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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 Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan	))))))	Case No. 08-935-EL-SSO

**BRIEF OF NUCOR STEEL MARION, INC.
ON A SHORT-TERM ELECTRIC SECURITY PLAN FOR FIRSTENERGY**

Pursuant to the Hearing Examiner's order in this proceeding, Nucor Steel Marion, Inc. ("Nucor") hereby submits its brief on a short-term electric security plan ("ESP") for the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively "FirstEnergy"). Nucor recommends that the Commission reject FirstEnergy's specific proposed short-term ESP, and instead direct FirstEnergy to implement a modified short-term ESP consistent with Amended Substitute Senate Bill 221 ("SB 221") that retains FirstEnergy's current rates and rate structure, with a reasonable rate adjustment (preferably an across-the-board percentage increase), if necessary, to generation-related rates contained in existing rates.

If, however, the Commission decides to approve FirstEnergy's short-term ESP, FirstEnergy, at minimum, should be required to explicitly clarify: (a) that the rate design proposed under the long-term ESP in Rider GEN (including class rates differentiated to reflect losses, seasonal adjustment factors, and the time-of-day rate option) will be included in the short-term ESP, and (b) that Rider EDR (along with other Riders proposed by FirstEnergy including Rider ELR and OLR) be in effect during the short-term ESP as well.

I. Introduction

A. Summary of FirstEnergy Proposal

On July 31, 2008, FirstEnergy submitted an application for authority to establish an ESP ("Application"). As part of the overall ESP proposal, FirstEnergy proposed a severable short-term ESP that would take effect on January 1, 2009. Application at 35. As proposed by FirstEnergy, the Commission would then have until March 5, 2009 to act on the long-term ESP proposal. *Id.* at 36. If the Commission approves the long-term ESP proposal, or modifies it in a manner acceptable to FirstEnergy, then the long-term ESP would go into effect seven days following Commission approval. *Id.* If no action is taken on the long-term ESP by March 5, 2009, or if the Commission rejects it, FirstEnergy proposes to implement the competitive bid process proposed in its market rate offer ("MRO") application, and to have MRO rates go into effect on May 1, 2009. *Id.* FirstEnergy states that the Commission must rule on the short-term ESP rate proposal by November 14, 2008, or it will be deemed withdrawn. *Id.* at 35.

With respect to the details of the plan, First Energy's short-term ESP proposal can best be described as "ESP Lite." Under the proposal, FirstEnergy would implement most of its long-term ESP, including the same rate design proposed in the long-term ESP, although certain elements of the long-term ESP would not be applicable under the short-term program. *Id.* at 37. Also, FirstEnergy proposes an average base generation rate of 7.75 cents/kwh and an average base generation rate charged to customers of 6.75 cents/kwh for the short-term ESP, with the difference deferred for future recovery. *Id.*

The proposed 7.75 cent/kwh short-term ESP generation rate is 0.25 cents/kwh higher than the proposed average generation rate for 2009 under the long-term ESP.

B. Need For and Principles Governing A Reasonable Short-Term ESP

FirstEnergy states that its short-term ESP proposal would provide benefits because it would provide price certainty for customers as of January 1, 2009, and would give the Commission additional time to consider the long-term ESP. *Id.* at 35-36. Nucor generally agrees that a well-designed short-term ESP could provide such benefits. Indeed, it is increasingly likely that FirstEnergy will have to implement some sort of interim proposal to provide generation service to its standard service offer ("SSO") customers. If a short-term ESP is not approved and agreed to by FirstEnergy, the Commission is expected to rule on the long-term ESP proposal by the end of the year. *See* Revised Code, Section 4928.143(C)(1) (an initial Commission order on a utility's initial ESP application is due within 150 days after the application was filed). It is a reasonable possibility that the Commission will direct substantial changes to the ESP proposal (Nucor, along with many other parties in this proceeding, certainly recommends such changes). In short, we know that FirstEnergy will not have an MRO in place and implemented by January 1, 2009, and it is very unlikely that FirstEnergy will have an approved ESP in place by then.

