

# INTERVENTION



0000150294

## BEFORE THE ARIZONA CORPORATION

### COMMISSIONERS

**BOB STUMP, Chairman**  
**GARY PIERCE**  
**BRENDA BURNS**  
**BOB BURNS**  
**SUSAN BITTER SMITH**

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AZ CORP COMMISSION  
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Arizona Corporation Commission

DOCKETED

FEB 11 2014

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IN THE MATTER OF REORGANIZATION  
OF UNS ENERGY CORPORATION

) DOCKET NO. E-04230A-14-0011

) DOCKET NO. E-01933A-14-0011

ORIGINAL

) NOBLE AMERICAS ENERGY

) SOLUTIONS LLC APPLICATION

) FOR LEAVE TO INTERVENE

Pursuant to A.A.C. R14-3-105, Noble Americas Energy Solutions LLC ("Noble Solutions") hereby makes Application for Leave to Intervene ("Application") in the above-captioned and above-docketed proceeding ("Instant proceeding"). In support of its Application, Noble Solutions submits the following information.

### I.

#### DESCRIPTION OF NOBLE SOLUTIONS

Noble Solutions is 100% owned by Noble Americas Gas & Power LLC, which in turn is 100% owned by Noble Group Ltd. ("Noble Group"). Noble Group is a market-leading global supply chain manager of agricultural and energy products, metals and minerals. Noble Group is listed in Singapore (SGX: N21), with headquarters in Hong Kong and operates from over 140 locations. Noble Group is ranked number 76 in the 2013 Fortune 500. Noble Solutions offers a suite of commodity products and commodity services structured to meet the unique needs of energy users and to capture the benefits of choice at the retail level of electricity and natural gas consumption. These commodity products include fixed price, index price and renewable energy, and commodity services include Powerfolio 3D, Online Energy Analyzer and market reports. At present, Noble Solutions serves commercial and industrial customers and institutions of higher learning in the states of California, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, Ohio,

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1 Oregon, Pennsylvania, Rhode Island, and Texas, and also in Baja California, Mexico.

2 In connection with the foregoing, Noble Solutions has been granted intervenor status in  
3 the generic docket established by the Commission in November of 2013 to examine the potential  
4 impacts to the Commission's current energy utility model resulting from innovation and  
5 technological developments in the generation and delivery of energy.<sup>1</sup> As noted below, the  
6 innovation and technological developments which are the subject of the Innovation Docket are  
7 among those challenges which confront the current and future directors and senior management of  
8 UNS Energy and the Arizona Utilities.<sup>2</sup>

9 II.

10 CIRCUMSTANCES OCCASIONING NOBLE SOLUTIONS'

11 INTERVENTION REQUEST

12 On January 10, 2014, UNS Energy Corporation ("UNS Energy") and Fortis, Inc.  
13 ("Fortis") filed a Joint Notice of Intent to Reorganize ("Joint Notice") with the Commission,  
14 which occasioned the establishment of the Instant Proceeding.<sup>3</sup> In essence, as a result of a  
15 December 11, 2013 Agreement and Plan of Merger ("Merger Agreement") entered into among  
16 UNS Energy, Fortis, FortisUS and Color Acquisition, (i) Color Acquisition would merge into  
17 UNS Energy, (ii) UNS Energy would become a wholly-owned subsidiary of FortisUS, an affiliate  
18 of Fortis, (iii) Fortis would become UNS Energy's ultimate parent, and (iv) UNS Energy's  
19 existing shareholders would be replaced by FortisUS as the sole shareholder of UNS Energy.<sup>4</sup> In

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21  
22 <sup>1</sup> This generic docket has been assigned Docket No. E-00000J-13-0375 by the Commission's Docket Control in  
23 response to a November 4, 2013 Memorandum from Commissioner Robert L. Burns to the Commission's Docket  
24 Control. As referenced herein, this docket will be referred to as the "Innovation Docket."

25 <sup>2</sup> As used herein, and as defined in the January 10, 2014 Joint Notice of Reorganization ("Joint Notice"), the term  
26 "Arizona Utilities" includes Tucson Electric Power Company, UNS Electric and UNS Gas.

