FILE

IN THE SUPREME COURT OF OHIO

In the Matter of the Review of the Initial Certification Application of Suvon, LLC d/b/a FirstEnergy Advisors to Provide Aggregation and Broker Services in the State of Ohio.	))))))	Case No. 2020-1009 Appeal from the Public Utilities Commission of Ohio Pub. Util. Comm. No. 20-103-EL-AGG

NOTICE OF APPEAL BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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NOTICE OF APPEAL

Appellant, the Office of the Ohio Consumers' Counsel ("OCC" or "Appellant"), consistent with R.C. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11(B)(2), 3.11(D)(2), and 10.02, gives notice to this Court and to the Public Utilities Commission of Ohio ("PUCO") of this appeal taken to protect consumers who rely on energy markets to deliver the benefits of lower prices and service innovation facilitated by robust retail competition. Appellant is the statutory representative, as established under R.C. Chapter 4911, of Ohio's residential utility consumers. OCC was a party of record in the case being appealed.

The decisions being appealed are the PUCO's Opinion and Order entered in its Journal on April 22, 2020 (Attachment A) approving the Application for Certification of Suvon, LLC d/b/a FirstEnergy Advisors ("FirstEnergy Advisors"), and the PUCO's Entry on Rehearing entered in its Journal on June 17, 2020 (Attachment B). Also attached as Attachment C is OCC's May 22, 2020 Application for Rehearing.

The PUCO's orders are unlawful and unreasonable in the following respects, all of which were raised in OCC's Application for Rehearing as noted:

1. The PUCO erred by granting FirstEnergy Advisors a certificate to provide competitive power broker and aggregation services to Ohioans when FirstEnergy Advisors failed to show that they had managerial, technical, and financial capability to provide service as required under Ohio law (R.C. 4928.08(B)) and PUCO rules (Ohio Adm. Code 4901:1-24-10(C)(2)). (Application for Rehearing at 3-6).

2. The PUCO denied Ohio consumers due process rights by failing to hold an evidentiary hearing to enable parties to present evidence regarding whether FirstEnergy Advisors is managerially fit and capable of providing service and of complying with PUCO rules and regulations. R.C. 4928.08, Ohio Adm. Code 4901:1-24-10(A)(2)(c), Ohio Adm. Code 4901:1-24-10(C)(1) and (2). (Application for Rehearing at 6-9).

3. The PUCO erred by denying discovery to parties, when the parties have discovery rights guaranteed under Ohio law (R.C. 4903.082) and PUCO rules (Ohio Adm.

Code 4901-1-16(A), and Ohio Adm. Code 4901-1-17(A)). (Application for Rehearing at 6-9).

4. The PUCO's decision approving the Application is unlawful and is unsupported by record evidence in violation of R.C. 4903.09. (Application for Rehearing at 9-10).

The PUCO's Opinion and Order entered in its Journal on April 22, 2020 and Entry on Rehearing entered in its Journal on June 17, 2020 are unreasonable and unlawful. The Court should remand the case to the PUCO with a directive that the PUCO rescind the certification of FirstEnergy Advisors.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal was served on the persons stated below via electronic transmission and upon the Chairman of the Public Utilities Commission of Ohio via hand-delivery at his public office in Columbus, Ohio this 17th day of August 2020.

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CERTIFICATE OF FILING

I hereby certify that a Notice of Appeal of the Ohio Consumers' Counsel was filed with the docketing division of the Public Utilities Commission of Ohio as required by Ohio Adm. Code 4901-1-02(A) and 4901-1-36.

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IN THE SUPREME COURT OF OHIO

In the Matter of the Review of the Initial Certification Application of Suvon, LLC d/b/a FirstEnergy Advisors to Provide Aggregation and Broker Services in the State of Ohio.	)	Case No. 2020-1009
	)	Appeal from the Public Utilities Commission of Ohio
	)	Pub. Util. Comm. No. 20-103-EL-AGG

ATTACHMENTS OF PUCO ORDERS AND DECISIONS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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

FINDING AND ORDER

Entered in the Journal on April 22, 2020

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission approves the application for certification as a competitive retail electric service power broker and aggregator filed by Suvon, LLC d/b/a FirstEnergy Advisors.

II. HISTORY OF THE PROCEEDING

{¶ 2} On January 17, 2020, Suvon, LLC d/b/a FirstEnergy Advisors (Suvon) filed an application for certification as a competitive retail electric service power broker and aggregator in the state of Ohio. In addition, Suvon also requested protective treatment for certain exhibits filed with its application, which were filed under seal pursuant to Ohio Adm.Code 4901:1-24-08(a). Suvon filed a supplement to its application on April 1, 2020.

{¶ 3} Motions to intervene were filed by the Ohio Consumers' Counsel (OCC) and Northeast Ohio Public Energy Council (NOPEC) on February 10, 2020. Vistra Energy Corp. and its subsidiaries (Vistra) filed a motion to intervene on February 11, 2020. On February 18, 2020, the Northwest Aggregation Coalition (NOAC) also filed a motion to intervene. No memoranda contra these motions to intervene were filed.

{¶ 4} Further, on February 21, 2020, Palmer Energy Company, Inc., (Palmer) filed a motion to intervene. Suvon filed a memorandum contra Palmer's motion on March 9, 2020. Palmer filed its reply on March 17, 2020.

{¶ 5} Energy Professionals of Ohio LLC (EPO) also filed a motion to intervene on February 21, 2020. Suvon filed a memorandum contra EPO's motion on March 9, 2020. EPO filed its reply on March 16, 2020.

