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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating)
Company and The Toledo Edison Company for) Case Nos. 09-1947-EL-POR
Approval of Their Energy Efficiency and Peak) 09-1948-EL-POR
Demand Reduction Program Portfolio Plans for) 09-1949-EL-POR
2010 through 2012 and Associated Cost Recovery)
Mechanisms)

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating) Case Nos. 09-1942-EL-EEC
Company and The Toledo Edison Company for) 09-1943-EL-EEC
Approval of Their Initial Benchmark Reports) 09-1944-EL-EEC

In the Matter of the Energy Efficiency and Peak)
Demand Reduction Program Portfolio of Ohio) Case Nos. 09-580-EL-EEC
Edison Company, The Cleveland Electric) 09-581-EL-EEC
Illuminating Company and The Toledo Edison) 09-582-EL-EEC
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INITIAL BRIEF SUBMITTED BY NUCOR STEEL MARION, INC.

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**BEFORE
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In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms	)))))))	Case Nos. 09-1947-EL-POR 09-1948-EL-POR 09-1949-EL-POR
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In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company	)))))	Case Nos. 09-580-EL-EEC 09-581-EL-EEC 09-582-EL-EEC

INITIAL BRIEF SUBMITTED BY NUCOR STEEL MARION, INC.

Nucor Steel Marion, Inc. ("Nucor") hereby submits its initial brief in the above-captioned proceedings, which address the energy efficiency and peak demand reduction program portfolios and initial benchmark reports of the Ohio Edison Company ("Ohio Edison"), the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies").

I. INTRODUCTION AND SUMMARY

A. Background

On December 15, 2009, FirstEnergy submitted an application ("Application") pursuant to Section 4928.66 of the Revised Code seeking approval of the Companies' respective energy efficiency and peak demand reduction ("EE/PDR") program portfolios, associated cost recovery mechanisms, the Demand Side Management and Energy Efficiency Rider ("Rider DSE"), and their initial benchmark reports. According to FirstEnergy, the programs proposed in the Application will achieve the EE/PDR benchmarks set forth in Section 4928.66 of the Revised Code for the years 2010 through 2012.

Nucor is a large industrial, interruptible customer of Ohio Edison. Nucor recycles scrap steel by using electric arc furnaces to melt scrap and produce new steel. The production process is energy intensive and Nucor consumes millions of dollars worth of electricity each year. Nucor is committed to helping create a clean environment and pursues energy efficiency and peak demand reduction in its own operations. Nucor Corporation (of which Nucor Steel Marion, Inc. is a subsidiary) is North America's largest recycler of any material, recycling millions of tons of scrap steel nationwide each year and conserving considerable amounts of energy, iron, limestone, and coal that would otherwise be needed to produce steel. Also, as an interruptible customer participating on Ohio Edison's Economic Load Response Rider ("Rider ELR"), Nucor provides multiple demand response and reduction benefits, including capacity avoidance and emergency reliability benefits.

In this proceeding, First Energy, the various intervenors, and the Commission are plowing new ground. This is the first EE/PDR portfolio application submitted by FirstEnergy to comply with the Section 4928.66 requirements. The Commission's "Green Rules" (Chapter 4901:1-39, Ohio Administrative Code), which are intended to add process and substance to the framework requirements of Section 4928.66, became effective only a few months ago,¹ and this proceeding is the first opportunity for the parties to see how these rules will work in action. Furthermore, the Ohio technical reference manual is still under development.²

B. Summary of Nucor's Positions and Arguments

Given the nature of this proceeding, Nucor submits that the starting point for FirstEnergy's portfolio should be already proven programs and rates, such as interruptible rates, that provide guaranteed levels of energy efficiency and peak demand reduction. FirstEnergy's portfolio should build on these successful programs to meet the statutory benchmarks by adding new cost-effective programs that will provide energy efficiency and peak demand reduction benefits that are tailored to meet the needs of specific customer classes (thereby increasing the likelihood of participation by the targeted customers), and that have a high likelihood of success. The costs of FirstEnergy's various programs should be recovered from the customers who participate in and primarily benefit from the programs, and the design of the rates to recover these costs should reflect sound ratemaking principles. Finally, the Commission should retain

¹ The Green Rules became effective on December 10, 2009.

² Docket No. 09-0512-GE-UNC, In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures.

flexibility in applying and interpreting its Green Rules, since the rules are “green” not only in the sense that they are intended to advance the environmental objectives of S.B. 221, but also in the sense that the rules are new and untested.

These principles underlie the positions Nucor has taken as an active participant in this proceeding. Nucor submitted the expert testimony of Dr. Dennis W. Goins, who testified on issues regarding the treatment of interruptible rates in FirstEnergy’s Application, and other cost allocation and rate design issues. Nucor also participated in the hearing in this proceeding, which was held from March 2 through 8, 2010, before Hearing Examiners Kimberly Bojko and Gregory Price.

