

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for)	
Alternative and Renewable Energy)	
Technologies and Resources, and Emission)	
Control Reporting Requirements, and)	
Amendment of Chapters 4901:5-1, 4901:5-3,)	Case No. 08-888-EL-ORD
4901:5-5, and 4901:5-7 of the Ohio)	
Administrative Code, pursuant to Chapter)	
4928, Revised Code, to Implement Senate Bill)	
No. 221.)	

RULEMAKING COMMENTS OF NUCOR STEEL MARION, INC.

In accordance with the Entry issued on August 20, 2008 by the Public Utilities Commission of Ohio (the "Commission") in the above-captioned proceeding, Nucor Steel Marion, Inc. ("Nucor") submits these comments on the Commission Staff's proposed rules to implement Amended Senate Bill No. 221 ("SB 221").

I. INTRODUCTION

Nucor is a large industrial customer of FirstEnergy that consumes millions of dollars worth of electricity each year. Nucor recycles steel scrap by using electricity to melt the scrap and produce new steel. Nucor Corporation (of which Nucor Steel Marion, Inc. is an affiliate) is North America's largest recycler of any material, recycling over 20 million tons of scrap steel in 2007 and conserving considerable amounts of iron, limestone, and coal that would otherwise be used to produce steel. In 2007, Nucor's bar mills, like the Marion facility, used recycled steel scrap for over 99% of their feedstock. Nucor Corporation has numerous steel-making facilities nationwide and has considerable

experience with demand response, working in the development of and participating in such programs at most of its steel mills.

Nucor submitted comments in Case No. 08-777-EL-ORD, the proceeding considering the first set of proposed rules developed by Staff to implement SB 221. As in that proceeding, Nucor believes that, in general, Staff's proposed rules in the instant proceeding are well-crafted and consistent with SB 221, although certain proposed rules should be improved and clarified. Below Nucor provides comments on the proposed rules, and offers suggested revised language.

II. COMMENTS

A. Chapter 4901:1-39 – Energy Efficiency and Demand Reduction Benchmarks.

Section 4901:1-39-01(A) – This section defines the term “demand response.” We recommend that the definition be revised to make it more explicit that demand response includes participation in all types of interruptible programs – specifically emergency/reliability interruptions along with economic interruptions. Similarly, the definition should also make more explicit that demand response includes peak demand reduction. While the language “reduction of customer load” includes these items, a more explicit definition would reduce the likelihood of later confusion or misinterpretation.

These changes make the definition of the term “demand response” more comprehensive and more accurate.

“Demand response” means a change in customer behavior or a change in customer owned or operated assets that effects the quantity and/or timing of electricity consumed as a result of price signals or other incentives. Demand response can reduce kilowatts of demand and/or kilowatt-hours of energy usage. Demand response includes participation in various interruptible programs, emergency/reliability interruption, economic

interruption or reduction of customer load, peak demand reduction, and may include certain types of energy conservation.

Section 4901:1-39-01(B) – The definition of the term “energy efficiency” in this section should be revised to explicitly state that recycling is a recognized form of energy efficiency for purposes of the Commission’s rules. When recycling of used materials is used as part of a customer’s production process, recycling recaptures lost or embodied energy from a used product, resulting in energy efficiency in comparison to using raw materials (for example, we estimate that recycling a pound of steel conserves over 5000 Btus as compared with producing steel without recycling). Explicitly recognizing recycling as a form of energy efficiency would, first and foremost, encourage utilization of less energy and save precious raw materials. In addition, it would provide more options for a utility to meet the energy efficiency requirements of Section 4928.66(A)(1)(a) of the Revised Code, and would have an added economic development benefit by serving to attract businesses that use recycling in their production processes to Ohio. Nucor recommends that this section be revised as follows:

“Energy efficiency” means the energy content of the useful output from a process, device, or system divided by the energy input into that process, device, or system. Energy efficiency also includes any production process that uses recycled materials as a majority of its raw materials.

Section 4901:1-39-01(E) – The definition of “peak demand reduction” in this section should be revised for greater clarity and precision. The definition should make explicit reference to interruptible rates in order to ensure that such rates are properly recognized as peak demand reduction mechanisms. Also, the definition should establish that, for a customer participating in a peak demand reduction program or rate, the customer’s demand reduction should be measured off the customer’s peak billing

demand, rather than off some other approach like the customer's average demand. For example, consider a customer with a 5 MW of firm load, a monthly average demand of 15 MW, and a monthly peak demand of 20 MW. Since the customer can and does place a 20 MW demand on the system, it should be recognized that the customer's peak load reduction and interruptible load is 15 MW (20 MW of peak demand minus 5 MW of firm demand), rather than of 10 MW (15 MW of average demand minus 5 MW of firm demand).

Clarifying the definition in this manner would recognize that when a customer's load is reduced, or can be reduced when necessary, as part of a peak demand program or rate, the utility avoids having to serve the customer's peak demand, not some lesser demand such as the customer's average demand. In other words, since the utility customer may utilize its peak demand at any time, it is the customer's peak demand that is being avoided or reduced, not the customer's average demand.

Finally, it is important to recognize that some peak demand reduction programs, like interruptible programs, have the ability to reduce peak demand, but are only used when necessary. If there is adequate supply to meet peak, then an interruptible load may be served out of reserves and the program may not be deployed (the program is effectively insurance; there is no need to interrupt if it is not necessary). Nonetheless, the interruptible load is available for deployment if necessary and provides the same or greater benefits for system planning, since the utility can guarantee these loads will be off if necessary and need not plan or procure resources to meet these loads.

Nucor recommends the following revisions to the definition:

"Peak demand reduction" means altering, or the ability to alter when necessary, the time and/or quantity of electricity consumed to reduce the

electric distribution utility's peak period requirements. Peak demand reduction results (or in the case of interruptible load, can result when necessary) in fewer kilowatts of load during peak periods, and may or may not result in fewer kilowatt-hours of energy use. Peak demand reduction specifically includes interruptible programs that permit the interruption or curtailment of some or all of a customer's load in response to emergencies and/or due to reliability reasons, even if an interruption is not necessary during a given peak. For a customer participating in a peak demand reduction program or rate, the customer's peak demand reduction quantity shall be the difference between the customer's peak demand (i.e., the customer's peak billing demand occurring during times when the customer has not been called upon to interrupt or curtail under the peak demand reduction program or rate) and the customer's firm demand (i.e., the demand that the customer maintains when called to interrupt or curtail under the peak demand reduction program or rate).

Section 4901:1-39-03(B) – This proposed rule provides that a person may file comments regarding an electric utility's benchmark report within 30 days of filing of such a report. It could be difficult for a party to develop a position on the benchmark report and provide constructive comments unless parties can ask the electric utility questions about how the report was prepared and the basis for the report's conclusions. Nucor recommends, therefore, that an opportunity for discovery be incorporated into this proposed rule, and that the time period for parties to file comments on the report be extended to 60 days:

Parties shall have the opportunity to send discovery requests to the electric utility on its benchmark report, and Any person may file comments regarding an electric utility's benchmark report within thirty sixty days of the filing of such report.

Section 4901:1-39-03(D) – This proposed rule provides that if the Staff recommends the assessment of a forfeiture based on its review of the utility's benchmark report and any comments, the electric utility may file a request for hearing within 30 days. Other parties aside from the utility should have procedural rights that mirror those granted the utilities in this proposed rule. Other parties aside from the electric utility

might disagree with the Staff report if it does not recommend the assessment of a forfeiture (or if there is some other concern with Staff's report), and these parties should have the same right to request a hearing as the utility has if Staff recommends a forfeiture. The rule should be rewritten to provide for a more general right for all parties to request a hearing on the filing and/or the Staff report, and the Commission should have the discretion to grant or deny such a request:

~~If staff recommends the assessment of a forfeiture, the electric utility may file, within thirty days, a request for hearing. Any person may request, within thirty days of the issuance of the staff report, a hearing on the report.~~

Section 4901:1-39-04(B)(2) – This section defines an electric utility's baseline for peak demand reduction. As discussed below regarding proposed rule 4901:5-5-01(S) which defines "peak demand" or "peak load," interruptible load is (or can be) curtailed if necessary at times of peak demand, so interruptible load does not contribute to, and is properly excluded from, the system peak. Accordingly, section 4901:1-39-04(B)(2) should be revised to make clear that a utility's baseline for peak demand reduction also does not include interruptible load:

The baseline for peak demand reduction shall be the highest seasonal hourly integrated firm peak demand (i.e., actual load minus interruptible load) in each of the past three calendar years as reported in the utility's three most recent forecast reports or reporting forms. In calculating the baseline and comparing it against actual peak demands, interruptible loads shall be excluded from both in order to ensure that the peak reduction benefit from interruptible loads are properly and fully reflected.

In practice, this would mean that all interruptible load under an electric utility's existing interruptible rates or programs in the previous three years would be removed for purposes of calculating the utility's baseline for peak demand reduction.

Section 4901:1-39-05(B) – This proposed rule allows a person to file objections within 30 days of the filing of a utility’s application to recover costs due to peak demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and potential shared savings. The Staff will then file a report with recommendations within 90 days of the filing of the application, and the Commission has the discretion to set the matter for hearing if all parties do not file a stipulation resolving all issues. At this point, no one knows how the cost recovery mechanisms addressed in this proposed rule will work, but it is safe to say that the issues raised in the utility’s application for cost recovery could be very complex. For example, how a utility calculates lost distribution revenues, what level of such revenues would be deemed “appropriate,” and what constitutes potential shared savings are all potentially complicated issues. It is important (especially in the early years of S.B. 221’s new energy efficiency and demand response framework) that parties have the time and the ability to ask discovery of a utility on its application, so that the parties may fully understand all elements of the utility’s application and can make informed objections to the application if necessary. Accordingly, Nucor recommends that the proposed rule be revised to state that parties will be able to conduct discovery on a utility’s application and to extend the deadlines:

Parties shall have the opportunity to send discovery to an electric utility on its application for recovery, and Any person may file objections within thirty sixty days of the filing of an electric utility’s application for recovery. The commission staff shall review the utility’s application and any objections, and file its report and recommendations within ninety one hundred and twenty days of the filing of the application. If a stipulation resolving all issues in the proceeding is not filed on behalf of all parties within thirty days of the filing of the staff report, the commission will set the matter for hearing and publish notice of hearing.

B. Chapter 4901:1-40 – Alternative Energy Portfolio Standard.

Section 4901:1-40-01(K) – This section states that the term “demand-side management” has the meaning set forth in rule 4901:1-39-01 of the Administrative Code. This term, however, is not defined in rule 4901:1-39-01. Nucor recommends that the definition of this term contained in proposed Section 4901:5-5-01(F) as modified below be used here:

“Demand-side management” has the meaning set forth in rule 4901:1-39-01 of the Administrative Code means those programs or activities that are designed to modify the magnitude and/or patterns of electricity consumption in a utility’s service area by means of equipment installed or actions taken on the customers premises, and shall include demand response and energy efficiency programs.

Section 4901:1-40-04(C)(2) – This section lists mercantile customer-sited resources which may be qualified resources for meeting electric utilities’ annual advanced energy resource benchmarks. For the same reasons discussed above for why recycling should be included in the definition of “energy efficiency” in Section 4901:1-39-01(B), recycling should be explicitly recognized as a mercantile customer-sited resource which an electric utility could use to meet its advanced energy resource requirements. Nucor recommends that a new subsection (f) be included in this section:

A mercantile customer-owned or controlled production process that uses recycled material as a majority of its raw materials.

