FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY BRIEF OF NUCOR STEEL MARION, INC.

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In accordance with the Hearing Examiner's instruction at the hearing in the above-captioned proceeding, Nucor Steel Marion, Inc. ("Nucor") hereby submits its reply brief.

I. INTRODUCTION

As the initial briefs of Nucor and several other parties to this proceeding clearly show, FirstEnergy's[1] proposed electric security plan ("ESP"), while claiming a relatively modest overall rate increase in 2009, would result in huge rate increases for large industrial customers. Nucor, for example, is served under existing interruptible rate schedules and would expect see a rate increase in excess of 50% if the ESP is approved as proposed. Nucor Initial Brief at 11. *See also* Ohio Energy Group ("OEG") Initial Brief at 15 (noting increases of 25% to 34% for some of FirstEnergy's largest industrial manufacturing firms); Ohio Manufacturers Association Initial Brief at 6 (noting an average increase for Toledo Edison transmission-level customers of 52%). This level of

[1] Ohio Edison Co., the Cleveland Electric Illuminating Co., and the Toledo Edison Co. (collectively "FirstEnergy").

increase would impose a serious burden even on a strong business operating in a thriving economy, but an increase of this magnitude in today's economic environment would be crippling for many businesses. Anyone who reads the newspapers knows that there could not be a worse time to impose a massive rate increase on Ohio industry.

Remarkably, up to this point FirstEnergy has been unwilling to countenance cost allocation and rate design improvements proposed by Nucor and other parties that would significantly mitigate the impact on industrial customers and affect in no way FirstEnergy's ability to recover whatever costs of providing standard service offer ("SSO") service approved by the Commission in this proceeding. Nucor made two main cost allocation and rate design proposals: (i) recognize the cost differences between customer classes by applying the class allocation factors ("CAFs") proposed by FirstEnergy in its 2007 CBP proposal[2] to the generation rate to develop class-specific generation rates; and (ii) improve the proposed interruptible rates to ensure that the credits offered to interruptible customers accurately reflect the benefits provided by interruptible load, and establish terms and conditions that will encourage participation on interruptible rates. These rate design proposals are in no way contingent upon how FirstEnergy will acquire the generation to serve its SSO load. In fact, the features Nucor advocates here are generally the same as those Nucor advocated in the market rate offer ("MRO") proceeding.

Moreover, the key rate design improvements offered by Nucor do not come out of left field. Rather, they were developed and advocated by FirstEnergy itself (as in the case

[2] Competitive bidding plan proposed by FirstEnergy in Case No. 07-796-EL-ATA ("2007 CBP proposal").

of applying CAFs to recognize class cost differences),[3] or are fully consistent with the rate design proposed by FirstEnergy elsewhere in its ESP (as in the case of using an interruptible customer's monthly billing demand, rather than its average demand, to determine the customer's realizable curtailable load),[4] or reflect standard industry practice (as in the case of using the avoided cost of a new peaking generator as the basis for an emergency/capacity interruptible credit).[5] In the case of the CAFs, for example, FirstEnergy has never reasonably explained, in either this proceeding or the MRO proceeding, why its CAF proposal from the 2007 CBP proposal is not equally applicable in 2008.

The enormous rate increases faced by the largest customers served by FirstEnergy are largely due to FirstEnergy abandoning its existing generation rate design, including proposing to eliminate all of its existing firm and interruptible tariffs, in favor of a new rate design with virtually equal assignment of generation costs to all customers on a per kWh basis. In addition to failing to effectively rebut Nucor's cost allocation and interruptible rate design proposals, FirstEnergy offers no evidence to show why its current rate design is inadequate and should be abandoned, other than the fact that it proposes to purchase the power from its affiliate on this basis. This is of little moment, of course, since FirstEnergy purchases power today from its affiliate under the current

[3] Nucor Initial Brief at 18-20 (explaining that the CAFs developed by FirstEnergy in the 2007 CBP proposal were based on the ratio of each load class' historical average SSO generation and transmission rate to the average of all historical SSO generation and transmission rates).

[4] *Id.* at 30-31 (explaining that, in every case where a demand charge is proposed in the ESP rates, the customer's demand is measured based on the customer's peak – not average – demand. The only place where FirstEnergy proposes to use an average demand measurement is in the case of the interruptible credits).

