



August 10, 2020

David P. Zambito

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VIA E-FILE

EXPEDITED TREATMENT REQUESTED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: Application of Suvon LLC, d/b/a FirstEnergy Advisors, For Approval To Offer, Render, Furnish Or Supply Electricity Or Electric Generation Services As A Marketer/Broker In The Commonwealth Of Pennsylvania; Docket No. A-2020-3020377

Motion of Suvon LLC, d/b/a FirstEnergy Advisors, to Dismiss the Protest *Nunc Pro Tunc* of the Retail Energy Supply Association, and for Expedited Treatment

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") in the above-referenced matter is the Motion of Suvon LLC, d/b/a FirstEnergy Advisors ("Suvon") to Dismiss the Protest *Nunc Pro Tunc* of the Retail Energy Supply Association, and for Expedited Treatment.

Please note that Suvon requests expedited treatment of this Motion. The protest of the Retail Energy Supply Association was filed 50 days late and at a point when the Commission's Bureau of Technical Utility Services appeared to have been finalizing its review of Suvon's application. Prolonged consideration of the Motion would cause unreasonable delay in the processing of Suvon's application and Suvon's entry into Pennsylvania's competitive electric generation supply market.

Thank you for your attention to this matter. If you have any questions regarding this filing, please direct them to me.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for Suvon LLC, d/b/a FirstEnergy Advisors

August 10, 2020
Rosemary Chiavetta, Secretary

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DPZ/kmg
Enclosures

cc: Scott J. Casto, Esq.
Lee Yalcin (*Bureau of Technical Utility Services*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Suvon LLC, d/b/a FirstEnergy Advisors :
For Approval To Offer, Render, Furnish Or Supply :
Electricity Or Electric Generation Services As A : Docket No. A-2020-3020377
Marketer/Broker In The Commonwealth Of :
Pennsylvania

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Motion of Suvon LLC, d/b/a FirstEnergy Advisors, to Dismiss the Protest *Nunc Pro Tunc* of the Retail Energy Supply Association** upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

DUE TO THE COVID-19 PANDEMIC, SERVICE IS BEING MADE BY E-MAIL ONLY:

Todd S. Stewart
Bryce R. Beard
Hawke McKeon & Sniscak LLP
100 North Tenth Street
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tsstewart@hmslegal.com
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Counsel for *Retail Energy Suppliers
Association*



David P. Zambito, Esquire
Counsel for *Suvon LLC*
d/b/a FirstEnergy Advisors

Date: August 10, 2020

VERIFICATION

I, Scott J. Casto, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 8/10/2020

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned above a horizontal line.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Suvon LLC, d/b/a FirstEnergy :
Advisors, For Approval To Offer, Render, Furnish :
Or Supply Electricity Or Electric Generation Services : Docket No. A-2020-3020377
As A Marketer/Broker To the Public In The :
Commonwealth of Pennsylvania :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that you have twenty (20) days from the service of the enclosed “Motion of Suvon LLC, d/b/a FirstEnergy Advisors, to Dismiss the Protest *Nunc Pro Tunc* of the Retail Energy Supply Association” to file an answer to the motion. All pleadings, such as an answer, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Suvon LLC, d/b/a FirstEnergy Advisors.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

David P. Zambito (PA ID # 80017)
Jonathan P. Nase (PA ID # 44003)
Cozen O'Connor
17 North Second St., Suite 1410
Harrisburg, PA 17101

Dated: August 10, 2020



David P. Zambito, Esq.
Counsel for *Suvon LLC, d/b/a FirstEnergy
Advisors*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Suvon LLC, d/b/a FirstEnergy :
Advisors, For Approval To Offer, Render, Furnish :
Or Supply Electricity Or Electric Generation Services : Docket No. A-2020-3020377
As A Marketer/Broker To the Public In The :
Commonwealth of Pennsylvania :

MOTION OF SUVON LLC, D/B/A FIRSTENERGY
ADVISORS, TO DISMISS THE PROTEST *NUNC PRO
TUNC* OF THE RETAIL ENERGY SUPPLY ASSOCIATION,
AND FOR EXPEDITED TREATMENT

AND NOW COMES Suvon LLC, d/b/a FirstEnergy Advisors (“Suvon”), pursuant to 52 Pa. Code § 5.103, to request that the Pennsylvania Public Utility Commission (“PUC” or “Commission”) dismiss the Protest *Nunc Pro Tunc* (“Late Protest”) filed by the Retail Energy Supply Association (“RESA”) on August 4, 2020. RESA had constructive notice of Suvon’s application for a license to be an electric generation supplier, as a broker/marketer, throughout the Commonwealth of Pennsylvania (the “Application”) based on the legal advertisements it published in seven newspapers throughout the Commonwealth. Moreover, the Late Protest was filed well after the deadline for filing a protest. Under these circumstances, there is no basis for the Commission to waive that deadline. Consequently, the Commission should expeditiously dismiss the Late Protest.

In support whereof, Suvon avers as follows:

I. PROCEDURAL HISTORY

1. On May 21, 2020, Suvon filed the Application.

2. Suvon subsequently filed proof that notice of its Application had been published in the following newspapers on the dates shown:

Newspaper	Date of Publication
Erie Times	May 29, 2020
Harrisburg Patriot-News	May 24, 2020
Johnstown Tribune-Democrat	May 27, 2020
Philadelphia Daily News	May 26, 2020
Pittsburgh Post-Gazette	May 22, 2020
Scranton Times	May 27, 2020
Williamsport Sun Gazette	May 29, 2020

3. Pursuant to 52 Pa. Code § 54.36, protests are due within fifteen days of the date notice of the application is published in newspapers. Using the latest date of publication, protests to Suvon’s Application were due by Monday, June 15, 2020.

4. On June 15, 2020, the Secretary of the Commission issued a letter to Suvon acknowledging receipt of the Application. The letter further acknowledged that 52 Pa. Code § 54.37 states that the Commission will process unprotested applications within forty-five days of being accepted by the Commission (in this case, by Wednesday, July 30, 2020). The Secretarial Letter, however, indicated that this deadline was waived.

5. RESA filed its Late Protest on Tuesday, August 4, 2020 (*i.e.*, 50 days after it was due and beyond the date upon which the Commission would normally act upon an application).

II. THE LATE PROTEST SHOULD BE DISMISSED

6. Suvon published newspaper advertisements in seven newspapers across the Commonwealth as required by the Commission. This legal advertisement gave RESA and its members constructive notice of the Application. As the Commission stated in *Interim Guidelines Regarding Notification by an Electric Generation Supplier of Operational Changes Affecting*

PUC LEXIS *25 (emphasis added):

Accordingly, an EGS must provide *constructive notice* to the customer service class *by publication in local newspapers* no later than 30 days prior to closing a service class to new customers. An EGS would not be required to provide such notice to a class if it had not previously provided service to a member of that class, or had not marketed its service to members of that class. *This notice must be published in the same newspapers in which notice of the filing of the EGS's licensing application appeared.*

RESA cites no precedent for the Commission to waive a deadline when a party has constructive notice of an application. The Commission should not establish such a precedent here because it would completely undermine the reason for requiring applicants to incur the expense of publishing newspaper advertisements in seven newspapers throughout the Commonwealth.

7. This is not a case in which a pleading was late by a day or two. RESA's Late Protest was filed *fifty days* after the deadline. RESA alleges that it did not become aware of the Application until on or about July 30, 2020, Late Protest ¶ 3. Yet, RESA offers no reasonable explanation as to why it or any of its members (sophisticated electric generation suppliers that operate throughout the Commonwealth) became aware of the application only upon that date. In any event, the date on which RESA actually became aware of the Application is irrelevant because, as discussed above, it had constructive notice of the Application as of the date it was published. PUC regulations provide that protests were due by June 15 and the Commission should have decided the unprotested application by July 30, 2020 (but the Commission waived that deadline as soon as the Application was accepted). Allowing a protest to be filed *nunc pro tunc* fifty days late is contrary to the public interest because it would encourage potential protestants to delay filing their protests.

8. RESA's Late Protest alleges that RESA did not become aware of the Application until on or about July 30, 2020. Late Protest ¶ 3. This unverified allegation is not credible. RESA

should have known that the Application would be filed and should have been looking for it, considering that RESA was a party to *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 (April 22, 2020) (in which the Public Utilities Commission of Ohio rejected similar arguments from RESA made in an attempt to prevent Suvon from obtaining a certificate as a competitive retail electric power service broker and aggregator in Ohio), attached as **Exhibit 1**. In any event, as discussed above, this allegation is irrelevant since RESA had constructive knowledge of the Application in May 2020.

9. In some previous cases in which a party filed a pleading late, and asked the Commission to accept the pleading *nunc pro tunc*, the Commission granted the request because it found good cause for the late filing. *See, e.g., Starr v. PECO Energy Company*, Docket No. C-2015-2516061 (Opinion and Order entered September 1, 2016) (holding that a party who was not served with Exceptions was permitted to file Replies to Exceptions *nunc pro tunc*); *Ingham v. PECO Energy Company*, Docket No. C-2016-2579564 (Opinion and Order entered Apr. 10, 2018) (same); *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Bill Rohrbaugh's Charter Service, Inc.*, Docket No. C-2014-2456403 (Opinion and Order entered Dec. 21, 2017) (permitting a party who was not served with a Petition for Rescission to file an Answer *nunc pro tunc*). RESA does not have good cause for failing to timely file a protest when it had constructive notice of the Application.

10. In some prior cases in which a party requested that the Commission accept a late-filed document *nunc pro tunc*, the Commission considered the request pursuant to 52 Pa. Code § 1.15(a)(1), which permits the Commission to extend the period for filing a document when a motion is filed after the expiration of the relevant period, if reasonable grounds are shown for the

failure to act. *See, e.g., Cortez v. PECO Energy Co.*, Docket No. C-2014-2410180 (Opinion and Order entered September 15, 2016) (finding that an administrative oversight was not reasonable grounds for failing to file Exceptions timely); *Kopanycia v. PECO Energy Co.*, Docket No. C-2016-2526619 (finding that an administrative oversight was reasonable grounds for failing to file Exceptions timely). RESA did not have good cause for failing to file a timely protest because it had constructive notice of the Application yet failed to file a timely protest.

11. RESA argues that the Commission should accept its Late Protest pursuant to 52 Pa. Code § 1.2(c), which provides (in pertinent part): “The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.” Waiver of the deadline for filing a protest is not necessary or appropriate in this case for the reasons discussed in Paragraphs 6-10 above.

12. In addition, waiver of the deadline is not necessary or appropriate in this case because RESA is a sophisticated organization, as is each of its members. RESA frequently participates in Commission proceedings and is represented by experienced regulatory counsel. It is, or should be, aware of the deadline for filing a protest.

13. Furthermore, waiver of the deadline is not necessary or appropriate in this case because 52 Pa. Code § 1.1(a) states, in pertinent part: “This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable.” Allowing a party with constructive notice of the Application to file a protest *nunc pro tunc* at this late date would not be just because it would essentially read the filing deadline out of the regulations. Waiving the deadline in this case would also harm Suvon’s competitive interests by unduly delaying its receipt of a license and its entry into the marketplace. The

Commission should view RESA's Late Protest for what it is: a concerted effort by competitors to delay and disrupt the business plan of Suvon and limit the expansion of the competitive retail market in the Commonwealth.

14. Waiving the deadline for filing a protest in this case would not promote the speedy or inexpensive determination of this proceeding. The staff of the Bureau of Technical Utility Services ("TUS") is currently reviewing the Application and should be almost done with its review. According to 52 Pa. Code § 54.36(c), protests are to be reviewed by TUS staff. If they determine that the protest (a) fully complies with 52 Pa. Code § 5.52(a), (b) sets out clearly and concisely the facts upon which the challenge to the fitness of the applicant is based, and (c) is sufficiently documented, TUS staff is to transfer the Application to the Office of Administrative Law Judge ("OALJ") for hearings or mediation. Referring the Application to OALJ for hearings at this point will certainly make this proceeding longer and more expensive for the parties and the Commission.

15. Waiving the deadline to allow RESA to participate in this case is not necessary or appropriate because TUS staff is perfectly capable of reviewing the Application. TUS staff can protect the public interest by determining whether Suvon is technically and financially fit. In fact, the data requests already issued by TUS demonstrate that TUS staff is considering the technical and financial fitness of Suvon. The public interest does not require waiving the Commission's regulations to permit another party to enter this case to raise those same issues.

16. Waiving the deadline to allow RESA to participate in this case is not necessary or appropriate because most of the issues RESA seeks to raise are beyond the scope of an application proceeding, which is limited to the technical and legal fitness of the applicant. 52 Pa. Code § 54.36(b). RESA purports to be concerned about issues posed by the alleged relationship between

Suvon and “its parent [electric distribution company (“EDC”)] FirstEnergy Corp.” Late Protest ¶ 8. Even RESA admits that these issues are beyond the scope of an application proceeding. Late Protest p. 4 n. 3.

17. Waiving the deadline to allow RESA to participate in this case is not necessary or appropriate because most of the issues RESA seeks to raise are not even presented in this case. RESA incorrectly alleges that FirstEnergy Corp. is an EDC. For example, RESA alleges “First, the application makes no indication of how FirstEnergy Advisors intends to alleviate customer confusion regarding the quality of service as it markets using a name shared with the electric distribution company, FirstEnergy Corp.” Late Protest ¶ 19. This issue, like most of the other issues that RESA attempts to raise, is addressed simply by acknowledging that the pertinent electric distribution companies in Pennsylvania are Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company.

18. 52 Pa. Code § 5.52(a)(3) requires a protest to set forth facts establishing the protestant’s standing. An association may have standing as a representative of its members. *Tripps Park v. Pa. Pub. Util. Comm’n*, 52 Pa. Cmwlth. 317, 415 A.2d 967, 970 (1980). However, RESA fails to allege any facts establishing that it, or any of its members, have standing to challenge RESA’s technical or financial fitness.

19. RESA speculates that the Application may harm consumers, Late Protest ¶ 4, and ratepayers of FirstEnergy Corp.’s electric distribution companies, Late Protest ¶¶ 8 and 25, but RESA lacks standing to advance the interest of other parties. *George v. Pa. Pub. Util. Comm’n*, 735 A.2d 1282 (Pa. Cmwlth. 1999); *Coggins v. PPL Electric Utilities Corporation*, Docket No. C-2012-2312785 (Opinion and Order entered June 13, 2013).

20. RESA makes vague allegations about the Application's implications for the competitive market, Late Protest ¶¶ 3, 4, 6, 8, 9, 18, 23 and 24, and asserts that RESA has standing to bring this protest in the public interest and in furtherance of RESA's organizational goals of promoting fair and competitive energy markets. Late Protest ¶ 6. The Commission should reject these arguments because RESA filed a protest, not an intervention. Compare 52 Pa. Code § 5.72(a)(3) (allowing a person to intervene where it has such an interest as to make its participation "in the public interest") with 52 Pa. Code § 5.52(a)(3) (requiring a protest to include facts demonstrating the protestant's standing). It is well-established in Pennsylvania that standing means demonstrating a direct, substantial and immediate interest in the proceeding. *William Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). RESA's unverified assertions about its interests in Suvon's technical and financial fitness fall far short of meeting this standard.

21. RESA speculates that competitive suppliers may be somehow harmed if the Application is approved because Suvon is ultimately owned by the same entity that owns several Pennsylvania EDCs. Late Protest ¶¶ 14-25. This speculation is insufficient to confer standing to challenge the Application. RESA and its members would be able to file a complaint at a later date if they ever obtain actual facts supporting a claim that they were harmed because Suvon failed to comply with a Commission regulation.

22. The Commission should see the Late Protest for what it really is: a competitive protest, which is forbidden by the PUC's regulations. 52 Pa. Code § 54.36(b).

III. REQUEST FOR EXPEDITED TREATMENT

23. Suvon respectfully requests that the Commission expedite its consideration of this motion to dismiss the Late Protest. The facts and the law are clear: RESA had constructive notice of the filing of the Application; RESA missed the deadline for filing a protest by fifty days; RESA failed to plead facts to establish its standing to protest the Application; and, RESA seeks to raise issues that are beyond the scope of an application proceeding. If this motion is not promptly granted, RESA will have successfully delayed the entry of another competitor into the Pennsylvania electric generation supply market by potentially several months (or longer). Consequently, the Commission should expeditiously dismiss the Late Protest.

IV. CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for all of the foregoing reasons, Suvon LLC, d/b/a FirstEnergy Advisors, respectfully requests that the Pennsylvania Public Utility Commission expeditiously dismiss the Protest *Nunc Pro Tunc* filed by the Retail Energy Supply Association on August 4, 2020 (*i.e.*, 50 days after protests were due).

Respectfully submitted,

COZEN O'CONNOR



David P. Zambito, Esq. (PA ID # 80017)

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Counsel for *Suvon LLC, d/b/a FirstEnergy Advisors*

Date: August 10, 2020

Exhibit 1

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, OCC¹ 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

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 its response 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