

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for)	
Alternative and Renewable Energy)	
Technologies and Resources, and Emission)	
Control Reporting Requirements, and)	
Amendment of Chapters 4901:5-1, 4901:5-3,)	Case No. 08-888-EL-ORD
4901:5-5, and 4901:5-7 of the Ohio)	
Administrative Code, pursuant to Chapter)	
4928, Revised Code, to Implement Senate Bill)	
No. 221.)	

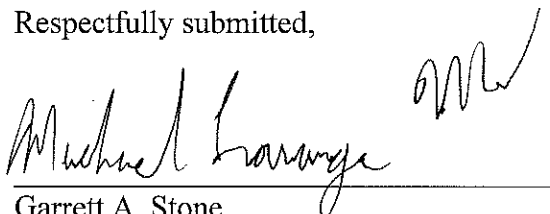
**APPLICATION FOR REHEARING
OF NUCOR STEEL MARION, INC.**

Pursuant to R.C. § 4903.10 and Rule 4901-1-35 O.A.C., Nucor Steel Marion, Inc., (“Nucor”) hereby requests rehearing of the Public Utilities Commission of Ohio’s (“Commission”) June 17, 2009 Entry on Rehearing in the above-captioned proceeding. The Commission should grant rehearing because interruptible load should not be required to actually be interrupted and reduce the measured demand at the system peak in order for interruptible load to count toward meeting the peak demand reduction benchmarks of R.C. 4928.66(A)(1)(b). Including such a requirement in Rules 4901:1-39-01(R) and 4901:1-39-05(C) fails to recognize that interruptible load provides the same very real peak demand reduction benefits, regardless of whether the load is interrupted at the system peak. While Nucor does not object to necessary interruptions, the result of this new requirement would be to cause utilities and/or interruptible customers to bear the additional costs related to unnecessary mandatory interruptions that create no additional system benefit. Also, this requirement could serve as a disincentive to the development

of and participation in properly designed interruptible programs, which would have a detrimental effect on system reliability as well as on Ohio's economic development and job creation efforts.

For these reasons, and as discussed in more detail in the attached Memorandum in Support, Nucor respectfully requests that the Commission grant rehearing of the Entry on Rehearing on the issue of whether interruptible load has to be interrupted at times of peak demand in order for such load to count toward meeting the peak demand reduction benchmarks of R.C. 4928.66(A)(1)(b).

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND EXECUTIVE SUMMARY

Amended Substitute Senate Bill No. 221 (“SB 221”) establishes aggressive peak demand reduction benchmarks that Ohio utilities must meet each year, starting in 2009. R.C. 4928.66(A)(1)(b) provides: “[b]eginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one percent reduction in peak demand in 2009 and an additional seventy-five hundredths of one percent reduction each year through 2018.” Interruptible load is essential in meeting these targets.

In its April 15, 2009 Opinion and Order (“April 15 Order”) in this proceeding, the Commission adopted new rules implementing various provisions of SB 221, including the peak demand reduction requirements of R.C. 4928.66(A)(1)(b). In particular, Rule 4901:1:39(R) defines “peak-demand benchmark” as “the reduction in peak demand an electric utility’s system must achieve as provided in division (A)(1)(b) of section 4928.66

of the Revised Code.” Rule 4901:1-39-05(C) requires an electric utility to file a portfolio status report detailing the utility’s “achieved energy savings and demand reductions relative to its corresponding baselines.” In response to the April 15 Order, several parties requested clarification that interruptible load need not actually be interrupted when not necessary for system reliability at peak times in order to be counted by a utility toward meeting the peak demand reduction benchmarks.¹

The Commission addressed this issue for the first time in this proceeding in the Entry on Rehearing, stating that interruptible load must be interrupted in order for such load to count against the peak demand reduction benchmark:

The Commission believes that the benefits of SB 221 cannot be realized unless real peak-demand reductions are realized. The baselines and benchmarks will be known in advance. The day-ahead forecast demand will indicate whether, and the degree to which, interruptions must be called or not called in order to achieve the benchmarks. If interruptible customers cannot accept the prospect of being interrupted, service should be sought under another tariff, supplier, or operations so as to mitigate demand during peak hours. If the electric utilities cannot rely upon interruptible customers to reduce peak demand, they should seek to implement real peak-demand reductions through other means.

