

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Suvon LLC, d/b/a FirstEnergy	:	
Advisors, for Approval to Offer, Render, Furnish	:	A-2020-3020377
Or Supply Electricity or Electric Generation	:	
Services as a Marketer/Broker in the	:	
Commonwealth of Pennsylvania	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision approves a joint petition for settlement in its entirety without modification because it is in the public interest and supported by substantial evidence. The settlement complies with Commission regulations regarding licensing of electric generation suppliers and is consistent with Commission regulations promoting settlements. The application will be transferred to the Commission’s Bureau of Technical Utility Services as an uncontested application.

HISTORY OF THE PROCEEDING

On May 21, 2020, Suvon LLC, d/b/a FirstEnergy Advisors (Suvon) filed with the Pennsylvania Public Utility Commission (Commission) an application for approval to offer, render, furnish or supply electricity or electric generation services as broker/marketer to the public in the Commonwealth of Pennsylvania (application). The application was docketed by the Commission at A-2020-3020377. In its application, Suvon stated, among other things, that it will help customers of all classes evaluate their energy needs and facilitate the selection of a

retail supplier. Suvon added that it will serve as a consultant to customers by gathering data, interfacing with retail suppliers and helping customers review their options. Suvon also added that it will advise on market trends, price and risk associated with various options, energy efficiency opportunities, understanding utility tariffs and help coordinate the contract renewal process. Suvon provided extensive detail regarding the service it seeks to supply and attached multiple documents to its application. On June 10, 2020, Suvon provided proof of publication to various newspapers of general circulation.

On August 4, 2020, the Retail Energy Supply Association (RESA) filed a protest *nunc pro tunc* in response to the application. In its protest, RESA averred, among other things, that Suvon lacks the technical fitness to maintain Commission consumer protection and competitive market safeguards and lacks the financial fitness to function without unjust subsidization from its parent FirstEnergy Corporation. RESA requested that the proposed application be denied. RESA added that it only became aware of Suvon's application on or about July 30, 2020 and requested that the Commission allow the consideration of its protest *nunc pro tunc* to "address the important consumer protection and competitive safeguard concerns raised in this protest."

On August 10, 2020, Suvon filed a motion to dismiss the protest filed by RESA as untimely arguing that RESA had 15 days from the date of publication of notice to file its protest which would be no later than June 15, 2020. On August 20, 2020, RESA filed an answer to Suvon's motion to dismiss. In its answer, RESA argued that it was delayed in submitting its protest due to the Covid-19 pandemic.

On September 1, 2020, the Commission issued a hearing notice setting an initial call-in telephonic hearing for this matter for Tuesday, October 13, 2020 and assigning me as the presiding officer. A prehearing order dated September 15, 2020 was issued setting forth various rules that would govern the hearing.

Suvon's motion to dismiss RESA's protest was denied by order dated September 10, 2020.

On September 24, 2020, Suvon filed an unopposed motion for a protective order. That motion was granted by order dated October 6, 2020.

By email on October 6, 2020, the parties indicated that they had reached a settlement in principle and requested that the procedural schedule be suspended. That request was granted informally by email on October 6, 2020 and a hearing notice was issued formally cancelling the hearing scheduled for October 13, 2020.

On October 16, 2020, Suvon and RESA submitted a joint petition for approval of settlement of all issues. Attached to the settlement were the following documents: Joint Stipulation of Fact (Attachment A), Suvon's Proposed Findings of Fact (Attachment B), Suvon's Proposed Conclusions of Law (Attachment C), Proposed Ordering Paragraphs (Attachment D), Statement in Support of Suvon LLC, d/b/a First Energy Advisors (Attachment E) and Statement in Support of The Retail Energy Supply Association (Attachment F). In addition, the parties requested in the settlement that official notice be taken of the application filed by Suvon on May 21, 2020. The application will be admitted into the record *sua sponte* and identified as Exhibit ALJ-1.¹

The record in this case closed on October 16, 2020 when the settlement was submitted for approval. For the reasons discussed below, the joint stipulation of fact will be approved, Suvon's application filed May 21, 2020 will be admitted into the record and the settlement will be approved in its entirety without modification because it is in the public interest and supported by substantial evidence. The application will be transferred to the Commission's Bureau of Technical Utility Services as an uncontested application.

¹ As copies of the application have already been submitted to the Commission's Secretaries Bureau for inclusion in the official file, and in light of the ongoing Covid-19 pandemic, the parties will not be directed to submit additional copies of the application as part of this Initial Decision.

FINDINGS OF FACT

Attached to the settlement as Attachment B is Suvon's proposed findings of fact. The settlement indicates that RESA did not join or oppose the proposed findings of fact. Suvon's proposed findings of fact will be approved as part of this decision and are set forth verbatim as follows:

THE PARTIES

1. Suvon LLC, d/b/a FirstEnergy Advisors is an Ohio limited liability company. Corrected Registration of Fictitious Name; Stipulation of Fact ¶ 1.