The following is a summary of Nucor’s positions and arguments:

I. Approval Sought for Use of Peak Demand Reduction Provided by Interruptible Rates in FirstEnergy’s EE/PDR Portfolio:

- In its Application, FirstEnergy seeks approval to count interruptible load under Rider ELR and the Optional Load Response Rider (“Rider OLR”) toward meeting FirstEnergy’s peak demand reduction benchmarks. Nucor supports this request, and a recent Commission finding and order confirmed that these rates, in fact, can be used to meet FirstEnergy’s PDR benchmarks.
- Riders ELR and OLR were approved by the Commission in FirstEnergy’s last electric security plan (“ESP”) proceeding, and, as FirstEnergy itself recognizes, no additional Commission review or approval is necessary or appropriate to continue these rates for the term of the current ESP plan.
- FirstEnergy also has acknowledged that issues concerning the expiration or continuation of Riders ELR and OLR at the end of the current ESP and the institution of an interruptible request for proposal (“RFP”) are being litigated in FirstEnergy’s market rate offer (“MRO”) proceeding, and are not issues in this proceeding. Since the hearing in this case, a number of stakeholders (including FirstEnergy and Nucor) have agreed to a Stipulation that forms the basis of a new three-year ESP for FirstEnergy that has been filed with the Commission, which includes continuation of these Riders, with modifications, for the term of the new ESP. Issues related to the benefits and continuation of these rates have been and/or should be addressed in those proceedings. Nevertheless, if the

Commission elects to address these issues in this proceeding, Nucor's positions are the same as those taken by Nucor on these issues in the MRO proceeding as outlined in Dr. Goins' testimony from that proceeding on these issues that was included as an exhibit to his testimony in this proceeding.

II. Application of the Total Resource Cost Test to Interruptible Rates:

- Since Riders ELR and OLR are interruptible rates, they should be subject to the appropriate ratemaking standards and not to the total resource cost ("TRC") test, or any other cost-effectiveness test. Given that these interruptible rates have already been approved as just and reasonable rates, it is even more apparent that such tests need not and should not be applied to such rates. Nucor recommends that the Commission grant a waiver of its rules, if deemed necessary, on this point. Further, a TRC or other cost-effectiveness test should not be applied to FirstEnergy's proposed interruptible RFP, since it is not known at this time whether the RFP will be implemented after the expiration of the current ESP plan, and since the costs of an RFP as proposed by FirstEnergy would be unknown from year to year even if such an RFP were implemented.
- If the Commission nevertheless determines that a TRC test should apply to Riders ELR and OLR:
 - The results of the test applied by FirstEnergy in the Application should be rejected as flawed, since the test as applied relies on short-run instead of long-run avoided capacity costs, and fails to factor in many other benefits of these interruptible rates, including avoided reserve margins and the ability to call economic interruptions.
 - Dr. Goins' recommendations on modifications to FirstEnergy's TRC cost-effectiveness test should be adopted so that the test uses long-run avoided capacity costs (such as the PJM Cost of New Entry ("CONE") estimate with an avoided reserve margin adjustment) and takes into consideration the other benefits provided by these rates.
 - A properly conducted TRC test for Riders ELR and OLR that incorporates Dr. Goins' recommendations demonstrates that the riders are cost effective.

III. Measurement of Peak Demand Reduction Provided by Rider ELR:

- The methodology initially proposed by FirstEnergy in the Application to measure the peak load reduction provided by Rider ELR far underestimates the actual load reduction benefit provided by the rate. FirstEnergy recognized this problem and proposed an alternate methodology for measuring the PDR benefit of Rider

ELR in its rebuttal testimony. While this alternate methodology is an improvement over the initial proposal, it still substantially understates the peak demand reduction provided by Rider ELR.

- A more reasonable measure of peak load reduction is the one the Commission approved for measuring Curtailable Load in Rider ELR – the difference between the customer’s contract firm load and its monthly highest 30 minute integrated kW during the non-holiday weekday hours of 11:00 am to 5:00 pm. The aggregate of all Rider ELR customers’ Curtailable Load during each of the summer peak months could be averaged for the four months to determine the peak demand reduction.
- Going forward, FirstEnergy should maintain robust interruptible rates due to their many other reliability and economic benefits, even if FirstEnergy can meet the peak demand reduction benchmarks using only peak demand reduction achieved as a by-product of energy efficiency programs.

IV. Cost Allocation and Rate Design Under Rider DSE:

- There is no dispute among the parties as to the design of the DSE1 charge.
- For allocation purposes, FirstEnergy proposes to initially allocate the costs of EE/PDR programs among the GT, GP, and GSU classes based on energy, and then later reconcile them based on the amount spent for each class under the DSE2 charge.
 - The initial proposed allocation method among these classes is flawed since cost responsibility by class does not reflect class energy use.
 - Instead, consistent with FirstEnergy’s ultimate allocation method based on expenditures by class, FirstEnergy should be required to reasonably estimate the amount it expects to expend by class and should design rates to initially recover that amount from each class, subject to reconciliation as proposed thereby enhancing predictability and reducing substantial fluctuation in the DSE2 charges.
 - FirstEnergy should be required to attempt to control its expenditures by class in an effort not to exceed the amounts it has estimated for each class.
- For rate design purposes, FirstEnergy proposes to recover costs from Rate GT based on kWh energy use under the DSE2 charge.

- This proposed rate design is flawed since individual GT customers do not cause these costs or benefit from these expenditures based on their overall energy usage. Moreover, Rate GT customers with substantial energy use are particularly likely to pay far in excess of the benefits such customers are likely to receive from the programs. To remedy these problems:
 - a reasonable portion of DSE2 costs (e.g., 50%) should be recovered on the basis of firm demand (this portion of the DSE2 charge, like the DSE1 charge, should not apply to Rider ELR and OLR customers since capacity is not acquired for these loads), to reflect the fact that the programs are intended to achieve peak demand reduction as well as energy savings; and
 - a cap or some other reasonable mechanism should be instituted for Rate GT customers in order to reduce the potential for intra-class subsidies and to ensure that the customers with the highest kwh consumption are not exposed to excessive DSE2 costs.

V. Shared Savings:

- FirstEnergy's proposal to keep 15% of the "shared savings" if energy efficiency or peak demand reduction beyond that required by the statutory benchmarks is achieved is unsupported and should be rejected.

As discussed further in this brief, all of Nucor's positions are fully supported by the expert testimony of Dr. Goins, as well as other evidence on the record in this proceeding.

