

**BEFORE 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        ) Case No. 20-103-EL-AGG  
Service Power Broker and Aggregator in Ohio.      )  
  )

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**MOTION TO WITHDRAW THE CERTIFICATION APPLICATION OF SUVON, LLC  
D/B/A FIRSTENERGY ADVISORS AS A COMPETITIVE RETAIL ELECTRIC  
SERVICE POWER BROKER AND AGGREGATOR**

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Suvon, LLC d/b/a FirstEnergy Advisors (“FirstEnergy Advisors”) files this Motion to Withdraw the Certification Application of FirstEnergy Advisors as a Competitive Retail Electric Service Power Broker and Aggregator (“Motion”) in response to the Ohio Supreme Court’s recent decision in *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3360 (October 14, 2021) (“Supreme Court Order”), which (i) reversed the Public Utilities Commission of Ohio’s (“Commission”) order in the above-captioned proceeding granting FirstEnergy Advisors certification as a competitive retail electric service (“CRES”) power broker and aggregator (“Commission Order”), and (ii) remanded the matter to the Commission for further proceedings.

As explained in the Memorandum in Support, in light of the unprecedented and exigent circumstances surrounding the Supreme Court Order, the Commission should grant this Motion and allow FirstEnergy Advisors to continue advising its current customers until it can fulfill the terms of all existing customer contracts. In so doing, the Commission will (i) streamline compliance with the Supreme Court Order, (ii) remove the ambiguity and uncertainty created by the Supreme Court Order, (iii) insulate FirstEnergy Advisors’ current customers from any potential

harm, prejudice, or disruption, and (iv) promote greater transparency in the CRES certification process.

WHEREFORE, the FirstEnergy Advisors respectfully request that the Commission grant this Motion and permit FirstEnergy Advisors to continue advising its existing customers until it fulfills all legal duties owed to those customers under existing contracts.

Respectfully submitted,

/s/ N. Trevor Alexander

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    )

**MEMORANDUM IN SUPPORT**

The Supreme Court Order has created confusion and uncertainty surrounding, among other things, FirstEnergy Advisors’ existing customers. As a CRES power broker and aggregator that lawfully operated with a Commission-approved certificate for over eighteen months during the pendency of the Supreme Court appeal, FirstEnergy Advisors grew its business by entering into legally binding contracts with many customers. Unfortunately, however, there is a lack of guidance addressing the impact of the Supreme Court’s decision on FirstEnergy Advisors’ existing customer base. Consequently, in an effort to (i) streamline compliance with the Supreme Court Order, (ii) eliminate the confusion and uncertainty surrounding the Supreme Court Order, (iii) shield existing customers from further harm, disruption, or confusion, and (iv) foster greater transparency in CRES certification proceedings, the Commission should grant this Motion, withdraw FirstEnergy Advisors’ application for certification, and authorize FirstEnergy Advisors to continue advising existing customers until its existing customer contracts expire.

By way of background, on January 17, 2020, and as supplemented on April 1, 2020, FirstEnergy Advisors filed its application for certification as a CRES power broker/aggregator (“Certification Application”). On April 22, 2020, the Commission issued an order granting the Certification Application, thereby enabling FirstEnergy Advisors to solicit customers and actively

participate in the retail energy market as a certified CRES broker/aggregator (“Commission Order”). After the Commission denied applications for rehearing, two intervenors appealed the Commission Order to the Ohio Supreme Court. On October 14, 2021, the Supreme Court reversed the Commission Order and remanded to the Commission for further proceedings.

Importantly, between April 22, 2020, and October 14, 2021, FirstEnergy Advisors, as a Commission-certified CRES broker and aggregator, actively participated in the retail market and cultivated a customer base. The service to those existing customers has been called into question because there is no guidance addressing the impact of the Supreme Court’s decision on FirstEnergy Advisors’ existing customers. Consequently, the Supreme Court Order has generated confusion and uncertainty. Granting the Motion will extinguish that confusion and uncertainty, provide a clear path forward in compliance with the Supreme Court Order, insulate FirstEnergy Advisors’ existing customers from further prejudice, disruption, and confusion, and facilitate greater transparency in CRES certification proceedings.

Prior to the Supreme Court Order, the Supreme Court had never reversed a Commission order awarding CRES certification approval to an applicant. Accordingly, the legal and practical uncertainty created by the Supreme Court Order is unprecedented. Given these exigent circumstances, the Commission should grant the Motion and permit FirstEnergy Advisors to continue advising its existing customers until it can fulfill its contractual obligations to those customers. In so doing, the Commission will effectively treat FirstEnergy Advisors in the same manner as a suspended CRES certificate holder under Ohio Adm. Code 4901:1-24-13(B). Under Ohio Adm. Code 4901:1-24-13(A), the Commission may “suspend[] a CRES provider’s certificate”<sup>1</sup> for good cause shown. And if a CRES certificate is suspended, Ohio Adm. Code Ohio

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<sup>1</sup> Note that while Ohio Adm. Code 4901:1-24-13(B) refers to a “CRES provider’s certificate,” the term “CRES provider” is defined in Ohio Adm. Code 4901:1-24-01(J) as “a person or entity, under certification by the commission

Adm. Code 4901:1-24-13(B) explicitly permits the suspended CRES certificate holder to “continue to provide all services it is obligated to provide under contract to its existing customers” while also prohibiting advertising or contracting with new customers during the pendency of the suspension. Similarly, here, under these unique circumstances, the Commission should grant the Motion and enable FirstEnergy Advisors to continue advising its existing customers until its contractual obligations to those customers expire. Meanwhile, with FirstEnergy Advisors also moving to withdraw the Certification Application, FirstEnergy Advisors cannot (and will not) advertise, solicit, or contract with any new customers.

Granting this Motion and allowing FirstEnergy Advisors to continue advising existing customers is also supported by Commission precedent. In a complaint case titled *In the Matter of the Complaint of Buckeye Energy Brokers, Inc. v. Palmer Energy Company* (“Palmer”), the Commission dismissed a complaint alleging that Palmer Energy, an energy advisor/consultant that did not take title to power, was improperly operating in Ohio without the requisite CRES certification.<sup>2</sup> The Commission ruled in favor of Palmer Energy, finding that the services it provided were merely consulting and advisory services, not broker services that would necessitate certification.<sup>3</sup> Similarly, here, although FirstEnergy Advisors was previously certified as a broker or aggregator, the services FirstEnergy Advisors provides to existing customers are far more akin to those of a consultant or advisor. FirstEnergy Advisors does not take title to electricity, is not directly advising customers, and does not select or otherwise determine which supplier will serve customers. Accordingly, consistent with the precedent of *Palmer* and spirit of Ohio Adm. Code

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who supplies or offers to supply a CRES,” and the term “CRES” is defined in Ohio Adm. Code 4901:1-24-01(H) as “**includ[ing] the services provided by** retail electric generation providers, power marketers, **power brokers, aggregators,** and governmental aggregators.” (emphasis added).

<sup>2</sup> *In the Matter of the Complaint of Buckeye Energy Brokers, Inc. v. Palmer Energy Company*, Case No. 10-693-GE-CSS, 2011 Ohio PUC LEXIS 1183, Opinion and Order (Nov. 1, 2011).

<sup>3</sup> *Id.* at \*39-45.

4901:1-24-13(B), the Commission should grant the Motion and allow FirstEnergy Advisors to continue advising existing customers until it can fulfill all contractual obligations owed to its customers.

Furthermore, the Commission should grant the Motion in the interest of transparency. If the Motion is granted, FirstEnergy Advisors intends to file a new certification application in the near future. In doing so, FirstEnergy Advisors will squarely place its new certification application before the Commission for all stakeholders to thoroughly review and evaluate. Thus, filing a new CRES certification application will allow all parties and the Commission to create a more transparent certification process, without a cloud of uncertainty hanging over it, where FirstEnergy Advisors can demonstrate that it satisfies all relevant legal criteria to be certified as a CRES broker/aggregator consistent with the dictates of the Supreme Court Order. Filing a new CRES certification application will avoid any appearance of impropriety that may be associated with recently released text messages that suggest communication between FirstEnergy Corp.'s former CEO and the former PUCO Chair related to FirstEnergy Advisors' pending certificate. *See* Exhibit A attached. In sum, a fresh start serves the interests of everyone.

In conclusion, by granting the Motion and allowing FirstEnergy Advisors to continue advising existing customers until it fulfills its contractual commitments, the Commission will (i) streamline compliance with the Supreme Court Order, (ii) remove the confusion and uncertainty surrounding the Supreme Court Order, (iii) protect FirstEnergy Advisors' existing customers from the potential harm, disruption, or confusion created by the Supreme Court Order, and (iv) promote greater transparency in future CRES certification proceedings.

Respectfully submitted,

/s/ N. Trevor Alexander

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**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 2nd day of November 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

*/s/ N. Trevor Alexander* \_\_\_\_\_  
Attorney for Suvon, LLC d/b/a  
FirstEnergy Advisors



**Short Message Report**

Conversations: 1	Participants: 2
Total Messages: 1	Date Range: 3/3/2020

**Outline of Conversations**



**NODISPLAY** 1 message on 3/3/2020 • Charles Jones • Dennis Chack

**Messages in chronological order** (times are shown in GMT -04:00)

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**NODISPLAY**

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DC

**Dennis Chack**

3/3/2020, 11:23 AM

Any luck on talking with Sam on energy license we just received request for additional comments

## Short Message Report

Conversations: 1	Participants: 2
Total Messages: 5	Date Range: 3/4/2020

### Outline of Conversations

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**NODISPLAY** 5 messages on 3/4/2020 • Charles Jones • Dennis Chack

**Messages in chronological order** (times are shown in GMT -05:00)

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**NODISPLAY**

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**CJ Charles Jones** 3/4/2020, 2:57 PM

He will get it done for us but cannot just jettison all process. Says the combination of over ruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us? He'll move it as fast as he can. Better come up with a short term work around.

**DC Dennis Chack** 3:05 PM

Ok thanks for discussing with him. How are you feeling

**CJ Charles Jones** 3:09 PM

[REDACTED]  
[REDACTED] Stopped by Sam's today on my walk. He has friends down and has been busy but he was out doing some yard work. Walking about 3 miles a day right now. A little bored since I cant golf or even get in the pool. But better than sitting in Ohio. Weather has been beautiful last 3 days.

**DC Dennis Chack** 3:14 PM

It was not the best the days we were there

**CJ Charles Jones** 3:14 PM

I know. Pretty chilly and windy.

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**11/2/2021 4:19:44 PM**

**in**

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

Summary: Motion To Withdraw The Certification Application of Suvon, LLC d/b/a FirstEnergy Advisors As A Competitive Retail Electric Service Power Broker and Aggregator electronically filed by Mr. N. Trevor Alexander on behalf of Suvon, LLC