

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Ohio	)	
Edison Company, The Cleveland Electric	)	Case No. 14-1297-EL-SSO
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 a Electric	)	
Security Plan	)	

**NOBLE AMERICAS ENERGY SOLUTIONS LLC'S MOTION TO INTERVENE**

Noble Americas Energy Solutions LLC respectfully moves the Public Utilities Commission of Ohio to grant it leave to intervene out-of-time in this case pursuant to Ohio Revised Code Section 4903.221 and Ohio Administrative Code Rule 4901-1-11(F). The reasons supporting this Motion are set out in the attached Memorandum in Support.

Respectfully submitted,

/s/ Michael D. Dortch

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## **MEMORANDUM IN SUPPORT**

On August 4, 2014, The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (together, “FirstEnergy”) filed an application for approval of a Standard Service Offer in the form of an Electric Security Plan (“ESP”). The ESP includes a Retail Rate Stability Rider (“Rider RRS”) that will permit FirstEnergy to recover any losses associated with its purchased power transactions from ratepayers. On December 1, 2015, FirstEnergy and some of the intervenors to this proceeding filed a Third Supplemental Recommendation and Stipulation (“Stipulation”) in which the signatories agree to Rider RRS with some modifications.

Noble Americas Energy Solutions LLC (“Noble Solutions”) is a certified power marketer of competitive retail electric service (“CRES”) in Ohio under PUCO Certificate No. 01-052E(8). Noble Solutions is also a member of the Retail Energy Supply Association (“RESA”), which is an intervenor in this proceeding. Recently, however, Noble Solutions’ interests unforeseeably diverged from those of RESA and some of its members. Due to this extraordinary circumstance, Noble Solutions seeks to intervene in this proceeding pursuant to Ohio Rev. Code Section 4903.221 and Ohio Admin. Code Rule 4901-1-11(F).

Ohio Rev. Code Section 4903.221(A) provides that the Commission “may, in its discretion, grant motions to intervene which are filed after the deadlines . . . for good cause shown.” In addition, Ohio Admin. Code Rule 4901-1-11(F) provides that the Commission should grant untimely intervention “under extraordinary circumstances.” Under Ohio Admin. Code Section 4901-1-11(A)(2) any person is permitted to intervene in a proceeding before this Commission upon a showing that:

The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair

or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Ohio Admin. Code Section 4901-1-11(B) provides that the following factors are to be considered in evaluating requests to intervene:

- (1) The nature of the person's interest;
- (2) The extent to which the person's interest is represented by existing parties;
- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and
- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.

*Id.*; see also Ohio Revised Code Section 4903.221. Further, the Ohio Supreme Court has stated that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 388 (2006).

First, Noble Solutions maintains a real and substantial interest in the proceeding and is likely to experience negative economic impacts if the Stipulation is approved. As a CRES, Noble Solutions currently sells exclusively to mercantile customers<sup>1</sup> in Ohio. As a CRES provider, Noble Solutions is committed to participating in and promoting competitive energy markets. The proposed Stipulation would greatly hinder the Ohio CRES market by providing FirstEnergy Solutions an unfair advantage in both the retail and wholesale electric service markets because of the ratepayer subsidy paid to FE's affiliate, FirstEnergy Solutions, through the PPAs as a guaranteed rate of return. The disposition of this proceeding could therefore impair Noble Solutions' ability to protect its interest in the Ohio electric service market.

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<sup>1</sup> Noble Solutions markets to commercial and industrial customer accounts. However it is possible that as part of a mixed-meter account, Noble Solutions may serve a location which, as part of a commercial or industrial facility, could be considered a residential account, such as university dormitories, a parsonage, university presidents' houses, etc.

Second, Noble Solutions is not adequately represented by the parties to this matter. Until recently, RESA did represent Noble Solutions' interests, and, until recently, Noble Solutions had no reason to believe that its interests would not remain completely aligned with those of RESA. However, RESA has taken positions that do not align with the interests of the competitive market which is the basis for Noble Solutions' interests. For instance, utility billing of PJM charges denies Noble Solutions its right as a Load Serving entity behind PJM to bill for its PJM costs and those of its customers. RESA has supported shifting the wholesale risk from CRES providers to the customer/ratepayer by supporting FE billing for some PJM charges and recovering for those charges from retail customers on a non-bypassable basis. If wholesale market charges that are the responsibility, and risk, of the CRES providers are shifted into the distribution rates of the utility, regardless of the retail market, the risk of changes to those charges are also shifted to customers. This limits CRES providers' ability to create products that manage those costs and risks as well as limiting customer choices, effectively imposing a one-size-fits-all approach to retail electric competitive products that is divergent from the way competitive markets were intended to function. This recent and unforeseeable divergence of interests between Noble Solutions and RESA demonstrates also the extraordinary circumstances which justify Noble Solutions' intervention at this point in the proceedings.

Noble Solutions will also significantly contribute to the development, and ultimate resolution, of the factual issues in this case by providing the perspective of a CRES provider that exclusively markets to mercantile customers, and which believes in the preservation of dual billing and does not focus on a mass-market, one-size-fits-all approach, which perspective is not currently represented. Fourth, Noble Solutions' admittance into these proceedings will not cause

undue delay or unjustly prejudice any part because Noble Solutions accepts the record in this proceeding as it exists on the date of this filing and does not intend to introduce any testimony.

For these reasons, Noble Solutions respectfully asks that this Commission grant its Motion to Intervene.

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 January 13, 2016

/s/ Michael D. Dortch

Michael D. Dortch

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/14/2016 9:31:02 AM**

**in**

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

Summary: Motion to Intervene electronically filed by Mr. Michael D. Dortch on behalf of Noble Americas Energy Solutions LLC