II. ARGUMENT

A. Approval Sought for Use of Peak Demand Reduction Provided by Interruptible Rates in FirstEnergy's EE/PDR Portfolio.

In its Application, FirstEnergy requests "Commission approval to either continue, restart or expand as components of the Companies' Plans" several energy efficiency and peak demand reduction "programs," including the "Interruptible Rate Tariff for Commercial/Industrial Customers," which is FirstEnergy's reference to Riders ELR and

OLR.³ Nucor agrees that FirstEnergy should be able to count interruptible load under Riders ELR and OLR toward meeting its peak demand reduction benchmarks. Beyond this issue, however, this proceeding should not be a vehicle for reconsidering these interruptible rates for the term of the current ESP – having been approved by the Commission as part of FirstEnergy’s ESP rate plan, no additional Commission approval of these rates for the term of the current ESP rate plan is necessary. Further, issues regarding whether Riders ELR and OLR should be continued following the termination of the current ESP rate plan also should not be addressed in this proceeding. These issues are being addressed in FirstEnergy’s on-going MRO proceeding, and its recently-filed ESP Stipulation.⁴

1. Interruptible load under Riders ELR and OLR should count toward meeting FirstEnergy’s peak demand reduction benchmarks.

Nucor supports FirstEnergy’s request for approval to count peak demand reduction savings from Riders ELR and OLR toward meeting FirstEnergy’s peak demand reduction benchmarks. Interruptible load – particularly interruptible load procured through a permanent interruptible rate that provides long-term avoided capacity cost benefits – is an ideal source of peak demand reduction.⁵ That FirstEnergy recognizes the importance of interruptible load in meeting its PDR benchmarks is evident in FirstEnergy’s request to count interruptible load for that purpose in this proceeding.

³ Application at 4-5.

⁴ Case No. 10-388-EL-SSO, 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 in the Form of an Electric Security Plan, Application at Attachment A (March 23, 2010) (“ESP Stipulation”).

⁵ Direct Testimony of Dr. Dennis W. Goins, Nucor Exhibit 1 (“Nucor Ex. 1”) at 14.

Moreover, in the recently filed ESP Stipulation, the signatories, including FirstEnergy, propose to continue Riders ELR and OLR through May, 2014 and to count load under those riders toward meeting the benchmarks.⁶

The Commission's Green Rules recognize that interruptible load can be used to meet the statutory peak demand reduction benchmarks, regardless of whether load under those rates is actually interrupted at the time of the system peak.⁷ In a recent Finding and Order, moreover, the Commission specifically addressed whether Rider ELR and OLR interruptible load can be used by FirstEnergy to meet its peak demand reduction benchmarks, clarifying that these tariffs "meet the requirements for a peak demand response program, under Rule 4901:1-39-05(E), O.A.C., because [they] provide FirstEnergy with the capability to reduce peak demand and the ELR and OLR tariffs are recognized as a capacity resource by [FirstEnergy's] regional transmission organization, the Midwest Independent System Operator, LLC."⁸ The Commission should approve FirstEnergy's request to use interruptible load under Riders ELR and OLR toward meeting the peak demand reduction benchmarks.

- 2. No additional Commission approval for Riders ELR and OLR is necessary in this proceeding through the term of the current FirstEnergy ESP rate plan, and the issues related to the continuation of these riders after the expiration of the current ESP should not be addressed in this proceeding.**

This proceeding is the result of FirstEnergy's Application requesting certain approvals and, as a result, the scope of this proceeding is limited by that Application.

⁶ ESP Stipulation at 20-21.

⁷ See O.A.C. 4901:1-39-05(E)(2).

⁸ Case No. 09-535-EL-EEC *et al.*, Finding and Order at 5-6 (March 10, 2010).

FirstEnergy has specifically clarified that it does not seek Commission review or approval of Riders ELR or OLR in this proceeding, nor does it seek review of issues whether these riders should be continued. As a result neither issue should be addressed in this proceeding.

As noted above, in its Application, FirstEnergy requested Commission approval to "either continue, restart or expand as components of the Companies' Plans" several energy efficiency and peak demand reduction "programs," including the "Interruptible Rate Tariff for Commercial/Industrial Customers." FirstEnergy subsequently clarified what approval it sought in this proceeding. In response to a discovery request, FirstEnergy explained that "[t]he Companies are only seeking approval in this proceeding to include the *results* of the ELR/OLR program for purposes of compliance with R.C. 4928.66(A) benchmarks."⁹ Riders ELR and OLR were approved by the Commission as part of the ESP rate plan for the full term of that plan. Accordingly, as FirstEnergy recognizes, no additional Commission approval is necessary in this proceeding to continue Riders ELR and OLR for the term of the current ESP rate plan.

With regard to issues related to the termination or continuation of Riders ELR and OLR after the expiration of the current ESP, FirstEnergy also makes it clear that it does not ask the Commission to address these issues in its application in this proceeding.¹⁰ Nucor agrees that the appropriate forum to address interruptible

⁹ Nucor Ex. 1, Exhibit Goins-1, FirstEnergy Response to Nucor Set 1 DR-16.

