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**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	)	Case No. 08-935-EL-SSO
Authority to Establish a Standard Service Offer	)	
Pursuant to R.C. 4928.143, Revised Code, in the	)	
Form of an Electric Security Plan	)	

**NUCOR STEEL MARION, INC.'S MEMORANDUM CONTRA  
THE APPLICATION FOR REHEARING OF OHIO EDISON COMPANY,  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY  
AND THE TOLEDO EDISON COMPANY**

Pursuant to Ohio Administrative Code 4901-1-35(B), Nucor Steel Marion, Inc. ("Nucor") submits this Memorandum Contra the Application for Rehearing and Request for Expedited Ruling of Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company and the Toledo Edison Company ("Toledo Edison") (collectively "FirstEnergy"), which was filed on January 9, 2009 ("Application for Rehearing").

**I. INTRODUCTION**

On January 7, 2009, the Commission issued a Finding and Order in this proceeding ("January 7 Order") directing FirstEnergy to terminate the regulatory transition charges ("RTC") and fuel charges for Ohio Edison and Toledo Edison effective January 1, 2009. January 7 Order at 8-9. In the Application for Rehearing, FirstEnergy argued that the January 7 Order violates Section 4928.141(A) of the Revised Code because it fails to continue the RTC and fuel charges until an electric security plan or a market rate offer has been approved.

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At the same time it filed its Application for Rehearing, FirstEnergy also filed its Application for approval of a new Rider FUEL to recover the difference between its existing generating charges in its existing rate schedules and the cost it expects to incur in acquiring power in the market. The Commission approved implementation of Rider FUEL on January 14, 2009. *See* Case No. 09-21-EL-ATA *et al.*, January 14 Finding and Order (“January 14 Order”).

Nucor is particularly concerned about the potential combined impact of paying the RTC, the 2008 fuel charges and Rider FUEL, if FirstEnergy’s Application for Rehearing were granted. With the approval of Rider FUEL, FirstEnergy’s request to continue its pre-2009 fuel rider is moot and should be denied.<sup>1</sup> As for the RTC charges, since other parties have addressed the merits of FirstEnergy’s claim for recovery, Nucor’s response is focused on what should happen if the RTC charges were permitted to be recovered, either in the event the Commission modifies its order to permit any recovery, or if the Commission is required to change its position as the result of any appeal. Nucor believes that it is important that the Commission make it immediately clear, on rehearing, that in such event, FirstEnergy is required to use any RTC charges recovered to offset fuel costs that would otherwise be collected under Rider FUEL and to modify Rider FUEL charges as necessary to reflect this approach.

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<sup>1</sup> In the January 7 Order, the Commission terminated the Fuel Recovery Mechanism and allowed the Fuel Cost Recovery Rider to remain in place for the limited purpose of collecting all remaining 2008 actual fuel costs that may be necessary. January 7 Order at 9. The Commission also made clear that the fuel riders were no longer necessary in light of the provision in Section 4928.143(C)(2)(b) of the Revised Code, which permits FirstEnergy to file for any increases or decreases in fuel costs. *Id.* Since fuel costs will now be recovered through Rider FUEL, there is no need to continue the fuel riders in effect under FirstEnergy’s Rate Certainty Plan.

**II. THE COMMISSION SHOULD CLARIFY THAT IF FIRSTENERGY IS PERMITTED TO RECOVER RTC CHARGES THAT SUCH CHARGES WOULD OFFSET FUEL COSTS THAT WOULD OTHERWISE BE RECOVERED UNDER RIDER FUEL.**

Several parties have argued that it is appropriate for the Commission to terminate RTC charges for Ohio Edison and Toledo Edison effective January 1, 2009.<sup>2</sup> These charges were specifically designed to fully recover authorized stranded costs by December 31, 2008, so the charges were due to expire, notwithstanding the continuation of FirstEnergy's existing rate plan. January 7 Order at 9.

Further, with the Commission's approval of Rider FUEL, it can be reasonably concluded there is no rational justification for the continuation of RTC charges. In its application requesting approval of Rider FUEL, FirstEnergy cited elimination of the RTC charges and the fuel charges as a major reason for the implementation of Rider FUEL. Case No. 09-21-EL-ATA *et al.*, January 9, 2009 Application at 4. Likewise, the Commission cited the termination of the RTC charges and the fuel riders in the January 7 Order as a reason for the Commission to examine FirstEnergy's proposal to recover purchased power costs through Rider FUEL. January 14 Order at 6. In fact, the continuation of the RTC charges along with the new Rider FUEL charges, would result in a massive windfall for FirstEnergy. Accordingly, the Commission should deny FirstEnergy's request for rehearing on the issue of the elimination of RTC charges.

Nevertheless, if there is any possibility that FirstEnergy may succeed at some point in recovering these RTC charges, then the Commission should, at a minimum,

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<sup>2</sup> See, e.g., Case No. 08-935-EL-SSO, Motion to Reject Applicants' Rate Filings Under the Default Provisions for Standard Service Offers Pursuant to R.C. Chapter 4928 and Motion for a Commission Order Directing Applicants to Submit Tariffs Consistent with the Default Provisions by the Ohio Consumer and Environmental Advocates (December 23, 2008); Case No. 08-935-EL-SSO, Comments of the Ohio Energy Group on the Proposed Tariff Filing of Toledo Edison, Ohio Edison and Cleveland Electric Illuminating Company at 1-2 (January 5, 2009).

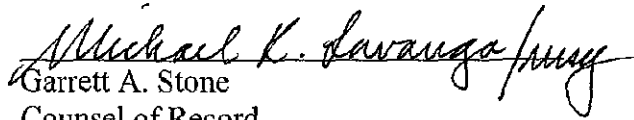
require that money collected through the RTC charges be used to offset any charges collected under Rider FUEL. In other words, the RTC charges should be applied to reduce the purchased power costs that would otherwise be recovered through Rider FUEL before that rider is applied, and Rider FUEL should recover only those purchased power costs in excess of costs recovered through the RTC charges. This offset makes sense given that the costs that have been recovered through the RTC charges are generation-related.

Also, given the huge rate increases customers can expect to see as a result of Rider FUEL, it is much more reasonable to require RTC charges (if FirstEnergy is allowed at any point to retain this mechanism) to offset Rider FUEL charges, rather than allowing FirstEnergy to apply the charges as an offset to some other costs, or allowing FirstEnergy to simply pocket the money. If the RTC charges are retained, an offset would be necessary to ensure that costs for FirstEnergy's ratepayers do not spin completely out of control.

### **III. CONCLUSION**

The Commission should clarify in its order on rehearing that if FirstEnergy is ever permitted to continue to recovery the RTC charges, those charges shall be used to offset purchased power costs that would otherwise be collected under Rider FUEL.

Respectfully submitted,

  
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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 electronic transmission, on January 20, 2009.

  
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