Given the uncertainty over the prospects of the long-term ESP proposal and the rapid approach of January 1, 2009, there is a compelling need for some sort of interim or short-term rate plan. However, any short-term ESP should be viewed against the backdrop of SB 221, which provides that, if there is no ESP or MRO approved by January 1, 2009, the utility's existing rates continue in place. *See* Revised Code, Section

4928.141(A). Nucor submits that, consistent with the statute, the existing rates should be the basis for the short-term ESP. Any increase should be a percentage increase to the generation component of each existing rate. Witnesses for the Staff, the Ohio Energy Group ("OEG"), and Kroger Company ("Kroger") all have proposed variants of this concept.

It is worth noting that keeping FirstEnergy's rates and rate design in place until an ESP or an MRO has been approved is consistent with the recommendation Nucor made in FirstEnergy's pending distribution case. *See* Case No. 07-0551-EL-AIR et al., Initial Brief of Nucor Steel Marion, Inc. at 4-10 (March 28, 2008) (recommending continuation of FirstEnergy's current rates as an interim measure until new generation and transmission rates are approved). This approach has now been validated by SB 221. Moreover, even if new distribution rates that reflect FirstEnergy's proposed rate design are approved in Case No. 07-0551-EL-AIR, FirstEnergy's existing rates and rate structure should still be retained for purposes of a short-term ESP. New distribution rates reflecting the new distribution rate classes (if approved) could simply replace the distribution component in FirstEnergy's existing rates.

FirstEnergy takes its long-term ESP, rather than the statute, as the basis for its short-term ESP. FirstEnergy's short-term ESP proposal would scrap the current rates and rate design and implement a totally new rate design – a rate design that many parties have objected to in this proceeding. In addition to implementing a problematic and controversial rate design, the short-term ESP proposal is seriously flawed because the rate is unjustifiably high when compared to the rates under the long-term ESP.

C. Nucor's Recommended Short-Term ESP Approach

As discussed further below, Nucor recommends the following approach to a short-term ESP:

- The Commission should reject FirstEnergy's specific short-term ESP proposal, and instead direct FirstEnergy to implement a modified short-term ESP consistent with SB 221, retaining FirstEnergy's complete set of current rates and rate structure, with a reasonable rate adjustment (preferably an across-the-board percentage increase), if necessary, to generation-related rates contained in existing rates.
- If, however, the Commission decides to approve FirstEnergy's short-term ESP, FirstEnergy should, at minimum, be required to explicitly clarify: (a) that the rate design proposed under the long-term ESP in Rider GEN (including class rates differentiated to reflect losses, seasonal adjustment factors, and the time-of-day rate option) will be included in the short-term ESP, and (b) Rider EDR (along with other Riders proposed by FirstEnergy including Rider ELR and OLR) will be in effect during the short-term ESP as well.

II. A Short-Term ESP Should Retain the Current Rates and Rate Structure and Should Be Consistent with the Statute.

A. SB 221 Contemplates That a Distribution Utility's Existing Rate Plan Remain in Effect if an ESP or an MRO is Not Approved by January 1, 2009.

Section 4928.141(A) of the Revised Code requires that, beginning, January 1, 2009, a distribution utility provide a standard service offer in the form of an ESP or an MRO. This section also provides that "the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code." Section 4928.143(C)(2)(b) further provides that if the Commission disapproves an ESP proposal or the utility withdraws its proposal:

> [T]he commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively.

The statute is clear that an interim measure between January 1, 2009 and when an ESP or MRO proposal is approved should reflect the utility's current standard service offer and current rate structure.

B. The Commission Should Approve a Short-Term ESP That Reflects the Requirements of SB 221.

A short-term ESP approved by the Commission should reflect the statutory scheme outlined above. FirstEnergy should retain its current rates and rate design for the short-term ESP. The statute specifically recognizes that the existing rates should also reflect increases or decreases in fuel costs. Although the FirstEnergy operating companies do not own generation and therefore would not be directly incurring fuel costs, they will have to purchase wholesale generation to continue to serve their SSO load. Given this fact, the most simple and logical approach to a short-term ESP, and the one most consistent with the statute, would be to continue FirstEnergy's current rates, and allow FirstEnergy to recover (or credit) the difference between the generation costs reflected in those rates and the reasonable and prudent cost to FirstEnergy of procuring generation for the term of the short-term ESP. For example, FirstEnergy could propose a generation rider with a fixed price or percentage increase to be added to the existing rates.