27 <sup>3</sup> In the Joint Notice, UNS Energy is acting upon behalf of itself and its affiliates UniSource Energy Services  
28 ("UES"), Tucson Electric Power Company ("TEP"), UNS Electric, Inc. ("UNS Electric") and UNS Gas, Inc. ("UNS  
Gas"). In that regard, in both the Joint Notice and herein, TEP, UNS Electric and UNS Gas will be collectively  
referred to as the "Arizona Utilities." In addition, in the Joint Notice Fortis is acting upon behalf of itself and its  
affiliates FortisUS Holdings Nova Scotia Limited ("FortisUS Nova Scotia"), Fortis US, Inc. ("FortisUS") and Color  
Acquisition Sub, Inc. ("Color Acquisition").

<sup>4</sup> See Joint Notice at page 2, lines 1-4. Also, see January 24, 2014 prepared testimony of UNS Energy witness David  
G. Hutchens at page 2, lines 11-16 and page 3, lines 8-13; and, January 24, 2014 prepared testimony of Fortis witness  
Barry V. Perry at page 12, lines 9-17.

1 that regard, direct ownership of the Arizona Utilities and UES would remain at UNS Energy.<sup>5</sup>

2 The Joint Notice observes that “the past decade has brought enormous changes to the  
3 utility industry,”<sup>6</sup> and states that

4 “In the near future, UNS Energy and the Arizona Utilities must  
5 address significant issues including: . . . (iv) innovations in the  
6 nature and delivery of electricity service.”<sup>7</sup>

6 In that regard, in prepared testimony filed on January 24, 2014 in the Instant Proceeding, UNS  
7 Energy’s Chairman and Chief Executive Officer stated as follows:

8 “The Arizona Utilities also will require increasing capital  
9 investments to comply with future physical- and cyber-security  
10 standards that are expected to apply to a broader range of assets, as  
11 well as costs to integrate increasing levels of DG, energy  
12 efficiency and other new energy technologies into their systems.”  
[Prepared testimony of Paul J. Bonavia at page 4, lines 9-12]  
[emphasis added]

13 \* \* \*

14 “In addition to rising capital costs, the Arizona Utilities face the  
15 prospect of future revenue losses due to energy efficiency  
16 improvements and customers’ increasing use of DG systems,  
17 including solar arrays, hydrogen fuel cells and other emerging  
18 technologies. These losses will be compounded by the cost of  
19 integrating such technologies into the utility infrastructure through  
20 bulk energy storage and other so-called smart-grid enhancements.  
21 At the same time, we will be pressed to adapt to changes in our  
22 customers’ energy consumption needs and expectations. Such  
23 conditions might challenge our ability to secure adequate financial  
24 resources to invest in the technology and other means to offer  
25 customers a broader array of choices in price and quality of  
26 service.” [Prepared testimony of Paul J. Bonavia at page 4, line 22  
27 – page 5, line 6] [emphasis added]

23 As noted above, this particular challenge is the subject of the Commission’s aforementioned

25 <sup>5</sup> See Joint Notice at page 2, lines 4-6. Also, see January 24, 2014 prepared testimony of UNS Energy witness David  
26 G. Hutchens at page 3, lines 15-16; and, January 24, 2014 prepared testimony of Fortis witness Barry V. Perry at  
page 12, lines 15-17.

27 <sup>6</sup> Joint Notice at page 3, line 11.

28 <sup>7</sup> Joint Notice at page 3, line 18-19. Another challenge is “. . . (vii) investing . . .to deliver increased renewable  
energy . . .” [Joint Notice at page 3, lines 21-23] which, as noted above, is a commodity product Noble Solutions  
offers.

1 Innovation Docket.

2 In that regard, TEP and UNS Electric were granted leave to intervene in the Innovation  
3 Docket on December 3, 2013. Further, in recognition of the importance of the subject matter of  
4 the Innovation Docket to Arizona electric utilities regulated by the Commission, such as TEP and  
5 UNS Electric, those two (2) subsidiaries of UNS Energy included the following statement in  
6 Comments they submitted in the Innovation Docket on January 17, 2014 in response to a  
7 December 5, 2013 letter from Commissioner Robert L. Burns to that docket:

8 “The Companies believe these workshops on innovative  
9 technologies will highlight the need for equally innovative  
10 regulatory models and policies. If the adoption of new products and  
11 services changes consumer behavior, our utility rates will need to  
12 adapt, becoming more transparent and responsive. Moreover, the  
13 current regulatory model, which is based on the outdated  
14 assumption that electric sales perpetually increase, must change.  
15 Utilities and regulators alike should be prepared to address the  
16 technological changes that are expected to challenge and transform  
17 the electric utility industry. For these reasons, the Companies look  
18 forward to participating in the proposed workshops in this docket.”  
19 [TEP and UNS Electric January 17, 2014 Comments at page 2 last  
20 paragraph] [emphasis added]