{¶ 6} On March 17, 2020, the Retail Energy Supply Association (RESA) filed a motion to intervene. Suvon filed a memorandum contra the motion on April 1, 2020. Suvon also filed a motion to strike portions of RESA's motion on April 1, 2020. RESA filed a reply to the memorandum contra the motion to intervene and a memorandum contra the motion to strike on April 8, 2020. Suvon filed a reply to the memorandum contra the motion to strike on April 15, 2020.

{¶ 7} Interstate Gas Supply, Inc. (IGS) filed a motion to intervene on March 25, 2020. IGS further requests that the Commission establish a procedural schedule for this proceeding. Suvon filed a memorandum contra the motion on April 9, 2020. IGS filed its reply on April 16, 2020.

{¶ 8} In addition, OCC[1] and NOPEC filed a joint motion to suspend the certification application on February 10, 2020. Vistra also filed a motion to deny or suspend the application on February 11, 2020. On February 18, 2020, NOAC filed a motion requesting a hearing in this proceeding.

{¶ 9} On April 7, 2020, Staff filed its review and recommendation, recommending that the application be granted.

{¶ 10} On April 14, 2020, NOPEC filed a response to the Suvon's supplement to its application and to the Staff review and recommendation. Vistra filed a response to Suvon's

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1 On April 17, 2020, OCC filed a motion for leave to file comments instanter and additional comments. The Commission finds that the motion for leave to file comments instanter should be denied. The application for certification in this proceeding was suspended on April 11, 2020; R.C. 4928.08(B) directs the Commission to act to approve or deny certification within 90 days after the date of the suspension. Accepting OCC's untimely additional comments will unduly delay the resolution of this case. We also note that OCC's untimely additional comments do little more than repeat arguments previously raised by OCC and NOPEC in their February 10, 2020 filing. These arguments have been fully considered and addressed by the Commission.

supplement to its application on April 14, 2020. EPO filed correspondence in support of Vistra's response on April 16, 2020.

III. DISCUSSION

A. *Intervention*

{¶ 11} Motions to intervene in this proceeding have been filed by OCC, NOPEC, Vistra and NOAC. No party opposed the motions. The Commission finds that the motions to intervene are reasonable and should be granted.

{¶ 12} Palmer, EPO, RESA and IGS also filed motions to intervene in this proceeding. Suvon opposed each of these motions to intervene. The Commission notes that the Supreme Court of Ohio has ruled that intervention in Commission proceedings should be liberally allowed. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.3d 384 at ¶ 20. Accordingly, we find that Palmer, EPO, RESA and IGS have each met the criteria set forth in R.C. 4903.221(B) and Ohio Adm.Code 4901:1-11(B) and that the motions to intervene should be granted.

{¶ 13} However, the Commission notes that several of the motions to intervene were filed by Suvon's competitors. Competition should be determined ultimately by acumen in the marketplace, not by presumptive inhibition through a Commission certification proceeding. Although we have granted intervention in this case to Suvon's competitors, we will carefully monitor the practice of competitors intervening in certification proceedings to ensure that this does not become a widespread, abusive practice and that competition is not unduly stifled by unnecessary litigation.

B. *Managerial, Technical and Financial Capability*

{¶ 14} In their joint motion to suspend the certification application, OCC and NOPEC claim Suvon is an affiliate of the FirstEnergy electric distribution companies, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy Utilities). As Suvon will be managed and controlled by members of the same

management team that controls the FirstEnergy Utilities, OCC and NOPEC argue that constitutes a violation of R.C. 4928.17(A), which requires that a competitive retail electric supplier be "fully separated" from its regulated utilities. Further, OCC and NOPEC contend that the application runs contrary to the recommendations set forth in the audit report filed in the Commission's review of the Companies' compliance with the corporate separation rules. *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*), SAGE Management Consultants, LLC Final Audit Report (May 14, 2018) at 46, 98-99. Likewise, RESA states that it has two major concerns with the application: the use of the trade name, "FirstEnergy Advisors" and the sharing of officers and directors of both Suvon and the FirstEnergy Utilities, citing also to the findings in the audit report in the *Corporate Separation Audit Case* in support of its arguments. *Id.* at 34-36, 98. IGS asserts that the application lacks sufficient information to determine if Suvon has the ability to comply with the corporate separation rules.

{¶ 15} In its motion to suspend or reject the application, Vistra argues that the trade name "FirstEnergy Advisors" is misleading, in violation of the Commission's consumer protection rules. Vistra also argues that approving Suvon's application will inhibit the competition the General Assembly tasked the Commission with protecting, speculating that the relationship between FirstEnergy Corp. and Suvon positions Suvon to exercise disproportionate market power.

{¶ 16} In its memoranda contra the motions to suspend, Suvon responds that there is no prohibition on the use of shared service employees. Suvon notes that it is a separate corporate entity and that the use of shared service employees has nothing to with its corporate structure. Suvon claims that there is no violation of R.C. 4928.17(A)(1) because it is a separate corporate entity from the utilities owned by FirstEnergy Corp., it will operate independently from the utilities, and it will comply with the corporate separation rules. Suvon contends that OCC and NOPEC present no evidence of any violation of these rules.

