

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S MOTION TO STRIKE, IN
WHOLE OR IN PART, THE REPLY BRIEF OF NOBLE AMERICAS ENERGY
SOLUTIONS LLC**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) respectfully move to strike the Reply Brief of Noble Americas Energy Solutions LLC (“Noble”). Noble is not a party to this proceeding. Its late-filed motion to intervene was opposed by the Companies on January 19, 2016, and lacks merit. Thus, Noble’s reply brief should be stricken.

In the alternative, the Companies move to strike the following portions of the Noble’s reply brief:

1. Page 6, footnote 5.
2. Page 14, footnote 21, starting with “Industry accounts” and ending with a web link to a news article.

The Commission should strike this material from Noble’s reply brief because Noble relies on a private report and a news article that are not in the record in this case and that are inadmissible hearsay.

For these reasons and those set forth in the attached memorandum in support, the Commission should grant this motion and strike Noble’s reply brief in whole or in part.

Respectfully Submitted,

/s/ James W. Burk

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ATTORNEYS FOR OHIO EDISON
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**MEMORANDUM OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY IN SUPPORT
OF MOTION TO STRIKE, IN WHOLE OR IN PART, THE REPLY BRIEF OF NOBLE
AMERICAS ENERGY SOLUTIONS LLC**

**I. Noble's Reply Brief Should Be Stricken In Its Entirety Because Noble Is Not A
Party And Lacks Grounds To Intervene.**

As explained in the Companies' Memorandum Contra Noble Americas Energy Solutions Llc's Motion To Intervene filed on January 19, 2016, Noble's delayed attempt to intervene in this proceeding is contrary to R.C. 4903.221 and O.A.C. 4901-1-11. Not only was Noble's motion untimely, but its concerns are adequately represented by other parties. Indeed, its concerns have been addressed by multiple parties to this proceeding.¹ Given that Noble has not

¹ Compare Noble Reply Brief, pp. 5-7 (alleged cost of Rider RRS) with RESA Reply Brief, pp. 14-16 (same), Sierra Club Reply Brief, pp. 18-30 (same), Exelon Reply Brief, pp. 5-9 (same), OCC/NOAC Reply Brief, pp. 14-18, ELPC Reply Brief, pp. 3-7 (same).

Compare Noble Reply Brief, pp. 7-9 (criticizing IGS agreement to settlement as evidence of lack of serious bargaining) with OCC/NOAC Reply Brief, pp. 77-79 (same), OMAEG Reply Brief, pp. 5-7 (same), NOPEC Reply Brief, pp. 7-9.

Compare Noble Reply Brief, pp. 9-10 (Rider RRS violates R.C. 4928.02(H)) with OCC/NOAC Reply Brief, pp. 103-04 (same); OCC/NOAC Brief, pp. 114-17 (same); OMAEG Reply Brief, pp. 12-14 (same); OMAEG Brief, pp. 68-70 (same); Exelon Brief, pp. 17-18 (same); EPSA/P3 Brief, pp. 17-18 (same); P4S Brief, p. 13 (same); CMSD Brief, pp. 26-28 (same); NOPEC Brief, pp. 42, 47-48 (same).

Compare Noble Reply Brief, pp. 10-12 (Rider NMB) with Exelon Reply Brief, pp. 19, 50-52 (same); OMAEG Brief, pp. 15-19 (same); RESA Brief, pp. 2-3, 49-50 (same).

Compare Noble Reply Brief, pp. 12-14 (federal policy/wholesale market arguments) with OCC/NOAC Reply Brief, pp. 4-10, 23 (same); OCC/NOAC Brief, pp. 102-17 (same); NOPEC Reply Brief, pp. 1-5 (same);

established good cause for its late-filed motion to intervene, it may not participate as a party and file a reply brief in this proceeding.² Thus, Noble's reply brief should be stricken in its entirety.

II. Portions Of Noble's Reply Brief Should Be Stricken For Relying On Documents That Are Not In The Record And Are Hearsay.

In the alternative, two portions of Noble's reply brief should be stricken. Noble improperly relies on two documents: (1) a policy piece prepared by the Institute for Energy Economics and Financial Analysis ("EEFA"), whose "mission is to accelerate the transition to a diverse, sustainable and profitable energy economy and to reduce dependence on coal and other non-renewable energy resources";³ and (2) a news article discussing an Ohio Supreme Court oral argument. Neither document is in the evidentiary record in this case and both are inadmissible hearsay. Accordingly, the Commission should strike Noble's discussion of and references to these documents from its reply brief.

The EEFA report is cited at page 6, footnote 5, of Noble's brief, apparently as evidence that the Companies' forecasts are inflated.⁴ The news article from RTO Insider is cited at page 14, footnote 21, of Noble's brief for the proposition that the U.S. Supreme may affirm two appeals before it.⁵ Noble's reliance on these stories is improper and contrary to the Rules of Evidence. They are not part of the record in this case, and the Commission has rejected prior efforts of parties to include information in a brief that is not part of the record. *See, e.g., In the*

(continued...)

OMAEG Reply Brief, pp. 15-16 (same); P3/EPSC Reply Brief, pp. 35-39 (same); Exelon Reply Brief, pp. 31-32 (same); Sierra Club, pp. 78-80 (same); IMM Reply Brief, pp. 12-13 (same); CMSD Reply Brief, pp. 16-21.

² Noble's Reply Brief also violates O.A.C. 4901-1-31(B) because it fails to include a table of contents despite being greater than ten pages in length and addressing more than one issue.

³ *See* <http://ieefa.org/about/>, accessed March 2, 2016.

⁴ Noble Reply Brief, p. 6.

⁵ Noble Reply Brief, p. 14 fn. 21.

Matter of FAF, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture, PUCO Case No. 06-786-TR-CVF, Opinion and Order at 3 (Nov. 21, 2006). If allowed to remain in Noble's reply brief, the Companies would be prejudiced as they would have no opportunity to refute the information that Noble seeks to introduce into the record.

The EEFA report and the RTO Insider article also are inadmissible hearsay, as are the quotations contained in the RTO Insider news article (*i.e.*, it contains double hearsay). *See In the Matter of the Complaint of the City of Reynoldsburg, Ohio*, PUCO Case No. 08-846-EL-CSS, Opinion and Order at 28 (Apr. 5, 2011) (granting motion to strike portions of reply brief that discussed and attached newspaper article and holding "[t]he newspaper article in question is hearsay and consistent with Commission precedent and the Rules of Evidence should not be considered as part of the record in this case"). Thus, the EEFA report and the RTO Insider article should in no way be used as evidence in this proceeding.

III. Conclusion

Accordingly, the Commission should strike Noble's reply brief in its entirety. In the alternative, the Commission should strike footnote 5 from Noble's reply brief as well as the discussion and citation to the RTO Insider article in footnote 21 of NOPEC's reply brief.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this Motion to Strike was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 4th day of March, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. Further, a courtesy copy has been served upon parties via electronic mail.

/s/ N. Trevor Alexander
One of Attorneys for the Companies

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in

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

Summary: Motion to Strike Noble Americas Post Hearing Reply Brief electronically filed by Mr. Nathaniel Trevor Alexander on behalf of Ohio Edison Company and The Cleveland Illuminating Company and The Toledo Edison Company