Entry on Rehearing at 5-6. Nucor respectfully requests that the Commission grant rehearing on this issue and reconsider its decision.

At the outset, Nucor notes that both FirstEnergy and AEP argued in their applications for rehearing of the April 15 Order that the requirement that interruptible load actually be interrupted to count toward the targets is inconsistent with the statute, which requires that utilities implement peak demand reduction programs “designed to achieve” the specified level of peak demand reduction each year. Nucor agrees with

¹ See applications for rehearing of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (“FirstEnergy”); Columbus Southern Power Company and Ohio Power Company (“AEP”); and the Ohio Energy Group.

FirstEnergy and AEP that the statute clearly allows a program to count toward meeting the benchmarks as long as the program is designed to achieve the required level of peak demand reduction, and notes that the Commission did not address this argument in the Entry on Rehearing. Aside from FirstEnergy's and AEP's argument, however, there are additional compelling reasons why the Commission should grant rehearing on this issue. Regardless of whether interruptible load is actually interrupted to reduce measured demand at the system peak, the Commission should allow utilities to count interruptible load toward meeting the peak demand reduction benchmarks for the following reasons:

- Interruptible load effectively provides the same real peak demand reduction, regardless of whether such load is interrupted at times of expected peak demand, since capacity is not acquired or constructed for such load.
- Requiring actual interruptions at times of peak demand would lead to costly interruptions of industrial and large commercial load when there is no justification for such interruptions based on a capacity shortage or a system emergency and no benefit to the utility, the electrical grid or other customers.
- Requiring actual interruptions at times of peak demand would be a disincentive to the development of and participation in properly designed interruptible programs by Ohio utilities.

II. ARGUMENT

A. Interruptible Load Provides The Same Real Peak Demand Reduction Regardless of Whether Such Load is Interrupted at Times of Expected Peak Demand.

The Entry on Rehearing states that “the benefits of SB 221 cannot be realized unless real peak demand reductions are realized.” Even if this is the case, interruptible

load provides “real peak demand reductions” regardless of whether the load is interrupted at times of peak system demand. As explained below, interruptible load, virtually alone among the resources and programs a utility can use to achieve peak demand reduction, allows a utility to completely avoid having to build or acquire capacity to serve such load, thereby reducing the peak demand a utility is required to serve. Interruptible rates are one of the most certain and cost effective means by which a utility can achieve the peak demand reduction benchmarks of SB 211.

Under an emergency/capacity interruptible program, interruptible load is required to interrupt in the case of a system emergency or a capacity shortage, and if the customer does not interrupt, it is subject to substantial financial penalties as well as to disconnection by the utility in some cases. Since performance on the part of the interruptible customer is mandatory, the utility does not have to build or acquire capacity resources or reserves to serve interruptible load. *See* Federal Energy Regulatory Commission, Docket No. AD06-2-000, *Assessment of Demand Response and Advanced Metering* at 11 (2006) (“*FERC Demand Response Assessment*”) (noting that demand response programs such as interruptible rates can “reduce system or local peak demand, thereby displacing the need to build additional generation, transmission, or distribution capacity infrastructure.”); *see also* Case No. 09-535-EL-EEC, Application of FirstEnergy at 2 (“FirstEnergy Waiver Application”) (stating the FirstEnergy’s interruptible rates, Riders ELR and OLR, represent “curtailable load designed to achieve a mitigation or reduction in the need for capacity that would otherwise be required.”).² In effect,

² In addition to the capacity avoidance benefit, interruptible load provides numerous other benefits, including: serving as a source of ancillary services such as operating and spinning reserves; avoidance of transmission losses; economic development and job retention benefits; and possible environmental benefits resulting from displacing fossil generation.

interruptible load does not add to peak demand; the utility serves interruptible load out of its reserves and interrupts such load when reserves are insufficient.