¹⁰ See Application, Ohio Edison Energy Efficiency & Peak Demand Reduction Program Portfolio and Initial Benchmark Report ("Ohio Edison Report") at 75-76 (noting that the RFP proposal is being litigated in the MRO proceeding, and that it is uncertain whether the RFP will be used in 2011); see also Nucor Ex. 1, Exhibit Goins-1, FirstEnergy Response to Nucor Set 1 DR-16 (stating that "the Companies are only seeking approval in this proceeding to include the *results* of the Interruptible RFP program (however it is

arrangements after the expiration of the current ESP is not this proceeding, but the MRO proceeding and/or the new ESP proceeding, where as part of the Stipulation FirstEnergy has recently proposed to continue Riders ELR and OLR through May, 2014.¹¹

Nevertheless, if the Commission elects to address these issues in this proceeding, Nucor's positions are the same as those taken by Nucor in the MRO proceeding. Very briefly, those positions are: (i) following the termination of the current ESP plan, Riders ELR and OLR should be retained and improved, and (ii) the RFP should be improved and implemented as a way for FirstEnergy to obtain incremental interruptible load.¹² Dr. Goins further explains and supports these positions in the relevant portions of his testimony in the MRO proceeding, which has been attached as an exhibit to his testimony in this proceeding.¹³

B. Application of the Total Resource Cost Test to Interruptible Rates

Riders ELR and OLR are Commission approved *rates*, and therefore are different from the energy efficiency and peak demand reduction programs FirstEnergy proposes in its EE/PDR portfolio. Applying the TRC test, or any other cost-effectiveness test typically applied to EE/PDR programs, to interruptible rates such as Riders ELR and OLR is unnecessary and problematic, particularly at this point, since the Commission has already determined these rates to be just and reasonable. If the Commission

ultimately approved in the MRO proceeding) for purposes of compliance with R.C. 4928.66(A) benchmarks").

¹¹ ESP Stipulation at 21-22.

¹² The status of the RFP proposal is unclear in light of the ESP Stipulation. The RFP proposal is not included in the ESP Stipulation, but FirstEnergy's MRO filing, which includes the RFP proposal, remains pending before the Commission. Nucor supports and is a signatory to the ESP Stipulation. Nucor's recommendations on the RFP are pertinent only to the extent the Commission rules on the RFP as proposed in the MRO proceeding, and should not be viewed as recommendations to alter the interruptible rate provisions of the ESP Stipulation.

¹³ Nucor Ex. 1, Exhibit Goins-2.

nevertheless decides that a TRC test should be applied to Riders ELR and OLR, the test as applied by FirstEnergy should be rejected since it fails to reflect an appropriate measure of long-term avoided capacity cost, and does not capture all the other benefits these interruptible rates provide. Moreover, the Commission should find, based on the testimony of Dr. Goins, that ELR and OLR are cost-effective.

1. The TRC test should not be applied to interruptible rates.

The Commission's Green Rules provide that an electric utility must demonstrate that its EE/PDR portfolio is cost-effective on an aggregate (portfolio) basis. O.A.C. 4901:1-39-04(B). A utility must also demonstrate that each program in the portfolio is cost-effective, except that a utility may include in its portfolio a program that is not cost-effective if the program provides "substantial non-energy benefits." *Id.* The utility is not required to demonstrate the cost-effectiveness of each measure included in its EE/PDR portfolio. *Id.* The rules define "cost effective" as "the measure, program, or portfolio being evaluated that satisfies the total resource cost test." O.A.C. 4901:1-39-01(F)

Although not entirely clear, these rules read together could be interpreted to require that a TRC test be done on every program within a utility's EE/PDR portfolio. However, the rules do not specify that a TRC test be applied to a Commission-approved rate, such as an interruptible rate, the operation of which produces peak demand reduction benefits that can be counted toward meeting a utility's benchmarks. A TRC test is ill-suited to an interruptible rate such as Rider ELR or OLR, since such rates are by their nature different from the other "programs" that constitute a utility's EE/PDR portfolio. The Commission applied statutory ratemaking standards and the

Commission's rules applicable to standard service offer rate plans in approving the interruptible rates as part of the current ESP rate plan.¹⁴ By definition, when the Commission approves and implements rates, the Commission determines that such rates are just and reasonable.¹⁵ As Dr. Goins testified:

[T]he need and justification for Riders ELR and OLR have been carefully scrutinized, and do not need to be addressed in this energy efficiency and peak demand reduction portfolio proceeding. Interruptible rates – like other retail rate forms – are subject to the Commission's ratemaking standards. Applying a TRC or other cost-effectiveness test to such rates in this proceeding is at best unnecessary and duplicative, and at worst misleading and confusing.¹⁶

The logic behind not applying a TRC test to an interruptible rate is clear. To the extent the TRC test is used by the Commission to determine which programs should be approved and implemented as part of the utility's EE/PDR portfolio, such a test is unnecessary for a rate that has already been subjected to Commission scrutiny in a rate case, found to be just and reasonable, and approved. In fact, at the hearing, FirstEnergy's witness Mr. Fitzpatrick agreed that applying a TRC test to Rider ELR or Rider OLR is not appropriate because they are rates.¹⁷ As a result, no witness in this proceeding provided testimony that supported applying the TRC to interruptible rates.

The TRC test as applied by FirstEnergy is also inappropriate for an interruptible rate because it does not capture all the benefits interruptible rates provide. Interruptible rates certainly provide substantial peak demand reduction benefits, which

¹⁴ See Case No. 08-935-EL-SSO et al., Second Opinion and Order at 7-8 (March 25, 2009) (discussing applicable law in evaluating ESP proposals).

¹⁵ See Office of Consumers' Counsel v. Pub. Util. Comm., 18 Ohio St. 3d 264, 265 (1985) (rates approved by the Commission are presumed reasonable).

¹⁶ Nucor Ex. 1 at 16.

