

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MOTION TO COMPEL FIRSTENERGY ADVISORS TO RESPOND TO OCC'S  
FIRST SET OF DISCOVERY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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April 17, 2020

*Special Counsel for the  
Office of the Ohio Consumers' Counsel*

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Without any basis in law or rule, FirstEnergy Advisors (“FEA”) simply refuses to answer OCC’s discovery, apparently intent on keeping secret all the details of how it will provide service to Ohioans. The PUCO should put a stop to FEA’s arrogant non-compliance with Ohio law and rules. The perceived lack of repercussions against those who violate the discovery rules is alarming and induces parties like FEA (and PALMco), to continue to obstruct the fact-finding process. The PUCO should consider levying a penalty against parties like FEA who continue to flout PUCO rules by creating meritless discovery delays and obstructing the fact-finding process.

FEA, an affiliate of the regulated FirstEnergy electric distribution utilities<sup>1</sup>, seeks to provide competitive (non-regulated) brokering and aggregation services to customers in Ohio. FEA’s application raises significant legal issues regarding corporate separation between FEA and the FirstEnergy Utilities. If these issues are not resolved, there could be an unlawful abuse of market power and harm to consumers.

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<sup>1</sup> The Ohio Edison Company, The Cleveland Electric Illuminating Company, and Toledo Edison Company (collectively the “FirstEnergy Utilities”).

OCC filed a Motion to Intervene in this case on February 10, 2020. On February 11, 2020, the Attorney Examiner granted requests by OCC, the Northeast Ohio Public Energy Council (“NOPEC”), and Vistra Energy Corp. (“Vistra”) to suspend the automatic approval of FEA’s application.<sup>2</sup>

OCC served its first set of case preparation discovery on FEA on March 9, 2020. FEA’s responses were due to OCC on or before March 30, 2020. FEA failed to provide any substantive responses to OCC’s document requests, objecting that OCC’s requests are “premature and OCC is not entitled to discovery at this time” because the PUCO has not set a hearing in this case.<sup>3</sup>

FEA’s objections have no merit. FEA’s failure to respond to OCC’s document requests violates the PUCO’s rules and precedent.<sup>4</sup> Accordingly, OCC moves to compel<sup>5</sup> FEA to respond to OCC’s discovery immediately. OCC asks the PUCO to expeditiously rule on its motion so that it can adequately prepare for participation in this proceeding.

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<sup>2</sup> Case No. 20-103-EL-AGG, Entry (Feb. 11, 2020).

<sup>3</sup> See FirstEnergy Advisors’ Objections, Answers, and Responses to OCC’s First Set of Interrogatories and Requests for Production of Documents (March 30, 2020) (attached hereto as “Exhibit A”).

<sup>4</sup> Ohio Adm. Code 4901-1-19; 4901-1-20.

<sup>5</sup> Ohio Adm. Code 4901-1-23.

Respectfully submitted,

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/s/ Angela D. O'Brien

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competitive advantage over other competitive brokers and aggregators in violation of the PUCO's rules.<sup>9</sup> (Recently the PUCO approved Auditor in FirstEnergy's corporate separation plan case recommended against use of the "FirstEnergy" name in providing competitive generation service).<sup>10</sup>

On March 9, 2020, OCC served discovery on FEA. FEA's discovery responses were due to OCC on March 30, 2020. FEA refused to substantively respond to OCC's document requests, and instead objected to each and every request as "premature" because there is no hearing set in this case. FEA's refusal to answer OCC's discovery is a direct violation of PUCO discovery rules, which FEA itself concedes permit discovery "immediately after a proceeding is commenced."<sup>11</sup>

FEA's refusal to respond to OCC's discovery makes it difficult, if not virtually impossible, for OCC to adequately participate in this proceeding. Accordingly, OCC moves the PUCO to compel FEA to comply with the PUCO rules and precedent and respond to OCC's discovery immediately.

## **II. ARGUMENT**

### **A. FEA is required to respond to OCC's discovery under Ohio Law, the Ohio Administrative Code, and PUCO precedent.**

The PUCO's rules and Ohio law permit ample discovery in PUCO proceedings.<sup>12</sup>

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<sup>9</sup> NOPEC/OCC Joint Motion, at 2, 15-17.

<sup>10</sup> See Case No. 17-974-EL-UNC, SAGE Management Consultants, LLC Final Report for Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (May 14, 2018), at 98-99.

<sup>11</sup> Ohio Adm. Code 4901-1-17(A).

<sup>12</sup> R.C. 4903.082, Ohio Adm. Code 4901-1-16(A), Ohio Adm. Code 4901-1-16(B).

Any party may serve written interrogatories to be answered by another party.<sup>13</sup>

Additionally, a party may serve on another party requests to produce documents.<sup>14</sup> And for purposes of discovery, a “party” includes “any person who has filed a motion to intervene which is pending at the time a discovery request or motion is to be served or filed.”<sup>15</sup>

Once discovery is served, the party served with such discovery must provide answers or objections to the written interrogatories within 20 days of service or within a longer or shorter time as the PUCO may allow.<sup>16</sup> With respect to requests for production of documents, the party served must produce the documents or permit inspection of the documents requested, or provide objections within 20 days of service or within a longer or shorter time as the PUCO may allow.<sup>17</sup>

FEA’s discovery responses to both written interrogatories and requests for production of documents were due 20 days after service (by March 30, 2020).<sup>18</sup> However, instead of providing responses to OCC’s document requests, FEA provided the following blanket objection to each and every OCC discovery request:

Objection. FirstEnergy Advisors objects to this request because it is premature and OCC is not entitled to discovery at this time. Commission rules allow for prehearing discovery to begin “after a proceeding is commenced” and such discovery “must be completed prior to the commencement of a hearing,” thus contemplating that a hearing must be set prior to engaging in discovery. Ohio Admin. Code 4901-1-17(A); *see also* Ohio Admin. Code 4901-1-16(A) (noting the purpose of rules 4901-1-16

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<sup>13</sup> Ohio Adm. Code 4901-1-19.