Several parties in this proceeding have put forth proposals that reflect this basic approach. Staff witness Robert B. Fortney recommends that FirstEnergy be allowed to maintain its current rates, plus a 2.5% surcharge on total bills. Fortney Testimony at 10.[1] OEG witness Stephen J. Baron recommends that FirstEnergy's existing generation rates should be continued, subject to an adjustment to reflect the difference between the revenues produced by the current generation rates and the cost of actual purchases from the Midwest ISO day-ahead market. Baron Testimony at 12-13. Mr. Baron explains that this mechanism could be implemented through a purchased power recovery rider. *Id.* at 13. Finally, Kroger witness Kevin C. Higgins recommends a rate-schedule specific rider that would be applied to recover the change in generation revenue authorized by the ESP. Higgins Testimony at 11-12. While Mr. Higgins proposes this mechanism as a rate mitigation measure for load-factor-differentiated rate schedules in the context of the long-term ESP, the mechanism shares the same basic premise as the Staff and OEG proposals, and therefore easily translates to the short-term ESP.

Nucor recommends that the Commission adopt a short-term ESP that retains FirstEnergy's existing rates and rate schedules. Under this approach, any increases or decreases to generation costs relative to the generation costs reflected in the current rates

[1] At the hearing on October 27, 2008, Mr. Fortney expressed a concern that, if the distribution rates addressed in Case No. 07-551-EL-AIR are approved before January 1, 2009, there could be a mismatch between the approved distribution rates (which would reflect the new rate classifications proposed in that case) and FirstEnergy's existing rates. Mr. Fortney recognized, however, that it is possible to have separate rate designs for distribution and generation rates. If the new distribution rates reflecting the new rate classes are approved, it would be straightforward to simply replace the distribution component in the existing rate schedules with the new distribution rates (reflecting the new rate classes). In this way, the existing rate schedules would be retained, but the distribution charge applicable to each rate schedule would reflect the new distribution rates.

would be recovered through a percentage increase or decrease to the generation charge in each rate schedule. Under this approach, customers would not be required to understand a confusing new rate design and the problem of winners and losers through that rate design will be avoided. This short-term ESP mechanism would be easy for FirstEnergy to implement and simple for customers to understand. It would provide customers with rate stability, while ensuring that FirstEnergy fully recovers its reasonably and prudently-incurred generation costs to serve SSO load prior to the approval of an ESP or an MRO. Finally, the approach would be consistent with the interim SSO concept reflected in SB 221. This mechanism should remain in place as a short-term ESP until service under a new more permanent ESP or MRO is ready to commence.

III. The Commission Should Reject or Modify FirstEnergy's Specific Proposed Short-Term ESP to Reflect the Issues Identified.

Unlike the Staff and OEG short-term ESP proposals, FirstEnergy's short-term ESP proposal is inconsistent with SB 221. Instead of continuing the current rates and rate schedules as an interim measure as contemplated in SB 221, FirstEnergy's proposal would implement the vast majority of FirstEnergy's long-term ESP proposal, without the parties and the Commission having had the opportunity to fully vet the proposal and correct the flaws. Given that the ESP proposal includes dramatic changes to FirstEnergy's rate design, and given that parties have raised numerous concerns about almost every aspect of the ESP, implementing the ESP even on a short-term basis could be a step into the abyss.

Further, the price FirstEnergy proposes for the short-term ESP is excessive and makes no sense in relation to the proposed long-term ESP price. The long-term ESP generation rate for 2009 is proposed to be 7.5 cents/kwh. This is the price for

FirstEnergy to supply ESP power for both summer and winter periods over the course of a year. The long-term price also incorporates the costs of certain activities and programs FirstEnergy proposes in the long-term ESP, but which are not included in the short-term ESP, such as the costs associated with FirstEnergy's renewable energy requirements, and the costs of environmental remediation and reclamation obligations relating to existing retired generating plants and/or manufactured gas plant sites owned by FirstEnergy. *See* Application at 37. Finally, although not within the purview of this brief, there is considerable evidence on the record that the proposed long-term ESP generation rates are too high.