¹⁷ Tr. Vol. II at 263.

is the reason for the inclusion of FirstEnergy's interruptible rates in its EE/PDR portfolio. But interruptible rates also provide additional benefits, including reliability benefits in the case of system emergencies, energy cost savings, and economic development benefits.¹⁸ FirstEnergy confirmed that none of these additional benefits are reflected in the TRC test conducted as part of the Application.¹⁹

For these reasons, the TRC is a poor fit for an interruptible rate and should not be applied.²⁰ To the extent the Commission determines that the rules currently require a TRC to be applied to FirstEnergy's interruptible rates, the Commission should exercise its discretion under O.A.C. 4901:1-39-02 to waive this requirement for good cause shown.

2. If the Commission requires a TRC test to be performed on FirstEnergy's interruptible rates, the TRC as conducted in the Application should be rejected.

If the Commission determines that the TRC test should be performed on FirstEnergy's interruptible rates, the TRC test on these rates performed by FirstEnergy nevertheless should be rejected. The TRC test on the interruptible rates is flawed for several reasons.

To begin with, the TRC test assumes a measure life of just one year for FirstEnergy's interruptible rates. The TRC definition contained in the Commission's Green Rules requires that a peak demand reduction measure or program be evaluated

¹⁸ Nucor Ex. 1 at 16 and Exhibit Goins-2 at 12-14 (summarizing the benefits of Interruptible load).

¹⁹ See Tr. Vol. II at 251 (Mr. Fitzpatrick agreed that the TRC test does not reflect all the benefits provided by interruptible rates); see also Nucor Ex. 1 at Exhibit Goins-1, FirstEnergy Response to Nucor Set 1 DR-13 (confirming that avoided energy costs are not reflected in the TRC for interruptible load).

²⁰ A TRC or other cost-effectiveness test also should not be applied to an interruptible RFP such as proposed in FirstEnergy's MRO, since the costs of such an RFP would be unknown from year to year even if such an RFP were implemented.

on a "life-cycle basis."²¹ Assuming only a one-year measure life for FirstEnergy interruptible rates is unreasonable, given that FirstEnergy has had some form of interruptible rates for years.²² Also, as noted above, if FirstEnergy's new ESP proposal is approved, Riders ELR and OLR will be extended at least through May of 2014. A more reasonable assumption for purposes of conducting the TRC, therefore, is that interruptible rates are long-term rates with a measure life well beyond one year.

Another major flaw in the TRC test as applied to interruptible rates is the use of short-term Midwest ISO and PJM prices to determine avoided capacity costs. As Dr. Goins testified "interruptible load enables a supplier to avoid the long-run marginal cost of capacity – not the short-run market price of capacity that FirstEnergy uses as a proxy for avoided capacity cost."²³ This issue goes hand in hand with the measure life issue discussed above – in other words, a long-term interruptible rate or program must be evaluated by looking at long-run avoided capacity costs.

A more appropriate measure of avoided capacity cost for use in the TRC as applied to an interruptible rate is the annual cost of a new combustion turbine.²⁴ As part of its Reliability Pricing Model ("RPM") construct, PJM calculates a "cost of new entry" or "CONE" value that represents the minimum annual capacity payment required to draw the least expensive form of new generating capacity to enter the market. CONE reflects the nominal levelized cost of a combustion turbine generating station.²⁵ The current CONE values were finalized and approved by FERC in 2009 for the years 2012-

²¹ O.A.C. 4901:1-39-01(Y).

²² Nucor Ex. 1 at 19.

²³ *Id.* at 18.

²⁴ *Id.*

²⁵ *Id.*

2013.²⁶ CONE was set at \$112,868 per MW-year, or \$112.87 per kW-year. By contrast, the short-term avoided capacity values – based upon Midwest ISO and PJM market prices – used by Black & Veatch in its TRC analysis are \$26.92 in 2010, \$33.00 in 2011, and \$74.01 in 2012.²⁷ At the hearing, Mr. Fitzpatrick testified that he was given these estimates by someone at FirstEnergy, and that he is uncertain how the estimates were calculated and what the estimates actually reflect.²⁸

Finally, interruptible load not only allows a supplier to avoid the long-term costs of capacity, but also avoids reserve margins that would have been necessary if the load were firm, transmission and distribution costs, and, in the case of Rider ELR, energy costs associated with FirstEnergy's ability to call economic interruptions.²⁹ Dr. Goins testified that these factors should be taken into account in a TRC analysis of an interruptible rate.³⁰ Although Black & Veatch correctly made a \$20.00 per kW-year adjustment to its short-term capacity prices to reflect avoided transmission and distribution costs, avoided reserve margins and avoided energy costs were not factored in.³¹

In developing his estimate of a reasonable avoided supply cost to use in a TRC of an interruptible rate, Dr. Goins added a 15 percent adjustment to the PJM CONE to reflect avoided reserve margins, as well as \$20.00 per kW-year to reflect avoided transmission and distribution costs (the same value for avoided T&D used in the Black &

²⁶ *Id.*

²⁷ Nucor Ex. 1 at Exhibit Goins-1, FirstEnergy Response to Nucor Set 1 DR-4.

²⁸ Tr. Vol. II at 254.

²⁹ Nucor Ex. 1, Exhibit Goins-2 at 12-13.

³⁰ Nucor Ex. 1 at 21.

³¹ Nucor Ex. 1 at Exhibit Goins-1, FirstEnergy Response to Nucor Set 1 DR-4.