2. RESA is a trade organization of retail energy suppliers of electricity and/or natural gas dedicated to promoting efficient, sustainable, and customer-oriented competitive retail energy markets. Stipulation of Fact ¶ 2.

SUVON'S CORPORATE STRUCTURE

3. Suvon is directly and wholly owned by FirstEnergy Corp. Application Attachment 7b Summary Organizational Chart.

4. Suvon has numerous affiliates, including several jurisdictional public utilities, but FirstEnergy Corp. is not a Pennsylvania electric distribution company. Application pp. 3-4.

5. Suvon is legally and operationally distinct from FirstEnergy Corp. and its affiliates. Neither FirstEnergy Corp. nor any of its affiliates play a role in the day-to-day operations of Suvon. Joint Stipulation of Fact ¶ 5.

SUVON'S APPLICATION

6. Suvon applied for authority to operate as an electric broker/marketer in Pennsylvania. Application p. 4.

7. Suvon's Application is complete. Secretarial Letter dated June 15, 2020.

8. Suvon is not presently operating as a broker/marketer in Pennsylvania. It will start operations in Pennsylvania if the Application is approved. Application pp. 4 and 5.

9. Suvon proposes to provide services throughout the Commonwealth to residential, small commercial, large commercial, industrial and governmental customers (except mixed meter customers). Application p. 5.

10. Suvon described its proposed services in the Application as follows:

As a broker, Suvon, LLC d/b/a FirstEnergy Advisors ("FE Advisors") will help customers of all classes evaluate their energy needs and facilitate the selection of retail suppliers. FE Advisors will serve as a consultant to customers, gathering data, interfacing with retail suppliers and helping customers review their options. FE Advisors will advise on market trends, price and risk associated with various options, energy efficiency opportunities, understanding utility tariffs and help coordinate the contract and renewal process.

Application p. 5.

11. Suvon will not be taking title to the electricity, nor will it be making payments for customers. Application p. 4.

12. On page 9 of the application form, an applicant for a broker's license is asked to provide information about the broker's payment structure. Suvon stated that it "will engage in contracts with suppliers for payment of our services. Generally, suppliers pay brokers based on a cent/kWh that the customer has used and paid for." Application p. 9.

SUVON'S FINANCIAL FITNESS TO OPERATE AS AN ELECTRIC BROKER/MARKETER

13. Page 9 of the application form instructs the applicant to provide sufficient information to demonstrate financial fitness commensurate with the service proposed to be provided. It lists examples of information that may be submitted. An actual or proposed organizational structure may be submitted to prove financial fitness. Suvon submitted a summary organizational structure that demonstrates Suvon is directly and wholly owned by its ultimate corporate parent, FirstEnergy Corp. Application, Attachment 7b.

14. As additional evidence of financial fitness, the application form states that the applicant may provide an internet address where its parent company's financial and credit information may be found. Suvon provided an internet link to FirstEnergy Corp.'s filings with the United States Securities and Exchange Commission. Application p. 9.

15. As further evidence of financial fitness, the application form states that the applicant may provide evidence of its credit rating. Suvon submitted a credit report as a **CONFIDENTIAL** attachment to the Application. Application Attachment 7b.

16. As additional evidence of financial fitness, the application form states that the applicant may provide audited financial statements. In response to a TUS data request, Suvon explained that its financial statements are not audited. It also stated: "Suvon does not take title to power consumed by customers, and does not anticipate any financial obligations to customers, electric generation suppliers, jurisdictional public utilities or PJM associated with the services Suvon intends to provide." Answer to TUS Data Request Set I No. 2.

17. Suvon also submitted unaudited financial statements as a **CONFIDENTIAL** attachment in response to TUS's data requests. Attachment to Answer to TUS Data Request Set I No. 2.

18. As further evidence of financial fitness, the application form states that the applicant may provide any other information that demonstrates its financial fitness. Suvon submitted forecasted financial statements as a **CONFIDENTIAL** attachment to the Application. Application, Attachment 7b.

19. Page 10 of the application form requests that an applicant provide a tax certification statement as further evidence of its financial fitness. Suvon attached a copy of its tax certification statement as a **CONFIDENTIAL** attachment to the Application. Application, Attachment 7f.

20. Attachment 2b-1 of the Application is the Limited Liability Company Operating Agreement of Suvon. Section 3.1 of that agreement states that FirstEnergy Corp. agrees to contribute to Suvon such cash, property or services as determined by FirstEnergy; FirstEnergy has no obligation to make capital contributions. Suvon is to finance its operations independently of FirstEnergy and without FirstEnergy's financial support. Application Attachment 2b-1 p. 2.