<sup>14</sup> Ohio Adm. Code 4901-1-20.

<sup>15</sup> Ohio Adm. Code 4901-1-16(H).

<sup>16</sup> Ohio Adm. Code 4901-1-19(A).

<sup>17</sup> Ohio Adm. Code 4901-1-20(C).

<sup>18</sup> Ohio Adm. Code 4901-1-19(A), Ohio Adm. Code 4901-1-20(C).



to 4901-1-24 is “to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings”). There has been no case schedule established in this proceeding, nor is there any hearing or briefing process by which discovery could be utilized. Because no hearing has been set in this matter, the proper scope of discovery is not defined, and therefore any discovery in this matter is premature until there is a demonstrated need or plan for a hearing as determined by the Commission. *See* Ohio Admin. Code 4901-1-16(B).<sup>19</sup>

FEA’s claims that OCC has no right to discovery unless and until the PUCO sets a hearing and procedural schedule should be rejected. FirstEnergy’s objections are contrary to the PUCO’s rules, PUCO precedent, and even the FirstEnergy Utilities’ own prior practice of responding to OCC’s discovery in other proceedings with no procedural or hearing schedule. The PUCO should direct FEA to respond immediately to OCC’s discovery so that OCC can adequately participate in this case, representing the interests of residential customers.

First, the PUCO rules (Ohio Adm. Code 4901-1-16(H)) plainly allow discovery to begin upon the filing of a motion to intervene, even before it is granted. According to the PUCO’s rules on discovery, any “party” may conduct discovery. And Ohio Adm. Code 4901-1-16(H) defines the term “party” to include “any person who has filed a motion to intervene which is pending at the time of the discovery request [].” Having filed a motion to intervene, OCC is a party for purposes of discovery.<sup>20</sup>

FEA’s refusal to respond to discovery is wrong and undermines what FEA itself concedes is the express purpose of the PUCO’s rules, that is “to encourage prompt and

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<sup>19</sup> Exhibit A, at 5-9.

<sup>20</sup> *See, e.g. In the Matter of the Application of the implementation of H.B. 218*, Case No. 05-1305-TP-ORD, Entry on Rehearing, ¶13 (May 3, 2006) ((holding that all persons with pending motions to intervene can participate in discovery).

expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings.”<sup>21</sup> FEA’s refusal to respond to OCC’s discovery prejudices OCC’s expeditious case preparation for these proceedings. OCC must be ready to present its case in accordance with whatever procedural schedule the PUCO sets in this case, and the delay in receiving FEA’s responses hinders OCC’s ability to do just that.

Second, the PUCO regularly allows discovery in cases where no hearing or procedural schedule is set. Thus, the PUCO should reject FEA’s claim that OCC’s discovery is “premature.”

Just last month, in another certification case where there is no hearing scheduled, the PUCO acknowledged that under the PUCO’s rules, OCC’s right to discovery began as soon as its motion to intervene was filed. In the consolidated cases concerning a competitive marketer’s applications to renew its certificates to serve Ohio’s natural gas and electric customers, the PUCO ordered marketer Verde Energy to answer pending discovery that OCC served after filing its motion to intervene and before a procedural schedule was set. The PUCO stated:

As a final matter, the attorney examiner notes that, under Ohio Adm. Code 4901-1-16(H), the term “party” includes any person who has filed a motion to intervene, which is pending at the time a discovery request or motion is to be served or filed. *Therefore, unless and until the attorney examiner rules on any pending motion to intervene, all parties, including the Company, are subject to discovery for the purposes of these proceedings, and should timely respond to all discovery requests.*<sup>22</sup>

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<sup>21</sup> Ohio Adm. Code 4901-1-16(A).

<sup>22</sup> *In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Services Supplier, et. al*, Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS, Entry at ¶13 (March 3, 2020) (emphasis added).

In that certification renewal case, the PUCO is determining, as it must determine here, whether the marketer has the managerial, technical, and financial capability to serve Ohio consumers and is able to comply with PUCO rules, orders and Ohio law.<sup>23</sup> In light of the PUCO's recent ruling, FirstEnergy's claim that OCC has no right to discovery because "the proper scope of discovery is not defined" has little merit.

Additionally, the PUCO expressly rejected similar arguments that discovery was improper and premature because there was no scheduled hearing in a 2011 case, *In re Columbia Gas of Ohio*, Case No. 11-5351-GA-UNC.<sup>24</sup> The PUCO rejected the utility's motion to stay discovery, noting that Ohio law and the PUCO's rules provide for ample discovery and encourage expeditious use of discovery:

Section 4903.082, Revised Code, requires the Commission to ensure ample rights of discovery, while Rule 4901-1-17(A), O.A.C., generally provides that discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible.<sup>25</sup>

In addition, the FirstEnergy Utilities have responded to OCC's discovery in other cases where the PUCO has not set a hearing or procedural schedule. For example, the FirstEnergy Utilities (and other electric utilities) annually file updates to their transmission cost recovery riders under Ohio Adm. Code 4901:1-36-03. Similar to certification cases, these matters involve an automatic approval process and the PUCO generally does not set a hearing or establish a procedural schedule. Nevertheless, OCC has intervened in these proceedings in the past and the FirstEnergy Utilities have

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<sup>23</sup> R.C. 4928.08(B).

