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 Approval of Rider FUEL and Related Accounting Authority	)	Case Nos.	09-21-EL-ATA 09-22-EL-ATA 09-23-EL-ATA

NUCOR STEEL MARION, INC.'S APPLICATION FOR REHEARING ON FAILURE TO PROPERLY ALLOCATE RIDER FUEL COSTS AND MEMORANDUM IN SUPPORT

I. APPLICATION FOR REHEARING

Pursuant to Section 4903.10 of the Revised Code, and Rule 4901-1-35 of the Ohio Administrative Code, Nucor Steel Marion, Inc. ("Nucor") hereby submits this Application for Rehearing of the Finding and Order issued by the Public Utilities Commission of Ohio ("Commission") on January 14, 2009 ("January 14 Order"). As explained further in the Memorandum in Support below:

- The January 14 Order is unreasonable and unlawful because it fails to properly allocate costs that will be recovered through Rider FUEL among customer classes. As a result, Rider FUEL will over-allocate generation-related costs to certain customer classes and rate schedules.
- The failure to address this issue is unreasonable and unlawful because it violates Section 4928.02(A) of the Revised Code, which requires the "availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."

- By failing to retain the current rate relationships between customer classes and rate schedules, Rider FUEL also violates Section 4928.143(C)(2)(b) of the Revised Code, which requires the continuation of the "provisions, terms, and conditions" of FirstEnergy's most recent standard service offer until an electric security plan or market rate offer is approved for FirstEnergy.

II. MEMORANDUM IN SUPPORT

A. Introduction

Following the issuance of the Commission's Opinion and Order of January 7, 2009 in Case No. 08-935-EL-SSO, FirstEnergy filed its application in this docket requesting approval of Rider FUEL ("Application"). Rider FUEL recovers the cost difference between the energy and capacity FirstEnergy obtained through its competitive bidding process to serve standard service offer load, and the generation revenue FirstEnergy receives under its current rates. In particular, Rider FUEL recovers:

> the difference between the Company's fuel costs incurred starting January 1, 2009, including purchased power, energy, capacity, planning reserve, alternative energy and credits, non-distribution uncollectible expense, Ohio Commercial Activity Tax expense and other applicable taxes, and any other expenses to provide retail generation service for all customers receiving retail generation service from the Company and the generation revenue, including generation charges and rate stabilization charges, charged those customers.

Application, Attachment A-1, Ohio Edison Fuel Rider. Costs are recovered under this rider through a near-uniform, volumetric per-kwh charge applied to three customer classes: Residential Class – 1.6499 cents/kwh; Commercial Class – 1.6259 cents/kwh; Industrial Class – 1.5529 cents/kwh.[1]

FirstEnergy filed its Application on January 9, 2009 and requested emergency rate relief under Section 4909.16 of the Revised Code, and the Commission granted the requested relief on a temporary basis "only to the extent that the rider includes the actual, reasonable, and prudently incurred purchased power costs" set forth in the Application. January 14 Order at 6. The Commission also directed FirstEnergy to make a filing by February 2, 2009 which includes testimony and provides information sufficient for the Commission to conduct a prudency review of FirstEnergy's purchased power costs. *Id.* at 7.

As discussed further below, the Commission erred in the January 14 Order by approving Rider FUEL without ensuring that the generation-related costs to be recovered through the rider were properly allocated among customer classes and rate schedules.

B. Rider FUEL Fails to Properly Allocate Generation-Related Costs.

With its Rider FUEL, FirstEnergy repeats a costly error that FirstEnergy made in its electric security plan ("ESP") and market rate offer ("MRO") rate proposals, both of which were rejected by the Commission. By proposing to pass wholesale power costs (including both energy and capacity costs) to all customers through a near-uniform per/kwh charge, Rider FUEL fails to recognize cost differences among customer classes and rate schedules in providing generation service. In particular, allocating generation costs in this manner will result in the over-allocation of generation costs to large industrial customers.

[1] *See* January 16, 2009 FirstEnergy tariff filing in Case Nos. 08-935-EL-SSO, 09-21-EL-ATA, and 89-6006-EL-TRF, Ohio Edison Co. Tariff, P.U.C.O. No. 11, Original Sheet 105.

Nucor and other parties addressed the issue of cost allocation in detail in the ESP and MRO proceedings. In both of those proceedings, FirstEnergy proposed to pass-through generation-related costs to all customers though a near-uniform per/kwh charge contained in Rider GEN – exactly as FirstEnergy now proposes to pass generation costs through Rider FUEL. Extensive evidence was provided in the ESP and MRO proceedings demonstrating that passing through generation costs in this manner fails to recognize differences in cost causation (such as timing, duration, and load factor differences) among customer classes and rate schedules.[2] For example, as Nucor witness Dr. Dennis Goins testified in the ESP proceeding, uniform volumetric generation rates fail to recognize that the average cost of purchased energy and capacity is lower for customer classes with high load factors because the fixed cost of capacity to serve higher load factor customers is spread over more kwhs, resulting in a lower average cost.[3] Similarly, off-peak loads have lower capacity costs, which lowers the average cost of generation for off-peak customers.[4]

