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 ELECTRIC SERVICE POWER BROKER AND AGGREGATOR IN OHIO.	**CASE NO. 20-103-EL-AGG**

ENTRY ON REHEARING

Entered in the Journal on June 17, 2020

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission denies the applications for rehearing filed by Northeast Ohio Public Energy Council, the Retail Energy Supply Association, and Ohio Consumers' Counsel.

II. HISTORY OF THE PROCEEDING

{¶ 2} Suvon, LLC d/b/a FirstEnergy Advisors (Suvon) is an electric services company pursuant to R.C. 4928.01(A)(9) and a competitive retail electric service power broker and aggregator in the state of Ohio, and, and as such, is subject to certification by the Commission.

{¶ 3} R.C. 4928.08 states that no electric services company shall provide a competitive retail electric service to a consumer in this state without first being certified by the 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. R.C. 4928.08 further states that certification shall be deemed approved thirty days after the filing of an application with the Commission unless the Commission suspends that approval for good cause shown. In the case of such a suspension, the Commission shall act to approve or deny certification to the applicant not later than ninety days after the date of the suspension. R.C. 4928.08(B).

{¶ 4} On January 17, 2020, Suvon filed an application for certification as a competitive retail electric service (CRES) power broker and aggregator in the state of Ohio. Suvon filed a supplement to its application on April 1, 2020.

{¶ 5} On February 11, 2020, the attorney examiner suspended approval of the application. On April 7, 2020, Staff filed its review and recommendation, recommending that the application be granted. Subsequently, on April 22, 2020, the Commission approved the application as supplemented.

{¶ 6} R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

{¶ 7} On May 22, 2020, Northeast Ohio Public Energy Council (NOPEC), the Retail Energy Supply Association (RESA) and Ohio Consumers' Counsel (OCC) each filed applications for rehearing regarding the April 22, 2020 Finding and Order.

{¶ 8} On June 8, 2020, Suvon filed a memorandum contra the applications for rehearing. In its memorandum contra, Suvon generally argues that the Commission has already considered and properly rejected all arguments raised in the applications for rehearing. Suvon claims that the parties seeking rehearing repeat arguments which they previously made and that, as these arguments have already been considered and rejected by the Commission, there is no need to further consider these arguments here. *In re the Complaint of Mr. and Mrs. Ronald Kohli v. Dayton Power and Light Co.,* Case No. 82-1204-EL-CSS, Entry on Rehearing (July 17, 1984).

{¶ 9} The Commission has thoroughly reviewed the applications for rehearing filed in this proceeding. To the extent that an assignment of error is not specifically addressed below, that assignment of error should be considered to be denied by the Commission.

III. DISCUSSION

A. RESA's Assignment of Error

{¶ 10} In its sole assignment of error, RESA claims that the Commission "violated the certification standards and procedures in R.C. 4928.08 and [Ohio Adm.Code] Chapter 4901:1-24, to the prejudice of RESA." The Commission finds that rehearing on this assignment of error should be denied because the assignment of error makes nothing more than broad, general claims and fails to specifically allege in what respect the Commission's order was unreasonable or unlawful. *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957 at ¶¶ 59-60. The assignment of error in this case is strikingly similar to the assignment of error in *Discount Cellular*, which stated "[t]he commission erred in dismissing the complaint because the Commission is required by R.C. 4905.26 to hear complaints alleging violations of Ohio utility law." *Discount Cellular* at ¶57. In this case, by simply alleging that the April 22, 2020 Finding and Order violated R.C. 4928.08 and *an entire chapter* of the Ohio Administrative Code, RESA failed to meet the specificity test of R.C. 4903.10, which the Supreme Court of Ohio has held should be strictly construed. As the Supreme Court has observed, RESA's "application for rehearing used a shotgun instead of a rifle" to hit the question. *Discount Cellular* at ¶59 (*citing Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244, 248, 638 N.E.2d 550 (1994) (*quoting Cincinnati v. Pub. Util. Comm.* 151 Ohio St. 353, 378, 86 N.E.2d 10 (1949))).