[5] *Id.* at 39 (citing a 2006 report by the Department of Energy that states that demand response programs designed to reduce capacity needs are valued based on the marginal cost of capacity and that, by convention, marginal capacity is assumed to be a peaking generator).

rate design and FirstEnergy has offered no evidence why this current practice cannot continue. As a result, if the Commission is not persuaded to adopt Nucor's specific rate design proposals at this time, as noted in Nucor's brief, another option that the Commission certainly has available to rectify this problem is simply to retain all of the existing rate schedules (potentially including special contract rates), both firm and interruptible, and adopt an across-the-board percentage rate increase rider applicable to each rate schedule. Nucor Initial Brief at 21-23; Direct Testimony of Robert B. Fortney, Staff Exhibit 5 at 4.

In the direct testimony of Nucor's witness Dr. Dennis W. Goins, and at the hearing, compelling evidence supporting Nucor's cost allocation and rate design proposals was developed, and this evidence is presented in a comprehensive manner in Nucor's initial brief. Nucor will not repeat those arguments in detail here. Instead, this reply brief will address only the relatively limited arguments made by FirstEnergy in response to Nucor's proposals. In addition, Nucor addresses several other issues raised by other parties in their initial briefs.

It must also be noted that on November 25, 2008, the Commission firmly rejected FirstEnergy's MRO. *See* Case No. 08-936-EL-SSO, Opinion and Order. In this ESP proceeding, FirstEnergy's standard response to criticisms of the ESP has been to say – if you don't like it, we'll have the MRO. FirstEnergy Initial Brief at 4. With the Commission's November 25 order, there is no MRO for FirstEnergy to fall back on if the Commission rejects the ESP or approves the ESP with modifications. The focus of FirstEnergy, the Commission, and all the intervenors at this point, therefore, should be to develop a fair, reasonable, and workable ESP. If, as appears likely, FirstEnergy's ESP is

not approved and in place by January 1, 2009, the provisions, terms, and conditions of FirstEnergy's existing rates should continue as FirstEnergy's SSO, as prescribed by the statute. Section 4928.143(C)(2)(b), Revised Code.

II. THE EVIDENCE IN THIS CASE STRONGLY SUPPORTS NUCOR'S COST ALLOCATION PROPOSAL.

FirstEnergy's proposed rate design will result in massive rate increases for large industrial and commercial customers because the rate design does not recognize cost differences to serve the various customer classes, such as cost differences based on class load factor. *See* Nucor Initial Brief at 13-14; Kroger Co. Initial Brief at 8. FirstEnergy, in fact, recognized this very same problem in its 2007 CBP proposal. In that case, FirstEnergy proposed CAFs to reflect the historical cost differences among customer classes. Nucor Initial Brief at 18-20. Nucor's recommendation in this case is very simple – adopt the same class cost allocation methodology and CAFs proposed by FirstEnergy in the 2007 CBP proceeding.

In its initial brief, FirstEnergy offers no reasonable justification for the cost allocation disparity in its proposed ESP rate design, and no response whatsoever to Nucor's CAF recommendation. FirstEnergy attempts to explain away the disproportionate increase to industrial customers by asserting that large increases for individual industrial customers are the result of special contract customers and other customers with discounted rates that pay "subsidized" below-average rates today, but will pay average rates under the ESP. FirstEnergy Initial Brief at 5, fn.6; 34, fn.41. But FirstEnergy cites to no evidence showing that the dramatic rate increase for Class GT customers will be suffered only by customers with expiring special contracts and discounted rates. More to the point, FirstEnergy offers no evidence to show that

customers receiving discounted rates are being "subsidized." Similarly, FirstEnergy offers no evidence to show that interruptible customers, like Nucor, served on tariff rates but facing massive increases, are being subsidized by other customers. After all, it was FirstEnergy that chose not perform a cost of service study for this proceeding.

FirstEnergy also ignores the key point – that costs to serve classes of customers differ based on the characteristics of each customer class. To the extent these class cost differences are not recognized in the cost allocation and rate design, customer classes will be either under-allocated or over-allocated costs (as is the case for Class GT customers, who are over-allocated costs in the ESP proposal). Indeed, FirstEnergy's own witnesses recognize that costs to serve high load factor customer classes are lower than the costs to serve low load factor customer classes. Nucor Initial Brief at 14-16.

