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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)
Authority to Establish a Standard Service Offer)
Pursuant to R.C. 4928.143, Revised Code, in the)
Form of an Electric Security Plan)

Case No. 08-935-EL-SSO

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**NUCOR STEEL MARION, INC.'S APPLICATION FOR REHEARING
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 7, 2009 ("January 7 Order"). As explained further in the Memorandum in Support below, the Commission should grant rehearing on the issue of FirstEnergy's changes to the operation of its interruptible rates. While FirstEnergy did not change the language of its interruptible tariffs, FirstEnergy changed its internal procedures for calling economic interruptions in a manner that drastically changed the operation of the interruptible rates. By changing the operation of its interruptible rates (in a manner that effectively makes the interruptible rates substantially higher than firm rates, thereby destroying the interruptible program) FirstEnergy has:

- violated Section 4928.143(C)(2)(b) of the Revised Code, which mandates the continuation of "the provisions, terms, and conditions of the utility's most recent standard service offer" in the event a utility withdraws its electric security plan;

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- rendered interruptible rates unviable; and
- has caused substantial economic harm to the large industrial customers on FirstEnergy's interruptible rates.

Nucor has filed a complaint in Case No. 09-0046-EL-CSS ("Complaint Case") addressing these issues. However, for the reasons discussed in the Memorandum in Support below, the Commission can and should decide these issues in the instant proceeding. Accordingly, Nucor requests that the Commission grant Nucor's request for rehearing and grant the following relief:

- Issue a stay directing FirstEnergy to immediately cease calling economic interruptions until new reasonable guidelines for calling economic interruptions and establishing buy-through prices are developed and approved by the Commission.
- Order FirstEnergy not to charge Nucor and other interruptible customers buy-through prices for economic interruptions called starting January 1, 2009 and instead price all energy purchased at standard tariff rates.
- Establish a proceeding to consider and establish new guidelines for the calling of economic interruptions under FirstEnergy's interruptible rates, including the modifications to FirstEnergy's existing interruptible tariffs to the degree necessary.
- Once new guidelines are established for economic interruptions, the Commission should permit interruptible customers to evaluate the new guidelines and convert any or all of their interruptible load to firm load.

II. MEMORANDUM IN SUPPORT

As of January 1, 2009, FirstEnergy has been implementing a new internal procedure for calling economic interruptions that has resulted in economic interruptions being called for Nucor (and likely other interruptible customers) in every hour of every day. As a result, rates have increased dramatically for interruptible customers, and the interruptible program has basically been shredded to pieces. In comments filed on January 5, 2009 in the instant proceeding ("January 5 Comments"), Nucor argued that, by

altering its internal procedures in a way that drastically changes the operation of the interruptible rates, FirstEnergy violated Section 4928.143(C)(2)(b) of the Revised Code, which mandates the continuation of “the provisions, terms, and conditions of the utility’s most recent standard service offer” in the event a utility withdraws its electric security plan.

In the January 7 Order, the Commission explained that the issue of the implementation of FirstEnergy’s interruptible rates appears to go beyond the scope of the Commission’s review of FirstEnergy’s proposed tariffs. January 7 Order at 11. However, the Commission noted that Nucor “may have cause for concern, especially in light of the coincidence that the implementation of the ‘newly established internal policy’ relating to interruptible service happens to correspond with the implementation of the proposed tariffs,” and explained that if Nucor believes FirstEnergy’s internal policies have caused or will cause the tariffs to be implemented unlawfully, Nucor should file a complaint setting forth the specific facts and circumstances. *Id.* Finally, the Commission stated:

[T]he Companies should be implementing their tariffs within the spirit of the law. Section 4928.143(C)(2)(b), Revised Code, requires the continuation of the provisions, terms, and conditions of the most recent SSO if the Companies terminate their ESP application. To that end, the Companies should be continuing all provisions, terms, and conditions of their RCP, which include the rate continuity and rate certainty established by the RCP. Any deviations from the general parameters of the RCP and the current state of the industry, without specific justifications in the RCP, tariffs, or law, that has a significant affect on customers may violate the spirit of the law. *Id.* at 11-12.

As the Commission suggested, Nucor filed a complaint in Case No. 09-0046-EL-CSS on January 21, 2009 (“Complaint”) restating and elaborating on the claims Nucor initially made in the January 5 Comments. The facts and legal arguments detailing

FirstEnergy's conduct with respect to its interruptible rates and supporting Nucor's requested relief are contained in Nucor's Complaint (including Attachment A and Exhibits 1-3). Rather than repeating those facts and arguments in this request for rehearing, Nucor incorporates the Complaint (including Attachment A and the exhibits) herein by reference.

Notwithstanding Nucor's Complaint, Nucor requests that the Commission grant rehearing and decide the issues relating to the operation of FirstEnergy's interruptible rates in this proceeding. There are several reasons why the Commission should grant rehearing here and resolve the issues to the degree possible, rather than waiting to address these issues in the Complaint Case.