{¶ 11} Further, the Commission finds that, even if RESA's assignment of error did not fail due to the lack of specificity, rehearing on this assignment of error would still be denied. In the memorandum in support of the application for rehearing, RESA appears to argue that the failure to consider compliance with the corporate separation plan provisions violates the Commission's standards governing approval of CRES applications. RESA argues that the Commission failed to follow Ohio Adm.Code 4901:1-24-10(C)(2), which requires the Commission to determine whether the applicant is managerially, financially, and technically fit and capable of complying with all applicable Commission rules and orders. However, RESA is incorrect. In the Finding and Order, the Commission adopted

the Staff Report and Recommendation, which clearly states that Staff was required to evaluate an applicant "based on its managerial, technical, and financial capabilities to provide the service it intends to offer and *its ability to comply with commission rules or orders* pursuant to Chapter 4928 of the Ohio Revised Code [emphasis added]" and that Staff had thoroughly reviewed and evaluated the application. Finding and Order at ¶¶ 21-22; Staff Review and Recommendation (Apr. 7, 2020). Further, with respect to compliance specifically with the corporate separation plan, mandated by R.C. 4928.17, by Suvon and its affiliates, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the FirstEnergy Utilities), the Commission rejected claims that the alleged failure to comply with the corporate separation plan provisions was evidence of a lack of managerial, technical and financial capability, and the Commission specifically rejected the argument made by NOPEC and OCC that the use of shared service employees is per se unlawful. Finding and Order at ¶ 21. In fact, the Commission has long allowed employees to be shared between electric distribution utilities and affiliated CRES providers, including shared officers and directors, as long as that sharing does not violate the code of conduct. *In re the Commission's Review of Chapter 4901:1-20, Ohio Administrative Code,* Case No. 04-48-EL-ORD, Finding and Order (July 28, 2004) at 10. Thus, we properly deferred the issue to *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.,* Case No. 17-974-EL-UNC (*Corporate Separation Audit Case*). The audit report in that case specifically addresses compliance with the code of conduct.

B. NOPEC's Third Assignment of Error and OCC's Fourth Assignment of Error

{¶ 12} NOPEC claims, in its third assignment of error, that the Commission abused its discretion by failing to consider in this certification case whether Suvon's management structure and use of a trade name violated the Commission's corporate separation rules. Likewise, in its fourth assignment of error, OCC claims that the Commission erred by failing to render a decision in this case on the inseparable issues pending in its audit of the FirstEnergy Utilities conducted in the *Corporate Separation Audit Case*. Alternatively, OCC alleges that the Commission erred by failing to hold its decision in abeyance in this case

until it fulfills its intention to render a decision in the *Corporate Separation Audit Case*. OCC claims that Suvon's application should be denied or held in abeyance pending due process and a decision in the *Corporate Separation Audit Case*.

{¶ 13} In support of this assignment of error, NOPEC and OCC claim that consideration of whether an applicant is fit and capable of complying with all applicable Commission rules necessarily depends on whether the applicant is in compliance with all applicable Commission rules and orders, and Ohio laws, including compliance with the corporate separation plan provisions.

{¶ 14} In its memorandum contra, Suvon contends that the Commission properly reserved corporate separation questions for the *Corporate Separation Audit Case.* Suvon notes that the Commission has discretion to consider any corporate separation issues in a separate docket. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 560, 433 N.E.2d 212 (1982).

{¶ 15} Rehearing on these related assignments of error should be denied. The Commission is vested with the broad discretion to manage its dockets to avoid undue delay and the duplication of effort, including the discretion to decide, how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort. *In re Columbus S. Power Co.,* Case Nos. 11-346-EL-SSO et al., Opinion and Order (Aug. 8, 2012) at 24 (citing *Duff v. Pub. Util. Comm.*, 56 Ohio St. 2d 367, 379, 382 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy,* 69 Ohio St. 2d at 560). In this case, we exercised our discretion and determined that both issues related to the use of a trade name and issues regarding compliance with the corporate separation plan provisions by Suvon and the FirstEnergy Utilities were best addressed in the *Corporate Separation Audit Case*.

{¶ 16} As we noted in the Finding and Order, OCC and NOPEC cited extensively, in their filings in this case, to the audit report in the *Corporate Separation Audit Case*; but the Commission has not adopted that audit report at this time, and the findings and conclusions

of the auditor should be litigated in that proceeding rather than this case. Finding and Order at ¶ 20. For example, the auditor's recommendation in the *Corporate Separation Audit Case* regarding the use of trade names represents a significant departure from well-established Commission precedents,[1] and, accordingly, that issue is best addressed in the *Corporate Separation Audit Case*. If the Commission determines that a hearing is necessary in that case, the auditor will be available as a witness to explain the basis of the recommendation and the need to depart from past precedent, subject to cross-examination by the parties to that proceeding. Likewise, the auditor would be available in that proceeding to explain whether the existing corporate separation plan governing the relationship between Suvon and the FirstEnergy Utilities is sufficient and the basis for any recommendations on that issue. The alternative, having the auditor potentially testify in both this proceeding and the *Corporate Separation Audit Case*, would be an unnecessary duplication of effort and may result in unnecessary delay.