FirstEnergy has offered nothing to address Nucor's CAF recommendation, which after all, was originally FirstEnergy's own recommendation last year. FirstEnergy could have addressed the CAF proposal in its rebuttal testimony, but FirstEnergy did not, while submitting extensive testimony on other rate design issues. Continuing this pattern, FirstEnergy does not even mention the CAF proposal in its initial brief. All the evidence on record, therefore, supports the reasonableness of the CAF proposal to remedy the cost allocation problem. There is *absolutely no* evidence on the record showing that using the CAFs would be unreasonable. The CAF mechanism – the mechanism designed and proposed by FirstEnergy to address the very cost allocation problem Nucor addresses in this proceeding – should be adopted and incorporated into the ESP rate design.

Finally, proposals have been advanced in this proceeding by FirstEnergy and OEG to ensure "gradualism." *See* FirstEnergy Initial Brief at 31-35; OEG Initial Brief at

16-18. While Nucor generally supports the application of the principle of gradualism in rate design, gradualism should not be viewed as a substitute for the proper allocation of costs. The CAF mechanism should be applied to class generation costs prior to applying any of the gradualism recommendations.

It is a well-recognized utility ratemaking principle that costs must be properly allocated to classes. Once proper cost allocation is complete, the principle of "gradualism" can then be applied to mitigate class rate impacts in order to gradually move classes to full cost of service responsibility. In short, cost allocation first determines the appropriate class increases, then gradualism looks at the end result to see if it is reasonable and if not, adjustments are then made to the proposed class increases to mitigate unreasonable rate impacts. Therefore, it is essential that costs are properly allocated before the application of gradualism. Dr. Goins' recommendation to adopt FirstEnergy's CAFs is the only proposal that squarely addresses the cost allocation issue, and ensures that costs are properly allocated among the customer classes. The evidence supporting this proposal is strong and unrebutted. Therefore, the CAFs should be applied first. Afterwards, if necessary, gradualism can be applied to reduce unreasonable class rate impacts.

In summary, the mitigation measures proposed in this case intended to effectuate gradualism could be effective in mitigating rate impacts among customer classes, but this does not absolve FirstEnergy of the responsibility to properly design the rates, which includes the need to properly allocate costs. Proper cost allocation, in this case through the application of the CAFs to the rates for the individual customer classes, should be performed first. After costs are properly allocated, interclass gradualism, such as

proposed by OEG, should be applied to the extent necessary to ensure that a particular customer class does not experience unreasonable rate increases.

III. THE EVIDENCE IN THIS CASE STRONGLY SUPPORTS NUCOR'S RECOMMENDED CHANGES TO FIRSTENERGY'S PROPOSED INTERRUPTIBLE RATES.

FirstEnergy offers two interruptible rates in the ESP – Rider ELR and Rider OLR. Importantly, FirstEnergy agrees with Nucor that interruptible rates provide important reliability and economic benefits to the system. FirstEnergy Initial Brief at 40-41. Nevertheless, as discussed in the initial briefs of Nucor and OEG, strong evidence demonstrates that there are several flaws with FirstEnergy's proposed interruptible rates, and several ways in which the rates should be improved. Nucor Initial Brief at 28-50; OEG Initial Brief at 21-24. In its initial brief, FirstEnergy brushes aside the recommendations of Nucor and OEG relating to realizable curtailable load, interruptible credits, and other improvements to the interruptible rate design, stating that "if such objectives are indeed warranted and desirable under particular circumstances, they can be readily pursued through the special contract mechanism and do not require changes to the Plan." FirstEnergy Initial Brief at 42.

Saying that a special contract could be used to address the deficiencies in FirstEnergy's proposed interruptible rates is no excuse for poorly-designed rates. The tariff rate itself must be properly designed. Credits should reflect the cost savings and other benefits interruptible load provides and should be high enough to encourage customer participation. Likewise, the terms and conditions of the tariff should encourage – rather than discourage – customer participation. The bottom line is that the rate design improvements proposed by Nucor and OEG would be fairer to customers, and would make the rates more attractive to customers, and would therefore improve the

effectiveness of the rates. FirstEnergy offers no reasonable justification for opposing these improvements.

A. Realizable Curtailable Load Should be the Difference Between the Interruptible Customer's Monthly Billing Demand and its Firm Load.

