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ORIGINAL

IN THE MATTER OF THE REORGANIZATION OF UNS ENERGY CORPORATION.

DOCKET NO. E-04230A-14-0011
DOCKET NO. E-01933A-14-0011

PROCEDURAL ORDER

BY THE COMMISSION:

On January 10, 2014, UNS Energy Corporation ("UNS Energy") on behalf of itself and its affiliates,[1] and Fortis Inc. ("Fortis") on behalf of itself and its affiliates, (collectively, "Joint Applicants") filed with the Arizona Corporation Commission ("Commission") pursuant to Arizona Administrative Code ("A.A.C.") R14-2-803, a Joint Notice of Intent to Reorganize ("Joint Notice").[2]

On February 11, 2014, Noble Americas Energy Solutions LLC ("Noble Solutions") filed an Application for Leave to Intervene ("Application") in this matter. Noble Solutions is the subsidiary of Noble Americas Gas & Power LLC which in turn is a subsidiary of Noble Group Ltd. Noble Group Ltd. is a "global supply chain manager of agricultural and energy products, metals and minerals." According to the Application, Noble Solutions serves commercial and industrial customers by offering "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."[3]

On February 18, 2014, Joint Applicants filed a Response to the Application, objecting on the grounds that Noble Solutions lacks standing to intervene under Arizona Administrative Code ("A.A.C.") R14-3-105 which limits intervention to parties "who are directly and substantially

[1] UniSourse Energy Services, Inc., Tucson Electric Power Company ("TEP"), UNS Electric, Inc. ("UNSE") and UNS Gas, Inc. ("UNSG"). TEP, UNSE and UNSG are collectively the "Arizona Utilities".
[2] A hearing on the Joint Notice is set for June 16, 2014.
[3] Application at 1.

affected by the proceedings," and because based on the Application, Noble Solutions' intervention would unduly broaden the issues of the proceeding.

On February 21, 2014, Noble Solutions filed a Reply to the Joint Applicants' Response.

In its Application, Noble Solutions has alleged that issues being examined in the Commission's generic docket relating to innovation and technological developments in the generation and delivery of energy ("Innovation Docket"),[4] are among the challenges which will confront the current and future directors and senior management of UNS Energy, and are relevant to the instant proceeding because of the governance provisions of the proposed merger.[5] Noble Solutions asserts that it will be the philosophies and policies of Fortis' directors and senior management that will determine and dominate the policies of UNS Energy and the Arizona Utilities with respect to a wide array of issues including regulatory matters.[6]

Noble Solutions states that as an entity interested in one or more "significant issues" facing UNS Energy and the Arizona Utilities' future, including in particular, issues of integrating new technologies, adapting to changes in customers' energy consumption needs and expectations, and offering a broader array of choices in price and quality of service, it is important that it have an opportunity to ascertain directly from Fortis: (i) Fortis' policy position(s) with respect to such issue(s), and (ii) Fortis' preferred position(s) as to how such issues should be addressed and resolved.[7]

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[4] Docket No. E-00000J-13-0375.
[5] Application to Intervene at 4.
[6] Application at 4-6.
[7] Application at 6. Noble Solutions cites to a statement in the Joint Notice and to testimony filed by Paul Bonavia, UNS Energy's Chairman and Chief Executive Officer:

> in the near future, UNS Energy and the Arizona Utilities must address significant issues including: . . . . (iv) innovations in the nature and delivery of electricity service. (Joint Notice at 3).
>
> The Arizona Utilities also will require increasing capital investments to comply with future physical- and cyber-security standard that are expected to apply to a broader range of assets, <u>as well as costs to integrate</u> increasing levels of DG, energy efficiency <u>and other new energy technologies into their systems</u>.(Testimony of Paul Bonavia at 4, emphasis added by Noble Solutions; *see* Application at 3.)
>
> <u>In addition to rising capital costs, the Arizona Utilities face the prospect of future revenue losses due to</u> energy efficiency improvements and customers' increasing use of DG systems, including solar arrays, hydrogen fuel cells and <u>other emerging technologies.</u> These losses will be compounded by the cost of integrating such technologies into the utility infrastructure through

The Joint Applicants argue that Noble Solutions has not identified any direct relationship with UNS Energy or the Arizona Utilities, (it is not a customer of the Arizona Utilities, not an organization that represents interests of customers residing within the Arizona Utilities' service territories, and does not have a business relationship with UNS Energy or the Arizona Utilities) such that it would be directly and substantially impacted by the proceeding. The Joint Applicants argue that Noble Solutions' sole basis for intervention is that both Noble Solutions and the Arizona Utilities have intervened in the Innovation Docket, and that Noble Solutions is curious as to what positions the Joint Applicants might take in that docket. The Joint Applicants argue that Noble Solutions' interest in the Innovation Docket does not demonstrate "substantially affected" as required by the Intervention Rule.[8]

Additionally, Joint Applicants argue that Noble Solutions' Application, on its face, demonstrates that its participation in the docket would unduly broaden the scope of this proceeding. Joint Applicants state that under A.A.C. R14-2-803.C, the Commission must consider whether the reorganization that is the topic of this proceeding, would impair the financial status of the public utilities, otherwise prevent them from attracting capital at fair and reasonable terms or impair their ability to provide safe and reliable service. The Joint Applicants argue that the potential positions that management might take in a generic policy docket in the future are irrelevant to the consideration of any financial impairment under Rule 803.[9] Moreover, the Joint Applicants argue that the Joint Notice does not suggest a particular position on future innovation or technology, but simply addresses the position that the proposed merger would place the Arizona Utilities in a better financial position to respond to any innovations that may be mandated or implemented in the future. The Joint Applicants note that as TEP and UNSE are participants in the Innovation Docket, Noble has the ability to pursue

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> bulk energy storage and other so-called smart-grid enhancements. At the same time, we will be pressed to adapt to changes in our customers' energy consumption needs and expectations. Such conditions might challenge our ability to secure adequate financial resources to invest in the technology and other means to offer customers a broader array of choices in price and equality of service. (Testimony of Paul Bonavia at 4, emphasis added by Noble Solutions; see Application at 3.)