{¶ 17} The Commission also notes that, in the *Corporate Separation Audit Case*, the attorney examiner has established a supplemental comment period and supplemental reply period, specifically to permit interested persons to comment upon the audit report as it now relates to Suvon. Entry, *Corporate Separation Audit Case* (Apr. 29, 2020) at ¶¶ 8-9. In order to facilitate comments related to Suvon, the attorney examiner, sua sponte, took administrative notice in the *Corporate Separation Audit Case*, of the application and supplement filed by Suvon in this proceeding. *Id.* at ¶ 10. Further, the attorney examiner found that RESA had demonstrated extraordinary circumstances and granted its out-of-time motion for intervention. Id. at ¶ 12.

{¶ 18} Moreover, we find that holding our decision in this case in abeyance, as requested by OCC, would be unduly prejudicial to Suvon, which has demonstrated that it

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[1] *See In re the Commission's Review of its Rules for Competitive Retail Electric Service,* Case No. 12-1924-EL-ORD, Finding and Order (Dec. 18, 2013) at 18 (*citing Ohio Consumers' Counsel v. Interstate Gas Supply d/b/a Columbia Retail Energy*, Case No. 10-2395-GA-CSS, Opinion and Order (Aug. 15, 2012)). *See also In re FirstEnergy Solutions Corp.,* Case No. 00-1742-EL-CRS, Entry (Nov. 2, 2000); *In re AEP Energy, Inc.,* Case No. 10-384-EL-CRS; *In re IGS Dayton, Inc., f/k/a DP&L Energy Resources, Inc.,* Case No. 00-2171-EL-CRS.

has the managerial, technical and financial capability to provide CRES power brokerage and aggregation service in Ohio. If, in the *Corporate Separation Audit Case*, the auditor and other parties persuade the Commission to deviate from our established precedents regarding the use of trade names or if the Commission determines the approved corporate separation plan to be inadequate, the Commission will take the necessary and sufficient steps to remedy the issue in that proceeding. However, denying Suvon the ability to compete as a CRES broker and aggregator while parties litigate the *Corporate Separation Audit Case* would be unduly prejudicial to Suvon. On the other hand, neither OCC nor Suvon's competitors, NOPEC and RESA, have demonstrated any prejudice stemming from the approval of Suvon's certificate. Competition should be decided by the marketplace rather than through duplicative litigation in a Commission certification proceeding. Finding and Order at ¶ 13.

C. OCC's Second Assignment of Error and NOPEC's Fourth Assignment of Error

{¶ 19} OCC claims in its second assignment of error that the Commission erred by denying discovery, which intervenors are entitled to conduct, by failing to hold a hearing, and by failing to afford due process to intervenors. NOPEC, in its fourth assignment of error, also claims that the Commission's denial of NOPEC's discovery rights was unlawful. NOPEC claims that, when a certification proceeding has been suspended based upon information provided by an intervening party, and the intervening party's intervention is unopposed, the intervenor has the right to discovery.

{¶ 20} In support of this assignment of error, OCC argues that the Commission should have afforded parties ample rights to discovery to allow parties to produce evidence regarding Suvon's ability to comply with corporate separation rules and Ohio law. OCC further contends that the certification application in this case should have been subject to a full hearing where all parties (Suvon, Staff and eight intervenors) offered testimony and cross-examined witnesses regarding the application. OCC posits that such a hearing would have allowed due process for the parties and resulted in the development of a record upon which the Commission should base its decision. NOPEC argues that the April 22, 2020, Finding and Order denied its motion to compel discovery and this denied NOPEC the

ability to substantiate its claim that Suvon lacked the capability to provide CRES power brokerage and aggregation service and comply with Ohio law. Both OCC and NOPEC cite to a recent attorney examiner ruling in a certification case in which the attorney examiner ruled that discovery should commence in that proceeding. *In re Verde USA Ohio, LLC,* Case Nos. 11-5886-EL-CRS et al. (*Verde*), Entry (Mar. 3, 2020).

