BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter 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

NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S
MOTION TO IMMEDIATELY
RESCIND OR SUSPEND SUVON, LLC D/B/A FIRSTENERGY ADVISORS'
CERTIFICATE TO PROVIDE AGGREGATION AND BROKER SERVICES
AND
DISMISS THIS CERTIFICATION CASE

No person is permitted to offer, contract or provide competitive retail electric service ("CRES") in this state without a valid certificate. R.C. 4928.08(B); Ohio Adm. Code 4901:1-24-03(A). On appeal of this proceeding, the Supreme Court of Ohio, in a unanimous decision, found that the CRES certificate the Commission issued to FirstEnergy Advisors is invalid.[1] *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630 (October 14, 2021) ("*FirstEnergy Advisors*") at ¶¶ 36, 39.

The Court based its ruling upon the Commission's failure to make findings regarding FirstEnergy Advisors' fitness and capability to provide service; and its fitness and capability to comply with the PUCO's rules and orders, including its corporate separation rules. *Id*. ¶¶ 27, 35, 38. Specifically, the Court found, among other things, that the Commission failed to consider FirstEnergy Advisors' managers' and employees' fitness and capability to provide power broker

[1] The Commission issued FirstEnergy Advisors Certificate No. 20-1468E (1) a year and a half ago, on April 23, 2020. FirstEnergy Advisors has been operating unlawfully for that period of time.

and aggregation services, as required by Ohio Adm. Code 4901:1-24-10(C)(1). *Id*. ¶ 25. It also found that the Commission failed to examine the employees that FirstEnergy Advisors proposed to share with its affiliated electric distribution utilities ("EDUs"), and whether the sharing complied with PUCO's corporate separation rules, as required by Ohio Adm. Code 4901:1-24-10(C)(2). *Id*. ¶¶ 26, 35, 38. The Court stated that the Commission, on remand, must determine whether FirstEnergy Advisors demonstrated that it could comply with corporate separation requirements "*before issuing a certificate*." Id., at ¶ 39 (emphasis original). Thus, FirstEnergy Advisors' current Certificate No. 20-1468E(1) is invalid.

In dicta, the Court remarked that the application could contain sufficient information for the Commission to be able, on remand, to explain how FirstEnergy Advisors met the requirements of Ohio Adm. Code 4901:1-24-10(C)(1) and (2). *Id*. ¶ 32. However, the application filed January 17, 2020, as supplemented on April 1, 2020, fails even to mention the qualifications of FirstEnergy Advisors' managers to provide service. Nor does it provide the manner in which its specific managers and employees are shared with FirstEnergy's EDUs, and whether the proposed sharing satisfies the corporate separation rules. Indeed, and unbeknownst to the Court, FirstEnergy Advisors' three managers have changed three times since the application was filed. Notices of these material changes in operations[2] do not provide any clue of the managers' fitness and capability to provide service, whether they are being shared with the FirstEnergy EDUs and, if so, whether the sharing complies with the Commission's corporate separation rules.

Because the Court has found FirstEnergy Advisors' certificate to be invalid, it currently is providing service in violation of R.C. 4928.08(B) and Ohio Adm. Code 4901:1-24-03(A). Its certificate must be rescinded or suspended immediately.

[2] The notices of material changes were filed in this docket on November 24, 2020; May 28, 2021; and August 27, 2021.

Because the existing record in this proceeding contains insufficient information to satisfy Ohio Adm. Code 4901:1-24-10(C)(1) and (2), the application must be dismissed.

Wherefore, pursuant to Ohio Adm. Code 4901-1-12, Northeast Public Energy Council ("NOPEC") moves this Commission to:

1. Rescind or suspend immediately FirstEnergy Advisors' invalid Certificate No. 20-1468E(1), issued April 23, 2020, to provide aggregation and power broker services in Ohio.
2. Order FirstEnergy Advisors to cease and desist offering, contracting and providing any form of CRES, including to its existing customers, until such time as the Commission may issue a valid certificate.
3. Order FirstEnergy Advisors to provide written notice to its existing customers that it no longer has authority to provide power broker and aggregation services in the State of Ohio.
4. Dismiss this proceeding and require FirstEnergy Advisors to file a new application, if it wishes to provide CRES in the future in this state, in a new proceeding in which the Commission must comply with the Supreme Court of Ohio's October 14, 2021 opinion in *FirstEnergy Advisors*.

The reasons supporting NOPEC's motion to intervene are contained in the accompanying Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On October 14, 2021, the Supreme Court of Ohio, in a unanimous decision, reversed the Commission's order issued in this proceeding on April 22, 2020 (the "Order").[3] The Order granted FirstEnergy Advisors a certificate to provide competitive retail electric service ("CRES") in this state as a power broker and aggregator. As explained below, the Court's decision invalidated the certificate, requiring that it be rescinded or suspended immediately. Moreover, this certification application must be dismissed, because the record in this proceeding does not contain the information required to re-issue the certificate on remand.

II. ARGUMENT

A. *The Court's decision invalidated FirstEnergy Advisors' certificate, requiring that it be rescinded or suspended immediately.*

A significant issue in this case was whether FirstEnergy Advisors had demonstrated that it was fit and capable of complying with all Commission rules, and particularly the Commission's

[3] See *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630 (October 14, 2021) ("*FirstEnergy Advisors*").

corporate separation rules,[4] as required by Ohio Admin. Code 4901:1-24-10(C)(2).[5] See *FirstEnergy Advisors*, at ¶¶ 12, 16, 18, 35, 38, 39. The Commission did not determine this issue. Instead, it deferred determination to a separate, pending case involving an audit of the FirstEnergy electric distribution utilities' ("EDUs") corporate separation plan, Case No. 17-974-EL-UNC (the "Audit Case"). *Id*., at ¶¶ 16, 35, 37.