Interruptible load, in essence, is an insurance policy, providing the utility with a *guarantee* that a specified quantity of load will be ready to curtail when system conditions call for load to be shed. In fact, this is exactly how the *FERC Demand Response Assessment* describes these types of programs:

In capacity-market programs, customers commit to providing pre-specified load reductions when system contingencies arise, and are subject to penalties if they do not curtail when directed. Capacity-market programs can be viewed as a form of insurance. In exchange for being obligated to curtail load when directed, participants receive guaranteed payments (i.e., insurance premiums). Just like with insurance, in some years load curtailments will not be called, even though participants are paid to be on call.

*FERC Demand Response Assessment at 49.*³

Even when a utility is supplying interruptible load at peak times, in a real sense the interruptible load is not contributing to the peak demand since the utility can interrupt that load whenever there is a capacity shortage or another system emergency. To take a simple example, assume a utility has 1,000 MW of firm load on its system. The utility must have resources available to serve its firm load plus an additional reserve margin (for example, 15%), so the utility would carry 1,150 MW of resources to serve the peak demand of 1,000 MW. Now assume the utility adds 100 MW of interruptible load. Since the utility does not have to build or acquire capacity to serve this interruptible load, for planning purposes the utility's peak demand remains 1,000 MW, and the resources the utility needs to carry remain at 1,150 MW, instead of increasing to 1,265 MW (1,000

³ Although this passage addresses capacity-market programs available in the wholesale markets, the insurance analogy applies equally to a retail-level interruptible program where interruptible customers are required to reduce their load at times of a system emergency or a capacity shortage.

MW + 100 MW + the 15% reserve margin). In other words, 1,000 MW remains the true peak demand notwithstanding the addition of the 100 MW of interruptible load because once the utility's demand reaches 1,000 MW, the utility can interrupt its non-firm load if and when necessary.

Utility planning and reporting requirements overseen by both this Commission and the Federal Energy Regulatory Commission ("FERC") demonstrate that interruptible load does not contribute to peak demand. Under the Commission's rules, interruptible load is not included in the calculation of a utility's "native load" for purposes of long-term planning and integrated resource planning. Rule 4905:5-01(R), O.A.C. Also, interruptible load is not included in a utility's peak demand for purposes of determining the utility's resource adequacy requirement in Midwest ISO. *See* FirstEnergy Waiver Application at 3, fn.6 ("[i]nterruptible load is recognized by MISO as offsetting the capacity that would otherwise be required as a result of the peak demand. Thus the availability of a quantity of interruptible load reduces required capacity, actually reducing the operational and economic impact of the peak."). Moreover, under long-standing FERC precedent, interruptible load is not included in a utility's allocation of capacity costs because the utility could curtail interruptible service during times of peak demand. *See Louisiana Public Service Commission v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 at PP 60-77 (2004) ("Opinion No. 468"); *Kentucky Utilities Co.*, Opinion No. 116, 15 FERC ¶ 61,220 (1981). In Opinion No. 468, FERC explained:

It is, thus, the right to interrupt that is critical to the analysis, and not the actual interruptions or even the number or length of such interruptions. If a company can keep a customer from imposing its load on the system at the system peak, as Entergy can do here, then, under the peak responsibility method of cost allocation that Entergy uses, that customer shares no responsibility for capacity costs.

Id. at P 74 (emphasis in the original) (citation omitted).

FERC's rationale for excluding interruptible load from capacity cost responsibility when such costs are recovered on the basis of contribution to peak demand, regardless of whether such load is interrupted, is the same rationale for why it is appropriate to count interruptible load toward meeting the peak demand reduction benchmarks, even if it is not interrupted at the time of the system peak – namely, the utility has avoided the need to build or acquire new capacity to serve interruptible load, regardless of whether the load is interrupted.