Under the short-term ESP as proposed by FirstEnergy, FirstEnergy would be supplying power in the winter months only, when wholesale electricity prices are lower than in the summer. While FirstEnergy's seasonal rate approach, if also implemented, would address this problem in part, it is not sufficient to completely resolve the issues related to the pricing. For example, FirstEnergy also would be assuming far less risk under the short-term ESP in providing SSO service over a period of a few months rather than over several years as FirstEnergy proposes in the long-term ESP. As noted above, FirstEnergy will not undertake certain activities and programs proposed under the long-term ESP (the costs of which presumably are reflected in the proposed long-term ESP price) in the short-term ESP. Given all of these factors, one would reasonably assume that the price under the short-term ESP would be lower than under the long-term ESP. But, inexplicably, FirstEnergy proposes a price higher than that proposed for the first year of the long-term ESP.

In summary, while a short-term ESP is necessary, the approach outlined above and by other parties based on current rates is far preferable to FirstEnergy's proposed short-term ESP as an interim measure. When compared to the long-term ESP proposal (which has many problems in its own right), the short-term ESP would give customers fewer benefits at a higher price. Accordingly, the Commission should reject or properly modify FirstEnergy proposed approach.

IV. If the Commission Approves FirstEnergy's Short-Term ESP as Proposed, the Commission Should at Minimum Ensure That the Rate Design Will Reflect the Same Seasonal, Time-of-Day and Voltage Adjusted Rate Design as Proposed in Rider GEN and Include Riders EDR, ELR and OLR.

As discussed above, FirstEnergy's proposed short-term ESP is seriously flawed and should be rejected. If the Commission nevertheless decides to approve FirstEnergy's proposal, the Commission should direct FirstEnergy to clarify the rate design that will be in effect for the term of the short-term ESP. Consistent with the testimony of FirstEnergy witness David M. Blank on October 24, 2008, FirstEnergy should clarify that the actual generation rates charged to customers will be developed as proposed in FirstEnergy's proposed Rider GEN. This would ensure that the generation rates are adjusted by rate class to reflect losses, and would include a seasonality adjustment and a time-of-day rate option.

FirstEnergy also should clarify that Rider EDR will be in effect during the short-term ESP. According to FirstEnergy, Rider EDR is a key component of the ESP aimed at mitigating customer rate impacts and effectuating gradualism. Application at 26. In the application, FirstEnergy states that Rider EDR will not be applicable during the term of the short-term ESP. Application at 37. However, at the hearing on October 24, 2008, Mr. Blank testified that Rider EDR would be in effect during the short-term ESP. If the

Commission approves the short-term ESP as proposed by FirstEnergy, the Commission should require that Rider EDR be in effect during the term of the plan, as stated by FirstEnergy at the hearing.

FirstEnergy has also proposed to make available interruptible Riders ELR and OLR during their short-term ESP. While Nucor recommends substantial improvements to these riders in its testimony in this case (*see* Direct Testimony of Dennis W. Goins at 19-29), maintaining some form of interruptible rates is crucial. Therefore, if the Commission accepts the FirstEnergy short-term ESP, Nucor recommends that the Commission explicitly require the implementation of these riders.

V. If the Commission Approves a Short-Term ESP, FirstEnergy Should be Required to File Rate Schedules Showing the Approved Rates, Terms, and Conditions That Will be in Effect for the Term of the Short-Term ESP.

FirstEnergy includes no specific rate schedules in its Application for its proposed short-term ESP. If the Commission approves any short-term ESP plan for FirstEnergy, FirstEnergy should be required to file the rate schedules that will be in effect for the term of the plan. This is an important requirement necessary to ensure that customers fully understand the rates, terms, and conditions that will be in effect during the term of the short-term ESP.

VI. CONCLUSION

For the reasons discussed herein, Nucor respectfully requests that the Commission adopt the recommendations set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Brief of Nucor Steel Marion, Inc. On a Short-Term Electric Security Plan for FirstEnergy* 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 October 31, 2008.

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