21. Suvon is financially independent of any Pennsylvania public utility. Joint Stipulation of Fact ¶ 20.

22. Suvon is a member of FirstEnergy Corp.'s unregulated money pool, which is set up to provide short-term capital requirements for participating companies. A money pool is a common cash management structure used in a variety of businesses, especially large utilities and utility holding companies. The unregulated money pool is separate and distinct from the utility money pool because regulatory requirements prohibit the cross-lending of funds from utilities to competitive entities. Joint Stipulation of Fact ¶ 21.

SUVON'S TECHNICAL FITNESS TO OPERATE AS AN ELECTRIC BROKER/MARKETER

23. Section 8 of the Application requests information about the technical fitness of the applicant. This information may include information regarding the applicant's previous experience in the electric industry. Suvon stated: "Current staff members have over 90 years of combined history in the electric and energy market. In the past 10 years, this group has focused on retail markets and has sold electric contracts to large, medium and small industrial and commercial customers." Attachment 8a, p. 2. Suvon further stated that its staff "has sold contracts to over 3 million residential customers via municipal aggregation and mail and web-based mass marketing [in] Ohio and Pennsylvania. While Pennsylvania does not participate in municipal aggregation, we worked with agents in Pennsylvania who offered chamber programs and programs for various boroughs." Id.

24. The application form also asks the applicant to identify its chief officers and include their resumes. Suvon attached the resumes of two of its officers (Brian A. Farley and Lorraine M. Rader), which demonstrate that these individuals have extensive experience in the electric industry. Application Attachment 8e.

25. As evidence of technical fitness, the application form states that an applicant may submit a summary and proof of licenses as a supplier of electric services in other states. Suvon submitted proof that it is certified as a Competitive Retail Electric Service Provider in Ohio. Application, Attachment 8a.

26. After submitting its Application, Suvon received its certificate for electric and gas aggregation services in Virginia. Joint Stipulation of Fact ¶ 4.

27. As further evidence of technical fitness, the application form states that an applicant may submit staffing structure and numbers as well as employee training commitments. Suvon provided an anticipated organization chart for employees working on behalf of Suvon. Application, Attachment 8a. p.2. It further stated:

Proposed Team

- Sales Consultant Energy Sales - Energy expertise in gas and electric, someone who has done energy audits, worked with customers and sold in past. Technical energy expert
- Sales Manager/Consultant Energy Sales - National account, large account sales' rep to manage industrial, commercial sales opportunities
- Sales Rep V - Sales specialist who creates and manages SMI sales team. Will be senior sales' expert and will know where to target, what technology to use and have a history of field sales creation success. Will also develop technology to obtain customers in residential channel.
- Sales Reps (2) - Sales' rep versed in selling to medium and potentially large commercial and industrial customers
- Analyst - lower level analyst trained to keep track of group activity, margin earned and expenses
- Training
 - Sales' Rep training is ongoing. Training in energy efficiency programs and resources has been developed. Call center training has been provided to our inhouse call center. Staff has attended and plans to continue to attend industry seminars including the MEC. Sales will also work with regulatory group to make sure that sales work is within rules and guidelines provided by the Pennsylvania Public Utility Commission.
 - External training - 2 sales reps intend to become certified energy managers in 2020.

Attachment 8a pp. 2-3.

28. FirstEnergy Corp. adopted 52 Pa. Code § 54.122 (“code of conduct”) as company policy. As part of this effort, annual training is provided for employees regarding the Commission’s code of conduct. Joint Stipulation of Fact ¶ 16.

29. As further evidence of technical fitness, the application form states that an applicant may submit business plans for operations within the Commonwealth. Suvon submitted the following business plan:

Within the Commonwealth, Suvon intends to provide fee-based energy broker/consulting services to customers who would like assistance in procuring electricity. We would:

- Serve as trusted advisors bringing energy expertise, brand name, relationship history and field experience to customers to negotiate best prices, terms and conditions for customer energy and product needs
- Develop direct client base of Commercial and Industrial customers who will hire FirstEnergy Advisors as their representative
- Develop Small, Medium Commercial/Industrial field sales team that can sell procurement services
- Develop website for sales brokering
- Develop a non-biased supplier base who will bid on customer load such that customer and supplier are positioned for success
- Continually monitor marketplace and develop product and sales expertise to meet customer needs
- Proactively meet sales goals in short, medium and long-term time horizons
- Evaluate and recommend partnering opportunities to grow business and improve services

Application, Attachment 8a, pp. 3-4.

SUVON IS WILLING AND ABLE TO COMPLY WITH THE PENNSYLVANIA PUBLIC UTILITY CODE, THE COMMISSION’S REGULATIONS AND ORDERS

Suvon will not Receive a Preference from any Pennsylvania Electric Distribution Company

30. Suvon has agent agreements in place with several suppliers. Suvon sends out customer load for bid and suppliers return price, terms and conditions of sale. Suvon compares prices and terms to present to customers. Suvon makes recommendations based on what it believes are the best price, term and conditions for the customer. The customer ultimately chooses the supplier and product that best suites its needs. Suvon does not prefer one supplier over another. The winning supplier and the customer agree to a contract. Joint Stipulation of Fact, ¶ 7.

31. Suvon does not have an affiliate that is a retail generation supplier. As a result, there is no incentive for a supplier to give Suvon any preference. Joint Stipulation of Fact ¶ 9.

Suvon will not Share Customer Information with any Affiliates

32. Suvon will obtain its own customer information. Joint Stipulation of Fact ¶ 11.

33. Although Suvon's offices are located in the same building as the offices of FirstEnergy Corp., the Suvon sales team is located in a separate, remote space where access is restricted. Joint Stipulation of Fact ¶ 6.

34. Suvon maintains all customer-specific information in a dedicated database or system, accessible only by certain employees and protected by corporate-approved cybersecurity tools. Joint Stipulation of Fact ¶ 12.

35. Employee access to information and information systems is restricted based on Federal Energy Regulatory Commission ("FERC") employee classification. Sales or customer-facing services will be performed by individuals classified as marketing function employees working on behalf of Suvon. Employees with market employee classifications do not have access to transmission or distribution systems, facilities, or related information. Marketing and regulated employees do not have access to each other's market useful information systems. The access restriction is ensured through a limitation on both physical access and information technology access. Access is consistently reviewed and monitored in accordance with FirstEnergy corporate policy. Joint Stipulation of Fact ¶ 13.

36. Employees working on behalf of Suvon are classified as market function employees. As such, these employees do not have access to transmission or distribution information, including customer data. If an employee begins a new position with a new

classification, an internal process is initiated that includes the wiping of the employee's computer and files to ensure information is not shared. Joint Stipulation of Fact ¶ 14.

37. Any customer information obtained from a Pennsylvania electric distribution company will be requested after obtaining the appropriate authorization from the customer. Joint Stipulation of Fact, ¶ 8.

Shared Services Costs will be Allocated to Suvon

38. FirstEnergy Service Company provides typical shared services, such as human resources, accounting, information technology, fulfillment and legal to various FirstEnergy Corp. subsidiaries, including Suvon. Joint Stipulation of Fact ¶ 25. The use of shared employees is permitted by the Pennsylvania affiliate restrictions. *Id.* ¶ 24.

39. Shared service employees bill and account for their time appropriately when supporting Suvon. Allocation is done based on which entity a service company employee is serving. If a shared service employee works for an hour for Suvon, the time is charged directly to Suvon. If a service company employee is working on a specific project, any time spent on that project is allocated to that project. Joint Stipulation of Fact ¶ 23.

40. Suvon does not share any costs or functions with FirstEnergy Corp. or any FirstEnergy Corp. subsidiaries. Suvon will rely on and properly allocate costs for typical shared services according to FirstEnergy Corp.'s Cost Allocation Manual ("CAM"). The CAM prescribes the appropriate methodologies for allocating costs. Joint Stipulation of Fact ¶ 23.

Marketing

41. Section 8 of the application form asks the applicant to disclose its proposed marketing methods. Suvon checked the following boxes:

- Internal – Applicant will use its own internal resources for marketing

- External EGS – Applicant will contract with a PUC LICENSED EGS broker/marketer
- Affiliate – Applicant will use a NON-EGS affiliate marketing company and or individuals
- External Third-Party – Applicant will contract with a NON-EGS third party marketing company and or individuals

Application p. 10.

42. Suvon further indicated that it does not expect to implement door to door sales activities. Application p. 11.

43. Section 8 of the application form asks the applicant to explain all methods it will use to ensure all marketing is performed in an ethical manner, for both employees and subcontractors. Suvon stated:

FirstEnergy Advisors' marketing will be done via phone, web, face to face and possibly mail. Eventually, FirstEnergy Advisors may engage a sales force to cover more territory to work the medium sized commercial/industrial customer base. This would be a direct customer contact sales force and may be outsourced.

FirstEnergy Advisors' process is to review its marketing material with our internal Communications group who then sends this material to our Legal department. All material is thoroughly reviewed for compliance with all Pennsylvania rules and regulations.

Before FirstEnergy Advisors considers using any outside contractor for service, an RFP will be developed and our internal vendor management team will qualify that vendor based on approval of qualifications. If FirstEnergy Advisors does engage outside contractors to handle small commercial/industrial channel customers, we would develop training process documents and require contractors to supply reports of training sessions and quality scoring. Any field training material will be vetted through Communications and Legal teams. FirstEnergy Advisors will supply training materials and face to face training. We would evaluate quality scoring from field and would record sessions and outcomes. We would also accompany any field sales group on a random basis to confirm report results.