<sup>24</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program, et al.*, Case Nos. 11-5351-GA-UNC, 11-5352-GA-AAM, Entry at ¶¶ 6, 8 (Jan. 27, 2012).

<sup>25</sup> *Id.* at ¶8.

responded to OCC's discovery without objecting that OCC's discovery is premature.<sup>26</sup> FEA's claim that OCC is now precluded from conducting discovery because there is no hearing or procedural schedule in this case should be rejected.

When OCC attempted to informally resolve this discovery dispute with FEA, FEA claimed that a nearly 15-year old PUCO rulemaking case supports denying OCC discovery in this case.<sup>27</sup> FEA is wrong. The rulemaking case is inapposite. Specifically, the PUCO declined in that case to adopt OCC's proposed definition of "proceeding" on the grounds that it would permit "any interested person [to] have the right to intervene, conduct discovery, and present evidence in any Commission case." But that ruling has nothing to do with, and does not justify, FEA's refusal to respond to OCC's discovery now. OCC has intervened in this case and OCC is entitled to conduct discovery regarding FEA's Application.<sup>28</sup>

FEA also claimed that the 2003 PUCO Entry in *In re Triennial Review Regarding Local Circuit Switching*, Case No. 03-2040-TP-COI supports FEA's refusal to respond to OCC's discovery.<sup>29</sup> It does not. In that Entry, the PUCO found that the case was a "highly unique and complex proceeding" that warranted a "managed discovery" process where parties were required to respond in writing to the PUCO's questions.<sup>30</sup> In addition,

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<sup>26</sup> See e.g. *In the Matter of the Review of the Non-Market-Based Services Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 19-2120-EL-RDR, and Case No. 18-1818-EL-RDR.

<sup>27</sup> See Exhibit 1 to Affidavit of Angela D. O'Brien (4/1/20 e-mail from FirstEnergy Advisors' counsel Trevor Alexander to Angela O'Brien citing *In re Chapters 4901-1, 4901-3 and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, Finding and Order (December 6, 2006)).

<sup>28</sup> Ohio Adm. Code 4901-1-16(H).

<sup>29</sup> See Exhibit 1 to Affidavit of Angela D. O'Brien (4/1/20 e-mail from FirstEnergy Advisors' counsel Trevor Alexander to Angela O'Brien citing *In re Triennial Review Regarding Local Circuit Switching*, Case No. 03-2040-TP-COI, Entry on Rehearing (October 28, 2003) ("*Triennial Review Entry*").

<sup>30</sup> *Triennial Review Entry*, at ¶8.

although the PUCO stated that there was no right to an evidentiary hearing in that case, the PUCO left open the potential for the parties to conduct their own discovery and permitted parties to depose witnesses before filing testimony.<sup>31</sup> Therefore, the *Triennial Review Entry* reflects nothing more than the PUCO exercising its discretion over “the governance of its own proceedings.”<sup>32</sup> Nothing in the *Triennial Review Entry* can be read to deny OCC’s right to discovery in this case under the PUCO’s rules and recent precedent.

In sum, Ohio law, the PUCO’s rules, and PUCO precedent allow discovery in PUCO proceedings even when no hearing or procedural schedule is set. Again, the PUCO’s rules permit discovery “immediately after a proceeding is commenced” and provide that discovery “should be completed as expeditiously as possible.”<sup>33</sup> FEA’s claim that OCC must *wait* for the PUCO to set a procedural schedule or hearing before serving discovery defies logic and the express provisions of PUCO’s rules. The PUCO should order FEA to respond immediately to OCC’s discovery so that OCC can prepare its case to protect consumers in this matter.

**B. The information OCC seeks from FEA for consumer protection is relevant and reasonably calculated to lead to the discovery of admissible evidence.**

OCC’s discovery is reasonably calculated to lead to the discovery of admissible evidence regarding the issues in this case. The PUCO’s rules provide that “any party to a commission proceeding may obtain discovery on any matter, not privileged, which is

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Ohio Adm. Code 4901-1-17(A).

relevant to the subject matter of the proceeding.”<sup>34</sup> The rule likewise provides: “It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”<sup>35</sup>

OCC’s discovery is directly related to FEA’s Application in this case. OCC’s document requests seek the documents and workpapers requested from FEA by the PUCO Staff, communications between FEA and the PUCO Staff, and exhibits to FEA’s Application filed under seal.<sup>36</sup> OCC requires this information to more fully evaluate the Application and to prepare for this proceeding. The PUCO Staff recommendations are part of what the PUCO must review in ruling upon the application.<sup>37</sup> OCC and other parties should have the opportunity to discover what information the PUCO Staff reviewed in coming to its recommendation. That information will help OCC address the sufficiency of the PUCO Staff’s review. FEA has no argument that the information sought by OCC is not “reasonably calculated to lead to the discovery of admissible evidence.”

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<sup>34</sup> Ohio Adm. Code 4901-1-16(B).

