



THOMAS, NIESEN & THOMAS, LLC

*Attorneys and Counsellors at Law*

CHARLES E. THOMAS, III  
Direct Dial: 717.255.7611  
cet3@tntlawfirm.com

June 2, 2014

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: John R. Evans, Small Business Advocate v. First Energy Solutions Corp.  
Docket No. P-2014-2421556

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Noble Americas Energy Solutions LLC is its Petition to Intervene in the above-referenced matter. Copies of the Petition are being served upon the persons and in the manner set forth in the certificate of service attached to it.

Should you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Charles E. Thomas, III

Encl.

cc: Certificate of Service (w/encl.)  
Becky Merola (w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

**JOHN R. EVANS,  
SMALL BUSINESS ADVOCATE,  
Petitioner**

**v.**

**FIRST ENERGY SOLUTIONS CORP.,  
Respondent**

:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket No. P-2014-2421556**

---

**PETITION TO INTERVENE  
OF  
NOBLE AMERICAS ENERGY SOLUTIONS LLC**

---

AND NOW, comes Noble Americas Energy Solutions LLC (“Noble” or “Petitioner”), by its attorneys, and pursuant to 52 Pa. Code § 5.71 *et seq.*, petitions the Pennsylvania Public Utility Commission (“Commission”) to intervene in the above-captioned proceeding. In support of its intervention, Noble states the following:

**I. INTRODUCTION**

1. This matter arises from the actions of FirstEnergy Solutions Corp. (“FES”) in March 2014 when it began sending notices to residential and small business customers on fixed-price contracts informing them of FES’s intention to pass through certain costs that were billed to it by PJM Interconnection, LLC (“PJM”). As the notices explained, PJM, in January 2014, incurred extremely high ancillary services costs to purchase power necessary to keep the electric system reliable and subsequently billed these high costs to FES. FES considered these costs to be a “pass-through event” under the terms of its fixed price contract, and, as a result, informed its fixed priced customers that it would begin billing them for the high costs imposed on FES by PJM through a one-time bill surcharge.

2. On May 15, 2014, the Office of Small Business Advocate (“OSBA”) filed a petition with the Commission for a declaratory order prohibiting FES from imposing upon small business customers certain ancillary service charges purportedly imposed upon FES by PJM.<sup>1</sup>

3. In its petition, the OSBA argues that the ancillary services charged by PJM to FES were not “new or additional” costs, nor were they costs “imposed” upon FES by PJM. Rather, the costs were voluntarily incurred as a result of a business decision made by FES to purchase from PJM rather than from another source, and, therefore, such costs cannot be deemed as a “pass-through event” under the terms and conditions of FES’s fixed price contract. OSBA Petition at 4-5. The OSBA further argues, *inter alia*, that customers are best served by labels and terms that are precise, transparent, and in plain language. *Id.* at 6.

## **II. NOBLE’S PETITION TO INTERVENE**

4. The name and business address of Petitioner are:

Noble Americas Energy Solutions LLC  
5325 Sheffield Ave.  
Powell, Ohio 43065

5. The name, address, and contact information of Petitioner’s counsel are:

Charles E. Thomas III, Esq.  
THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 600  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
Tel: (717) 255-7611  
Fax: (717) 236-8278  
cet3@tntlawfirm.com

6. Noble is licensed by the Commission as an electric generation supplier (“EGS”) at Docket No. A-110141 to offer, render, furnish or supply electricity and electric generation supplier

---

<sup>1</sup> A similar petition for declaratory order was filed on April 8, 2014 by the Utility Workers Union of America (“UWUA”), William J. Sterner, Charles B. Cook, and James O’Brien II at Docket No. P-2014-2415108. The UWUA petition seeks a declaratory order concerning the meaning of a pass-through provision contained in the terms and conditions of residential fixed-price contracts for the supply of electricity by FES.

services to large commercial (over 25kW), industrial, and governmental customers, and to residential and small commercial (25kW and under) customers (limited to mixed meters), throughout the Commonwealth. Noble is one of the nation's largest independent, non-residential retailers and marketers of retail energy services. Noble strives to serve the energy supply needs of national and regional commercial, industrial, and governmental customers, and where there are mixed meters some residential meters, across 14 states, including Pennsylvania, and offers its customers a wide variety of energy-related products and services, including fixed, indexed, demand response, and green energy options.