Veatch analysis).³² Finally, Dr. Goins included a \$24.00 per kW-year adjustment to reflect the avoided energy cost savings associated with FirstEnergy's ability to call economic interruptions under Rider ELR.³³ The result is a total long-run avoided supply cost of \$173.80 per kW-year attributable to FirstEnergy's interruptible rate, Rider ELR.³⁴ As noted above, Black & Veatch included only a \$20.00 adjustment to reflect avoided T&D costs, resulting in the avoided capacity values used in the TRC of FirstEnergy's interruptible rates – \$46.92 in 2010, \$53.00 in 2011, and \$94.85 in 2012.³⁵ Dr. Goins testified that if his \$173.80 per kW-year estimate of long-run avoided supply costs in FirstEnergy's analysis of the interruptible rates were substituted for the short-run avoided capacity costs actually used in the analysis, the TRC would exceed 1.00 in 2010, 2011, and 2012.³⁶

In conclusion, a TRC test should not be applied to an interruptible rate. But if the Commission concludes that such a test must be applied, the assumptions used in the test must accurately reflect the long-term nature of an interruptible rate and the long-run supply costs that the interruptible load allows the utility to avoid. FirstEnergy's TRC analysis, which assumes a one-year program, short-term avoided capacity costs, and no avoided reserve margin or avoided energy cost benefit, results in understated TRC values for the years 2010-2012. Dr. Goins' analysis, on the other hand, demonstrates that when the proper assumptions are used, FirstEnergy's interruptible rates would pass the TRC by healthy margins.

³² Nucor Ex. 1 at 20.

³³ *Id.*

³⁴ *Id.*

³⁵ Nucor Ex. 1 at Exhibit GOINS-1, FirstEnergy Response to Nucor Set 1 DR-4.

³⁶ Nucor Ex. 1 at 20-21.

C. Peak Demand Reduction Attributable to Interruptible Rates.

As FirstEnergy recognizes, its original methodology for determining peak demand reduction from interruptible rates in this proceeding far understated the actual reduction benefits from the load. FirstEnergy's proposed alternative methodology, while an improvement, is a complex black-box approach that continues to understate peak demand reduction. Dr. Goins' recommendation, to use Curtailable Load, as measured under Rider ELR per its terms, to compute the PDR value is the most straightforward approach and should be adopted. FirstEnergy's witness indicated that it would be willing to use the methodology recommended by Dr. Goins if it were accepted by the Commission.

- 1. Curtailable Load as measured under Rider ELR should be used to determine the level of peak demand reduction provided by Rider ELR interruptible load.**

To determine the amount of peak demand reduction provided by Rider ELR interruptible load that can be counted toward meeting the PDR benchmarks, FirstEnergy originally measured the maximum hour loads of Rider ELR customers from 3 p.m. – 6 p.m., Monday through Friday, during the months of June through August, 2009.³⁷ FirstEnergy then defined available interruptible load as the average of the difference between each customer's hourly maximum demand and firm contract demand.³⁸ Using this method, FirstEnergy estimated that its total available interruptible load from Rider ELR is 147 MW.³⁹

³⁷ Ohio Edison Report at 26, OE Table 11.

³⁸ *Id.*

³⁹ *Id.* The estimated available interruptible load was 31.7 MW for Ohio Edison, 33.4 MW for Cleveland Electric Illuminating, and 81.9 MW for Toledo Edison.

The methodology for calculating peak demand reduction provided by Rider ELR included in FirstEnergy's Application is consistent with the definition of "coincident peak demand savings" contained in the Green Rules.⁴⁰ This term, however, is used only with respect to peak demand reduction savings resulting from a utility's energy efficiency programs, not peak demand reduction programs.⁴¹ The rules do not specify that the measurement of peak demand reduction savings provided by PDR programs, or by an interruptible rate that provides peak demand reduction benefits, must be limited to a customer's average load minus firm load in the time periods specified in Rule 4901:1-39-01(D). It should be noted that FirstEnergy's interruptible rates permit interruptions any time of the day or year whenever an emergency occurs.

Dr. Goins testified that the approach used by FirstEnergy likely substantially understates the PDR value of interruptible rates.⁴² As explained by Dr. Goins:

First, the hourly measurement period is too narrow, and is inconsistent with the period used to determine Curtailable Load under Rider ELR. Second, averaging demands over a narrow time period implicitly assumes that only the customer's average interruptible demand will be on line when a curtailment event occurs. In my opinion, it is more reasonable to assume that a customer's demand on line at the time of a curtailment event is the customer's maximum demand. Further, even if a customer's demand is below its maximum demand at the exact moment of interruption, the customer is precluded from increasing its demand up to or above its peak demand for the length of the curtailment, which the customer otherwise has the right to do. In this case, interruptible load available for curtailment equals maximum demand less firm contract demand.⁴³

⁴⁰ O.A.C. 4901:1-39-01(D).

⁴¹ *Id.* Coincident peak demand savings is defined as "the demand savings for energy efficiency measures that are expected to occur during the summer on-peak period which is defined as June through August on weekdays between 3:00 p.m. and 6:00 p.m.".

⁴² Nucor Ex. 1 at 22.

⁴³ *Id.*

A more reasonable approach to quantifying the peak demand reduction from Rider ELR that should count toward meeting the PDR benchmark is to start with the Curtailable Load measurement currently contained in Rider ELR. Curtailable Load under Rider ELR is the difference between an interruptible customer's maximum demand and firm contract demand in the peak measurement period of 11 a.m. – 5 p.m. EST (12 p.m. – 6 p.m. EDT) on non-holiday weekdays.⁴⁴ From this starting point, Dr. Goins recommends that the Curtailable Load for each Rider ELR customer be added together to calculate a total monthly Rider ELR Curtailable Load.⁴⁵ FirstEnergy could then average the total Rider ELR Curtailable Loads for the months of June through August to calculate the PDR value for Rider ELR interruptible load for a given year.⁴⁶

This methodology would produce a PDR value for Rider ELR interruptible load that more accurately reflects the peak demand reduction benefits provided by interruptible load. Unlike peak demand reductions obtained as a byproduct of energy efficiency programs, interruptible load under Rider ELR provides FirstEnergy with a guaranteed source of interruptible load in the case of an emergency. Assume a Rider ELR customer has a contract firm demand of 25 MW, and a monthly peak demand (within the time periods prescribed in the Curtailable Load calculation) of 100 MW when an emergency interruption is called. Even if the customer is operating at 50 MW when the interruption is called (so that the customer only has to drop 25 MW to get down to its firm demand of 25 MW), FirstEnergy knows that it will be keeping 75 MW of load –

⁴⁴ Nucor Ex. 1 at Goins Exhibit-2, Exhibit DWG-2.