<sup>35</sup> *Id.*

<sup>36</sup> *See* Exhibit A, at 5-9. To the extent OCC’s requests seek confidential information, OCC is willing to execute a Protective Agreement with FEA to protect any confidential, competitively sensitive, or trade secret information. FEA also claims that OCC’s use of the term “informal requests” in RPD-01-001 is “vague, overbroad, and unduly burdensome to answer”. *Id.* at 5. That objection should be rejected as well. OCC provides specific examples in the request of the type of information it is seeking. The request is also tailored to seek requests pertaining to this proceeding, *i.e.* Case No. 20-103-EL-AGG. Thus, it should not be burdensome for FEA to produce the PUCO’s or PUCO Staff’s requests made to FEA and FEA’s responses to those requests in this proceeding,

<sup>37</sup> *See* Ohio Admin. Code 4901:1-24-10(B).

**C. OCC undertook reasonable efforts to resolve the discovery dispute.**

As detailed in the attached affidavit, OCC made reasonable efforts to resolve this discovery dispute with FEA.<sup>38</sup> However, instead of negotiating a reasonable solution to the discovery dispute, FEA has chosen to ignore the PUCO's rules and relevant PUCO precedent that unequivocally support OCC's ample rights to discovery in this case.<sup>39</sup> OCC informed FEA that it would file this motion to compel if FEA did not make arrangements for the prompt production of the documents OCC seeks.<sup>40</sup> FEA did not respond to OCC's final request to resolve the discovery dispute.<sup>41</sup>

At this date, FEA's discovery responses are over two weeks overdue. This delay has cost OCC valuable time in preparing a potential case to protect the consumers FEA seeks authority to serve. The PUCO should not tolerate FEA's refusal to follow the discovery process that is plainly permitted under Ohio law and the PUCO's rules. The PUCO should grant OCC's motion to compel and require FEA to respond immediately to OCC's discovery.

**III. CONCLUSION**

FEA refused to respond to OCC's discovery in violation of Ohio law, the PUCO's rules, and PUCO precedent that expressly permit and encourage broad discovery. OCC's discovery is relevant and reasonably calculated to lead to the discovery of admissible evidence, and FEA does not claim otherwise. In short, there is no legitimate reason for

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<sup>38</sup> See Affidavit of Angela D. O'Brien.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

FEA's refusal to respond to OCC's discovery. The delay in receiving FEA's responses has thwarted OCC's case preparation.

OCC respectfully requests that the PUCO expeditiously grant this motion to compel and order FEA to respond immediately to OCC's discovery.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Angela D. O'Brien  
Angela D. O'Brien (0097579)  
Counsel of Record  
Assistant Consumers' Counsel

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*Special Counsel for the  
Office of the Ohio Consumers' Counsel*



## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Compel was served via electronic transmission upon the parties this 17<sup>th</sup> day of April 2020.

/s/ Angela D. O'Brien  
Angela D. O'Brien  
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Broker Services in the State of Ohio.	)	

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**AFFIDAVIT OF ANGELA D. O'BRIEN IN SUPPORT OF MOTION TO COMPEL  
RESPONSES TO DISCOVERY**

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I, Angela D. O'Brien, attorney for the Office of the Ohio Consumers' Counsel ("OCC") in the above-captioned case, being first duly sworn, depose and state that, based on knowledge and information, the following efforts have been made to resolve the differences with Suvon, LLC d/b/a FirstEnergy Advisors ("FirstEnergy Advisors") from whom discovery is sought:

1. On February 10, 2020, OCC filed a Motion to Intervene in this proceeding in accordance with R.C. 4903.221 and Ohio Adm. Code 4901-1-11.
2. On March 9, 2020, OCC served its first set of discovery (interrogatories and requests for production of documents) on FirstEnergy Advisors.
3. Under Ohio Adm. Code 4901-1-19(A) and 4901-1-20(C), FirstEnergy Advisors' responses to OCC's discovery were due on March 30, 2020.
4. On March 30, 2020 FirstEnergy Advisors provided its Objections, Answers, and Responses to OCC's First Set of Interrogatories and Requests for Production of Documents. However, FirstEnergy Advisors did not substantively respond to OCC's discovery nor did it produce documents in response to any of OCC's requests for production of documents.

5. On Monday, March 30, 2020, I contacted counsel for FirstEnergy Advisors via e-mail to inquire whether FirstEnergy Advisors would respond to OCC's discovery.<sup>1</sup>

6. On Wednesday, April 1, 2020, counsel for FirstEnergy Advisors responded via e-mail stating that FirstEnergy Advisors "stands by its objections" to OCC's discovery.<sup>2</sup>

7. On Thursday, April 2, 2020, I responded to FirstEnergy Advisors' counsel via e-mail offering again to resolve the discovery dispute and indicated that if an informal resolution of the discovery dispute could not be reached, OCC may file a motion to compel with the PUCO.<sup>3</sup>

8. FirstEnergy Advisors did not respond to OCC's April 2, 2020 communication regarding the discovery dispute. FirstEnergy Advisors also has not produced documents in response to OCC's requests for production of documents.

9. The discovery dispute between OCC and FirstEnergy Advisors cannot be resolved without intervention by the PUCO.

10. I attest that Exhibit 1 attached to this Affidavit contains the true and accurate e-mail communications between OCC and FirstEnergy Advisors.

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<sup>1</sup> Exhibit 1 (March 30, 2020 5:18 PM e-mail from OCC counsel Angela O'Brien to FirstEnergy Advisors' counsel Trevor Alexander).

<sup>2</sup> *Id.* (April 1, 2020 5:13 PM e-mail from FirstEnergy Advisors' counsel Trevor Alexander to OCC counsel Angela O'Brien).

<sup>3</sup> *Id.* (April 2, 2020 9:45 AM e-mail from OCC counsel Angela O'Brien to FirstEnergy Advisors' counsel Trevor Alexander).