{¶ 17} Suvon also argues that the use of the name "FirstEnergy Advisors" is not a violation of Commission rules and that any such restriction would violate the Constitution. Suvon notes that the Commission has held that, absent other circumstances indicating that the use of the name and/or logo is unfair, misleading or deceptive, the Commission did not believe that an unaffiliated CRES supplier should necessarily be prohibited from using the incumbent utility's name and/or logo. *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)). Suvon also contends that tradenames have long been recognized as constitutionally protected commercial speech. Suvon disputes Vistra's claim that approval of the application would be anticompetitive; Suvon argues that the claim is baseless because additional competitors inherently increase competition. Suvon concludes that the only relevant issue before the Commission in this case is Suvon's qualifications under the Commission's application process.

{¶ 18} In its response to Suvon's supplemental filing, Vistra speculates that Suvon made the filing to address claimed inadequacies in the application identified by intervenors. However, Vistra contends that the supplemental filing does not sufficiently address the use of the trade name, "FirstEnergy Advisors," or compliance with corporate separation requirements. NOPEC, in its response to the supplemental filing and the Staff review and recommendation, argues that both the supplement and the Staff review and recommendation failed to address the central question of whether the corporate separation rules are violated if a CRES provider is managed and controlled by the same individuals that control affiliated electric distribution utilities. NOPEC recommends that the Commission reject the Staff review and recommendation because it failed to address this central question.

{¶ 19} The Commission notes that the arguments of intervenors center around questions regarding the fact that Suvon will be doing business under a trade name derived from the name of its corporate parent, FirstEnergy Corp., and whether Suvon is properly

separated from the FirstEnergy Utilities. We note that these are not new or novel questions. FirstEnergy Corp. has previously had a competitive affiliate certified as a CRES provider in this state. *In re FirstEnergy Solutions Corp.*, Case No. 00-1742-EL-CRS, Entry (Nov. 2, 2000). Likewise, we have certified other CRES providers who are or were affiliated with a public utility in this state. *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. Further, certified competitive retail natural gas suppliers, who were unaffiliated with any public utility, have reached contractual agreements to use a trade name similar to the name of a public utility. *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). We note that the existing requirements for proper disclosure of the affiliate relationship has been considered to be a necessary and sufficient protection in all prior cases. We expect Suvon to include and present the required disclosure, in a conspicuous and efficacious manner in all communications with consumers.

{¶ 20} Nonetheless, the Commission finds that issues regarding Suvon's use of the trade name and compliance with corporate separation requirements by FirstEnergy Corp. affiliates 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*. OCC and NOPEC have cited the auditor's report filed in that proceeding, but the Commission has not adopted that report at this time, and the finding and conclusions of the auditor should be litigated in that proceeding rather than this case. We also note that, in itsresponse to Suvon's April 1, 2020 supplemental filing, Vistra questions the sufficiency of the FirstEnergy Utilities' corporate separation plan and cost allocation manual; however, the review of the corporate separation plan and the cost allocation manual are, in fact, essential elements of the corporate separation audit report, and should be addressed in that proceeding. *Corporate Separation Audit Case*, Audit Report (May 14, 2019) at 19-37, 101-121.

{¶ 21} Therefore, the Commission finds 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. Staff has

thoroughly reviewed Suvon's managerial, technical and financial capability and has recommended that Suvon's application should be approved. Upon review of the many motions and memoranda filed in this case, we find that no other parties have raised material issues regarding Suvon's managerial, technical and financial capability. NOPEC's response to the April 7, 2020 Staff review and recommendation, faulting Staff for failing to address the "key corporate separation issues in this case," aptly demonstrates that NOPEC's sole focus is upon compliance with the corporate separation requirements rather than Suvon's managerial, technical and financial capability. Moreover, we 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. Finally, we are not persuaded by OCC and NOPEC's assertion that use of shared service employees is per se unlawful; OCC and NOPEC have failed to identify any statute, Supreme Court precedent, or Commission ruling in support of this overly broad claim. To the contrary, shared service arrangements are authorized by Federal law.

{¶ 22} Upon review of all of the filings in this case, we find that no party has raised any issues which materially dispute Staff's determination that Suvon has demonstrated the managerial, technical and financial capability to function as a CRES power broker and aggregator in this state. Accordingly, we find that Suvon's application should be approved. We further find that no hearing is necessary in this proceeding.

C. *Motions for a Protective Order and to Compel*

{¶ 23} On March 17, 2020, Suvon filed a motion for a protective order. In its motion, Suvon contends that discovery is premature. Subsequently, on March 20, 2020, NOPEC filed a motion to compel discovery. NOPEC filed a memorandum contra the motion for a protective order on April 1, 2020. Suvon filed a memorandum contra the motion to compel on April 6, 2020. Replies to the memorandum contra were filed on April 8, 2020, and April 13, 2020, by Suvon and NOPEC respectively. OCC also filed a motion to compel discovery on April 17, 2020.

{¶ 24} Suvon contends that discovery is premature at this point in the proceeding because no hearing or procedural schedule has been established by the Commission. Suvon also argues that NOPEC's discovery requests are not reasonably calculated to lead to the discovery of admissible evidence; Suvon claims that Ohio Adm.Code 4901:1-24-10(B) determines the scope of this case and does not provide for automatic discovery from intervenors. NOPEC contends that the failure to respond to discovery demonstrates that Suvon lacks the managerial, technical and financial capability to be a CRES provider. NOPEC further contends that Commission rules and precedent permit discovery before a case is set for hearing, citing a recent ruling by the Commission in similar circumstances. *In re Verde USA Ohio, LLC*, Case Nos. 11-5886-EL-CRS et al. (*Verde*), Entry (Mar. 3, 2020).