21 Noble Solutions shares TEP’s and UNS Electric’s view that the Commission’s current  
22 energy utility regulatory model is outdated, and that the Commission can and should make  
23 changes to the same which recognize and allow for recent and ongoing innovation and  
24 technological developments which can affect the manner of generation and delivery of energy and  
25 related services to the ultimate consumer. It is for that reason that Noble Solutions also requested  
26 (and on January 6, 2014 was granted) intervention in the Innovation Docket.

27 The relevance of the Innovation Docket to the Instant Proceeding is occasioned by the  
28 governance provisions of the proposed merger, and the resulting governance structure if the  
merger is approved. More specifically, while both the Joint Notice and the January 24, 2014  
prepared testimony of UNS Energy and Fortis discuss Fortis’ professed intent to rely on local  
utility management and decision making in connection with the future operations of UNS Energy  
and the Arizona Utilities, the reality is that the philosophies and policies of Fortis’ directors and

1 senior management will play a significant, if not dominant, role in the post-merger philosophies  
2 and policies of UNS Energy and the Arizona Utilities with respect to a wide array of subjects,  
3 including regulatory matters.

4 For example, at closing of the merger, four (4) of UNS Energy's current eleven (11)  
5 members of its Board of Directors "who are acceptable to FortisUS," will be retained.<sup>8</sup> The  
6 composition of the remaining Board of Directors will be determined by Fortis, acting through  
7 FortisUS. Thus, even though a majority of UNS Energy's post-merger Board of Directors may be  
8 independent and Arizona residents, the identity of the same effectively will be decided by Fortis.  
9 Similarly, no later than one (1) year following closing of the merger, FortisUS will also appoint  
10 the members of the Board of Directors for each of the Arizona Utilities.<sup>9</sup> So, again, those  
11 individuals with director level authority and responsibility for determining the philosophies and  
12 policies of the Arizona Utilities with respect to regulatory matters will be individuals selected by  
13 FortisUS, who presumably will reflect the philosophies and policies of FortisUS and its parent  
14 with regard to utility regulation in today's environment.<sup>10</sup>

15 Similarly, while the proposed merger documents appear to provide that the senior  
16 management of UNS Energy and the Arizona Utilities will continue to be employed for at least  
17 two (2) years following closing of the merger,<sup>11</sup> the reality is that they will be subject to the  
18 prospect of substantial influence and policy direction from their respective Board(s) of Directors,  
19 who, in turn, will serve at the pleasure of FortisUS. In that regard, in describing Fortis' business  
20 model for its regulated utilities, the Joint Notice states that

21 "Each regulated utility has its own senior management team that  
22 lives in the area served by the utility and stands accountable to the

23  
24 <sup>8</sup> See Joint Notice at page 8, lines 14-17. Also, see January 24, 2014 prepared testimony of Fortis witness Barry V. Perry at page 13, lines 24-26.

25 <sup>9</sup> See Joint Notice at page 8, lines 17-23. Also, see January 24, 2014 prepared testimony of UNS Energy witness David G. Hutchens at page 13, lines 23-26.

26 <sup>10</sup> The merger provision that the majority of each of these Boards of Directors shall be "independent," with the majority of such independent directors "being residents of the State of Arizona, and with emphasis on selecting candidates who reside, conduct business or work within the Arizona Utilities' service territories" does not alter the fact that their ultimate identification and selection will be made by FortisUS, presumably following consultation with its parent.

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28 <sup>11</sup> See prepared testimony of Fortis witness Barry V. Perry at page 14, lines 21-23.

1 individual utility's Board of Directors."<sup>12</sup> [emphasis added]

2 In making this observation, Noble Solutions does not intend in any way to disparage or discount  
3 the competence or caliber of UNS Energy's and the Arizona Utilities' current senior management.  
4 To the contrary, based upon information available to it, Noble Solutions considers them to be very  
5 capable. But, as noted above, ultimately they are accountable to and subject to policy direction  
6 from their respective Board(s) of Directors, the composition of which will be determined by  
7 FortisUS no later than one (1) year following closing of the merger.