By insisting that load actually be interrupted at peak times in order to count toward meeting the peak demand reduction benchmarks, the Commission's rules fail to account for the critical capacity avoidance benefit provided by interruptible load. There can be no question that capacity avoidance is the goal of SB 221's peak demand reduction requirements. R.C. 4928.66(A)(1)(b) requires a 7.75% reduction in a utility's peak demand over a ten year period, which means that a utility (assuming it meets the benchmarks) will be able to avoid having to acquire capacity to serve 7.75% of its baseline demand over this period. A utility will be able to avoid building or acquiring new generation to meet this demand, providing environmental benefits and thereby furthering a key policy objective of SB 221. The utility's customers will avoid the additional capacity costs that would otherwise be included in rates, such as the cost of new generation, transmission, or distribution facilities, providing an economic benefit to all customers. A utility could produce these benefits by having a robust level of interruptible load available – whether that load is interrupted at the time of the system peak or not. Simply put, the more interruptible load a utility has on hand, the fewer

capacity resources the utility has to acquire in order to meet its peak demand.

In fact, interruptible load provides the most assurance of capacity avoidance among the different types of resources and programs a utility could use to meet the peak demand reduction benchmarks. Programs such as time-of-use rates, or programs that provide a customer a price signal or a financial incentive to reduce demand at peak times through the installation of better equipment (but which do not actually require curtailment), are important and certainly contribute to peak demand reduction. But since the utility cannot be certain how much peak demand reduction will be achieved by these programs at any given time, the utility may still have to acquire resources to serve at least some of the load and at best can only estimate the level of peak demand reduction these programs actually will provide. By contrast, interruptible load that *must* interrupt when there is a system emergency or capacity shortfall provides the utility with a precise quantity of load that the utility knows it does not have to plan for. Accordingly, interruptible load, regardless of whether it is actually interrupted at the time of the system peak, is clearly a very effective and desirable mechanism for achieving the peak demand reduction mandates of SB 221.

B. Requiring Actual Interruptions at Times of Expected Peak Demand Would Lead to Costly Interruption of Industrial and Large Commercial Load When There Is No System Benefit to Justify the Interruption.

The Entry on Rehearing implies that it will be relatively easy for a utility to determine when its peak demand will occur and to interrupt load in order to achieve the peak demand reduction benchmarks, noting that “[t]he day-ahead forecast demand will indicate whether, and the degree to which, interruptions must be called or not called in order to achieve the benchmarks.” Entry on Rehearing at 5-6. While a utility might have

a general idea when its peak demand will occur, there is no way for the utility to know for certain beforehand. As a result, if a utility must interrupt its interruptible load in order for that load to count against the peak demand reduction benchmark, the utility inevitably will interrupt load whenever the utility anticipates the system peak *might* occur. In other words, interruptible customers would be interrupted on many more days than the actual system peak, since a utility will not know for certain when exactly the peak day will be. Interruptible customers likely would face several interruptions each month in the peak summer months.

Subjecting interruptible customers to this level of interruptions, regardless of whether there is a system emergency or a capacity shortfall, would provide no benefit to the utility, and would be extremely disruptive for the industrial and large commercial customers on interruptible rates. To be clear – Nucor, and presumably all interruptible customers, are ready and willing to interrupt at times of a capacity shortfall or other system emergency, as required by the relevant tariff (in Nucor’s case, Ohio Edison’s Rider ELR). But it is important to recognize that customers pay a significant cost in order to be interruptible, because they must plan their operations and operate their facilities and equipment in a manner that recognizes that they might be called to shut down at any time on very short notice. The costs for the interruptible customer climb even higher each time the customer is actually interrupted, since the customer incurs costs in shutting down its equipment and facilities (especially on short notice), and would typically also incur costs related to lost production and lost sales during the period the customer is shutdown.

In short, the prospect of subjecting interruptible customers to many interruptions

that are not necessary from a system reliability perspective should be reconsidered given the potential additional costs to these customers from such a practice. Interrupting interruptible load on numerous days in the summer simply in an attempt to clip the system peak, regardless of whether there is an emergency or a capacity shortage, is economically wasteful – especially since the utility achieves valuable capacity avoidance benefits simply by having interruptible load on hand.

