

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating) **EL**
Company and The Toledo Edison Company for) Case No. 08-935-SSO
Authority to Establish a Standard Service Offer)
Pursuant to Section 7928.143, Revised Code in)
the Form of an Electric Security Plan)

In the Matter of the Application of Ohio Edison)
Company, the Cleveland Electric Illuminating)
Company and the Toledo Edison Company for) **EL**
Approval of a Market Rate Offer to Conduct a) Case No. 08-936-SSO
Competitive Bidding Process for Standard Service)
Offer Electric Generation Supply Accounting)
Modifications Associated with Reconciliation)
Mechanism, and Tariffs for Generation Service)

**NUCOR STEEL MARION, INC.'S
MEMORANDUM IN RESPONSE TO MOTIONS BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Nucor Steel Marion, Inc. ("Nucor") hereby responds to several motions made by the Office of the Ohio Consumers Counsel ("OCC") on August 29, 2008. OCC moves: (1) for a bifurcated hearing in the FirstEnergy market rate offer ("MRO") case; (2) to consolidate the MRO case and the FirstEnergy electric security plan ("ESP") case; (3) to sever issues in the FirstEnergy distribution rate case (Case Nos. 07-551-EL-AIR, et al.) from the ESP case; or, in the alternative (4) to supplement the record in the ESP case using the record in the distribution rate case.

Nucor submits this response to specifically support OCC's motion for a bifurcated hearing in the MRO case and to articulate how Nucor believes the bifurcation should work.

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Nucor is concerned that without bifurcation, crucial issues (many of which FirstEnergy elected not to address in its MRO application) will not be adequately addressed in the MRO case, including allocation of generation and transmission costs among customer classes, interruptible rates, rate design issues like time-of-day rates, economic development rates, rate impacts, and barriers to competition. Moreover, it is impossible to determine if the FirstEnergy MRO proposal meets the Commission's rules when they have not been finally published – bifurcation can help to address this issue. In addition, Nucor also states that it sees the merit in OCC's other three motions and does not object to them.

Nucor agrees that the MRO case should be bifurcated and should proceed in two phases. Although FirstEnergy insists that the Commission must decide whether to approve FirstEnergy's MRO proposal within 90 days of the filing of the proposal, a close reading of the statute shows that the Commission has more time and flexibility to make a final determination on a utility's entire MRO proposal than FirstEnergy contemplates.

The statute provides that what must be ruled on by the Commission within 90 days is: (i) whether the distribution utility's competitive bidding process ("CBP") contained in the MRO application meets the five criteria specified in Section 4928.142(A)(1); (ii) whether the CBP complies with the rules developed by the Commission concerning the conduct of the CBP and the qualification of bidders; and (iii) whether the three RTO participation and pricing information requirements contained in Section 4928.142(B) are met. As OCC explains, the Commission cannot expect to rule on the entire MRO proposal within 90 days because the final Commission MRO rules have not yet even been promulgated.

Dividing the proceeding into two phases, as contemplated in the statute, will be more efficient and will help to ensure that all important issues are fully and fairly addressed. The first

part of the proceeding should address whether FirstEnergy's proposed CBP satisfies the eight criteria specified in Sections 4928.142(A)(1) and (B) of the Revised Code. The hearing currently scheduled to begin on September 16, 2008 in this proceeding should be used to address only whether FirstEnergy's MRO proposal meets these statutorily-required criteria pertaining solely to the CBP portion of the MRO filing.