{¶ 21} In its memorandum contra, Suvon argues that that there is no automatic right to a hearing in Commission cases and that many Commission cases proceed without a hearing even where parties disagree. Suvon further claims that OCC and NOPEC have presented no authority in support of their claim that they are entitled to a hearing. Suvon also claims that there is no automatic right to discovery which prevented the Commission from issuing the Finding and Order. Suvon argues that Ohio law does not provide for a hearing and full discovery process in certification cases and that the Commission has rejected proposals which would provide any interested person the right to intervene, conduct discovery and present evidence in any Commission case. *In re the Commission's Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code,* Case No. 06-685-AU-ORD, Finding and Order (Dec. 6, 2006) at ¶ 7; *see also In re Triennial Review Regarding Local Circuit Switching,* Case No. 03-2040-TP-COI, Entry on Rehearing (Oct. 28, 2003) at ¶ 8.

{¶ 22} The Commission finds that rehearing on these assignments of error should be denied. As an initial matter, the Commission reiterates that the reliance by NOPEC and OCC upon the attorney examiner ruling in *Verde* is misplaced. The facts and circumstances surrounding Suvon's application are vastly different than the facts and circumstances surrounding Verde's renewal application. *Verde*, Entry (Mar. 3, 2020) at ¶¶ 3-6. Further, the attorney examiner's ruling was part of a broader entry which also established a procedural schedule, *which included a deadline for discovery*, leaving no question that discovery should commence. *Id.* at ¶¶ 11, 13.

{¶ 23} Nonetheless, the Commission did not deny NOPEC and OCC their rights to discovery prior to the issuance of the Finding and Order in this case. NOPEC and OCC

were unable to obtain discovery in this proceeding because NOPEC and OCC each failed to expeditiously prosecute their motions to compel discovery. By statute, Commission certification proceedings are to be conducted on an expedited basis. R.C. 4928.08 states that certification shall be deemed approved 30 days after the filing of an application with the Commission unless the Commission suspends that approval for good cause shown. In the case of such a suspension, the Commission shall act to approve or deny certification or certification renewal to the applicant not later than 90 days after the date of the suspension. In this case, the application was filed by Suvon on January 17, 2020. The attorney examiner suspended approval of the application on February 11, 2020. Therefore, according to the statutory directive in R.C. 4928.08, the Commission was to act to approve or deny the certification application by May 11, 2020. Despite this 90-day period, NOPEC did not file its motion to compel discovery until March 20, 2020. Compounding the issue, NOPEC did not seek expedited consideration of the motion to compel, which, by rule, would have required Suvon to respond in seven days. Ohio Adm.Code 4901-1-12(C). Instead, Suvon timely filed its memorandum contra the motion to compel on April 6, 2020. NOPEC used its full seven-day reply period and filed its reply on April 13, 2020, which was after the filing of the Staff Review and Recommendation on April 6, 2020. OCC did not file its motion to compel discovery until April 17, 2020, the sixty-sixth day of the 90-day period for Commission action directed by R.C. 4928.08. OCC also did not seek expedited consideration of the motion to compel. Parties to Commission proceedings should be guided by the statutory timeframe directing the Commission to act to approve or deny a certification application. Nonetheless, on April 22, 2020, within the statutory 90-day period, the Commission issued its Finding and Order approving the certificate and finding that no hearing was necessary. Finding and Order at ¶ 22. At that point, the motions to compel discovery filed by NOPEC and OCC were, in fact, moot. Finding and Order at ¶ 25.

{¶ 24} With respect to holding a hearing in this proceeding, OCC has not identified any statutory provision for providing for a hearing on an application for certification as a CRES provider. R.C. 4928.08 contains no such provision although the statute does provide

for an opportunity for a hearing if the Commission suspends, rescinds or conditionally rescinds an existing certificate. R.C. 4928.08(D). OCC has not identified any decision of the Supreme Court of Ohio or Commission precedent requiring a hearing on an application for certification as a CRES provider. The Commission rules governing applications for certification as a CRES provider do provide that the Commission, *at its discretion*, may set the matter for hearing. Ohio Adm.Code 4901:1-24-10(A)(2)(c).