Of course, in both the ESP and MRO proceedings, the Commission rejected FirstEnergy's proposed rate designs. In the ESP Order, the Commission stated:

> [T]he Commission finds that FirstEnergy has not demonstrated that the proposed rate design and tariff structure properly allocates the cost of providing generation service to the appropriate customers. Therefore, we decline to implement a new generation rate design and tariff structure at this time. Instead, the Commission finds that FirstEnergy should file new

[2] *See, e.g.*, December 19, 2008 Opinion and Order in Case No. 08-935-EL-SSO ("ESP Order") at 21-22 (summarizing evidence on lack of proper cost allocation in proposed ESP rates); Direct Testimony of Dennis W. Goins in Case No. 08-935-EL-SSO ("Goins ESP Testimony") at 9-15; Nucor Initial Brief in Case No. 08-935-EL-SSO at 7-24; Direct Testimony of Dennis W. Goins in Case No. 08-936-EL-SSO at 16-19; Nucor Initial Brief in Case No. 08-936-EL-SSO at 8-12.

[3] Goins ESP Testimony at 11-12. Nucor incorporates Dr. Goins' testimony in the ESP proceeding herein by reference, and requests that the Commission take administrative notice of that testimony.

[4] *Id.* at 12.

> tariffs adjusting its current rate design and tariff structure to implement the new base generation rates approved by the Commission in the ESP. These proposed tariffs should maintain the current rate relationships between customer classes and among the rate schedules within each customer class.
>
> In addition, the Commission agrees that the issues raised by various intervenors regarding the inclusion of demand components in the generation rate design must be addressed. To that end, the Commission finds that FirstEnergy should work with Staff and other stakeholders, to develop a means of transitioning FirstEnergy's generation rate schedules to a more appropriate rate structure which takes into consideration of time varying generation costs of serving different customers and classifications of customers with homogenous loads and/or generation cost profiles, considers customer load factor, incorporates seasonal generation cost differentials, and, where adequate metering is available, provides customers with time-differentiated and dynamic pricing options.

ESP Order at 22-23. *See also*, November 25, 2008 Opinion and Order in Case No. 08-936-EL-SSO at 24.

Just as the lack of adequate cost allocation and rate design was a fatal flaw with respect to the recovery of generation-related costs through Rider GEN in the ESP and MRO proceedings, so it is under FirstEnergy's Rider FUEL. As FirstEnergy explains, Rider FUEL recovers not just "fuel," but the full range of generation-related costs, including "purchased power, energy, capacity, planning reserve, alternative energy and credits, non-distribution uncollectible expense, Ohio Commercial Activity Tax expense and other applicable taxes, and any other expenses to provide retail generation service." Application, Attachment A-1, Ohio Edison Fuel Rider. By failing to take into account cost differentiation among customer classes and rate schedules, therefore, Rider FUEL suffers from the same flaws that lead the Commission to reject FirstEnergy's proposed Rider GEN in both the ESP and MRO proposals. As proposed, therefore, Rider FUEL does not provide for "nondiscriminatory and reasonably priced retail electric service," as required by Section 4928.02 of the Revised Code.

Moreover, if Rider FUEL as proposed is left intact, it will run afoul of Section 4928.143(C)(2)(b) of the Revised Code, which requires the continuation of the "provisions, terms, and conditions" of FirstEnergy's most recent standard service offer until an ESP or MRO is approved for FirstEnergy. Retaining the "provisions, terms, and conditions" of FirstEnergy's current rate plan undoubtedly means that the current rate relationships among customer classes and rate schedules should be retained (as the Commission required in the ESP Order), notwithstanding the addition of incremental generation-related costs to be recovered through Rider FUEL. The requirements of Section 4928.143(C)(2)(b) of the Revised Code, therefore, also require that Rider FUEL be modified to reflect proper cost allocation and rate design with respect to the generation-related costs that will be recovered through the rider.

Nucor requests that the Commission direct FirstEnergy to properly allocate Rider FUEL costs, and to properly design the rates to recover such costs, in its order on rehearing. There are two reasonable approaches available for the Commission to adopt:

- FirstEnergy should be required to determine the percentage of generation-related cost recovered through each rate schedule prior to January 1, 2009, and the same percentage of Rider FUEL costs should be allocated to each rate schedule. This would be the most straightforward way of properly allocating the Rider FUEL generation costs and preserving existing rate relationships, given that FirstEnergy is already required to continue its existing rates under Section 4928.143(C)(2)(b) of the Revised Code.
- In the alternative, FirstEnergy should be required to apply the class allocation factors ("CAFs") FirstEnergy initially proposed in its 2007

competitive bidding proposal in Case No. 07-796-EL-ATA. *See* Goins ESP Testimony at Exhibit DWG-3. In both the ESP and MRO proceedings, Nucor demonstrated that the CAFs are a reasonable mechanism for ensuring that generation costs are properly allocated among customer classes. *See, e.g., id* at 14-15.

III. CONCLUSION

Nucor respectfully requests that the Commission grant rehearing of the January 14 Order, and direct FirstEnergy to properly allocate costs that will be recovered through Rider FUEL to the various customer classes and rate schedules as described above.

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 U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission on January 29, 2009.

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