{¶ 25} The Commission finds that NOPEC's reliance upon the ruling in *Verde* is misplaced. The facts and circumstances surrounding the renewal application in *Verde* are substantially different from the facts in this case, including the fact that, although no decision was made on whether to set the matter for hearing, the attorney examiner did establish a procedural schedule and comment period. Nonetheless in light of our determination that Suvon has the managerial, technical and financial capability to serve as a CRES power broker and aggregator and our determination that no hearing is necessary in this proceeding, we find that the motion for a protective order filed by Suvon and the motions to compel filed by NOPEC and OCC are moot and should be denied.

IV. ORDER

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That Suvon's application be approved. It is, further,

{¶ 28} ORDERED, That the motions to intervene filed by NOPEC, Vistra, NOAC, Palmer, EPO, RESA and IGS be granted. It is, further,

{¶ 29} ORDERED, That the motion for a protective order filed by Suvon be denied. It is, further,

{¶ 30} ORDERED, That the motions to compel filed by NOPEC and OCC be denied. It is, further,

{¶ 31} ORDERED, That a copy of this Finding and Order 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

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

Summary: Finding & Order approving the application for certification as a competitive retail electric service power broker and aggregator filed by Suvon, LLC d/b/a FirstEnergy Advisors. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio

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

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

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

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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Special Counsel for the
Office of the Ohio Consumers' Counsel

May 22, 2020

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Suvon LLC d/b/a FirstEnergy Advisors ("FirstEnergy Advisors") is an affiliate of the regulated FirstEnergy electric distribution companies ("FirstEnergy Utilities") that serve two million consumers. As an affiliate of the regulated FirstEnergy Utilities and as a would-be participant in Ohio's deregulated electricity markets, FirstEnergy Advisors (and the FirstEnergy Utilities) must comply with Ohio law and the PUCO's rules regarding corporate separation. Corporate separation laws and rules are put in place to protect competition and the benefits of lower prices and greater innovation it brings to consumers. FirstEnergy Advisors presents a risk to those consumer benefits of competition, as was the concern of NOPEC, OCC, Vistra Energy Corp. ("Vistra"), the Northwest Aggregation Coalition ("NOAC"), Palmer Energy Company, Inc. ("Palmer"), Energy Professionals of Ohio LLC ("EPO"), the Retail Energy Supply Association ("RESA"), and Interstate Gas Supply ("IGS"). .

FirstEnergy Advisors' filed its initial certification application in the above-captioned proceeding on January 17, 2020, with the Public Utilities Commission of Ohio ("PUCO").

However, the PUCO declined to adopt a procedural schedule[1] or compel discovery[2] to fully explore the serious issues related to FirstEnergy Advisors' Application. Over the objections of several parties, the PUCO approved FirstEnergy Advisors' Application as supplemented, without allowing due process.[3] The Order approving the Application is unlawful and unreasonable in the following respects and the Application should have been denied:

ASSIGNMENT OF ERROR NO. 1:
The PUCO erred by failing to find that FirstEnergy Advisors' Application (as supplemented) violates R.C. 4928.08(B) and Ohio Adm. Code 4901:1-24-10(C), and therefore it should be denied.

ASSIGNMENT OF ERROR NO. 2:
The PUCO erred by denying the discovery, which intervenors are entitled to conduct (in violation of R.C. 4903.082, Ohio Adm. Code 4901-1-16(A) and Ohio Adm. Code 4901-1-17(A)), by failing to hold a hearing, and by failing to afford due process to intervenors. The Application should be denied.

ASSIGNMENT OF ERROR NO. 3:
The PUCO's decision approving the Application is unlawful and is unsupported by record evidence in violation of R.C. 4903.09. The Application should be denied.

ASSIGNMENT OF ERROR NO. 4:
The PUCO erred by failing to render a decision in this case on the inseparable issues pending in its audit of the FirstEnergy Utilities' corporate separation, Case No. 17-974-EL-UNC. Alternatively, the PUCO erred by failing to hold its decision in abeyance in this case until it fulfills its intention to render a decision in the audit case, Case No. 17-974-EL-UNC. FirstEnergy Advisors' Application should be denied or held in abeyance pending due process and a decision in the audit case.

Under R.C. 4903.10 and O.A.C. 4901-1-35, OCC respectfully requests rehearing of the PUCO's April 22, 2020 Finding and Order ("Order") approving FirstEnergy Advisors' application for certification as a competitive retail electric service power broker and aggregator.

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[1] *See* Interstate Gas Supply, Inc.'s Reply in Support of Motion to Intervene and Request to Establish a Procedural Schedule (April 16, 2020).

[2] OCC's Motion to Compel FirstEnergy Advisors to Respond to OCC's First Set of Discovery (April 17, 2020); NOPEC's Motion to Compel (March 20, 2020).

[3] Finding and Order (April 22, 2020) ("Order").

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate or modify its April 22, 2020 Order as requested by OCC.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In seeking to be certified as an aggregator and power broker, a would-be participant in Ohio's deregulated electricity markets must demonstrate that it can and will comply with Ohio law and the PUCO's rules regarding corporate separation.[4] For reasons this case makes obvious, these rules and laws exist to prevent affiliates of monopoly utilities from leveraging that relationship to gain an unfair advantage to the detriment of both other competitors and consumers who benefit from competition.[5] FirstEnergy Advisors failed to meet its burden to demonstrate that it is able to comply with PUCO rules, orders, and Ohio law on corporate separation.[6]

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[4] *See* Ohio Adm. Code 4901-1-24-05(A).

