

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

NOBLE AMERICAS ENERGY SOLUTIONS LLC'S
MEMORANDUM CONTRA OHIO POWER COMPANY'S
MOTION TO STRIKE THE REPLY BRIEF
OF NOBLE AMERICA ENERGY SOLUTIONS, LLC

On February 16, 2016, Ohio Power Company ("AEP Ohio") moved to strike the Reply Brief filed in this matter eight days earlier by Noble Americas Energy Solutions LLC ("Noble Solutions"). AEP Ohio's Motion is properly denied.

AEP Ohio posits only two bases for its Motion to Strike. First, it complains that Noble Energy did not ask to intervene in this action until months after the deadline for intervention. This is, of course, absolutely correct. Second, it complains that it was prejudiced – but provides no specifics regarding that alleged prejudice – because Noble Solutions elected not to file an Initial Brief before filing a Reply Brief. This is absolutely incorrect.

Regarding AEP Ohio's first objection, Noble Solutions explained in its Motion to Intervene that it has participated in these proceedings from the outset through an industry group; and that it recognized no need to intervene directly in this matter until *after* AEP Ohio filed its Stipulation, which contained signatures of individuals on behalf of parties to the same industry trade group through which Noble Solutions was participating – a trade group, the Commission should note, whose members had vowed to oppose AEP Ohio's PPA/Rider proposals, and who

had in fact staunchly opposed those proposals until two members were 'bought off' by AEP Ohio.

Confronted with these surprise defections and unwilling to allow the reason for those defections to go unremarked upon, Noble Solutions invoked the "for good cause shown" exception within Ohio Rev. Code Section 4903.221(A) for late intervention, and asked to intervene for the specific purpose of criticizing the decision of the "defecting" members of the industry group and the process that induced those defections. Noble Solutions understood and acknowledged that its late intervention meant that it was bound by record in the case, and that any comments it might submit would necessarily be limited by the evidence, arguments, opinions, and positions expressed by others.

Noble Solutions' comments on brief are entirely consistent with the limits it recognized when it sought intervention. It introduced no new evidence, and it relied upon nothing beyond the record and briefs. It merely contrasted evidence which had been admitted in the case against the positions taken by others in the Stipulation and in their briefs.

AEP Ohio likely finds most irritating Noble Solutions comments regarding the manner in which it achieved its "success". Noble Solutions directed this Commission's attention to the testimony of two witnesses who were deeply and fundamentally critical of the PPA proposal. Those two witnesses were sponsored by IGS and Direct Energy. Noble Solutions pointed out that neither IGS nor Direct Energy disavowed the testimony of their witnesses when they agreed to sign the Stipulation. In fact, Noble Solutions emphasized the fact that, despite signing the Stipulation, those two entities continued to refuse to lend any support to AEP Ohio's PPA and rider proposals.

Noble Solutions maintains that the Stipulation proved to be nothing but a vehicle through which AEP Ohio purchased the surrender of the signatories thereto. As Noble Solutions showed, the price IGS and Direct Energy were paid to leave the field of battle consisted of vague promises to allow the two to help design and then participate in a pair of pilot programs that have absolutely nothing to do with the PPA itself or the rider through which AEP wishes to recover the cost of its PPA. Moreover, Noble Solutions pointed out that the two pilot “programs” AEP Ohio offered to create are of no benefit to CRES providers, generally, and would only be attractive to a CRES provider that happened to be pursuing the specific marketing models pursued by IGS and Direct Energy. Rather than benefit a broad category of providers of whom IGS and Direct Energy were representative, the promises cynically promised benefits to IGS and Direct Energy alone, and promised discriminatory operation against the interests of others.

Noble Solutions also argued that the Stipulation obviously violates important federal and state policies, and is harmful to ratepayers and the public interest, generally. Its comments were fairly raised by the evidence and by the briefs of AEP and others. Noble Solutions certainly did not exceed the proper scope of intervention.

Regarding AEP Ohio’s Second Complaint concerning Noble Solutions’ Brief: AEP Ohio complains that it suffered prejudice because Noble Solutions filed a reply brief without also filing an *initial* brief.

Noble Solutions finds AEP Ohio’s complaint to be quite ironic. *The same day* AEP Ohio filed its Motion to Strike in this case, complaining about Noble Solutions’ conduct, AEP Ohio itself asserted the right to file a Reply Brief without first filing an Initial Brief on the Merits in First Energy’s pending ESP case, 14-1297-EL-SSO. See Exhibit A hereto.

AEP Ohio, of course, did file notice that it was reserving the right to file a Reply Brief in that case, whereas Noble Solutions did not file any such notice in this case. Still, as this Commission is aware parties to Commission proceedings frequently eschew the right to file an initial brief, but exercise the right to file a reply. While AEP Ohio purported to expressly preserve its rights to a reply in the First Energy cases and Noble Solutions did not do so here, this Commission has never mandated such a practice in its proceedings. In fact, filing a Reply without first filing an initial brief or expressly claiming the right to file a reply often occurs in Commission proceedings. In fact, the same week that AEP Ohio claimed prejudice from Noble Solutions conduct in its case *and* provided notice that it “reserved its rights” to file a Reply in the First Energy cases, Staff filed a Reply Brief in still a third case without first filing an initial brief, and without providing notice purporting to preserve a right to file a Reply Brief. *See*, for example, *Orwell Natural Gas Co. v. Orwell Trumbull Pipeline Co.*, Case No. 15-637-GA-CSS.

Last, AEP Ohio complains that it had no opportunity to respond to Noble Solutions’ arguments. To the extent that AEP Ohio had any valid argument in opposition to Noble’s arguments that might be worthy of this Commission’s contemplation, AEP Ohio could certainly seek leave to file a sur-reply to those arguments.

Respectfully submitted,

/s/ Michael D. Dortch

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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing were served via electronic transmission upon the persons listed below this March 7, 2016

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/s/ Michael D. Dortch
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Legal Department

February 16, 2016

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The Honorable Megan J. Addison
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Re: *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO*

Dear Attorney Examiners:

Ohio Power Company has elected to forego filing an Initial Post-Hearing Brief in this matter but reserves the right to file a Reply Brief.

Thank you for your attention to this matter.

Respectfully Submitted,

/s/ Steven T. Nourse
Steven T. Nourse

cc: Parties of Record

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 14-1297-EL-SSO

Summary: Correspondence -Ohio Power Company in referenced to the Initial Post-Hearing Brief electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: Memorandum in Opposition to AEP Ohio's Motion to Strike electronically filed by Mr. Michael D. Dortch on behalf of Noble Americas Energy Solutions LLC