In reversing the Commission, the Court cited to R.C. 4928.08[6] and found that:

> [A] company cannot provide competitive retail electric services to consumers 'without first being certified.' And to be certified, PUCO must find that an application is 'fit and capable of complying" with the commission's rules. Ohio Admin. Code 4901:1-24-10(C)(2).

Id., at ¶ 36. The Court found that the commission erred by not making this determination before certifying FirstEnergy Advisors. *Id*., at ¶38. It further made clear that "on remand, *before granting certification*" the commission must determine whether FirstEnergy Advisors is fit and capable of complying with the PUCO's corporate separation requirements. *Id*., at ¶ 39 (emphasis original). Thus, FirstEnergy Advisors currently does not have a valid certificate to operate and serve Ohio consumers.

Ohio Adm. Code 4901:1-24-03(A) provides:

> No person shall offer, contract, or provide a competitive retail electric service in this state without a valid certificate.

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[4] See R.C. 4928.17 and Ohio Admin. Code 4901:1-37.

[5] Ohio Admin. Code 4901:1-24-10(C)(2) provides that the Commission will not approve a CRES application unless it finds that the "applicant is managerially, financially, and technically fit and capable of complying with all applicable commission rules and orders."

[6] R.C. 4928.08(B) provides in part:

> No…electric services company…shall provide a competitive retail electric service to a consumer in this state…***without first being certified by the public utilities commission*** regarding its managerial, technical, and financial capability to provide that service…[Emphasis supplied.]

Because it lacks a valid certificate, it is unlawful for FirstEnergy Advisors to continue to "offer, contract, or provide" CRES in this state. *Id*. Accordingly, the Commission should rescind or suspend FirstEnergy Advisors' Certificate No. 20-1468E(1) immediately. It also should explicitly order FirstEnergy Advisors to cease and desist offering, contracting and providing any form of CRES, including to its existing customers, until such time as the Commission may issue a valid certificate. In addition, the Commission should order FirstEnergy Advisors to provide written notice to its current customers that it no longer is qualified to provide power broker and aggregation services in this state.

B. *This certification application must be dismissed, because the record in this proceeding does not contain the information required to re-issue the certificate on remand.*

In dicta, the Court remarked that the application could contain sufficient information for the Commission to be able, on remand, to explain how FirstEnergy Advisors met the requirements of Ohio Adm. Code 4901:1-24-10(C)(1) and (2). *Id*. ¶ 32. Even the most cursory review of the application, filed January 17, 2020 and supplemented on April 1, 2020, shows that sufficient information is lacking. Neither the application, nor its supplement, provide a biography of FirstEnergy Advisors' proposed managers, or even mention their qualifications to provide service, as required by Ohio Adm. Code 4901:1-24-10(C)(1). Nor does the application or its supplement examine FirstEnergy Advisors' manager's and employees' relationships with the FirstEnergy EDUs to satisfy the corporate separation rules, per Ohio Adm. Code 4901:1-24-10(C)(2). Indeed, FirstEnergy Advisors has changed managers and officers three times since the Commission issued it April 22, 2020 Order. The notices of these changes[7] provide no insight as to the current

[7] The notices were filed in this docket on November 24, 2020; May 28, 2021; and August 27, 2021.

managers', officers' and employees' fitness and capability to provide service, or their current relationships with the FirstEnergy EDUs.

Because the information on the record in this case obviously is insufficient for the Commission to find compliance with Ohio Adm. Code 4901:1-24-10(C)(1) and (2) on remand, this case must be dismissed. If FirstEnergy Advisors wishes to provide power broker and aggregation services in this state in the future, it must file a new certification application that meets the Court's standards as outlined in *FirstEnergy Advisors*.

In addition, the Court instructed the Commission to rule upon outstanding motions to compel FirstEnergy Advisors to answer discovery and to determine whether a hearing is required. *Id*. ¶¶ 41-43. Considering the changes in FirstEnergy Advisors' managers and officers since this application was filed, discovery requests and the motions to compel are outdated. Even if the motions were granted, the information provided would be incomplete and would not result in a complete and fair record. Discovery can be requested and a determination of whether a hearing should be held can be based upon the new application in a new proceeding, if filed.

III. CONCLUSION

For the foregoing reasons, NOPEC respectfully requests the Commission to:

1. Rescind or suspend immediately FirstEnergy Advisors' invalid Certificate No. 20-1468E(1), issued April 23, 2020, to provide aggregation and power broker services in Ohio.
2. Order FirstEnergy Advisors to cease and desist offering, contracting and providing any form of CRES, including to its existing customers, until such time as the Commission may issue a valid certificate.

3. Order FirstEnergy Advisors to provide written notice to its existing customers that it no longer has authority to provide power broker and aggregation services in this state.

4. Dismiss this proceeding and require FirstEnergy Advisors to file a new application, if it wishes to provide CRES in the future in this state, in a new proceeding in which the Commission must comply with the Supreme Court of Ohio's October 14, 2021 opinion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with O.A.C. 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing Motion was sent by, or on behalf of, the undersigned counsel to the following parties of record this 20th day of October 2021.

Dane Stinson

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Summary: Motion by Northeast Ohio Public Energy Council to Immediately Rescind or Suspend Suvon, LLC d/b/a FirstEnergy Advisors' Certificate To Provide Aggregation and Broker Services and Dismiss This Certification Case electronically filed by Teresa Orahood on behalf of Dane Stinson