⁴⁵ Nucor Ex. 1 at 23.

⁴⁶ *Id.*

load that would otherwise have the right to come on – off the system for the duration of the emergency. At the hearing, FirstEnergy witness Katherine Kettlewell testified that keeping interruptible load off the system at a time of emergency helps keep an emergency situation from getting worse, even if the customer was operating below its peak demand at the time the interruption was called.⁴⁷ Stated simply, the benefit of interruptible load is not limited to the customer dropping load in response to an emergency interruption – the benefit is also in keeping all the load the customer otherwise could put on the system off the system for the duration of the interruption.

- 2. The alternate methodology for calculating the peak demand reduction provided by Rider ELR proposed by FirstEnergy in its rebuttal testimony is an improvement over the methodology proposed in the Application, but still would substantially understate the peak demand reduction provided by the rate.**

In FirstEnergy's rebuttal testimony, Ms. Kettlewell agreed that FirstEnergy incorrectly used the methodology for calculating peak demand reduction associated with energy efficiency programs for calculating the PDR value provided by Rider ELR interruptible load, and that this methodology understates the PDR value interruptible load actually provides.⁴⁸ Ms. Kettlewell explained that Section 4901:1-39-05(E)(2) of the Green Rules allows an electric utility to count peak demand reductions through one of several options, including a demonstration of its capability to reduce its peak demand through a program that "meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the Federal Energy

⁴⁷ Tr. Vol. IV at 527-28.

⁴⁸ Rebuttal Testimony of Katherine M. Kettlewell ("FirstEnergy Ex. 11") at 2-3.

Regulatory Commission.”⁴⁹ Consistent with this rule, Ms. Kettlewell recommends that the amount of Rider ELR interruptible load that FirstEnergy currently registers as load modifying resource (“LMR”) capacity in Midwest ISO should be used as the PDR value of interruptible load applied toward meeting FirstEnergy’s PDR benchmark.⁵⁰ Under this methodology, Rider ELR interruptible load would provide 258 MWs of peak demand reduction on a total company, as opposed to 147 MWs under the original methodology.⁵¹

FirstEnergy’s alternative methodology is a clear improvement over the methodology reflected in the portfolio plans. Nevertheless, the alternative methodology is not very transparent and is still likely to substantially understate the actual PDR value provided by interruptible load as compared to Dr. Goins’ approach of simply using the Curtailable Load measurement prescribed in Rider ELR.

According to Ms. Kettlewell, FirstEnergy uses a multi-factor calculation to develop LMR capacity utilized by Midwest ISO for emergency purposes.⁵² The calculation looks at maximum performance, average on-peak performance, average performance at system monthly peaks including the hours before and after the peak, and average performance during the hours of 3 p.m. to 6 p.m., Monday through Friday, June through August.⁵³ The factors are given weights to arrive at a “realistic operational

⁴⁹ *Id.* at 3.

⁵⁰ *Id.*

⁵¹ *Id.* The amounts of interruptible load currently registered as LMR in Midwest ISO by operating company are: 48 MWs for CEI, 66 MWs for Ohio Edison, and 144 MWs for Toledo Edison. *Id.* at 4.

⁵² *Id.* at 3.

⁵³ *Id.* at 3-4.

capability associated with interruptible resources.”⁵⁴ FirstEnergy’s methodology for calculating LMR capacity provided by interruptible load is not prescribed by Midwest ISO, but instead is a methodology that FirstEnergy has developed on its own.⁵⁵

Although Ms. Kettlewell testified that FirstEnergy’s multi-factor calculation is consistent with the time periods that would “most likely result in emergency interruptions,”⁵⁶ Ms. Kettlewell also testified that FirstEnergy has performed no study or analysis to substantiate this claim.⁵⁷ FirstEnergy also provided no study or analysis supporting the claim that the time period specified in Rider ELR for purposes of determining Curtailable Load is “too broad.”⁵⁸ And, as noted above, Ms. Kettlewell agreed that even if a customer is not at its peak demand when called to interrupt, that customer prevents the exacerbation of an emergency situation on the system by committing not to put its load back on the system during the time period that the emergency interruption is in effect.⁵⁹ In Nucor’s view, the benefit of preventing an interruptible customer from putting load in excess of its firm demand and up to its peak demand on the system at the time of a system emergency is as much of an avoided capacity benefit as the actual drop of load by an interruptible customer when an interruption is first called.

FirstEnergy’s revised approach to measuring the PDR value of interruptible load also would change once FirstEnergy moves to PJM in 2011. FirstEnergy states that

⁵⁴ *Id.* at 4.

⁵⁵ Tr. Vol. IV at 516.

⁵⁶ FirstEnergy Ex. 11 at 4.

⁵⁷ Tr. Vol. IV at 519.

⁵⁸ FirstEnergy Ex. 11 at 4.