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF FRANKLIN )

The undersigned, being of lawful age and duly sworn on oath, hereby certifies,  
deposes and state the following:

I have caused to be prepared the attached written affidavit for OCC in the above  
referenced docket. This affidavit is true and correct to the best of my knowledge,  
information and belief.

Further affiant sayeth naught.

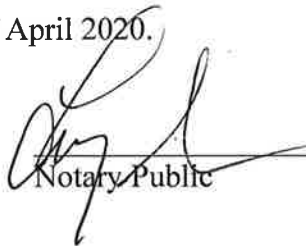


Angela D. O'Brien, Affiant

Subscribed and sworn to before me this 17 day of April 2020.



LARRY STEVEN SAUER, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

  
Notary Public

## O'Brien, Angela

---

**From:** O'Brien, Angela  
**Sent:** Thursday, April 2, 2020 9:45 AM  
**To:** Alexander, Trevor; Bingham, Debra; Irader@firstenergycorp.com; Hehmeyer, Kari  
**Cc:** Kimberly W. Bojko  
**Subject:** RE: Suvon/FirstEnergy Advisors - 20-103-EL-AGG - OCC's 1st Set of Discovery Requests

Trevor-

Regardless of what arguments Verde did or did not make in the certificate cases, the very recent Attorney Examiner Entry in those certificate cases directly contradicts your primary contention that the PUCO rules do not allow for discovery in certificate cases where no hearing is set. And the PUCO ordered Verde to respond to OCC's discovery even though Verde opposes OCC's intervention in those cases.

The reality is that OCC regularly conducts, and the PUCO allows, discovery in many different kinds of proceedings where there is no hearing or procedural schedule set. So your blanket objections to OCC's discovery have little merit.

My reading of your message is that FirstEnergy Advisors is refusing to respond to OCC's discovery, which violates the PUCO's rules and precedent. If FirstEnergy Advisors is willing to reconsider, please let me know. If not, OCC may move forward with a motion to compel.

Regards,

Angela



Angela O'Brien  
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
(614) 466-9531  
angela.obrien@occ.ohio.gov

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**From:** Alexander, Trevor <TAlexander@Calfree.com>  
**Sent:** Wednesday, April 1, 2020 5:13 PM  
**To:** O'Brien, Angela <Angela.O'Brien@occ.ohio.gov>; Bingham, Debra <Debra.Bingham@occ.ohio.gov>; Irader@firstenergycorp.com; Hehmeyer, Kari <KHehmeyer@Calfree.com>  
**Cc:** Kimberly W. Bojko <bojko@carpenterlipps.com>  
**Subject:** RE: Suvon/FirstEnergy Advisors - 20-103-EL-AGG - OCC's 1st Set of Discovery Requests

Angela,

I have reviewed the authority you cited in your email below and don't believe it applies. From my review of the *Verde* docket it does not appear that Verde actually made the arguments that Suvon has made in its Motion for Protective Order and in response to the OCC discovery. Instead Verde raised other arguments and so the Attorney Examiner did not have cause to address the arguments raised by Suvon here. The Attorney Examiner certainly did not address them in Entry. Therefore, I do not agree that this issue has been resolved by the Commission.

It is also noteworthy to examine the circumstances of the *Verde* Entry. The *Verde* Entry suspended the consideration of the license application. When it did so the Attorney Examiner also expressly established a process for intervenor participation, comments, and discovery. When the Attorney Examiner did so in *Verde* it established the scope of the case and permitted the parties to determine the appropriate scope of discovery. Comparing *Verde* to this case, when the Suvon application was suspended the Attorney Examiner did not also establish a process for intervenor participation, comments, or discovery. That distinction is material because without a hearing or comment mechanism in this case there is as yet no way to determine what the appropriate scope of discovery may be.

I believe the better authority comes from actual Commission Orders instead of an Attorney Examiner Entry in a case where the issue was not raised. As discussed in detail in the Motion for Protective Order, I believe the Commission clearly addressed this exact issue in response to OCC's position in *In re Matter of the Review of Chapter 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, Finding and Order at ¶ 7 (December 6, 2006) and again in *In re Triennial Review Regarding Local Circuit Switching*, Case No. 03-2040-TP-COI, Entry on Rehearing at ¶ 8 (October 28, 2003) (denying OCC and CLEC's application for rehearing claiming that it has full discovery rights in a proceeding). As such, Suvon stands by its objections.

Thanks,  
Trevor

**N. Trevor Alexander**  
Attorney at Law  
[talexander@calfee.com](mailto:talexander@calfee.com)  
614.621.7774 Phone

---

**From:** [Angela.OBrien@occ.ohio.gov](mailto:Angela.OBrien@occ.ohio.gov) <[Angela.OBrien@occ.ohio.gov](mailto:Angela.OBrien@occ.ohio.gov)>  
**Sent:** Monday, March 30, 2020 5:18 PM  
**To:** Alexander, Trevor <[TAlexander@Calfee.com](mailto:TAlexander@Calfee.com)>; [Debra.Bingham@occ.ohio.gov](mailto:Debra.Bingham@occ.ohio.gov); [lraeder@firstenergycorp.com](mailto:lraeder@firstenergycorp.com); [KHehmeyer@Calfee.com](mailto:KHehmeyer@Calfee.com)  
**Cc:** Kimberly W. Bojko <[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)>  
**Subject:** RE: Suvon/FirstEnergy Advisors - 20-103-EL-AGG - OCC's 1st Set of Discovery Requests

Good afternoon, Trevor-

FirstEnergy Advisors has declined to respond to OCC's First set of discovery because you claim that discovery at this point is "premature" because there has not been a hearing set for this case. Your position is directly contrary to the PUCO's rules and recent PUCO precedent acknowledging that a party's right to discovery begins as soon as its motion to intervene is filed, regardless of whether a hearing has been scheduled.

