

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
MEMO CONTRA THE FIRST ENERGY OPERATING COMPANY'S
MOTION TO STRIKE

Respectfully submitted,

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I. INTRODUCTION

Noble Americas Energy Solutions LLC (“Noble Solutions”) is a certified provider of competitive retail electric service (“CRES”) in Ohio under PUCO Certificate No. 01-052E(8) that focuses its marketing efforts on industrial and commercial consumers of electricity. Since nearly the initiation of these proceedings, Noble Solutions has participated in them as a member of The Retail Energy Supply Association (“RESA”) an industry group which moved to intervene in this matter on October 1, 2014, less than two months after this case was first filed.

Recently, however, during the course of negotiations surrounding the Joint Stipulation and Recommendation filed December 1, 2015, in these proceedings (the “Third Supplemental Stipulation,” which incorporates the terms of the December 22, 2014 Stipulation, the May 28, 2015 Supplemental Stipulation, and the June 4, 2015 Second Supplemental Stipulation; collectively, “the Stipulation”) and the Joint Stipulation and Recommendation filed December 14, 2015, in case numbers 14-1693 and 14-1694, initiated by the Ohio operating companies of American Electric Power (collectively, “AEP Ohio”), Noble Solutions’ interests unforeseeably diverged from those of certain members of RESA. When these conflicts arose, Noble Solutions immediately sought separate intervention in these proceedings pursuant to Ohio Revised Code (“R.C.”) Section 4903.221 and Ohio Admin. Code Rule 4901-1-11(F), invoking the exception for extraordinary circumstances and promising to accept the record in this case as it had developed to that point. By this commitment, Noble Solutions assured this Commission and the parties to these proceedings that its late intervention could not be unduly prejudicial to any other party. Noble Solutions is thus unable to introduce testimony of its own and strictly limited to addressing only the evidence introduced by others, the legal arguments raised by those others, and the opinions and positions expressed by said others thereon.

II. ARGUMENT

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “First Energy Operating Companies,” or “FE”) have moved to strike Noble Solutions’ Reply Brief in its entirety on the basis that “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.” FE Motion to Strike, p. 1.

Initially, of course, this Commission’s rules make it clear that any person or entity that has moved to intervene and whose motion for intervention remains pending is generally to be treated as a party by all other parties. For example, the rules regarding service of pleadings and other papers (4901-1-05 (E)), motions (4901-1-12 (E)) and discovery (4901-1-16 (H)) all explicitly provide that for purposes of those rules, “the term ‘party’ includes any person who has filed a motion to intervene which is pending at the time.”

In the absence of any ruling by this Commission on its motion to intervene, Noble Solutions properly filed its Reply Brief.

More significantly, leave to intervene is to be freely granted, and even late intervention is favored so long as undue prejudice does not attach to intervention. In this case, Noble Solutions explained the basis for its late intervention, invoked the exception provided by this Commission’s rules for extraordinary circumstances, and expressly accepted the record in this case as it had developed to that point. FE therefore suffered no prejudice as a result of Noble Solutions’ late-filed request for intervention. Its Motion to Strike the entirety of Noble Solutions’ Reply Brief should be denied.

As an alternative to its Motion to Strike, FE asks this Commission to strike two specific references within Noble Solutions' Reply Brief. The first reference is the entirety of footnote 5 on page 6 of Noble Solutions' Reply Brief. It would be inappropriate to strike that reference from Noble Solutions' Reply Brief. The references merely support Noble Solutions' comments regarding the outdated and greatly inflated forecasts relied upon by FE to support its analysis, and refer specifically to a public comment filed in the record on February 16, 2016, by the Institute for Energy Economics and Financial Analysis and to a more exhaustive discussion of FE's forecasts found within the Initial Brief of the Sierra Club.

FE also asks this Commission to strike a portion of footnote 21 on page 14 of Noble Solutions' Reply Brief. FE complains that the offending material – Noble Solutions' comments regarding an industry report suggesting the justices of the United States Supreme Court were quite skeptical of a position not terribly unlike FE's in this case during an oral argument occurring February 24, 2016 -- are based upon hearsay. Noble Solutions' point was to inform the Commission of the fact that the cases it referenced were being heard by the United States Supreme Court. To the extent that FE wishes the news article in which the Justices were said to be skeptical of a position quite like that of FE's in this case, Noble Solutions will agree to simply withdraw that portion of its comments.

Respectfully submitted,

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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 24, 2016

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