[5] *See, e.g.*, R.C. 4928.17, Ohio Adm. Code Chapter 4901:1-3.

[6] *See* Ohio Admin. Code 4901:1-24-10(C), which requires an applicant seeking to provide competitive electric services to demonstrate that they are "managerially, financially, and technically fit and capable of performing the service it intends to provide" and "managerially, financially, and technically fit and capable of complying with all applicable commission rules and orders." The rule also requires the applicant to be "able to provide reasonable financial assurances sufficient to protect electric distribution utility companies and the customers from default."

It should be quite concerning to regulators that FirstEnergy Advisors will be managed and controlled by the same executives who manage and control FirstEnergy's regulated utilities.[7] FirstEnergy Advisors also plans to do business under the "FirstEnergy" name. That approach could cause customer confusion and give FirstEnergy Advisors an unfair competitive advantage over other competitive brokers and aggregators, in violation of the PUCO's rules.[8]

The PUCO-approved auditor, in the FirstEnergy Utilities' corporate separation audit case, recommended against the use of the "FirstEnergy" name in providing competitive services.[9] The auditor concluded that allowing FirstEnergy competitive affiliates to do business under the "FirstEnergy" name "implies an endorsement by the FirstEnergy Ohio Companies."[10] The auditor found that preventing FirstEnergy Utilities' affiliates from using the FirstEnergy brand name would help "eliminate affiliate bias."[11] Contrarily, FirstEnergy Advisors is using the FirstEnergy name and FirstEnergy logo.

The one-page PUCO Staff Report and the Supplemental Application[12] filed by FirstEnergy Advisors fail to alleviate the concerns under law and rule. Moreover, intervenors were precluded from supporting their positions with more information than what FirstEnergy Advisors filed, because FirstEnergy Advisors declined to answer discovery and the PUCO allowed that. It also is not known what, if any, additional information FirstEnergy Advisors

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[7] *See* Joint Motion to Suspend FirstEnergy Advisors' Certification Application and Joint Motion for Hearing by NOPEC and OCC (Feb. 10, 2020) ("NOPEC/OCC Joint Motion") at 1-2, 10-15.

[8] *Id.* at 2, 15-17.

[9] *See In the Matter of the Review of The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC ("Audit Case"), 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) ("Audit Report") at 98.

[10] *Id.*

[11] *Id.* at 46.

[12] *See* Supplemental Application.

provided to the PUCO Staff. Instead, FirstEnergy Advisors seems intent on keeping secret relevant details regarding how it will provide service to Ohioans.[13]

Despite the serious deficiencies in the Application as supplemented, the PUCO approved the Application, without allowing discovery on FirstEnergy Advisors, without holding a hearing and without awaiting the outcome of the Audit Case investigation of the FirstEnergy Utilities' corporate separation that has been pending at the PUCO for over three years.

The PUCO denied the intervening parties due process and gave FirstEnergy Advisors the benefit of that constraint on parties. The PUCO should have rejected the Application outright or allowed the parties the opportunity to conduct discovery and participate in an evidentiary hearing or held its decision in abeyance pending the outcome of the FirstEnergy Utilities' Audit Case.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by failing to find that FirstEnergy Advisors' Application (as supplemented) violates R.C. 4928.08(B) and Ohio Adm. Code 4901:1-24-10(C), and therefore it should be denied.

Ohio law requires regulated electric distribution utilities to maintain full separation from competitive affiliates, to protect consumers from subsidizing any affiliate's unregulated activities.[14] To confirm adherence with affiliate restrictions and to prevent the abuses of market power, a regulated utility must create, file, and implement a PUCO-approved corporate separation plan in order to offer both noncompetitive retail electric service and a competitive retail electric service ("CRES"), including through affiliates.[15] These corporate separation plans

[13] *See* OCC's letter regarding FirstEnergy Advisors' Motion for Protective order where OCC explains that FirstEnergy Advisors requested a broad exemption from the discovery rules. OCC Letter (April 1. 2020) at 1 and n.1 (citing FirstEnergy Advisors' Motion for Protective Order).

[14] R.C. 4928.02(H).

[15] R.C. 4928.17(A).

must meet a minimum content threshold.[16] Additionally, in order to obtain certification to provide competitive electric retail services, a CRES application must provide sufficient information to enable the PUCO to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer and its ability to comply with PUCO rules and orders adopted under Chapter 4928 of the Revised Code, including adherence to corporate separation rules and law.[17]

In a case pending since 2017, the PUCO is reviewing FirstEnergy Advisors' affiliated regulated utilities' current corporate separation plan.[18] In that case, the PUCO retained an independent auditor to review the corporate separation plan. In 2018, the PUCO auditor criticized the FirstEnergy Utilities' co-mingling of senior officers of regulated and non-regulated affiliates and recommended changes.[19] The PUCO auditor also criticized the use of the "FirstEnergy" name by the utilities' non-regulated affiliate, and recommended that the non-regulated affiliate use a name that does not contain the "FirstEnergy" name or any name implying a connection to the FirstEnergy Utilities.[20]

Despite that pending case, FirstEnergy Advisors failed to prove that its operational plan adequately addresses corporate separation requirements. The Supplemental Application vaguely promises to prevent FirstEnergy Advisors from accessing information not available to

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[16] Ohio Adm. Code 4901:1-37-05.

[17] Ohio Adm. Code 4901-1-24-05.

[18] *See* Audit Case.

