so, established that it has a real and substantial interest in the proceeding. Accordingly, IGS should be granted intervention to explore those issues.

i. No Other Intervenor Represents IGS’ Interests.

¹⁴ Suvon Memo Contra at 2.

Suvon also claims that IGS cannot satisfy the Commission's intervention standard because "IGS raises the same concerns with possible competitive issues that the substantive comments of others seeking intervention have raised."¹⁵ For that reason, Suvon implies that IGS' interests are adequately represented by other parties to this proceeding and argues that granting IGS' Motion to Intervene is "duplicative and unnecessary since *IGS would not be impacted in any way. . .*."¹⁶ (emphasis added). Here again, Suvon mischaracterizes the standard for intervention under Ohio Adm. Code 4901-1-11 to arbitrarily deprive IGS of its right to participate in this case.

Under the Commission's rules, a party must be granted intervention upon a showing that the party is "so situated that the disposition of the proceeding may, as a practical matter, impair or impede [its] ability to protect that interest."¹⁷ While Palmer Energy, the Ohio Consumers' Counsel, and NOPEC may have raised similar issues in this docket, the Commission has yet to grant intervention to any of those prospective intervenors; therefore, any suggestion that IGS' interests are adequately represented by those parties is simply absurd.

More importantly, none of those prospective intervenors represent IGS' interests. IGS cannot, and does not, rely on any other entity that seeks intervention in this docket to represent its interest. Though IGS acknowledges that it may not be the only party concerned about the impact of Suvon's application on Ohio competitive market conditions, it nevertheless seeks intervention to address the impact of that application

¹⁵ Suvon Memo Contra at 4.

¹⁶ *Id.*

¹⁷ Ohio Adm. Code 4901-1-11(A)(2).

solely on IGS and its customers. Therefore, because IGS has demonstrated that it has a real and substantial interest in this proceeding that cannot be adequately represented by other parties, the Commission should dismiss Suvon's arguments and grant IGS' Motion to Intervene.

B. IGS' Request to Establish A Procedural Schedule Will Develop the Record and Assist the Commission in its Review of Suvon's Application.

In support of its request to deny IGS' Motion to Intervene, Suvon argues that IGS' recommendation to establish a procedural schedule is not only "unnecessary for an application proceeding[.]"¹⁸ but also will unduly prolong or delay this case.¹⁹ Suvon challenges IGS' right to establish a procedural schedule and participate in its application process arguing that "[a]pplication review . . . is reserved for the Commission and its Staff, not IGS or any other 'stakeholder.'"²⁰ The rule that governs the review and certification of CRES applications, however, is not nearly as limiting as Suvon contends. Indeed, the Commission's rules enable it to set an application proceeding for hearing and facilitate stakeholder participation under a specific set of circumstances.

Pursuant to Ohio Adm. Code 4901:1-24-10(A)(2)(c), the Commission is authorized to set an application proceeding for hearing once the PUCO has acted to suspend that application. The Commission suspended Suvon's application on February 11, 2020.²¹ In the weeks that followed, IGS moved to intervene and, in response to that suspension

¹⁸ Suvon Memo Contra at 6.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 6.

²¹ See Attorney Examiner Entry Order suspending FirstEnergy Advisors' Certification Application in order for the Commission to Further Review this Matter, at ¶8 (Feb. 11, 2020).

order, requested that the Commission establish a procedural schedule in this case.²² To provide for an organized and streamlined review of Suvon's application, IGS requested that the Commission afford stakeholders the opportunity to file two rounds of comments and serve discovery under an abbreviated timeline.²³ IGS also requested that the Commission authorize stakeholders to file testimony and conduct an evidentiary hearing, if necessary.²⁴ Although Suvon urges the Commission to adopt a more limiting standard of review regarding its application, there is nothing in the Commission's rules that expressly prohibits IGS, or any other stakeholder, from participating in the application review process.

Furthermore, the Commission's rules require that in reviewing Suvon's application, the Commission must "consider the information contained in the [sic] application, supporting attachments and *evidence*, and recommendations of its staff."²⁵ (emphasis added). The Commission is also charged with ensuring that Suvon is "managerially, financially, and technically fit and capable of complying with all applicable commission rules and orders."²⁶ Because Suvon's application has not conclusively demonstrated that it is fully capable of complying with Ohio's corporate separation requirements and the Commission's rules, the Commission should adopt IGS' proposed procedural schedule to aid in developing the factual record necessary to reach a final decision in this case.

²² IGS Motion to Intervene at 4.

²³ *Id.* at 6.

²⁴ *Id.* at 7.

²⁵ Ohio Adm. Code 4901:1-24-10(B).

²⁶ Ohio Adm. Code 4901:1-24-10(C)(2).

i. IGS' Request to Establish A Procedural Schedule Will Not Unduly Prolong or Delay this Proceeding.

Finally, Suvon argues that IGS' motion should be denied because its request to adopt a procedural schedule in this case will unduly prolong and delay the proceeding. In support of its argument, Suvon contends that not only is IGS' proposal contrary to the normal application approval processes; "there is simply no justification for delaying a Commission decision[] by at least another three months . . . to provide IGS Energy with its preferred schedule."²⁷ IGS disagrees.

Suvon's affiliation with FirstEnergy utilities presents a heightened risk of improper conduct that warrants closer inspection. Although IGS' proposed procedural schedule may further extend the timeline of this case, the discovery and comment periods proposed in IGS' supporting memorandum will not *unduly* delay the case. Indeed, Suvon amended its application in this proceeding on April 1, and in doing so, reset the automatic approval deadlines set forth in Ohio Adm. Code 4901:1-24 to begin as of that date.²⁸ It follows then that IGS' proposed procedural schedule, if approved, is unlikely to extend this proceeding beyond the date(s) by which the Commission is required to rule on Suvon's application.

Given the uncertainty surrounding Suvon's ability to comply with Ohio's corporate separate requirements and the Commission's rules, IGS' request to establish a procedural schedule also will provide order and certainty to this proceeding. More importantly, the discovery and comment period that IGS proposed will "significantly

²⁷ Suvon Memo Contra at 5.

²⁸ See Correspondence Supplementing Application Exhibits B-2 and B-3 of Suvon LLC (Apr. 1, 2020).

contribute to the full development and equitable resolution of the factual issues”²⁹ in this case. Accordingly, IGS’ Motion to Intervene and request to establish a procedural schedule satisfied the standard for intervention set forth under R.C. 4903.221(B)(4) and Ohio Adm. Code 4901-1-11(B)(4).

III. CONCLUSION

Despite the claims Suvon raised in its Memorandum Contra, IGS has satisfied the Commission’s liberal standard for intervention. IGS’ motion raised concerns that Suvon’s application presents a heightened risk of cross subsidies between regulated distribution utilities and their unregulated competitive affiliate that runs counter to Ohio law and the Commission’s rules. Moreover, IGS’ established that its intervention will not unduly prolong and delay this proceeding. Based on the foregoing, IGS’ respectfully requests that the Commission grant its Motion to Intervene and request to establish a procedural schedule in this case.

Respectfully submitted,

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²⁹ Ohio Adm. Code 4901-1-11(B)(4).

CERTIFICATE OF SERVICE

I certify that this *Reply in Support of Motion to Intervene and Request to Establish a Procedural Schedule and Memorandum in Support of Interstate Gas Supply Inc.* was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio on this 16th day of April 2020.

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Summary: Reply in Support of Motion to Intervene and Request to Establish a Procedural Schedule electronically filed by Mr. Michael A Nugent on behalf of Interstate Gas Supply, Inc.