{¶ 25} However, there are no material disputes of fact in this case. No one disputes that Suvon intends to use the trade name "FirstEnergy Advisors" and that Suvon uses shared service employees, including officers and directors. Suvon provided this information in its certification application filed on January 17, 2020. There is no allegation that Staff failed to thoroughly investigate and review the application and the supplement filed by Suvon. Thus, as provided by Ohio Adm.Code 4901:1-24-10(A)(2)(c), the Commission reviewed the application, supporting attachments and evidence, and the recommendation of Staff. In addition, the Commission considered the numerous motions, comments, and memoranda filed both by Suvon and by the eight intervening parties in this proceeding. Finding and Order at ¶¶ 14-18. Having reviewed all of these filings, the Commission determined that the record contained the necessary and sufficient information to approve the application, and the Commission determined, at its discretion, that no hearing was necessary in this proceeding. Finding and Order at ¶¶ 21-22. No arguments raised by OCC persuade us to reconsider that determination.

D. NOPEC's First Assignment of Error and OCC's Third Assignment of Error

{¶ 26} In its first assignment of error, NOPEC claims that the Commission failed to make findings of fact to support approval of Suvon's application. Similarly, OCC claims in its third assignment or error that the Commission's decision approving the application is unlawful and is unsupported by record evidence in violation of R.C. 4903.09.

{¶ 27} Suvon responds in its memorandum contra that the Commission made all of the required findings to grant the application for certification. Suvon notes that the

Commission specifically references the application and supplement filed in this case, the facts referenced therein, and Staff's investigation of the facts. Finding and Order at R.C. ¶ 21-22.

{¶ 28} Ohio Adm. Code 4901:1-24-10(B) specifies that, in evaluating an application for certification as a CRES provider, the Commission should consider the information contained in the application, supporting attachments and evidence, and recommendations of Staff. In the April 22, 2020 Finding and Order, the Commission thoroughly reviewed and considered the arguments raised by NOPEC, RESA, and OCC, as well as arguments raised by Suvon and other parties. Finding and Order at ¶¶ 14-19. The Commission rejected the arguments opposing certification, finding that issues regarding Suvon's use of a trade name and compliance with the statutory corporate separation plan requirements by FirstEnergy Corp. affiliates are best raised in other proceedings, specifically the ongoing review of the corporate separation plan audit of the FirstEnergy Utilities conducted in the *Corporate Separation Audit Case*. Finding and Order at ¶¶ 19-20. The Commission further explained that no party in the case had materially disputed Staff's determination that Suvon had the managerial, technical and financial capability to serve as a CRES power broker and aggregator, and the Commission adopted the recommendation filed by Staff on April 7, 2020. Finding and Order at ¶¶ 21-22. Thus, upon review, we find that our reasoning, and the factual basis supporting approval of Suvon's application, are easily discernable from the April 22, 2020 Finding and Order. *Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184 at ¶ 20 (citing *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 311-312, 513 N.E.2d 337 (1987)). Accordingly, rehearing on this assignment of error should be denied.

E. NOPEC's Second Assignment of Error

{¶ 29} In its second assignment of error, NOPEC claims that the Commission unlawfully shifted the burden of proof to the intervenors by requiring them to show that the application should not be granted.

{¶ 30} Rehearing on this assignment of error should be denied. The Commission did not shift the burden of proof to the intervenors. We simply stated that no intervenor had raised any arguments to materially dispute Staff's determination that Suvon had the managerial, technical and financial capability to serve as a CRES power broker and aggregator. Finding and Order at ¶¶ 21. Observing that intervenors had failed to materially dispute the Staff's determination cannot reasonably be construed as shifting the burden of proof in this proceeding. The burden of proof in this proceeding remained where it began: with the applicant, Suvon.

F. NOPEC's Fifth Assignment of Error and OCC's First Assignment of Error

{¶ 31} In its fifth assignment of error, NOPEC claims that the Commission erred by failing to find in this certification case that Suvon lacks the managerial capability to provide service because Suvon has not identified a management team that is compliant with the Commission's corporate separation rules. In its first assignment of error, OCC alleges that the Commission erred by failing to find that Suvon's application, as supplemented, violates R.C. 4928.08(B) and Ohio Adm.Code 4901:1-24-10(C). OCC claims that Suvon failed to prove that its operational plan adequately addresses corporate separation requirements. OCC also claims that Suvon has not demonstrated how it will prevent information from flowing between shared employees.

{¶ 32} In its memorandum contra, Suvon responds that there is no prohibition on the use of shared service employees and that shared service employees are often used in Ohio. Suvon notes that Ohio Adm.Code 4901:1-37-04(A)(5) and 4901:1-37-08 specifically address how shared service employees should be accounted for under a cost allocation manual. Further, Suvon states that it has demonstrated that it is a separate corporate entity from the FirstEnergy Utilities and that the use of shared service employees has nothing to do with the corporate structure.