[8] The Joint Applicants note that at any given time, the Commission has a number of generic dockets open that impact the Arizona Utilities, and the fact that an entity participates in those dockets should not afford standing to intervene in an unrelated docket. Response at 2.

[9] Response at 3.

answers to appropriate questions through that docket.

In its Reply to the Joint Applicants' Response, Noble Solutions argues that Rule 803.C supports its position because the prospective challenges facing the Arizona Utilities as a result of innovation and technological changes bear directly on the future ability of the Arizona Utilities to provide safe, reasonable and adequate service within the contemplation of Rule 803(C). Noble Solutions argues that it is important that parties of record have an opportunity within the context of the instant proceeding to ascertain the views and positions of Fortis senior management with respect to currently identifiable regulatory matters, including the issues that are the subject of the Innovation Docket, and that this is particularly so because no evidentiary hearings have been scheduled or contemplated in the Innovation Docket.[10]

Noble Solutions argues that it is directly and substantially affected by a decision in the instant proceeding because "how the Arizona Utilities respond to change(s) in the Commission's current energy regulatory model could directly and substantially affect the ability of Noble Solutions to have a future business relationship with the Arizona Utilities and/or their respective customers."[11] Noble Solutions asserts that the Commission has in the past granted intervention to entities which did not possess a current relationship with the applicant (citing wholesale and retail electric service providers), but did possess a prospect of a future business relationship.[12] In those cases, Noble Solutions argues the nexus for intervention was how a Commission decision could impact the prospect for the intervenor to do business in the future.

The Commission evaluates requests to intervene pursuant to A.A.C. R14-3-105 which provides in relevant part:

> A. Intervention. Persons, other than the original parties to the proceeding, <u>who are directly and substantially affected by the proceedings</u>, shall secure an order from the Commission or presiding officer granting leave to intervene before being allowed to participate.
>
> B. Application. An application for leave to intervene shall be in writing and must state the basis for the application. Such application shall be served and filed by an applicant at least five days before the proceeding is called for hearing. <u>No application for leave to intervene shall be granted where by so doing the issues theretofore presented</u>

[10] Nobel Solutions' Reply at 3.
[11] Noble Solutions' Reply at 5.
[12] Noble Solutions' Reply at 4.

> will be unduly broadened, except upon leave of the Commission first had and received.

The Joint Notice was filed pursuant to A.A.C R14-2-803 which states in relevant part:

> A. Any utility or affiliate intending to organize a public utility holding company or reorganize an existing public utility holding company will notify the Commission's Utilities Division in writing at least 120 days prior thereto . . . .
>
> B. The Commission staff will, within 30 days after receipt of the notice of intent, notify the Applicant of any questions which it has concerning the notice or supporting information, the Commission will, within 60 days from the receipt of the notice of intent, determine whether to hold a hearing on the matter or approve the organization or reorganization without a hearing.
>
> C. At the conclusion of any hearing on the organization or reorganization of a utility holding company, the Commission may reject the proposal if it determines that it would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

Noble Solutions has presented a valid basis how it could be directly and substantially affected by the outcome of this proceeding. The ability of the proposed new entity to operate in a changing environment of technological innovations and potential regulatory paradigm shifts is relevant to its ability to attract capital and provide safe, reasonable and adequate service. As a potential competitor or business partner with the Arizona Utilities, Noble Solutions can offer a unique perspective to the proceedings that could benefit the Commission as it considers the proposed transaction.

Both the Joint Applicants and Noble Solutions focus their arguments on Rule 803. This is not the first time that the Commission has been asked to consider a reorganization involving UNS Energy.[13] As the Commission discussed at length in that earlier case, Rule 803 is not the only standard of review for reorganizations. In addition to determining if the proposed transaction would impair the financial status of the public utility, the Commission has the overarching obligation imposed by Article 15, §3 of the Arizona Constitution, to consider the broad public interest. Rule 803 speaks to several considerations of "public interest," but may not encompass the entire inquiry. While Noble Solutions has demonstrated that its participation would not unduly broaden the issues under the context of Rule 803, all parties are reminded that Rule 803 is not the only standard.

While the ability of the management of the newly proposed entity to respond financially and

[13] *See* Decision No. 67454 (January 4, 2005).

philosophically to changing market conditions is part of the inquiry into the public interest and within the scope of this proceeding, the focus of this docket is not on the specifics that are being addressed in the Innovation Docket. Noble Solutions has stated that it wants to ascertain Fortis' positions on integrating new technologies and changing consumer expectations and Fortis' preferred policy positions. This statement is extremely broad and on its face potentially overly burdensome to the parties and the process of considering the issues in this proceeding. To require Fortis to take a position on specific issues being addressed in the Innovation Docket, especially before other participants in that docket, could be unfair to the Joint Applicants, and would potentially unduly broaden the scope of this proceeding. Noble Solutions is cautioned that the instant docket should not be used as a fishing platform for specific positions being addressed in the Innovation Docket, or broaden the issues to debate the merits of competition, but rather to explore the ability of new management and the merged entity to address the future challenges of Arizona's electric market.

IT IS THEREFORE ORDERED that Noble Solutions' Application for Leave to Intervene is granted as discussed herein.

DATED this 10th day of March, 2014.

JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed
this 16th day of March, 2014 to:

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