8 Against the above background, Noble Solutions believes it is important that persons  
9 and/or entities interested in one (1) or more of the "significant issues" facing UNS Energy and the  
10 Arizona Utilities in the near future, as identified in the Joint Notice and January 24, 2014  
11 prepared testimony of UNS Energy and Fortis, have an opportunity to ascertain directly from  
12 Fortis (i) Fortis' policy position(s) with respect to such issue(s), and (ii) Fortis' preferred  
13 positions(s) as to how such issues should be addressed and resolved. As previously indicated,  
14 Noble Solutions is particularly interested in ascertaining Fortis' views and policy(ies) position on  
15 how to address the potential impact on the Commission's current energy utility regulatory model  
16 of innovation and technological developments in the generation and delivery of energy.<sup>13</sup> In that  
17 regard, Fortis has already submitted in the Instant Proceeding the January 24, 2014 prepared  
18 testimony of its President and Chief Executive Officer (H. Stanley Marshall) and Vice President,  
19 Finance and Chief Financial Officer (Barry V. Perry), either or both of whom presumably are in a  
20 position to provide important information and insight on this subject. Accordingly, Noble  
21 Solutions is filing its intervention request in the Instant Proceeding.

22 III.

23 CONCLUSION

24 As of this juncture, Noble Solutions does not have a position as to whether or not the  
25

26 <sup>12</sup> See Joint Notice at page 11, lines 7-9.

27 <sup>13</sup> In that regard, as indicated from the above-quoted excerpts from the January 24, 2014 prepared testimony of UNS  
28 Energy witness Paul J. Bonavia, this particular "significant issue" area represents an important challenge for the  
Arizona Utilities. Thus, this will be an important challenge for Fortis as well, given its proposed ultimate ownership  
of UNS Energy and the Arizona Utilities.

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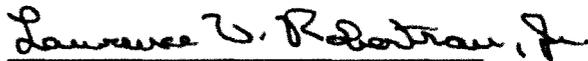
1 Commission should approve the proposed merger, either with the conditions proposed by the  
2 signatory parties to the December 11, 2013 Merger Agreement and/or additional or substitute  
3 conditions determined by the Commission to be appropriate. But, as noted above, Noble  
4 Solutions is very interested in being able to ascertain directly from senior executives of Fortis the  
5 views and position(s), if any, of Fortis and FortisUS with respect to how potential impacts to the  
6 Commission's current energy utility model resulting from innovation and technological  
7 developments in the generation and delivery of energy might be addressed in future Commission  
8 policies. In that regard, Noble Solutions believes that Fortis' views and position(s) can best be  
9 ascertained through direct examination and cross-examination and/or questions during an  
10 evidentiary hearing.<sup>14</sup>

11 For the reasons discussed above, Noble Solutions could be directly and substantially  
12 affected by a Commission decision in the Instant Proceeding. Further, Noble Solutions'  
13 participation as a party would not unduly delay conduct of said proceeding, inasmuch as Noble  
14 Solutions currently does not anticipate raising any issues not already raised by the Joint Notice  
15 and the January 24, 2014 prepared testimony of UNS Energy and Fortis.

16 WHEREFORE, Noble Solutions hereby requests that the Commission enter an appropriate  
17 form of order granting (i) Noble Solutions' Application for Leave to Intervene in the Instant  
18 Proceeding and (ii) Noble Solutions all rights as a party of record therein.

19  
20 Dated this 11<sup>th</sup> day of February 2014.

21 Respectfully submitted,

22 

23 Lawrence V. Robertson, Jr.

24 Attorney for Noble Americas Energy Solutions LLC

25 The original and thirteen (13) copies

26  
27 <sup>14</sup> As of this juncture, no evidentiary hearings have been scheduled in the Innovation Docket, nor is there any present  
28 assurance an evidentiary hearing will be conducted. Whereas, pursuant to the Commission's January 31, 2014  
Procedural Order in the Instant Proceeding, an evidentiary hearing has been scheduled to commence on June 16,  
2014.

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1 of the foregoing will be filed  
2 this 11<sup>th</sup> day of February 2014 with:

3 Docket Control Division  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 A copy of the same served by e-mail  
8 or first class mail that same date to:

9 Lyn A. Farmer, Chief Administrative Law Judge  
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