The hearing in the second part of the proceeding should be scheduled at a later date, and this second phase should address whether the MRO meets the final MRO rules adopted by the Commission, as recommended by OCC. This second phase of the proceeding should address all other issues regarding the proposed MRO, other than the eight threshold CBP issues to be decided in the first phase of the proceeding. This would include the myriad of other important issues related to FirstEnergy's MRO proposal, including the following issues, most of which FirstEnergy elected not to address in its application, as to how FirstEnergy's ultimate rate schedules and riders should be developed under the proposed MRO:

- how generation and transmission costs from competitive suppliers should be allocated among and recovered from each of the rate classes under the MRO;
- whether and how FirstEnergy should offer interruptible service under its MRO;
- whether and how the MRO should address various rate design issues such as time-of-day rates;
- whether and how FirstEnergy should address the substantial rate impacts from its proposal; and
- whether and how economic development and retention should be addressed in the MRO rates.

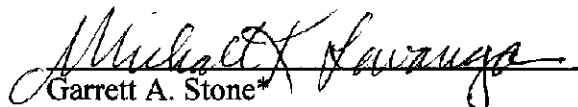
Bifurcating the MRO in this manner is fully consistent with the statutory scheme. Although the statute is clear that the Commission must rule within 90 days on whether the CBP proposed in an MRO meets the specific requirements spelled out in Sections 4928.142(A)(1) and (B), Section 4928.142(B) also provides that, when an electric utility files an MRO and an ESP together, the utility shall not initiate its CBP until at least 150 days after the filing date of the applications. The Commission should use the additional 60 days after ruling on whether FirstEnergy's proposed CBP meets the criteria specified in Sections 4928.142(A)(1) and (B) to consider and rule on all the other elements that are included or should be included in the MRO proposal.

Bifurcating the MRO proceeding would mitigate the intense time pressures all parties are under in both the MRO and ESP proceedings. Rather than having to prepare their cases on all elements of FirstEnergy's MRO proposal in time for the scheduled start of the hearing on September 16, parties could concentrate in this initial phase on FirstEnergy's proposed CBP and examining whether it meets the eight criteria specified in Sections 4928.142(A)(1) and (B). Parties would then have more time to prepare their cases on the other elements of the MRO proposal, including elements not directly related to the procurement of generation supply, such as rate design, cost allocation, and economic development. Many of these elements are the same or similar to elements that will need to be addressed in the ESP proceeding, which counsels for the consolidation of the ESP and MRO proceedings, as OCC requests. Another option would be to defer consideration of all MRO issues aside from whether the CBP meets the eight criteria specified in Sections 4928.142(A)(1) and (B) until after the hearing in the ESP proceeding has been held and it has been determined whether the ESP or MRO approach is preferred. Either of these options would allow the parties the maximum amount of time possible to evaluate both the

MRO and the ESP proposals and to prepare their cases, and would be more administratively efficient than trying to conduct a hearing (starting in less than two weeks) on the full MRO application, including crucial issues not specifically addressed by FirstEnergy, followed closely by a hearing on the ESP application.

In summary, the Commission should grant OCC's motion to bifurcate the MRO proceeding. The first part of the proceeding should address whether FirstEnergy's proposed CBP meets the eight criteria specified in Sections 4928.142(A)(1) and (B) of the Revised Code, and the Commission should rule on these issues within the statutorily-prescribed 90 day period. These more limited issues can be addressed on the procedural schedule that has been established in the MRO proceeding (*i.e.*, intervenor testimony due September 9; Staff testimony and hearing begins on September 16). All other issues determinative of whether FirstEnergy's MRO proposal complies with the Commission's final rules, including rate design, interruptible, cost allocation, and economic development issues, should be addressed together with similar or overlapping ESP issues if the MRO and ESP proceedings are consolidated, or deferred until after the ESP hearing has been conducted. Given the time constraints the parties are under in the ESP and MRO proceedings, Nucor urges the Commission to rule on OCC's motions on an expedited basis.

Respectfully submitted,



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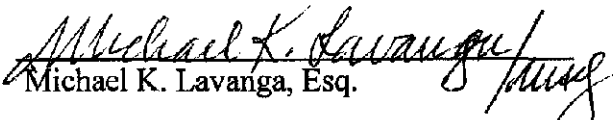
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission on September 3, 2008.


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