Application p. 11.

44. Suvon's marketing materials include an affiliate disclaimer. Joint Stipulation of Fact ¶ 19.

45. LegalC-2020-3016290 staff is included in the process of developing marketing materials and will ensure compliance with the Code, the Commission's regulations and orders, including but not limited to 52 Pa. Code § 54.122. Joint Stipulation of Fact ¶ 17.

46. On page 12 of the Application, Suvon agreed to the following:

STANDARDS OF CONDUCT AND DISCLOSURE: As a condition of receiving a license, Applicant agrees to conform to any Uniform Standards of Conduct and Disclosure as set forth by the Commission. Further, the Applicant agrees that it must comply with and ensure that its employees, agents, representatives, and independent contractors comply with the standards of conduct and disclosure set out in Commission regulations at 52 Pa. Code § 54.43, as well as any future amendments.

THE FINANCIAL SECURITY REQUIREMENT SHOULD BE REDUCED FOR SUVON

47. Suvon checked the box on page 8 of the Application indicating that, as an applicant for broker/marketer authority, it was requesting a reduction of the \$250,000 bond requirement because it will not take title to electricity and will not pay electricity bills on behalf of customers. Suvon also submitted a \$10,000 bond to the Commission. Application Attachment 7a (**CONFIDENTIAL**).

48. The purpose of the bond is to ensure the licensee's financial responsibility, the payment of gross receipts tax, and the supply of electricity at retail in accordance with contracts, agreements or arrangement. 52 Pa. Code § 54.40(b).

49. Suvon will be paid a fee by suppliers for assisting customers in procuring electricity. Application p. 9 and Attachment 8a p. 3. Consequently, there is little risk to customers or suppliers if Suvon faces financial challenges.

DISCUSSION

Legal Standard

In 1996, the Pennsylvania General Assembly passed the Electricity Generation Customer Choice and Competition Act (the Act), 66 Pa.C.S. § 2801, *et seq.* Among other things, the purpose of the Act was to move toward greater competition in the electricity generation market. 66 Pa.C.S. § 2802(3). Relevant to this case is Section 2809 of the Act which provides requirements for the licensing of electric generation suppliers (EGSs). Section 2809 provides, in pertinent part:

(a) License requirement.-- No person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers, marketers, aggregators and other entities, shall engage in the business of an electric generation supplier in this Commonwealth unless the person or corporation holds a license issued by the commission.

66 Pa.C.S. § 2809(a). Section 2809 further provides additional detail regarding the license application and issuance as well as matters regarding the form of regulation of EGSs. 66 Pa.C.S. § 2809(b)-(g).

In addition, in response to the Act, the Commission has set forth various regulations implementing Section 2809 regarding the licensure of EGSs. This includes matters regarding the application process, change in organization structure or operational status, publication of notice of filing, protests to applications, approval of the applications, regulatory assessments, reporting requirements, bonding, transferring or abandonment of licenses, license suspension and revocation and standards of conduct and disclosure for licensees. *See*, 52 Pa. Code §§ 54.31-54.43.

It is pursuant to these statutes and regulations that Suvon submitted its application and RESA filed its protest. In this case, however, the parties have submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the

time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be approved is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id., *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water and Sewer Assocs., 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

Settlement Terms

In the settlement, the parties agreed to resolve all outstanding issues. The relevant terms of the settlement are as follows, with the original paragraph numbering provided in the settlement:

A. Request for Official Notice

14. The Application is supported by the Application Affidavit, signed by Brian A. Farley, which states (in pertinent part): “That the Applicant herein has answered the questions on the application correctly, truthfully, and completely and provided supporting documentation as required.”

15. Suvon’s answers to the data requests of TUS were supported by verifications from the supporting witnesses.

16. The proofs of publication submitted by Suvon were supported by affidavits of individuals from each of the publishing newspapers.

17. The corrected certificate of fictitious name filing is an official record of the Pennsylvania Department of State.

18. Consequently, the Joint Petitioners request that the ALJ and the Commission take official notice of the facts stated in the documents described in paragraphs 14-17.

B. Joint Stipulation of Fact

19. The Joint Petitioners request that the ALJ recommend, and the Commission approve, the Joint Stipulation of Fact (“Stipulation”) attached hereto as **Attachment A**.

C. Approval of Application

20. Based on the facts set forth in the documents described in paragraphs 14-17 and in the Stipulation, Suvon requests that the ALJ recommend, and the Commission grant, the Application and issue a license to Suvon to offer, render, furnish or supply electricity or electric generation services as a broker/marketer. RESA does not oppose this request.

D. Modification of Bonding Requirement

21. In the Application, Suvon requested that the Commission modify the \$250,000 bond requirement because Suvon will not take title to electricity and will not pay electricity bills on behalf of its customers. Suvon also submitted a \$10,000 bond. Suvon requests that the ALJ recommend, and the Commission grant, the requested modification of the bonding requirement. RESA does not oppose this request.