[19] Audit Case, Audit Report at 39. *See, also,* NOPEC's Response to Supplemented Application and Staff Recommendation (April 14, 2020) ("NOPEC's Response") at 2-4; RESA Motion to Intervene (March 17, 2020) ("RESA Motion") at 3, 13-14.

[20] Audit Report, at 98-99; *See also, e.g.*, NOPEC/OCC Joint Motion at 4-5; RESA Motion at 3, 7-8. IGS Motion to Intervene and Establish a Procedural Schedule (March 25, 2020) ("IGS Motion") at 8-9.

nonaffiliated competitors, by limiting employee access to information.[21] However, just a few sentences later, FirstEnergy Advisors admits that its corporate structure will include "shared representatives and/or employees" who will have access to that exact information.[22] To deal with this fact, FirstEnergy Advisors merely states an intent to conduct employee training and to disclose this corporate structure to clients.[23]

However, the Supplemental Application makes no attempt to explain how FirstEnergy Advisors plans to stop the flow of information between shared employees. Not does it explain how each of the same executives will be able individually to manage and control the information that each knows about both FirstEnergy Advisors and the affiliated regulated utilities. Additionally, the disclaimer featured in the Supplemental Application fails to lessen the anticompetitive concerns surrounding the use of the "FirstEnergy" name noted by the Auditor.[24] In fact, the disclaimer only serves to elevate these concerns, by emphasizing that FirstEnergy Advisors is a subsidiary of FirstEnergy Corp.[25]

Finally, rather than address the shortcomings of FirstEnergy Advisors' Application and Supplemental Application, the Staff Report only highlights their deficiencies. The single-page Staff Report notes that FirstEnergy Advisors "has stated that it intends to comply with all commission rules."[26] It's easy for an applicant to show merely an intent to comply. But an applicant must demonstrate "an ability to comply."[27] FirstEnergy Advisors has failed to show

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[21] Supplemental Application at 3.

[22] *Id.*

[23] *Id.* at 3-4.

[24] *See* Audit Case, Audit Report at 98.

[25] Supplemental Application at 4.

[26] Staff Report.

[27] Ohio Adm. Code 4901-1-24-05.

specifically how it will comply with the applicable corporate separation rules, orders, and law while maintaining a shared corporate structure, comingled assets and competitively sensitive information, and the FirstEnergy name.

Based upon the information filed in the Application, as supplemented, the Application on its face violates Ohio law and fails to satisfy Ohio Adm. Code 4901:1-24-10. FirstEnergy Advisors has failed to demonstrate that it satisfies the certification requirements to become a CRES provider. It failed to show that it is managerially, technically, and financially capable to perform the services it intends to provide. It failed to show it will comply with applicable PUCO rules and orders. And it failed to show it has financial assurances sufficient to protect the distribution utility and customers from default as required in Ohio Adm. Code 4901:1-24-10(C) and R.C. 4928.08(B).

ASSIGNMENT OF ERROR NO. 2: The PUCO erred by denying the discovery, which intervenors are entitled to conduct (in violation of R.C. 4903.082, Ohio Adm. Code 4901-1-16(A) and Ohio Adm. Code 4901-1-17(A)), by failing to hold a hearing, and by failing to afford due process to intervenors. The Application should be denied.

As requested in OCC and NOPEC's Joint Motion to Suspend[28] and as requested by other intervening parties, the PUCO should have adopted a procedural schedule that allowed for the full development of a factual record for the benefit of the PUCO's decision-making. That schedule should have included conducting a hearing on whether FirstEnergy Advisors possesses the managerial, financial and technical capability to provide service and complies with Ohio law, rules, and orders. Parties should have had the opportunity to conduct discovery on the issues raised in the Application, as supplemented, and to provide testimony and evidence demonstrating

[28] *See* NOPEC/OCC Joint Motion.

how the Application does not satisfy Ohio law or the PUCO's rules for certification to operate in the state of Ohio.

OCC and NOPEC requested an evidentiary hearing on February 10, 2020 and February 25, 2020.[29] NOPEC again requested a hearing on April 14, 2020.[30] Vistra requested a hearing on February 11, 2020, April 1, 2020, April 14, 2020.[31] The Northwest Ohio Aggregation Coalition requested a hearing on February 17, 2020,[32] and Interstate Gas Supply, Inc. requested a hearing on March 25, 2020.[33] The PUCO denied these requests.

Under Ohio Adm. Code 4901:1-24-10(A)(2)(c), the PUCO should conduct a hearing on the suspended application with a schedule that provides ample opportunity to conduct discovery. Further, the schedule should allow for appropriate due process in this case by allowing discovery to be conducted as required by R.C. 4903.082,[34] testimony to be filed, and a public hearing to be held to develop a complete record that will assist the PUCO in a full and fair consideration of the Application.[35] The PUCO routinely relies on testimony in contested cases and a hearing is an important part of any contested matter before the PUCO.

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[29] NOPEC/OCC Joint Motion at 2, 5, 17; NOPEC-OCC Reply to FirstEnergy Advisors' Memorandum Contra the NOPEC-OCC Motions to Suspend the Certification Application and for a Hearing (February 25, 2020) at 2, 12.

[30] NOPEC Response to Supplemented Application and Staff Recommendation (April 14, 2020) at 4, 12.

[31] Vistra's Motion to Suspend, Motion to Deny or Suspend, Application, Motion for Expedited Treatment (February 11, 2020) at 7; Vistra's Memorandum in Support of Interstate Gas Supply, Inc.'s Request to Establish Procedural Schedule (April 1, 2020) at 1; Vistra's Response at 2, 8.