Under FirstEnergy's proposal, the portion of an interruptible customer's load to which the interruptible credit would be applied is the customer's realizable curtailable load ("RCL"). Nucor and OEG argue that an interruptible customer's RCL should be the difference between the customer's monthly billing demand and its firm load – not the difference between the customer's historical average monthly demand during summer peak hours and its firm load, as proposed by FirstEnergy. Nucor Initial Brief at 28-31; OEG Initial Brief at 23-24. Nucor and OEG's proposed RCL is appropriate because, by agreeing to be interruptible, a customer gives up the right to consume energy up to (and beyond) its monthly peak demand when an interruption is called. Therefore, it is proper to calculate an interruptible customer's RCL as its billing demand minus its firm demand. Nucor Initial Brief at 28-29.

FirstEnergy's only response to the Nucor and OEG proposal is that "the Companies' proposal provides interruptible customers a credit that is greater than the value of power likely to be interrupted in an emergency or required to be bought through as part of an economic interruption." FirstEnergy Initial Brief at 42. This contention is simply wrong. It is based on a faulty analysis contained in FirstEnergy witness Warvell's rebuttal testimony, which assumes both emergency and economic interruptions occur in a very limited number of hours per year around the system peak demand, and measures the demand of interruptible load in those hours. Rebuttal Testimony of Kevin T. Warvell, FirstEnergy Exhibit 19 at 4. But the reality is that FirstEnergy can call an emergency or

economic interruption in any of the 8,760 hours in the year.[6] The very fact that FirstEnergy wants the ability to call interruptions at any time shows that FirstEnergy knows that the need for an interruption could arise at any time. As a result, there can be no basis for FirstEnergy's assertion that FirstEnergy's proposal provides a credit greater than the value of the power to be interrupted. Moreover, an emergency, by definition, cannot be predicted.

Further, even assuming that Mr. Warvell's limited analysis accurately reflected the amount of interruptible load on line when an interruption is called, this does not support using a customer's average load to establish the RCL. As discussed in Nucor's initial brief, if a customer is not interruptible, it has the ability to take service up to or beyond its peak monthly demand at any time. Nucor Initial Brief at 28-29. By agreeing to be interruptible, a customer forgoes the right to put its interruptible load (*i.e.*, the customer's load over and above its firm load) on the system when an interruption is called – regardless of whether the customer is operating at peak demand when the interruption is called. In other words, even if the interruptible customer only has its firm load on line when an interruption is called, the system is receiving a benefit from the customer's interruptibility because that customer no longer can put load over and above its firm load on the system for the duration of the emergency. Therefore, the level of interruptible load on the system when an interruption is called is irrelevant with respect to establishing the RCL. The RCL should reflect the difference between the maximum load

[6] In fact, at the hearing, Mr. Warvell testified that FirstEnergy called economic interruptions in approximately 1,200 hours in 2007. Tr. Vol. XI at 131. This highlights the absurdity of looking at interruptible load levels during the 15 hours at and around the system peak to buttress the argument that FirstEnergy's proposed RCL value is a better proxy for the load likely to be interrupted than the method proposed by Nucor and OEG, particularly with regard to economic interruptible load.

that the customer could put on the system at the time of the interruption – the customer's monthly billing demand – and the customer's firm load.

B. The Emergency/Capacity Credit should be $7.50.

As discussed at length in Nucor's initial brief, the industry standard approach for determining the value of an emergency/capacity interruptible credit is to base the credit on the avoided cost of a new peaking generator.[7] Nucor Initial Brief at 38-41. Based on the independent 2006 U.S. Department of Energy analysis, Dr. Goins recommended a $7.50 interruptible capacity credit. *Id.* at 39-40. This figure is well supported and conservative, since it does not take into account transmission and incremental fuel costs avoided due to interruptible load. *Id.* at 40. In OEG's initial brief, OEG agrees that $7.50 is an appropriate emergency/capacity interruptible credit. OEG Initial Brief at 23.