{¶ 33} The Commission thoroughly considered this issue in the Finding and Order, where we noted that we were not persuaded by the arguments raised by NOPEC and OCC

in their joint motion to suspend the application filed on February 10, 2020. Finding and Order at ¶¶ 14, 21. Neither NOPEC nor OCC has raised new arguments in support of these assignments of error, and rehearing should be denied on that basis. However, the Commission will reiterate that no one disputes that Suvon will use shared service employees, including officers and directors. However, in the April 22, 2020 Finding and Order, the Commission, consistent with past decisions, rejected the argument by NOPEC and OCC that use of shared service employees is per se unlawful. Finding and Order at ¶ 21. The Commission has not prohibited electric distribution utilities and affiliated CRES providers from using shared service employees, officers and directors, as long as that sharing does not violate the code of conduct. *In re the Commission's Review of Chapter 4901:1-20, Ohio Administrative Code,* Case No. 04-48-EL-ORD (*Transition Plan Rule Review*), Finding and Order (July 28, 2004) at 10. The code of conduct contains provisions prohibiting the improper flow of information between shared service employees and employees of competitive affiliates, and, as stated above, the audit report in the *Corporate Separation Audit Case* specifically addresses compliance with the code of conduct. Thus, any issues OCC has with respect to compliance with the code of conduct are best addressed in that proceeding.

G. NOPEC's Sixth Assignment of Error

{¶ 34} Further, NOPEC alleges, in its sixth assignment of error, that the Commission erred by failing to find in this certification case that Suvon's use of a trade name violates Ohio's electric utility corporate separation provisions. NOPEC claims that prior Commission decisions regarding trade names are inapplicable in this case because the Commission had reasoned that to require a supplier to change its name would cause customer confusion since affiliates had been using a similar name to the utility for a number of years. *Transition Plan Rule Review*, Finding and Order (July 28, 2004) at 8-9. NOPEC explains that, since Suvon is a new competitor, that would not be the case in this instance.

{¶ 35} Suvon argues in its memorandum contra that there is no prohibition on the use of a parent company's name. Suvon notes that many utilities in Ohio have, or had, affiliates with similar trade names. *See In re AEP Energy,* Case Nos. 10-384-EL-CRS and 12-

1491-GA-CRS; *In re Duke Energy Retail Sales*, Case No. 04-1323-EL-CRS; *In re Dominion Retail Inc.,* Case Nos. 00-1781-EL-CRS and 02-1757-GA-CRS; *In re Vectren Retail LLC,* Case No. 11-1078-EL-CRS.

{¶ 36} The Commission also thoroughly considered this issue in the Finding and Order, rejecting the arguments raised by NOPEC and OCC in their joint motion to suspend the application filed on February 10, 2020. Finding and Order at ¶¶ 14, 19-20. We note that NOPEC fails in its attempt to distinguish the past precedents regarding the use of tradenames noted by the Commission. In support of this assignment of error, NOPEC points to the Commission's discussion regarding the use of joint advertising in the *Transition Plan Rule Review*. *Transition Plan Rule Review*, Finding and Order (July 28, 2004) at 8-9. However, in the April 22, 2020 Finding and Order, the Commission never relied upon or cited to the *Transition Plan Rule Review*. Instead, the Commission noted several other precedents on this issue. Finding and Order at ¶ 19 (*citing In re FirstEnergy Solutions Corp.,* Case No. 00-1742-EL-CRS, Entry (Nov. 2, 2000), *In re AEP Energy, Inc.,* Case No. 10-384-EL-CRS; *In re IGS Dayton, Inc., f/k/a DP&L Energy Resources, Inc.,* Case No. 00-2171-EL-CRS, *Ohio Consumers' Counsel v. Interstate Gas Supply d/b/a Columbia Retail Energy,* Case No. 10-2395-GA-CSS, Opinion and Order (Aug. 15, 2012). Otherwise, NOPEC has raised no new arguments in support of this assignment of error. Accordingly, rehearing should be denied on that basis.

IV. ORDER

{¶ 37} It is, therefore,

{¶ 38} ORDERED, That the applications for rehearing filed by RESA, NOPEC and OCC be denied. It is, further,

{¶ 39} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GAP/hac

Summary: Entry denying the applications for rehearing filed by Northeast Ohio Public Energy Council, the Retail Energy Supply Association, and Ohio Consumers' Counsel. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio