

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	
Proposal to Enter into an Affiliate)	
Power Purchase Agreement for)	Case No. 14-1693-EL-RDR
Inclusion in the Power Purchase)	
Agreement Rider)	

In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 14-1694-EL-AAM
Certain Accounting Authority)	

**OHIO POWER COMPANY'S MOTION TO STRIKE THE POST-HEARING "REPLY"
BRIEF OF NOBLE AMERICAS ENERGY SOLUTIONS LLC**

Ohio Power Company ("AEP Ohio") moves to strike the Post-Hearing "Reply" Brief ("Brief") filed on February 8, 2016 in this proceeding by Noble America's Energy Solutions LLC ("Noble"). Noble moved to intervene in this proceeding on January 12, 2016, nearly fifteen months after this proceeding was initiated and five months after the August 21, 2015 deadline for motions to intervene. As described in AEP Ohio's January 18, 2016 Memorandum Contra, Noble's motion to intervene should be denied because Noble has not established that its perspective is different from the numerous parties already advancing Noble's interests in this case, and because late intervention would be unfair and prejudicial to AEP Ohio and other Signatory Parties. Insofar as the Commission ultimately denies Noble's motion to intervene, it should also strike Noble's Brief.

But there is an additional reason to strike Noble's Brief regardless of whether Noble's motion to intervene is granted: Noble failed to file its Brief by the February 1, 2016 deadline for *initial* briefs. Where, as here, a party's intervention request is pending, the party should adhere to the procedural schedule applicable to all other parties. Here, the deadline for filing initial post-

hearing briefs was February 1, 2016, and it is notable that other parties whose intervention motions were pending filed their briefs by the February 1, 2016 deadline. *See, e.g.*, Renewed Joint Motion of Advanced Power Service, Carroll County Energy LLC, and South Field Energy LLC for Leave to File a Joint Brief of *Amicus Curiae* Instanter (Feb. 1, 2016). But Noble did not file its brief until February 8, 2016, the deadline for *reply* briefs. In failing to adhere to the initial brief deadline, Noble failed to follow the Commission’s procedural schedule, did not frame its arguments as a reply to initial brief arguments of other parties and denied AEP Ohio and other parties a meaningful opportunity to respond to Noble’s arguments.

Moreover, there was no justification for Noble’s failure to meet the initial brief deadline. Noble claims that its late intervention was justified when other CRES providers – in particular, Interstate Gas Supply, Inc. (“IGS”) and Direct Energy Services, LLC (“Direct”) – joined the Stipulation filed in this case. But the Stipulation was filed on December 15, 2015, well in advance of the February 1, 2016 deadline for initial briefs. Thus, Noble could have (and should have) expressed all of its criticism of IGS and Direct – and made all of its other arguments – in a brief filed by February 1. Indeed, Noble’s Brief repeatedly cites the hearing testimony of witnesses from IGS, but Noble could have cited hearing testimony in a brief filed by February 1. Critically, Noble’s Brief never cites the initial briefs of IGS, Direct, AEP Ohio, or any other Signatory Party, and thus Noble’s brief is not truly a “reply.” Rather, it is an initial brief that should have been filed by the initial brief deadline.

Noble has repeatedly flouted this Commission’s procedural schedule, not only in failing to move for intervention by the deadline for doing so but also, now, by failing to file its Brief by the initial brief deadline. It is one thing for a party to waive its initial brief and reserve the right to file a proper reply brief that addresses arguments made by others and does not raise new

points for the first time on reply, but Noble's brief fails to reply to arguments made by other parties' initial brief and does not permit other parties the opportunity to reply to Noble's arguments. A quick review of Noble's "Reply" brief will show that it does not include a citation to any argument made in the AEP Ohio Initial Brief. Noble filed an untimely initial brief and labeled it a "Reply." That approach ignores the established procedural schedule and is unfair. Accordingly, Noble's Brief should be stricken.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse

Matthew J. Satterwhite

Matthew S. McKenzie

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: (614) 716-1608

Fax: (614) 716-2950

Email: stnourse@aep.com

mjsatterwhite@aep.com

msmckenzie@aep.com

Daniel R. Conway

Porter Wright Morris & Arthur, LLP

41 S. High Street, 30th Floor

Columbus, Ohio 43215

Telephone: (614) 227-2270

Fax: (614) 227-2100

Email: dconway@porterwright.com

Christopher L. Miller

Ice Miller LLP

250 West Street

Columbus, Ohio 43215

Telephone: (614) 462-2339

Fax: (614) 222-4707

Email: christopher.miller@icemiller.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike was served upon the parties of record in this proceeding by electronic service this 16th day of February, 2016.

/s/ Steven T. Nourse

Steven T. Nourse

Allison@carpenterlipps.com;
Bojko@carpenterlipps.com;
charris@spilmanlaw.com;
ckilgard@taftlaw.com;
chris@envlaw.com;
Christopher.Miller@icemiller.com;
cmooney@ohiopartners.org;
drinebolt@ohiopartners.org;
dstinson@bricker.com;
ghiloni@carpenterlipps.com;
dclark1@aep.com;
dboehm@BKLLawfirm.com;
dconway@porterwright.com;
dwilliamson@spilmanlaw.com;
fdarr@mwncmh.com;
gaunder@CarpenterLipps.com;
ghull@eckertseamans.com;
glpetrucci@vorys.com;
gpoulos@enernoc.com
Greta.see@puc.state.oh.us;
haydenm@firstenergycorp.com;
mhpetricoff@vorys.com;
jeffrey.mayes@monitoringanalytics.com;
jennifer.spinosi@directenergy.com;
jkylercohn@BKLLawfirm.com;
jlang@calfee.com;
jmcdermott@firstenergycorp.com;
Jodi.bair@occ.ohio.gov;
joliker@igsenergy.com;
jvickers@elpc.org;
Katie.johnson@puc.state.oh.us;
Kevin.moore@occ.ohio.gov;
Kristin.henry@sierraclub.org;
Kurt.Helfrich@ThompsonHine.com;
evelyn.robinson@pjm.com
Larry.sauer@occ.ohio.gov;

laurie.williams@sierraclub.org;
lhawrot@spilmanlaw.com;
mjsatterwhite@aep.com;
msmckenzie@aep.com;
mdortch@kravitzllc.com;
mfleisher@elpc.org;
msoules@earthjustice.org;
mjsettineri@vorys.com;
mkurtz@BKLLawfirm.com;
mpritchard@mwncmh.com;
msmalz@ohiopoverlylaw.org;
myurick@taftlaw.com;
o'rourke@carpenterlipps.com
rseiler@dickinsonwright.com
rsahli@columbus.rr.com;
ricks@ohanet.org;
sam@mwncmh.com;
Sarah.Parrot@puc.state.oh.us
scasto@firstenergycorp.com;
Sechler@carpenterlipps.com
schmidt@sppgrp.com;
Scott.Campbell@ThompsonHine.com;
sfisk@earthjustice.org;
sasloan@aep.com;
Stephanie.Chmiel@ThompsonHine.com;
steven.beeler@puc.state.oh.us;
stnourse@aep.com;
talexander@calfee.com;
tdougherty@theOEC.org;
tobrien@bricker.com;
todonnell@dickinsonwright.com
twilliams@snhslaw.com;
tony.mendoza@sierraclub.org;
Werner.margard@puc.state.oh.us;
William.michael@occ.ohio.gov;
william.wright@puc.state.oh.us

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Summary: Motion -Ohio Power Company's Motion to Strike the Post-Hearing "Reply" Brief of Noble Americas Energy Solutions LLC electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company