Settlement at 3-4. In addition, the settlement is also conditioned on the standard settlement conditions that accompany most settlements submitted to the Commission. For example, the parties reserved their right to withdraw from the settlement if the settlement is not approved without modification. Id. at 5. The parties also reserved their right to continue with litigation if the Commission does not approve the settlement. Id. The parties also agreed to waive their rights to file exceptions if the settlement is recommended for approval without modification. Id. at 6.

Public Interest Analysis

Position of the parties

As noted above, the benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest. *See, Lancaster, Warner, supra.* In the settlement, the parties did not state why the settlement is in the public interest. As discussed further below, however, Suvon and RESA both submitted statements in support of the settlement, articulating their individual reasons why approving the settlement without modification is appropriate and in the public interest.

In its statement in support, Suvon first raised several procedural matters. In particular, Suvon noted that the settlement includes a request that the ALJ and the Commission take official notice of documents already filed in this case and approve the joint stipulation of fact. Suvon noted that these requests are reasonable and in the public interest because they will expedite resolution of this proceeding. In addition, Suvon noted that the joint stipulation of fact addresses the concerns that RESA expressed in its protest.

Next, Suvon stated in its statement in support of the settlement that the Commission should approve the application and promptly issue an electric broker/marketer license to Suvon because Suvon has demonstrated, by a preponderance of the evidence, that it is financially and technically fit and is willing and able to comply with applicable statutes, regulations and Commission orders. Suvon stated that RESA does not oppose this request and granting it is reasonable and in the public interest. Suvon noted, among other things, that it is a startup founded in 2017, it does not take title to power consumed by customers, it is financially independent of any Pennsylvania public utility and does not share any costs or functions with First Energy Corp. or any First Energy subsidiary and is technically fit since it is licensed as a competitive retail electric service provider in Ohio. Suvon added that it submitted a detailed business plan with its application, as well as an employee training plan and will not market through door to door sales. Suvon concluded that the preponderance of the evidence demonstrates that Suvon satisfies the statutory and regulatory requirements for obtaining a

license as a broker/marketer and, therefore, its request is in the public interest and should be approved.

Finally, Suvon stated in its statement in support that the Commission should grant its request to reduce its bond requirement from \$250,000 to an initial bond amount of \$10,000. Suvon added that there is little risk to customers or suppliers in this case if Suvon faces financial challenges and that reducing the bond requirement would ease Suvon's entry into the competitive marketplace without posing a risk to suppliers, customers or the Commonwealth.

In its statement in support, RESA stated that "based on RESA's analysis of the settlement parameters and stipulations agreed to by Suvon showing its intent to comply with the Commission's Code of Conduct regulations, acceptance of the Joint Petition for Approval of Settlement of all issues is in the public interest." RESA also noted savings associated with no longer continuing to litigate the matter.

Disposition

The joint petition for settlement will be approved in its entirety without modification because it is in the public interest and supported by substantial evidence. *See, Lancaster and Warner, supra.* The settlement complies with the relevant sections of the Public Utility Code and the Commission's regulations regarding the licensure of electric generation suppliers and is consistent with the Commission policy to promote settlement.

As a preliminary matter, the settlement asks that official notice of the application be taken and that a detailed statement of facts be admitted into the record. In particular, the settlement requests that the Commission take official notice of the application, which is supported by an affidavit signed by Brian Farley, the Vice President of Sales and Operations for Suvon, as well as Suvon's answers to TUS data requests, the proofs of publication submitted by Suvon and the corrected certificate of fictitious name filing made to the Pennsylvania Department of State. The joint stipulation of fact attached to the settlement that the parties ask to be approved contains 26 stipulation facts. The facts pertain to the parties to the proceeding, the

filings made, the update to the filings, the affiliates of Suvon and supporting facts that 1) Suvon will not receive a preference from any Pennsylvania utility, 2) Suvon will not receive preferential sharing of leads and customer information, 3) First Energy has trained, adopted and enforced the Commission's Code of Conduct, 4) Suvon will ensure appropriate marketing of its services, 5) Suvon will ensure the independence of its finances, and 6) the independence of employees is ensured.

As Suvon noted in its statement in support of the settlement, the settlement was submitted prior to a hearing being held but Suvon had already submitted extensive evidence to the Commission in support of its application, including answering two sets of data requests from TUS. There is no practical purpose to require Suvon to submit the application and data responses to the Commission a second time. Instead, the parties request that the Commission take official notice of these documents to save the expense of additional copying and for the Commission to maintain multiple copies of the same documents. Suvon noted that this would limit unnecessary administrative tasks by the parties and the Commission during the Covid-19 pandemic.