In its initial brief, FirstEnergy does not cite any evidence demonstrating that the $7.50 credit is unreasonable, or that the costs underlying this proposed credit are unreasonable or unreliable. Nor does FirstEnergy take issue with the widely-accepted rate design principle that an emergency/capacity interruptible credit should be based on the avoided cost of a peaking generator. Indeed there is no evidence proffered by FirstEnergy on these matters. Instead, FirstEnergy simply reiterates its argument that its proposed $1.95/kW credit, based on a single bilateral agreement for a designated network resource in Midwest ISO, is the appropriate measure. FirstEnergy Initial Brief at 42-43.[8] Nucor's initial brief explains the myriad of reasons, supported by extensive evidence, why $1.95 is a wholly inadequate emergency/capacity interruptible credit. Nucor Initial

[7] This is consistent with how Midwest ISO values capacity. *See Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 at P 55 (2008) (explaining that Midwest ISO values capacity as the cost of new entry for a peaking resource).

[8] FirstEnergy did not produce this bilateral agreement, and FirstEnergy could not show when the agreement was executed or what the terms of the agreement were. Tr. Vol. II at 46-48.

Brief at 41-45. The weight of the evidence clearly supports the $7.50 credit for emergency/capacity interruptions recommended by Dr. Goins.

It is worth noting that while FirstEnergy continues in its brief to claim its proposed $1.95 credit accurately reflects the cost of capacity, the record in this case is littered with conflicting and inexplicable capacity cost estimates by FirstEnergy's own witnesses. While supporting $1.95 as the appropriate credit, Mr. Warvell also testified that the credit did not reflect the avoided reserve charges or avoided losses that he admitted should be included. Nucor Initial Brief at 44. FirstEnergy witness Dr. Jones' capacity cost estimate for the years 2009-2011 is $2.50, and FirstEnergy witness Mr. Graves' estimate is $2.84. *Id.* at 44-45. Further, in the 2007 CBP case, FirstEnergy stated that an emergency interruptible credit would be in the range of $2.40 and $3.40 based on market capacity values. *Id.* at 45. These varying estimates conclusively demonstrate the unreliability of relying on FirstEnergy's unsubstantiated "market estimate" of capacity cost (where there is no public market data). However, even if the Commission were to accept FirstEnergy's argument that the emergency/capacity interruptible credit should be based on the market price of a designated network resource in Midwest ISO, it would be more appropriate to set the credit at the $3.40 estimate from the 2007 CBP case or at least Mr. Graves' $2.84 estimate.

C. If the Commission concludes that the Credit for Economic Interruptions is $6.05, this Credit Should be Clearly Set forth in the Interruptible Riders and a Limit on the Number of Allowable Economic Interruptions Reflecting the Value of that Level of Interruptions Should be Established.

Throughout the proceeding, the $6.05 credit for existing interruptible customers contained in Rider EDR has alternatively been described by FirstEnergy as a rate mitigation measure (which would make sense given that the credit is contained in the

economic development rider) and a credit for economic interruptions. After vacillating throughout the case, in its initial brief, FirstEnergy appears to finally come down on the side of an economic interruption credit. FirstEnergy Initial Brief at 43, fn.48.

Nucor believes that the record shows that the $6.05/kW proposed in Rider EDR is necessary for economic development/gradualism reasons, particularly given its proposed application only to current interruptible customers, and is not an economic interruption credit as now suggested by FirstEnergy. Nucor believes that a separate economic interruption credit should be established in the interruptible riders, with a reasonable value and limit on economic interruptions. However, if the Commission concludes that the $6.05 credit proposed in Rider EDR is really only the credit for economic interruptions, then the $6.05 economic interruption credit should be set forth separately in the interruptible riders and not be included in Rider EDR. This would avoid confusion and ensure that the $6.05 credit is not mischaracterized as a rate mitigation or "gradualism" measure, but instead is recognized as a credit intended to reflect the value of economic interruptible load.

FirstEnergy cites the $6.05 credit in arguing against Nucor's proposal to limit the number of economic interruptions to 250 hours a year. FirstEnergy Initial Brief at 43. Again pointing to Mr. Warvell's rebuttal testimony, FirstEnergy argues that if economic interruptions were limited to 250 hours per year, this would reduce the value of the right to interrupt and would require a reduction of the customer's interruptible credit. *Id.* FirstEnergy also complains that if economic interruptions were limited to 250 or 1000 hours a year, it would limit FirstEnergy's ability to call economic interruptions. *Id.*