In the consolidated cases concerning Verde Energy USA Ohio, LLC's applications to renew its certificates of authority to serve Ohio's natural gas and electric customers (Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS) – certification cases where no hearing has been set – the PUCO directed Verde Energy to answer pending discovery that OCC served after filing its motion to intervene over Verde Energy's objections that OCC's discovery was premature. The PUCO's March 3, 2020 Entry in those cases specifically states (at ¶13) that:

"As a final matter, the attorney examiner notes that, under Ohio Adm. Code 4901-1-16(H), the term "party" includes any person who has filed a motion to intervene, which is pending at the time a discovery request or motion is to be served

or filed. *Therefore, unless and until the attorney examiner rules on any pending motion to intervene, all parties, including the Company, are subject to discovery for the purposes of these proceedings, and should timely respond to all discovery requests.*" (emphasis added)

FirstEnergy Advisors is violating the PUCO's rules and precedent by failing to timely respond to OCC's first set of discovery.

Please advise when FirstEnergy Advisors will respond to OCC's first set of discovery. If we cannot make arrangements for a prompt discovery production, OCC will move forward with a Motion to Compel.

Best regards,

Angela O'Brien



Angela O'Brien  
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
(614) 466-9531  
[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)

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---

**From:** Alexander, Trevor <[TAlexander@Calfee.com](mailto:TAlexander@Calfee.com)>

**Sent:** Monday, March 30, 2020 3:47 PM

**To:** Bingham, Debra <[Debra.Bingham@occ.ohio.gov](mailto:Debra.Bingham@occ.ohio.gov)>; Irader@firstenergycorp.com; Hehmeyer, Kari <[KHehmeyer@Calfee.com](mailto:KHehmeyer@Calfee.com)>

**Cc:** O'Brien, Angela <[Angela.OBrien@occ.ohio.gov](mailto:Angela.OBrien@occ.ohio.gov)>; Kimberly W. Bojko <[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)>

**Subject:** RE: Suvon/FirstEnergy Advisors - 20-103-EL-AGG - OCC's 1st Set of Discovery Requests

Counsel,

Please see the attached responses to OCC's 1<sup>st</sup> set of discovery requests.

Thanks,

Trevor Alexander

**N. Trevor Alexander**

*Attorney at Law*

[talAlexander@calfee.com](mailto:talAlexander@calfee.com)

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Please visit Calfee's **COVID-19 Resource Center** containing First Alerts to help guide you through the challenges faced by individuals and organizations as a result of the novel coronavirus outbreak or **subscribe** to receive the most up-to-date Alerts sent directly to your email inbox.

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**From:** Debra.Bingham@occ.ohio.gov <Debra.Bingham@occ.ohio.gov>

**Sent:** Monday, March 9, 2020 3:31 PM

**To:** Irader@firstenergycorp.com; Alexander, Trevor <TAlexander@Calfee.com>; Hehmeyer, Kari <KHehmeyer@Calfee.com>

**Cc:** Angela.O'Brien@occ.ohio.gov; Kimberly W. Bojko <bojko@carpenterlipps.com>

**Subject:** Suvon/FirstEnergy Advisors - 20-103-EL-AGG - OCC's 1st Set of Discovery Requests

Attached please find OCC's 1<sup>st</sup> Set of Discovery Requests in regard to the subject case. For your convenience in answering, we are submitting the document to you in Word format. If you have any questions, please contact our office.



Deb Bingham  
Administrative Assistant

Office of the Ohio Consumers' Counsel  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
(614) 466-1311  
[debra.bingham@occ.ohio.gov](mailto:debra.bingham@occ.ohio.gov)

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**SUVON, LLC D/B/A FIRSTENERGY ADVISORS’ OBJECTIONS, ANSWERS, AND  
RESPONSES TO THE OHIO CONSUMERS’ COUNSEL’S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

---

Pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, Suvon, LLC d/b/a FirstEnergy Advisors (“FirstEnergy Advisors”) objects, answers, and responds to the Ohio Consumers’ Counsel’s (“OCC”) First Set of Interrogatories and Requests for Production of Documents (collectively, the “Requests”) as follows:

**GENERAL OBJECTIONS**

1. These General Objections are incorporated by reference into FirstEnergy Advisors’ responses made with respect to each Request. The inclusion of any specific objection to a Request in a response below is not intended, nor shall in any way be deemed, as a waiver of any General Objection or any specific objection made herein or that may be asserted at another date.

2. FirstEnergy Advisors objects to each Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable statutory or common law privilege, prohibition, limitation, or immunity from disclosure. Nothing contained in the responses below is intended as a waiver of this objection.

3. FirstEnergy Advisors objects to each Request to the extent that it seeks information not relevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

4. FirstEnergy Advisors objects to each Request to the extent that it seeks production of information that is confidential business, commercial, or proprietary information belonging to FirstEnergy Advisors or third parties.

5. FirstEnergy Advisors objects to each Request, definition, or instruction to the extent that it purports to impose upon FirstEnergy Advisors obligations greater than, or different from, those contained in the Ohio Administrative Code.

6. FirstEnergy Advisors objects to each Request to the extent it seeks documents or information not in FirstEnergy Advisors' possession, custody, or control.