Official notice or judicial notice of facts may be taken by the Commission or the presiding officer pursuant to Section 5.408 of the Commission's regulations. 52 Pa.Code § 5.408(a). When the decision of the Commission or the presiding officer rests on official notice or judicial notice of a material fact not appearing in evidence in the record, the parties will be so notified. 52 Pa.Code § 5.408(b). In this case, the request of the parties for official notice to be taken of the application and the data requests already submitted to the Commission will be granted, except that, in lieu of taking official notice of the application and data requests, these documents will be moved into the record *sua sponte*. The application will be marked as ALJ Exhibit Number 1. In addition, the joint stipulation of facts will be approved and admitted as marked.

Of note, the Commission and the Commonwealth are currently facing an unprecedented pandemic. As a result of this pandemic, the Commission offices have been closed and the Commission is operating under unique circumstances. On March 20, 2020, the

Commission issued an Emergency Order at docket number M-2020-3019262 in response to the Proclamation of Disaster Emergency issued by Governor Wolf on March 6, 2020. The Emergency Order is noted here because it encourages all parties to Commission proceedings “to cooperate regarding the suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines in connection with the performance of any obligation prescribed by the Public Utility Code or other applicable law.” The Commission also noted that “the receipt and sending of all mail from the United States Postal Service and other couriers has been interrupted while the Commission has limited, or no, access to its physical facilities.” The Commission “encourage[d] the cooperation of all persons having business before the Commission to assist with implementing measures necessary for continuing Commission operations during the effective dates of this Order and the Covid-19 disaster emergency.”

Such cooperation warrants admitting the May 21, 2020 application filed by Suvon into the record as ALJ Exhibit 1, as well as the admission into the record of the joint stipulation of fact and the answers to the data requests. These provisions of the settlement are in the public interest.

With regard to the request in the settlement that the application be granted “and a license issued to Suvon to offer, render, furnish or supply electricity or electric generation services as a broker/marketer,” it is noted that the several issues raised by RESA in its protest have been addressed by the joint stipulation of fact that is admitted into the record of this proceeding.

For example, in its protest, RESA argued that Suvon “lacks technical fitness because its application lacks requisite details on how it intends to ensure compliance with the Commission’s regulations,” citing to the Commission’s code of conduct regulations for EGSs. RESA questions whether Suvon will, among other things, operate in an independent capacity to ensure consumer protections and competitive market safeguards. RESA also questioned whether Suvon would “operate without competitive advantage and abuse of customer data from First Energy.” In response, the settlement provides that Suvon will not receive a preference from any Pennsylvania public utility. This includes no preferential sharing of leads and customer

information. In addition, the settlement states that First Energy, Suvon's parent company, provides annual training on the Commission's code of conduct to its employees.

RESA also raised concerns in its protest regarding Suvon's financial fitness. RESA argued that Suvon does not possess the necessary financial fitness to warrant approval because it did not identify in its application how its operations can function financially separate and without unjust subsidization from its parent company, First Energy. RESA added that Suvon "potentially shares offices, employees and administrative resources with First Energy Corp." In the settlement, however, the parties agreed, among other things, that Suvon is financially independent of any Pennsylvania public utility and is a member of First Energy's unregulated money pool. The parties also agreed that there is no mechanism by which First Energy retains revenues from Pennsylvania electric distribution companies and that Suvon will rely on and properly allocate costs for typical shared services, such as human resources, accounting, information technology, fulfillment and legal, but that shared employees will bill and account for their time appropriately when supporting Suvon consistent with First Energy's cost allocation manual.

As a result, each of the issues raised in RESA's protest have been addressed in the settlement. RESA no longer opposes approval of Suvon's application. The provision of the settlement seeking approval of Suvon's application is in the public interest.

Finally, the settlement also requests that "the Commission modify the \$250,000 bond requirement because Suvon will not take title to electricity and will not pay electricity bills on behalf of its customers," and notes that Suvon submitted a \$10,000 initial bond amount with its application. Section 54.40 of the Commission's regulations provides that "a license will not be issued or remain in force until the licensee furnishes a bond or other security approved by the Commission," and sets the initial security level from each applicant at \$250,000. *See*, 52 Pa.Code § 54.40(a), (c). The regulation provides that the purpose of the security is to ensure the licensee's financial responsibility, the payment of gross receipts tax and the supply of electricity at retail in accordance with contracts, agreement or arrangement. 52 Pa.Code § 54.40(b). Suvon noted in its statement in support of the settlement, however, that there is little risk to customers

or suppliers if Suvon faces financial challenges because “Suvon will be paid a fee by suppliers for assisting customers in procuring electricity.” Suvon also noted a Secretarial Letter issued April 8, 2016 that allows marketer/brokers to maintain a security level of \$10,000 since they do not normally have gross receipts.