C. Requiring Actual Interruptions at Expected Times of Peak Demand Would be a Disincentive to the Development of and Participation in Properly Designed Interruptible Programs.

Ohio utilities offered interruptible rates long before the passage of SB 221 and the establishment of peak demand reduction benchmarks. These programs did not require interruption at peak times when it was not necessary for system reliability. Even if the Commission leaves in place the requirement that interruptible load actually be interrupted at times of expected peak demand in order to count toward meeting the benchmarks, however, there will still be a need for interruptible rates and those programs will continue to provide important benefits. Nevertheless, there is no question that if the Commission retains the requirement that interruptible load actually be interrupted at times of expected peak demand in order to count toward meeting the benchmarks, the ability of a utility to use traditional interruptible programs to meet SB 221's peak demand reduction requirements will be diminished. As a result, there is a possibility that a utility might either: (i) alter traditional interruptible programs (by, for example, giving the utility more flexibility to call mandatory interruptions when there is no emergency or capacity shortfall) in order to make them more useful in meeting the peak demand reduction benchmarks; or (ii) seek to meet the peak demand reduction benchmarks through other

programs.

Either of these approaches would have potentially harmful impacts on the retention of existing interruptible customers and on efforts to attract new interruptible customers (most of whom are large industrial and commercial customers who provide economic development and job retention benefits to Ohio), and likely would increase costs to the utility and/or its customers. Giving a utility more flexibility to call mandatory interruptions at the time of expected peak demand when there is no reliability justification for those interruptions, for example, would make interruptible rates less attractive to customers. While customers currently on interruptible rates stand ready to interrupt when there is a system emergency or a capacity shortfall (not to mention being subject to numerous economic interruptions over the course of a year), some interruptible customers might not be willing or able to sign onto an interruptible rate if they know that they will be subject to numerous mandatory interruptions each year. Even for those interruptible customers who can still participate, a higher incentive likely would be necessary for participation to offset the additional costs of greater interruptions.

Similarly, if a utility looks away from interruptible rates and focuses on other types of programs to meet the peak demand reduction benchmarks, the further development of robust interruptible programs could suffer. In fact, requiring that interruptible load actually be interrupted at the expected times of peak demand to count toward meeting the benchmark would create a perverse incentive favoring programs producing a short term benefit by clipping the utility's demand on a handful of peak days in the summer (and may not provide system emergency and reliability benefits) over programs such as interruptible rates, that provide a long term, guaranteed, and sustained

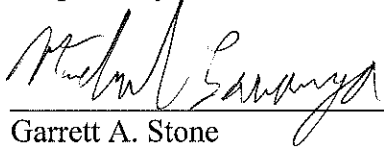
capacity avoidance benefits.

Interruptible load provides important benefits and should be retained and expanded, even if interruptible load could not be used to meet the peak demand reduction benchmarks at all. But a better approach would be to sync up a utility's interruptible rates with its peak demand reduction obligations. This approach would actively encourage the development of more interruptible load, which would provide more of the capacity avoidance benefit discussed above.

III. CONCLUSION

For the reasons discussed above, Nucor respectfully requests that the Commission grant rehearing of the Entry on Rehearing on the issue of whether interruptible load must be interrupted to reduce measured demand at the system peak in order for such load to count toward meeting the peak demand reduction benchmarks of R.C. 4928.66(A)(1)(b), and determine that interruptible load need not actually be interrupted at times of peak demand in order to count toward meeting the benchmarks.

Respectfully submitted,

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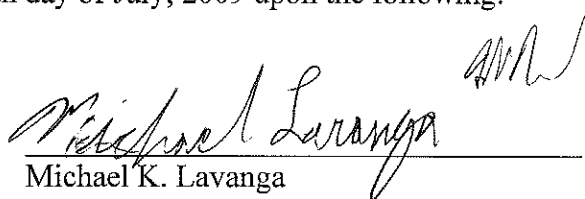
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Application for Rehearing* of Nucor Steel Marion, Inc. was served via by first-class, postage prepaid U.S. mail, and, where indicated, electronic on this 17th day of July, 2009 upon the following:


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