[32] Motion by the Northwest Ohio Aggregation Coalition to Intervene and Motion to Hold a Hearing in this Matter (February 2, 2020).

[33] IGS Motion at 7.

[34] *See* R.C. 4903.82 ("All parties and intervenors shall be granted ample rights of discovery. The present rules of the public utilities commission should be reviewed regularly by the commission to aid full and reasonable discovery by all parties. Without limiting the commission's discretion the Rules of Civil Procedure should be used wherever practicable.")

[35] *See* R.C. 4903.09 (providing that the PUCO must include "a transcript of all testimony" in its written opinion in a contested case); see also Ohio Adm. Code 4901:1-27-10(A)(2)(c).

The PUCO's rules and Ohio law permit ample discovery in PUCO proceedings.[36] Ohio Adm. Code 4901-1-16(H) plainly allows discovery to begin upon the filing of a motion to intervene, even before it is granted. Ohio Adm. Code 4901-1-17(A) further provides that "discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible." But in this case, FirstEnergy Advisors simply refused all requests for discovery by the parties.[37] In a recent PUCO certification case, the PUCO correctly acknowledged that, under the PUCO's rules, parties have a right to discovery (which begins as soon as a motion to intervene is filed) in certification cases.[38] And, in that certification case, the PUCO directed the applicant requesting CRES certification to respond to discovery.[39]

Similarly, in the instant case, the PUCO should have afforded parties ample rights to discovery to allow the parties to produce evidence regarding FirstEnergy Advisors' ability to comply with corporate separation rules and Ohio law.[40] Without an opportunity to conduct discovery and present their case at a hearing and be heard, the parties were unable to fully develop a record in this contested case for the PUCO to rely upon. Additionally, the Staff Report[41] did little to add to the record, and instead summarily accepts the limited information put forth in FirstEnergy Advisors' Supplemental Application.[42]

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[36] R.C. 4903.082, Ohio Adm. Code 4901-1-16(A), Ohio Adm. Code 4901-1-16(B).

[37] *See* OCC's Motion to Compel FirstEnergy Advisors to Respond to OCC's First Set of Discovery, (April 17, 2020).

[38] *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 (March 3, 2020) at ¶13.

[39] *Id.*

[40] *See Ohio Consumers' Counsel v. PUC* (2006) 111 Ohio St.3d 300, 320-22 (finding that the PUCO erred in denying OCC's motion to compel discovery and finding that Ohio law allows broad and ample discovery rights).

[41] *See* Staff Report.

[42] *See* Supplemental Application.

The PUCO has long held that it is in the public interest for it "to base its decisions on as full and complete a record as possible."[43] Accordingly, FirstEnergy's Application should have been subject to a full hearing where all parties offered testimony and cross-examined witnesses regarding the Application. Such a hearing would have allowed due process for the parties and resulted in the development of a record upon which the PUCO should base its decision.

ASSIGNMENT OF ERROR NO. 3: The PUCO's decision approving the Application is unlawful and is unsupported by record evidence in violation of R.C. 4903.09. The Application should be denied.

Eight parties intervened in this proceeding to raise questions regarding FirstEnergy Advisors' Application. There is no question that this proceeding is a "contested case" for purposes of R.C. 4903.09. R.C. 4901.09 expressly states:

> In *all contested cases* heard by the public utilities commission, a complete record of all the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decision arrived at, based upon said findings of fact. (emphasis added).

Despite the numerous requests for a hearing in this contested case, the PUCO refused to conduct a hearing to develop a record on which to base its decision, as required by R.C. 4903.09.[44]

As noted above, the PUCO denied the opposing parties an opportunity to conduct discovery and an evidentiary hearing. Thus, there is no evidentiary record in this contested case to support the PUCO's determination that FirstEnergy Advisors has the managerial capability to provide service to Ohio consumers as required by R.C. 4928.08(B) and Ohio Adm. Code 4901:1-24-10(C)(2). Instead, the PUCO relied solely on Staff's one-page recommendation, which also

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[43] *In the Matter of the Application of Columbus & Southern Ohio Elec. Co. for Auth. to Amend & to Increase Certain of Its Rates & Charges for Elec. Serv.. in the Matter of the Application of Columbus & Southern Ohio Elec. Co. for Auth. to Amend & to Increase Certain of Its Rates & Charges for Elec. Serv. in Various Municipalities in Franklin Cty., Ohio.*, 1976 WL 408123, *2, Case No. 74-760-EL-AIR, Interim Order (May 27, 1976).

[44] Order at 7.

contained no factual determinations to support the Application. For this additional reason, the PUCO should grant rehearing and deny the Application.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred by failing to render a decision in this case on the inseparable issues pending in its audit of the FirstEnergy Utilities' corporate separation, Case No. 17-974-EL-UNC. Alternatively, the PUCO erred by failing to hold its decision in abeyance in this case until it fulfills its intention to render a decision in the audit case, No. 17-974-EL-UNC. FirstEnergy Advisors' Application should be denied or held in abeyance pending due process and a decision in the audit case.

As explained previously, an application for certification as a CRES provider requires that the applicant demonstrate an "ability to comply with [PUCO] rules or orders adopted under Chapter 4928 of the Revised Code."[45] Ohio law requires regulated electric distribution utilities to be fully separated from competitive affiliates to protect consumers from subsidizing any affiliate's unregulated activities.[46] To maintain adherence with affiliate restrictions and to prevent the abuses of market power, R.C. 4928.17(A) requires regulated utilities to create, file, and implement corporate separation plans approved by the PUCO.