Nucor agrees with the general proposition that the economic interruptible credit should reflect the value of economic interruptible load to the system (including an appropriate risk premium to reflect the uncertainty of economic buy-through prices) for whatever number of hours FirstEnergy can call economic interruptions. In other words, a customer should generally receive a higher credit if it is subject to a higher number of economic interruptions than the customer would if it were subject to a lower number of economic interruptions. In its initial brief, Nucor demonstrated that $2.60 per kw month is a reasonable credit if there was a 250 hour limit on economic interruptions (the $2.60 credit was recommended by Dr. Goins based on FirstEnergy's estimate from the 2007 CBP case). Nucor Initial Brief at 48-50. FirstEnergy's proposed $6.05 economic credit is a little more than two times Nucor's proposed $2.60 economic credit. If the economic interruptible credit is set at $6.05, therefore, this implies that Dr. Goins' proposed 250 hour limit on the number of economic interruptions could be increased such that it would fall somewhere in the range of 500 to 600 hours. Nucor could support a 550 hour limit as a reasonable compromise.

IV. FIRSTENERGY'S PROPOSED REASONABLE ARRANGEMENT RIDER SHOULD BE CONSISTENT WITH THE COMMISSION'S PROPOSED RULE ON REASONABLE ARRANGEMENTS.

Nucor supports FirstEnergy's proposed reasonable arrangements rider ("Rider RAR"). According to FirstEnergy, Rider RAR was established under the Commission's proposed rule on reasonable arrangements – Rule 4901:1-38. FirstEnergy Initial Brief at 44. In certain respects, however, proposed Rider RAR conflicts with the Commission's rule as adopted by the Commission in its September 17, 2008 finding and order in Case No. 08-777-EL-ORD ("September 17 Order"). The Commission has granted rehearing of the September 17 Order, and it might be some time before the rules are finalized and in

effect. Nevertheless, the rules adopted by the Commission in the September 17 Order represent the Commission's most current thinking on the requirements for reasonable arrangements. Since it is unclear when the rules will be finalized, and since it is possible that a customer might seek a reasonable arrangement before the rules are finalized, FirstEnergy's Rider RAR should be modified as necessary to comply with version of Rule 4901:1-38 approved by the Commission in the September 17 Order.

To begin with, FirstEnergy proposes to limit the availability of Rider RAR such that if a customer is taking service under a unique arrangement or is avoiding energy efficiency or demand response charges under Rider DSE, that customer is not eligible for Rider RAR. Similarly, customers taking service under Rider RAR or a unique arrangement would not be eligible for exemption from DSE1 and DSE2 charges under Rider DSE. As described in the initial brief of Industrial Energy Users-Ohio ("IEU-Ohio"), at the hearing, FirstEnergy explained that these limitations were based on limitations contained in the draft rules. IEU-Ohio Initial Brief at 19. In the Commission's order adopting the rules, the Commission rejected these limitations, noting that it would look at each arrangement on a case-by-case basis. September 17 Order at 8. Accordingly, these limitations should be removed from FirstEnergy's proposed Rider RAR and Rider DSE.

In the September 17 Order, the Commission also rejected the following requirements contained in the proposed rules: (i) the criterion for a minimum fixed asset investment to qualify for economic development and energy efficiency arrangements; (ii) the 10% electric intensity criterion; and (iii) the criterion that energy efficiency arrangements be available only to facilities with loads of not more than 1000 kws.

September 17 Order at 7. Rider RAR currently contains these requirements, so they should also be removed consistent with the September 17 Order.

Also, the Commission did not adopt language in the proposed rules that would have required customers to commit to maintaining their operations for at least twice the term of the incentives in order to qualify for an economic development or energy efficiency special arrangement. Instead, the proposed rules currently provide that customers must agree to maintain operations for the term of the incentives. Rules 4901:1-38-03(A)(2)(g); 4901:1-38-03(B)(2)(f); 4901:1-38-04(A)(2)(f). Rider RAR should be revised to reflect this change as well.

Finally, Rider RAR does not address unique arrangements. Although a unique arrangement is referred to as a special contract in the section of Rider RAR entitled "Availability," there is no section of Rider RAR addressing the availability of and the requirements for a unique arrangement. This is despite the fact that a unique arrangement is treated as a type of reasonable arrangement in the proposed rules.[9] To avoid confusion and to ensure that proposed Rider RAR is fully consistent with the Commission's rule on reasonable arrangements, a section reflecting the unique arrangements requirements contained in proposed rule 4901:1-38-05 should be added to Rider RAR.