Section 4901:1-40-07 – This proposed rule provides that an electric utility or electric services company may request a determination that its expected cost of compliance with an advanced energy or renewable energy benchmark would exceed its reasonably expected generation rate by 3% or more. As written, the rule would allow only an electric utility or electric services company to request such a determination. The

section of the statute that this rule effectuates (Section 4928.64(C)(3)), however, does not limit the parties who may make such a request just to electric utilities and electric service companies (as opposed to the case of a force majeure determination, which the statute (Section 4928.64(C)(4)(a)) specifically states must be brought by a utility or electric services company).

Nucor recognizes that it is unlikely that a party other than a utility or electric services company would request such a determination, given that it is the utility or service company that will be negotiating contracts with advanced energy/renewable energy suppliers, and thus will have the all the relevant cost information. Nevertheless, it is not out of the realm of possibility that a customer, another party, or Staff might want to make a case that the 3% threshold would be exceeded, even if the relevant electric utility or electric services company does not intend to request such a determination from the Commission. For this reason, and since the statute does not limit requests for such a determination solely to electric utilities or electric services companies, the rules should allow other parties to request such a determination from the Commission.

- (A) ~~An electric utility or electric services company~~ Any person may request a determination from the commission that ~~its~~ the reasonably expected cost of compliance of an electric utility or electric service company with an advanced energy resource benchmark would exceed ~~its~~ the electric utility's or electric service company's reasonably expected generation rate by three percent or more. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.
- (1) The burden of proof for substantiating whether or not the cost cap will be exceeded ~~such a claim~~ shall remain with the electric utility or electric services company.
- (2) An electric utility or electric services company that requests such a determination shall pursue all reasonable

compliance options prior to requesting such a determination from the commission.

- (3) In the case that the commission makes such a determination, the electric utility or electric services company may not be required to fully comply with that specific benchmark.
- (B) ~~An electric utility or electric services company~~ Any person may request a determination from the commission that its the reasonably expected cost of compliance of an electric utility or electric service company with a renewable energy resource benchmark, including a solar energy resource benchmark, would exceed its the electric utility's or electric service company's reasonably expected generation rate by three percent or more. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.
- (1) The burden of proof for substantiating whether the cost cap would be exceeded ~~such a claim~~ shall remain with the electric utility or electric services company.
 - (2) An electric utility or electric services company that requests such a determination shall pursue all reasonable compliance options prior to requesting such a determination from the commission.
 - (3) In the case that the commission makes such a determination, the electric utility or electric services company may not be required to fully comply with that specific benchmark.

C. Chapter 4901:5-5 – Electric Utility Forecast Reports Filing Requirements.

Section 4901:5-5-01(S) – The proposed revision to this section defines “peak demand” or “peak load” as the “electric transmission owner or electric utility’s maximum sixty-minute integrated clock hour predicted or actual load for the year.” The current definition, on the other hand, is based on “native load,” which is defined as “internal load minus interruptible loads.” The proposed revised definition needs to be modified to

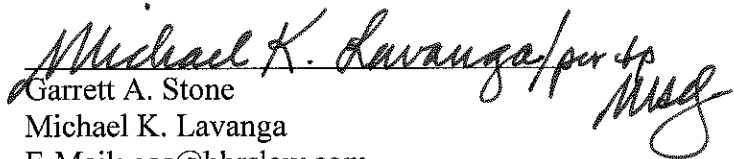
retain this distinction and to state that peak demand/peak load is firm load and does not include interruptible load. Since interruptible load is (or can be) curtailed if necessary at times of peak demand, interruptible load does not contribute to, and is properly excluded from, the system peak. Nucor recommends that this proposed revised definition be modified as follows:

“Peak demand” or “peak load” means the electric transmission owner or electric utility’s maximum sixty-minute integrated clock hour predicted or actual firm load, which shall mean its total load minus interruptible loads.

III. CONCLUSION

Nucor Marion respectfully requests that the Commission consider these comments and incorporate the revisions discussed herein into the proposed rules.

Respectfully submitted,


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Summary: Comments Nucor Comments electronically filed by Ms. Barbara L Morris on behalf of Nucor