To begin with, there is no question that FirstEnergy has changed the provisions, terms, and conditions of its existing interruptible rates by implementing new internal operating procedures for calling economic interruptions that result in constant economic interruptions, and the complete elimination of the economic benefit interruptible customers are entitled to under FirstEnergy's interruptible rates.¹ Granting a remedy that would halt FirstEnergy's attempt to scrap its existing interruptible rates, therefore, falls squarely within the scope of the Commission's authority under Section 4928.143(C)(2)(b) of the Revised Code to "issue such order as is necessary to continue the provisions, terms, and conditions" of FirstEnergy's most recent standard service offer following the withdrawal and termination of FirstEnergy's ESP proposal.

¹ See Case No. 09-0046-EL-CSS, Answer of Ohio Edison Company at 3 (February 2, 2009) (admitting that Ohio Edison has implemented a new internal policy for calling economic buy through events which commenced on January 1, 2009).

Second, ruling on these issues in this proceeding would allow the Commission to resolve these issues pertaining to interruptible rates for all interruptible customers of all three FirstEnergy Ohio operating companies at one time.² Complaint proceedings are better suited for resolving disputes between a utility and a single customer based on a set of facts and circumstances particular to that one customer. In this case, FirstEnergy has implemented its new internal guidelines for calling economic interruptions for all three Ohio operating companies, so all interruptible customers across the three operating companies are affected by this new policy. This is confirmed by Industrial Energy Users-Ohio's ("IEU-Ohio") January 12 memorandum in support filed with their application for rehearing in this proceeding, which points out interruptible customers currently have no idea when and for how long they will be interrupted.³ Also, just yesterday Praxair, Inc. filed a complaint against CEI raising similar issues with respect to economic interruptions as raised by Nucor in this proceeding and in the Complaint.⁴ The issues Nucor has raised, therefore, do not affect Nucor and Ohio Edison alone. By ruling on these issues in this proceeding, the Commission can resolve the issues for all three FirstEnergy Ohio operating companies, and all of their interruptible customers, at one time.

² In Nucor's Complaint, Nucor named all three FirstEnergy Ohio operating companies, even though Nucor is a customer only of Ohio Edison. CEI and Toledo Edison have moved to strike the complaint, arguing that Nucor is not a customer of theirs and therefore has no standing to bring a complaint against them. *See* Case No. 09-0046-EL-CSS, Motion to Dismiss of the Cleveland Electric Illuminating Company and the Toledo Edison Company (February 2, 2009). While Nucor does not agree that CEI and Toledo Edison must be removed as parties to the Complaint Case, deciding the interruptible issues on rehearing in the instant proceeding would avoid the Commission having to make a determination on standing with respect to CEI and Toledo Edison in the Complaint Case.

³ Case No. 08-935-EL-SSO, IEU-Ohio Memorandum in Support and Memorandum in Reply to FirstEnergy's Motion for Stay at 2 (January 12, 2009).

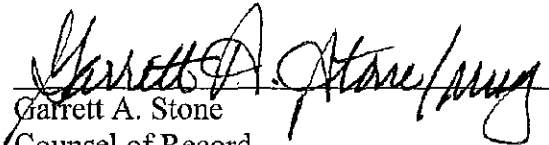
⁴ *In the Matter of the Complaint of Praxair, Inc. v. The Cleveland Electric Illuminating Company*, Case No. 09-88-EL-CSS.

Finally, the Commission should grant Nucor's request for rehearing and address the interruptible issues in this proceeding because time is of the essence. As a result of FirstEnergy's new internal policy for calling economic interruptions, Nucor saw a rate increase in January of roughly 50% over the average price per kWh it paid in 2008 including economic buythroughs, and a price well over the price Nucor would have paid as a firm customer, and it is likely that Nucor will pay even more per kWh in February. There is no doubt that FirstEnergy's other interruptible customers have experienced similar rate impacts – if those customers have not already abandoned their interruptible rates. Each day FirstEnergy is allowed to continue applying its warped policy for calling economic interruptions, FirstEnergy's interruptible customers are paying a high price. Taking such a hit in good economic times would be difficult for many of these customers, and the impacts are made exponentially worse due to the wretched economic conditions facing Ohio and the rest of the nation. The Commission can, and should, stop the bleeding for FirstEnergy's interruptible customers by granting Nucor's request for rehearing on the interruptible issues in this proceeding, and granting Nucor's requested relief.

III. CONCLUSION

For the reasons discussed above, Nucor respectfully requests that the Commission grant rehearing of the January 7, 2009 Order.

Respectfully submitted,



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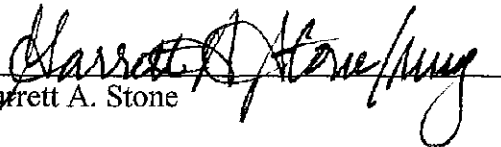
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CERTIFICATE OF SERVICE

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 February 6, 2009.


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