7. As a licensed EGS, Noble has a direct and immediate interest in the issue raised and to be addressed in this proceeding. Noble provides fixed and indexed priced contracts, or a combination thereof, with many of its commercial and industrial customers.<sup>2</sup> Noble and many other EGSs have performed on the obligations made to their customers who purchased a fixed price product regardless of the events of this past winter. While Noble can only speak from its own viewpoint, Noble believes "regulatory action" or "change in law" clauses are also common in supplier contracts. These clauses are placed in contracts to protect the parties in the event that there is, in fact, a change in law or regulation that impacts a customer's fixed price. Noble is deeply concerned that some of the responses to recent winter events can cause a negative perception of the retail electric industry. Such actions may have additional material impacts on Noble's operations, business activities, and the Pennsylvania competitive retail market in which it participates. Noble, consequently, has a vested interest in ensuring that there is a distinguishable difference in the actions at issue in this proceeding.

---

<sup>2</sup> Index priced contracts should not be confused with variable priced contracts. Index contracts are based on an index using a floating price that tracks an established publicly available index. A variable contract, on the other hand, is a contract in which price is determined by the supplier and may change from time to time at the discretion of the supplier. Noble does not offer variable priced contracts.

8. PJM has confirmed that there were no changes in law or regulations enacted during January 2014 and that the charges for ancillary services were simply higher. Market participants know, or should know, which ancillary services are market based and that they are subject to fluctuations. Noble agrees with the statements made by the OSBA that “[i]t is certainly *not* true that these costs were new or additional costs that were *imposed* upon FES by PJM.” OSBA Petition at 5 (emphasis in original).

9. As one of the largest retail suppliers in the country, Noble believes this is not an industry-wide problem, but rather a problem with what may be a limited number of EGSs. Unfortunately, the actions described by the OSBA in its petition could negatively impact consumers, other EGSs, the Pennsylvania retail market, and the industry as a whole if these EGSs engaged in misleading or deceptive marketing practices.

10. Noble’s interest in this proceeding is not adequately represented by any other participant. Its interest, moreover, may be directly affected by the outcome of this proceeding, as Noble could be bound by any Commission decision regarding the ability of FES (or an EGS generally) to recover from its customers ancillary service costs under the terms of fixed priced contracts. Accordingly, Noble submits that its intervention in this proceeding is necessary and appropriate.

WHEREFORE, Noble Americas Energy Solutions LLC respectfully requests that the Pennsylvania Public Utility Commission grant this Petition to Intervene and afford Noble an opportunity to participate in this proceeding as a full and active party.

Respectfully submitted,



---

Charles E. Thomas, III, Esq. (PA ID # 201014)  
THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 600  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
Tel: (717) 255-7611  
cet3@tntlawfirm.com

*Counsel for Petitioner  
Noble Americas Energy Solutions LLC*

DATED: June 2, 2014

VERIFICATION

I, Becky Merola, Government Affairs East of Noble Americas Energy Solutions LLC, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
Becky Merola

JOHN R. EVANS,  
SMALL BUSINESS ADVOCATE,  
Petitioner

v.

FIRST ENERGY SOLUTIONS CORP.,  
Respondent

Docket No. P-2014-2421556

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 2nd day of June, 2014, served a true and correct copy of the foregoing Petition to Intervene of Noble Americas Energy Solutions LLC, upon the persons listed below by first class mail, postage prepaid:

Daniel G. Asmus, Esq.  
Office of Small Business Advocate  
300 North Second Street, Suite 1102  
Harrisburg, PA 17101

David P. Zambito, Esq.  
Cozen O'Connor  
305 N. Front Street, Suite 400  
Harrisburg, PA 17101-1236

Candis A. Tunilo, Esq.  
Brandon J. Pierce, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923



Charles E. Thomas, III (PA ID # 201014)