RESA did not raise an issue in its protest regarding Suvon’s bonding requirement. Therefore, there is no issue of disputed fact that needs to be resolved. Nonetheless, Suvon has made the request for the reduced bonding requirement as part of the settlement. As the application will be transferred to TUS as an uncontested application as part of this decision, the issue of approving the reduced bonding requirement will be deferred to their review.

In addition to all of these individual factors that support approving the settlement as being in the public interest, the settlement is also in the public interest because of the general benefits of agreeing to a settlement. In this case, the parties have expended substantial time and expense to reach the agreement. However, to the extent that no settlement was reached and the matter was fully litigated, the parties would have expended significantly more additional time and expense. The settlement will save the parties from expending substantial time and expense involved with further litigation. Additional costs could have included multiple rounds of preserved written testimony, lengthy hearings, briefs, exceptions and possible appeals. Avoiding such expenditures conserves the resources of all other parties involved in these proceedings and Commission resources as well.

The settlement should be approved as being in the public interest because the application and the responses to the filings in this proceeding have been thoroughly vetted and considered by all concerned parties. The settlement is the result of extensive and fruitful negotiations between all the parties, raising multiple unique issues, and represents what each party believes to be a fair and reasonable compromise. These efforts also demonstrate that the parties are satisfied that there are no unresolved evidentiary issues at this point in the proceeding.

The settlement is also in the public interest and should be approved without modification because it is supported by substantial evidence. On appeal, decisions of the

Commission will be examined to determine if they are supported by substantial evidence. 2 Pa.C.S. § 704. The application filed May 21, 2020 is being admitted into the record as part of this decision and the parties agreed to a joint stipulation of fact when the settlement was submitted on October 16, 2020. In that stipulation, the parties agreed to 26 facts, many of which align with and support the individual aspects of the settlement. The stipulation is being admitted into the record as part of this decision. The admission of those facts supports adopting the settlement. This is particularly true as, although the facts of this proceeding were fully vetted by the parties, no pre-served written testimony was ever circulated. This was likely because efforts to circulate pre-served written testimony were otherwise expended on settlement discussions and one of the incentives for settling a case is to avoid the expense of preparing pre-served written testimony.

As a result, the settlement will be approved without modification because it is in the public interest, consistent with the Public Utility Code and supported by substantial evidence. The parties are commended for obtaining a complete resolution of these issues in this case, including the addition of multiple facts that support granting the application. Settlements can be difficult under normal circumstances. Achieving the settlement during the Covid-19 pandemic, among other unique issues, was likely even more difficult.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this investigation. 66 Pa. C.S. §§ 1102, 2809.
2. The Applicant bears the burden of proving that it is qualified to provide the requested service under the applicable standard by a preponderance of the evidence. 66 Pa. C.S. § 332.
3. The Applicant has the burden of proving its entitlement to licensing and must do so by a preponderance of the evidence, or evidence which is more convincing than the

evidence presented by the other parties. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950); Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990).

4. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth. 1982); Edan Transp. Corp. v. Pa. Pub. Util. Comm'n, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa. C.S. § 704.

5. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Com. Bd. of Review, 166 A.2d 96 (Pa. Super. 1960); Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984).

6. The Public Utility Code provides for the licensing of an electric broker/marketer. 66 Pa. C.S. § 2809.

7. An application must contain such information as the Commission requires. 66 Pa. C.S. § 2809(b).

8. A license shall issue to a qualified applicant if it is found that the applicant is fit, willing and able to perform properly the service proposed and to conform to the provisions of the Code regarding licensure and to conform to the lawful orders and regulations of the commission. 66 Pa. C.S. § 2809(b).

9. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231.

10. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The

Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401.

11. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165 (Order entered October 4, 2004); Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs., 74 Pa. P.U.C. 767 (1991).

12. The settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the joint petition for approval of settlement of all issues submitted by Suvon LLC, d/b/a FirstEnergy Advisors and the Retail Electric Supply Association on October 16, 2020 at docket number A-2020-3020377 is approved without modification.

2. That the application for approval to offer, render, furnish or supply electricity or electric generation services as broker/marketer to the public in the Commonwealth of Pennsylvania submitted by Suvon LLC, d/b/a FirstEnergy Advisors dated May 21, 2020 is admitted into the record of this proceeding as ALJ Exhibit 1.

3. That the joint stipulation of fact submitted by Suvon LLC, d/b/a FirstEnergy Advisors and the Retail Electric Supply Association on October 16, 2020 at docket number A-2020-3020377 is approved.

4. That the application for approval to offer, render, furnish or supply electricity or electric generation services as broker/marketer to the public in the Commonwealth of Pennsylvania submitted by Suvon LLC, d/b/a FirstEnergy Advisors dated May 21, 2020 case be transferred to the Commission's Bureau of Technical Utility Services as an uncontested application.

Date: October 28, 2020

_____/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge