

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Suvon,)	
LLC, d/b/a FirstEnergy Advisors for)	20-0103-EL-AGG
Certification as an Aggregator and Power)	
Broker.)	

**APPLICATION FOR REHEARING OF
RETAIL ENERGY SUPPLY ASSOCIATION**

In accordance with R.C. 4903.10 and Ohio Admin. Code 4901-1-35, the Retail Energy Supply Association (RESA)¹ respectfully submits this Application for Rehearing of the April 22, 2020 Finding and Order (Order) granting certification as a competitive retail electric service power broker and aggregator to Suvon LLC, d/b/a FirstEnergy Advisors (Suvon). The Order is unreasonable and unlawful because:

- A. The Commission violated the certification standards and procedures in R.C. 4928.08 and O.A.C. Chapter 4901:1-24, to the prejudice of RESA.

A memorandum in support follows.

MEMORANDUM IN SUPPORT

More than two years ago, RESA filed a complaint against the FirstEnergy EDUs² alleging violations of statutes and rules governing corporate separation. Less than a month after RESA filed its complaint, auditors in the *Corporate Separation Audit Proceeding*³ released a

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company.

³ *Review of Ohio Edison Co., et al. Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC.

report (the Sage Report) documenting numerous shortcomings in both the FirstEnergy EDUs' corporate separation plan and their compliance with the plan.⁴ As documented in the filings in this case by RESA and other stakeholders, FirstEnergy has done nothing to address the deficiencies brought to light by the Sage Report or RESA's complaint. Several parties intervened in this case to express concerns about Suvon's use of the "FirstEnergy" name and whether Suvon can or will comply with the FirstEnergy EDUs' corporate separation plan and related statutes and rules.

The Commission decided to grant Suvon a certificate now, but not address whether Suvon is capable of complying with corporate separation requirements until later. This decision violates the Commission standards and procedures for evaluating CRES applications. The Commission should grant rehearing and conduct further proceedings to evaluate whether Suvon is "fit and capable of complying with applicable commission rules and orders."⁵

ARGUMENT

"The PUCO, as a creature of statute, has no authority to act beyond its statutory powers."⁶ "In determining whether any order of the commission is unlawful and unreasonable, inquiry should therefore be made, not only into the evidence, to determine whether the order is properly supported by the evidence, but also into the proceedings during the course of the hearing, to determine whether the statutes relative to procedure have been followed and whether the law applicable to the proceeding has been properly applied."⁷

⁴ *Sage Management Consultants, LLC Compliance Audit, Final Report, May 14, 2018*, Case No. 17-974-EL-UNC (filed May 14, 2018).

⁵ O.A.C. 4901:1-24-10(C)(2).

⁶ *Disc. Cellular, Inc. v. Pub. Util. Comm.*, 2007-Ohio-53, ¶ 51, 112 Ohio St. 3d 360, 373, 859 N.E.2d 957, 969.

⁷ *Vill. of St. Clairsville v. Pub. Util. Comm'n*, 102 Ohio St. 574, 579, 132 N.E. 151, 152 (1921).

A CRES supplier may not lawfully conduct business “without first being certified by the public utilities commission regarding its managerial, technical, and financial capability to provide that service and providing a financial guarantee sufficient to protect customers and electric distribution utilities from default.”⁸ Importantly, “[c]ertification shall be granted pursuant to procedures and standards the commission shall prescribe [.]”⁹ It is reversible error to establish certification standards and fail to observe those standards.¹⁰

The procedures and standards for certification are contained in Chapter 4901:1-24, O.A.C. Prospective suppliers are required to complete forms disclosing information necessary to evaluate “managerial, financial, and technical capability to provide the service it intends to offer *and* its ability to comply with commission rules or orders adopted pursuant to Chapter 4928 of the Revised Code.”¹¹ Suppliers are also required to certify that they “will comply with all applicable commission rules or orders adopted pursuant to Chapter 4928., Title XLIX of the Revised Code.”¹² The Commission will approve an application if it finds that “*all* of the following are true:

(1) The applicant is managerially, financially, and technically fit and capable of performing the service it intends to provide.

(2) The applicant is managerially, financially, and technically fit and capable of complying with all applicable commission rules and orders.

⁸ R.C. 4928.08(B).

⁹ *Id.*

¹⁰ See *Canton Storage & Transfer Co. v. Pub. Util. Comm.*, 1995-Ohio-282, 72 Ohio St. 3d 1, 10, 647 N.E.2d 136, 144 (“These changes in the standard to obtain a certificate under R.C. 4921.10 were error.”).

¹¹ O.A.C. 4901:1-24-05(A) (emphasis added).

¹² O.A.C. 4901:1-24-06(D).

(3) The applicant is able to provide reasonable financial assurances sufficient to protect electric distribution utility companies and the customers from default.”¹³

Suvon had the burden of proving not only its managerial, financial, and technical capability, but *also* that it is “fit and capable of complying with all applicable commission rules and orders.”¹⁴ The Order, however, combines two *separate* requirements into one: “[W]e specifically reject arguments which seek to cast questions regarding compliance with the corporate separation statute and rules as evidence of a lack of managerial, technical and financial capability.”¹⁵ The Commission’s own rules expressly require consideration of Suvon’s fitness and capability of complying with Commission rules and orders, but the Commission declined to do so.

The Order focuses on the statutory requirement for certification, but ignores that the Commission’s rules and procedures are an integral component of the statute. It is simply not the case that “pursuant to R.C. 4928.17, the *only* relevant issues in this certification proceeding are whether Suvon has the managerial, technical and financial capability to be a CRES broker/aggregator in this state.”¹⁶ R.C. 4928.17 also says that “certification shall be granted pursuant to procedures and standards the commission shall prescribe [.]” The Commission has proscribed procedures and standards that require it to consider whether an applicant is “fit and capable of complying with all applicable commission rules and orders.”¹⁷ By violating its own rules, the Commission has also violated the statute requiring it to adopt and operate under those rules.

¹³ O.A.C. 4901:1-24-10(C)(1-3) (emphasis added).

¹⁴ *Id.* at (C)(2).

¹⁵ Order ¶ 21.

¹⁶ *Id.*

¹⁷ O.A.C. 4901:1-24-10(C)(2)

It makes sense to require an applicant to certify (and for the Commission to verify) that an applicant is fit and capable to complying with “applicable commission rules and orders” *before* granting a certificate. Possible deficiencies can be identified and corrected before consumers are enrolled. Granting a certificate and later revoking or suspending it over corporate separation issues would be disruptive to consumers and unfair to competitors. If the Commission is not going to evaluate an applicant’s fitness and capability of complying with Commission rules before it issues a certificate, then the certificate rules and standards are a dead letter.

The Order fails to explain why the concerns raised about corporate separation “are best raised in other proceedings, specifically the ongoing review of the corporate separation audit of the three FirstEnergy Utilities in the *Corporate Separation Audit Case*. ”¹⁸ This “ongoing review” has remained idle for over two years. The Commission has “not adopted” the auditor’s findings, but it does not need to adopt them to address the issues raised in this proceeding. Suvon did not even exist when the auditor conducted its investigation and rendered its findings. Whether other affiliates violated corporate separation rules in the past does not conclusively resolve—one way or the other—whether Suvon or other affiliates are capable of complying with these rules today or in the future.

Compliance with corporate separation is a precondition to Suvon’s eligibility for a CRES certificate. “[N]o electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, *unless* the utility implements and operates under a corporate separation plan [.]”¹⁹ The Commission simply

¹⁸ Order ¶ 22.

¹⁹ R.C. 4928.17

cannot grant a certificate without first confirming that Suvon and its affiliates comply with corporate separation requirements.

CONCLUSION

The Commission did not follow proper procedures in considering Suvon's application. The Commission should grant rehearing and address the concerns raised by RESA and other stakeholders.

Dated: May 22, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

RESA certifies that a copy of the foregoing was served by electronic mail this 22nd day of May, 2020 to the following:

/s/ Lucas A. Fykes
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/22/2020 4:04:55 PM

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

Summary: Application For Rehearing Of Retail Energy Supply Association electronically filed by Ms. Valerie A Cahill on behalf of Retail Energy Supply Association