FirstEnergy Advisors' affiliated regulated utilities filed two corporate separation plans; the latest one was approved in 2010.[47] In order to verify compliance with Ohio Adm. Code 4901:1-37 and R.C. 4928.17, the PUCO conducts audit cases reviewing the corporate separation plans of regulated utilities and their nonregulated CRES affiliates.[48] As discussed above, a separate Audit Case concerning the corporate separation between the FirstEnergy Utilities and

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[45] Ohio Adm. Code 4901:1-24-05(A).

[46] R.C. 4928.02(H).

[47] *See In re FirstEnergy,* Case No. 99-1212-EL-ETP, Opinion and Order (July 19, 2000); *In re FirstEnergy*, Case No. 10-388-EL-SSO, Opinion and Order (August 27, 2010) at 16, 27, approving the Corporate Separation Plan filed in Case No. 09-462-EL-UNC.

[48] Audit Case, Entry (May 17, 2017) at ¶4.

various affiliates is currently pending before the PUCO.[49] In that case, the auditor raised specific concerns regarding the use of the FirstEnergy name and the shared corporate structure between regulated utilities and their nonregulated affiliates.[50] To protect the public interest and to establish a level playing field for competitors to benefit consumers, it is imperative that the PUCO eliminate any affiliate abuses that have occurred, are currently occurring, and may occur in the future.

In its Order approving FirstEnergy Advisors' Application, the PUCO stated that "issues regarding [FirstEnergy Advisors'] use of the trade name and compliance with corporate separation requirements by FirstEnergy Corp. affiliates are best raised in" the Audit Case.[51] The PUCO notes that these concerns are "essential elements" of the Audit Report, and must be fully addressed in the Audit Case.[52]

However, the fact that these corporate separation issues are essential elements of the Audit Case does not make them any less determinative in the instant case. As noted above, a successful certification application requires the applicant to demonstrate compliance with all applicable PUCO rules, orders, and Ohio laws, including compliance with the PUCO's corporate separation rules and Ohio law. Simply put, if the PUCO finds that FirstEnergy Utilities' corporate separation plan fails to meet applicable standards in the Audit Case, then FirstEnergy Advisors' Application also fails as a matter of law.

Enforcing the corporate separation laws and rules and/or strengthening the FirstEnergy Utilities' corporate separation plan is particularly important with regard to the sharing or co-

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[49] *Id.*

[50] Audit Case, Audit Report at 39, 98-99.

[51] Order at 6.

[52] *Id.*

mingling of senior management (and the competitively sensitive information possessed) in the instant case. Neither the FirstEnergy Utilities nor FirstEnergy Advisors explain how the same managers who run the regulated utilities and unregulated competitive affiliate, FirstEnergy Advisors, can separate their knowledge of the regulated business, operations, and market information from their knowledge of the affiliate's business, operations, and market information. In fact, it is clear that real separation cannot occur to protect competitive markets. The corporate separation law and rules need to be enforced to protect captive customers from subsidizing competitive affiliates and to make sure that FirstEnergy is not providing an affiliated CRES provider an unfair preference. Allowing FirstEnergy Advisors to use the "FirstEnergy" brand offers that unfair advantage, as noted by the auditor.[53]

Therefore, if the PUCO finds that these issues are best addressed in the Audit Case, then approving FirstEnergy Advisors' Application in the instant case proves premature. Instead, the PUCO should refrain from entering a decision in this case until a review of the FirstEnergy Utilities' corporate separation plan is complete. As explained previously, a finding in the Audit Case that the corporate separation plan fails to comply with PUCO rules, orders, and Ohio law would mean that FirstEnergy Advisors' Application also fails. If the PUCO chooses not to fully address corporate separation issues in the instant case, then waiting for the outcome of the Audit Case will allow the PUCO to establish the appropriate guidelines for the interactions between the regulated FirstEnergy Utilities and its affiliate, FirstEnergy Advisors. Setting such guidelines prior to FirstEnergy Advisors receiving a certificate to operate and begin operations will provide needed assurance that customers can likely be protected from market power abuses as outlined in the Audit Report.

[53] Audit Case, Audit Report at 98.

III. CONCLUSION

For the reasons stated, FirstEnergy Advisors failed to carry its burden to prove it merits a certificate to operate under applicable law and rule. The PUCO's decision violates law relating to the discovery rights of OCC and other parties, violates law regarding the standards for granting a certificate and violates law regarding the standards for corporate separation between an entity claiming competitive status (FirstEnergy Advisors) and its monopoly utility affiliates (FirstEnergy Utilities). All of these violations abdicate consumer protection by the state from this affiliate of the FirstEnergy monopoly utilities that can impair fair competition despite its claims otherwise.

Therefore, under R.C. 4903.10(B) the PUCO should abrogate its decision granting the Application of FirstEnergy Advisors, or conduct a hearing process and then modify its decision by prohibiting (among other things) the structure of FirstEnergy Advisors that is in violation of corporate separation standards, or hold its decision in abeyance pending due process and its stated intention to decide the corporate separation issues in Case No. 17-974-EL-UNC that are applicable here.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served via electronic transmission upon the parties this 22nd day of May 2020.

/s/ Kimberly W. Bojko
Kimberly W. Bojko
Special Counsel for OCC

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Bojko, Kimberly W.