7. Also, in responding to these Requests, FirstEnergy Advisors does not admit the truth, validity, completeness, or merit of any of OCC's Definitions, Instructions, Requests, or any subparts of the Definitions, Instructions, or the Requests set forth below.

**OCC Set 1**  
**As to Objections: N. Trevor Alexander**

Case No. 20-0103-EL-AGG

*In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors For Certification as a  
Competitive Retail Electric Service Power Broker and Aggregator in Ohio*

**INTERROGATORIES**

**OCC Set 1**  
**– INT-01-001**

Pursuant to O.A.C. 4901-1-16(C), please identify each expert witness that FirstEnergy Advisors expects to testify at any hearing in this proceeding.

**Response:**

Objection. FirstEnergy Advisors objects to this request because it is premature and OCC is not entitled to discovery at this time. Commission Rules allow for prehearing discovery to begin “after a proceeding is commenced” and such discovery “must be completed prior to the commencement of the hearing,” thus contemplating that a hearing must be set prior to engaging in discovery. Ohio Admin. Code 4901-1-17(A); *see also* Ohio Admin. Code 4901-1-16(A) (noting the purpose of rules 4901-1-16 to 4901-1-24 is “to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings”). There has been no case schedule established in this proceeding, nor is there any hearing or briefing process by which discovery could be utilized. Because no hearing has been set in this matter, the proper scope of discovery is not defined, and therefore any discovery in this matter is premature until there is a demonstrated need or plan for a hearing as determined by the Commission. *See* Ohio Admin. Code 4901-1-16(B).

FirstEnergy Advisors also objects to this Request because it seeks information that is protected by the attorney-client privilege and the attorney work-product doctrine. Subject to the foregoing, FirstEnergy Advisors states that it has not yet determined what witnesses it will call at hearing. FirstEnergy Advisors will disclose any witnesses it intends to call in accordance with any witness schedule ultimately estimated by the Attorney Examiner.

**OCC Set 1**  
**As to Objections: N. Trevor Alexander**

Case No. 20-0103-EL-AGG

*In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors For Certification as a  
Competitive Retail Electric Service Power Broker and Aggregator in Ohio*

**OCC Set 1**  
**– INT-01-002**

For each expert witness identified in your response to INT-01-001, please state the subject matter in this case on which the expert is expected to testify.

**Response:**

Objection. FirstEnergy Advisors objects to this request because it is premature and OCC is not entitled to discovery at this time. Commission Rules allow for prehearing discovery to begin “after a proceeding is commenced” and such discovery “must be completed prior to the commencement of the hearing,” thus contemplating that a hearing must be set prior to engaging in discovery. Ohio Admin. Code 4901-1-17(A); *see also* Ohio Admin. Code 4901-1-16(A) (noting the purpose of rules 4901-1-16 to 4901-1-24 is “to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings”). There has been no case schedule established in this proceeding, nor is there any hearing or briefing process by which discovery could be utilized. Because no hearing has been set in this matter, the proper scope of discovery is not defined, and therefore any discovery in this matter is premature until there is a demonstrated need or plan for a hearing as determined by the Commission. *See* Ohio Admin. Code 4901-1-16(B).

FirstEnergy Advisors also objects to this Request because it seeks information that is protected by the attorney-client privilege and the attorney work-product doctrine. Subject to the foregoing, FirstEnergy Advisors states that it has not yet determined what witnesses it will call at hearing. FirstEnergy Advisors will disclose any witnesses it intends to call in accordance with any witness schedule ultimately estimated by the Attorney Examiner.

**OCC Set 1**  
**As to Objections: N. Trevor Alexander**

Case No. 20-0103-EL-AGG

*In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors For Certification as a  
Competitive Retail Electric Service Power Broker and Aggregator in Ohio*

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**OCC Set 1**  
**– RPD-01-001**

Please provide copies of all formal and informal requests (e.g., interrogatories, data requests) made to the Company by the Commission, the PUCO Staff, and/or the PUCO's Attorneys General in connection with this proceeding, and the Company's responses to those requests.

**Response:**

Objection. FirstEnergy Advisors objects to this request because it is premature and OCC is not entitled to discovery at this time. Commission Rules allow for prehearing discovery to begin "after a proceeding is commenced" and such discovery "must be completed prior to the commencement of the hearing," thus contemplating that a hearing must be set prior to engaging in discovery. Ohio Admin. Code 4901-1-17(A); *see also* Ohio Admin. Code 4901-1-16(A) (noting the purpose of rules 4901-1-16 to 4901-1-24 is "to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings"). There has been no case schedule established in this proceeding, nor is there any hearing or briefing process by which discovery could be utilized. Because no hearing has been set in this matter, the proper scope of discovery is not defined, and therefore any discovery in this matter is premature until there is a demonstrated need or plan for a hearing as determined by the Commission. *See* Ohio Admin. Code 4901-1-16(B).

FirstEnergy Advisors also objects that the term "informal requests" is vague, overbroad, and unduly burdensome to answer.

**OCC Set 1**  
**As to Objections: N. Trevor Alexander**

Case No. 20-0103-EL-AGG

*In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors For Certification as a  
Competitive Retail Electric Service Power Broker and Aggregator in Ohio*

**OCC Set 1**  
**– RPD-01-002**

Please provide copies of all documents and workpapers provided to the Commission, the PUCO Staff, and/or the PUCO's Attorneys General in connection with this proceeding, including schedules in Excel format.