V. THE COMMISSION SHOULD NOT ADOPT STAFF'S PROPOSAL THAT COULD BE CONSTRUED TO LIMIT OR DISCOURAGE THE USE OF INTERRUPTIBLE LOAD TO MEET THE PEAK DEMAND REDUCTION TARGETS IN SECTION 4928.66(A)(1)(b) OF THE REVISED CODE.

Pursuant to Section 4928.66(A)(1)(b) of the Revised Code, electric utilities are required to meet annual peak demand reduction targets starting in 2009. Interruptible load is an obvious and important mechanism for helping to achieve these demand

[9] The rule on unique arrangements is rule 4901:1-38-05, which is a subpart of Chapter 4901:1-38 – Reasonable Arrangements.

reduction targets. Tr. Vol. II at 63. No party in this proceeding opposes the use of interruptible load to meet the statutory peak demand reduction targets. However, Staff proposes a condition that could limit or discourage the use of interruptible load to meet the targets.

Staff argues that no credit toward meeting the peak demand reduction benchmarks should be given to FirstEnergy for its interruptible/curtailable programs unless reductions actually occur. Staff Initial Brief at 36. It is not clear how Staff would apply this proposal. Nucor agrees that, in the case where a customer only is subject to economic interruptions, it may be reasonable to credit interruptions to meeting the peak demand benchmarks only if reductions actually occur. This is because under economic interruptions a customer has the ability either to curtail or to buy-through the interruption, and there is no peak demand reduction/capacity-avoidance benefit unless the interruptible customer elects to curtail.

This is not the case for either Rider ELR or OLR, however, because customers under these riders are subject to emergency/capacity interruptions. As discussed in detail in Nucor's initial brief, in the case of load subject to emergency/capacity interruptions, FirstEnergy does not have to build or acquire capacity to serve such load. Nucor Initial Brief at 25. Such load also avoids the reserve margin and planning reserve associated with the avoided capacity. *Id.* Finally, even though interruptible load may not be called at the time of the system peak demand, FirstEnergy always has the ability to call for emergency interruptions – it is the ability to interrupt as necessary, not whether the load is actually interrupted, that is the key. In a very real sense, therefore, emergency/capacity interruptible load does not contribute to FirstEnergy's peak demand.

Even if an emergency interruption might not be called in a given year, the utility would still realize the avoided capacity and planning reserve benefits discussed above. Staff's approach, however, could be construed so that the utility would forfeit the benefit of the emergency interruptible program with respect to meeting the demand reduction benchmarks if an emergency interruption is not called. This result is contrary to the intent of the statute.

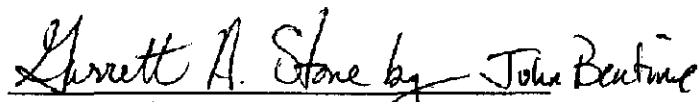
Further, on a practical level, Staff's proposal would encourage FirstEnergy to call for emergency interruptions that are unnecessary in order to have interruptible load contribute to meeting the benchmark. The restriction could also be a disincentive for FirstEnergy to continue to offer good interruptible rates. If interruptible load can contribute to the peak demand reduction targets only in the limited circumstances implied in Staff's proposal, FirstEnergy might turn its peak demand reduction efforts elsewhere.

As a result, not only would there be a drop in the number of new interruptible customers, but there would probably be a drop in existing interruptible customers as well. If existing interruptible customers leave the program and become firm, this will have the exact opposite effect from what the peak demand reduction targets in Section 4928.66(A)(1)(b) of the Revised Code seek to achieve – it will drive up peak demand. Accordingly, the Commission should not adopt Staff's recommendation or at least clarify that it does not apply to loads subject to emergency/capacity interruptions, such as loads under Riders ELR and OLR. Further, the Commission should expressly find that such interruptible loads subject to emergency/capacity interruptions do count toward meeting FirstEnergy's peak demand reduction targets.

VI. CONCLUSION

For the reasons discussed herein and in its initial brief, Nucor respectfully requests that the Commission adopt the positions discussed herein and in Nucor's initial brief as modifications to the ESP.

Respectfully submitted,



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I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via electronic transmission, on December 12, 2008.

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