**Response:**

Objection. FirstEnergy Advisors objects to this request because it is premature and OCC is not entitled to discovery at this time. Commission Rules allow for prehearing discovery to begin “after a proceeding is commenced” and such discovery “must be completed prior to the commencement of the hearing,” thus contemplating that a hearing must be set prior to engaging in discovery. Ohio Admin. Code 4901-1-17(A); *see also* Ohio Admin. Code 4901-1-16(A) (noting the purpose of rules 4901-1-16 to 4901-1-24 is “to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings”). There has been no case schedule established in this proceeding, nor is there any hearing or briefing process by which discovery could be utilized. Because no hearing has been set in this matter, the proper scope of discovery is not defined, and therefore any discovery in this matter is premature until there is a demonstrated need or plan for a hearing as determined by the Commission. *See* Ohio Admin. Code 4901-1-16(B).

**OCC Set 1**  
**As to Objections: N. Trevor Alexander**

Case No. 20-0103-EL-AGG

*In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors For Certification as a  
Competitive Retail Electric Service Power Broker and Aggregator in Ohio*

**OCC Set 1**  
**– RPD-01-003**

Please provide copies of all discovery received by the Company from other parties in this proceeding, and the Company's responses to that discovery.

**Response:**

Objection. FirstEnergy Advisors objects to this request because it is premature and OCC is not entitled to discovery at this time. Commission Rules allow for prehearing discovery to begin "after a proceeding is commenced" and such discovery "must be completed prior to the commencement of the hearing," thus contemplating that a hearing must be set prior to engaging in discovery. Ohio Admin. Code 4901-1-17(A); *see also* Ohio Admin. Code 4901-1-16(A) (noting the purpose of rules 4901-1-16 to 4901-1-24 is "to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings"). There has been no case schedule established in this proceeding, nor is there any hearing or briefing process by which discovery could be utilized. Because no hearing has been set in this matter, the proper scope of discovery is not defined, and therefore any discovery in this matter is premature until there is a demonstrated need or plan for a hearing as determined by the Commission. *See* Ohio Admin. Code 4901-1-16(B).

**OCC Set 1**  
**As to Objections: N. Trevor Alexander**

Case No. 20-0103-EL-AGG

*In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors For Certification as a  
Competitive Retail Electric Service Power Broker and Aggregator in Ohio*

**OCC Set 1**  
**– RPD-01-004**

Please provide copies of all communications in connection with this proceeding between the Company and the Commission, the PUCO Staff, and/or the PUCO's Attorneys General.

**Response:**

Objection. FirstEnergy Advisors objects to this request because it is premature and OCC is not entitled to discovery at this time. Commission Rules allow for prehearing discovery to begin “after a proceeding is commenced” and such discovery “must be completed prior to the commencement of the hearing,” thus contemplating that a hearing must be set prior to engaging in discovery. Ohio Admin. Code 4901-1-17(A); *see also* Ohio Admin. Code 4901-1-16(A) (noting the purpose of rules 4901-1-16 to 4901-1-24 is “to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings”). There has been no case schedule established in this proceeding, nor is there any hearing or briefing process by which discovery could be utilized. Because no hearing has been set in this matter, the proper scope of discovery is not defined, and therefore any discovery in this matter is premature until there is a demonstrated need or plan for a hearing as determined by the Commission. *See* Ohio Admin. Code 4901-1-16(B).

FirstEnergy Advisors further objects to this request because it seeks confidential settlement discussions with other parties.



**OCC Set 1**  
**As to Objections: N. Trevor Alexander**

Case No. 20-0103-EL-AGG

*In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors For Certification as a  
Competitive Retail Electric Service Power Broker and Aggregator in Ohio*

**OCC Set 1**  
**– RPD-01-005**

Please provide all confidential information filed under seal with the Application, including the confidential information contained in Exhibits C-3 and C-5.

**Response:**

Objection. FirstEnergy Advisors objects to this request because it is premature and OCC is not entitled to discovery at this time. Commission Rules allow for prehearing discovery to begin “after a proceeding is commenced” and such discovery “must be completed prior to the commencement of the hearing,” thus contemplating that a hearing must be set prior to engaging in discovery. Ohio Admin. Code 4901-1-17(A); *see also* Ohio Admin. Code 4901-1-16(A) (noting the purpose of rules 4901-1-16 to 4901-1-24 is “to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings”). There has been no case schedule established in this proceeding, nor is there any hearing or briefing process by which discovery could be utilized. Because no hearing has been set in this matter, the proper scope of discovery is not defined, and therefore any discovery in this matter is premature until there is a demonstrated need or plan for a hearing as determined by the Commission. *See* Ohio Admin. Code 4901-1-16(B).

FirstEnergy Advisors further objects to this request because it seeks competitively sensitive confidential information.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Objections, Answers, and Responses of Suvon, LLC d/b/a FirstEnergy Advisors to the First Set of Interrogatories and Requests for Production of Documents of the Ohio Consumers' Counsel was served on the following parties this 30th day of March 2020 by electronic delivery.

Angela O'Brien  
Office of the Ohio Consumers' Counsel  
65 East State Street, 7th Floor  
Columbus, Ohio 43215  
[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)

Kimberly W. Bojko  
Carpenter, Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

/s/ N. Trevor Alexander  
One of the Attorneys for Suvon, LLC d/b/a  
FirstEnergy Advisors

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**Commission of Ohio Docketing Information System on**

**4/17/2020 12:46:18 PM**

**in**

**Case No(s). 20-0103-EL-AGG**

Summary: Motion Motion to Compel FirstEnergy Advisors to Respond to OCC's First Set of Discovery by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of O'Brien, Angela Ms.