⁵⁹ Tr. Vol. IV at 527-28.

under PJM's rules, interruptible capability would need to be qualified as a demand resource in the PJM RPM and would need to clear through either the ATSI utilities' FRR auction or any subsequent incremental auctions.⁶⁰ The PDR value for interruptible load in 2011 and 2012 would be equal to the value of demand resources that have cleared in either the FRR auction or any subsequent incremental auction.⁶¹

FirstEnergy's proposal for measuring PDR value of interruptible load after the move to PJM is flawed because it hews too tightly to PJM's RPM rules, rather than recognizing the flexibility the Commission has written into the Green Rules concerning the use of interruptible load to provide PDR. For example, Rule 4901:1-39-05(E)(2)(a) states that interruptible load can be used to meet the PDR benchmarks if it "meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the Federal Energy Regulatory Commission," but this rule imposes no requirement that interruptible load that otherwise meets the requirements to be counted as a capacity resource in PJM may not be counted if that load does not clear the RPM. Even if, theoretically, FirstEnergy bid Rider ELR interruptible load into the RPM and it did not clear, under the terms of both the currently-effective Rider ELR and the revised Rider ELR proposed in the ESP Stipulation that would be effective starting in June of 2011, the FirstEnergy operating companies and ATSI (FirstEnergy's transmission affiliate) could still call on that interruptible load

⁶⁰ FirstEnergy Ex. 11 at 5.

⁶¹ *Id.*

and avoid peak demands, even if PJM could not.⁶² Any failure of FirstEnergy's interruptible load to clear in the RPM, therefore, would not render Rider ELR useless as a tool to deal with system emergencies, or extinguish the peak demand reduction benefit provided by such load.

Also, by proposing to only count interruptible load that has cleared in the RPM auction toward meeting the PDR benchmarks, FirstEnergy overlooks Rule 4901:1-39-05(E)(2)(b), which states that "a peak-demand reduction program equivalent to a regional transmission organization program, which has been approved by this commission" may be used to meet the benchmarks. This provision of the Green Rules provides the flexibility for a utility to count interruptible load toward meeting the PDR benchmarks, even if it is not used as a capacity resource in an RTO. In the case of Rider ELR, since the FirstEnergy operating companies and ATSI have the right to interrupt customers when, in the sole judgment of any of those companies, an emergency condition exists, Rider ELR is "equivalent" to program that can be counted as a capacity resource in an RTO.

In summary, the alternative methodology proposed in FirstEnergy's rebuttal testimony is an improvement over methodology used in the program portfolios for calculating the PDR value associated with interruptible load, but it still does not capture the full PDR benefit interruptible load provides. Out of the three PDR measurement methodologies proposed in this proceeding, Dr. Goins' methodology is the most

⁶² See Nucor Ex. 1 at Exhibit Goins-2, Exhibit DWG-2 (containing currently-effective Riders ELR and OLR); see also ESP Application at Attachment B (containing proposed revised Riders ELR and OLR effective June 1, 2011).

transparent and straightforward and best reflects the peak demand reduction benefit interruptible load provides. Further, FirstEnergy has stated that it is not opposed to using Dr. Goins' methodology should the Commission choose to allow it.⁶³ If the Commission does not adopt Dr. Goins' methodology, then Nucor urges the Commission to adopt the alternative approach offered by FirstEnergy in its rebuttal testimony. However, with respect to the methodology FirstEnergy proposes to use when it moves to PJM, Nucor requests that the Commission reject the requirement that interruptible load must clear the PJM RPM for it to be counted toward meeting the PDR benchmarks.

3. **Going forward, FirstEnergy should retain robust interruptible rates and should not rely solely on peak demand reduction associated with energy efficiency programs to meet the PDR benchmarks.**

It appears that FirstEnergy is proposing only two peak demand reduction programs in its portfolio to meet the PDR benchmarks – the Commercial/Industrial Interruptible Demand Reduction Program and the residential direct load control program. Any additional peak demand reduction is projected to be achieved as a side benefit from FirstEnergy's energy efficiency programs.

Section 4928.66(A)(1)(b) of the Revised Code requires an electric distribution utility to implement *peak demand reduction programs* designed to achieve the specified peak demand reduction benchmarks, while Section 4928.66(A)(1)(a), on the other hand, requires an electric distribution utility to implement *energy efficiency programs* that achieve the energy savings benchmarks. A reasonable interpretation of the statute is that the General Assembly intended that the PDR benchmarks should be met through

⁶³ FirstEnergy Ex. 11 at 5.

programs specifically designed to achieve peak demand reduction, not through energy efficiency programs, since the statute specifically references two different types of programs. Although the Commission's Green Rules provide that peak demand reduction from energy efficiency programs may be counted toward meeting the PDR benchmarks,⁶⁴ the rules are unclear about whether a utility may exclusively use energy efficiency programs to meet the PDR benchmarks.

Dr. Goins testified that he is concerned that the ambiguity in the statutory requirements for achieving peak demand reduction might be used to justify the elimination of peak demand programs in their entirety, and the sole reliance on PDR achieved as a byproduct of energy efficiency programs to meet the PDR benchmarks.⁶⁵

It would be a mistake for FirstEnergy to rely solely on peak demand reduction from energy efficiency programs to meet the PDR benchmarks. Interruptible rates and programs such as the residential direct load control program "provide enhanced reliability benefits and capacity savings since FirstEnergy can essentially dispatch these non-firm loads not only during summer peak periods, but also when emergency conditions occur on the generation, transmission, or distribution systems" which peak demand reduction achieved as a byproduct of energy efficiency programs does not provide.⁶⁶ Peak demand reduction from energy efficiency is uncertain and cannot be dispatched to deal with an emergency like interruptible load, and therefore provides a

⁶⁴ O.A.C. 4901:1-39-05(E).

⁶⁵ Nucor Ex. 1 at 23-24.

⁶⁶ *Id.*

diluted avoided capacity benefit when compared to rates and programs specifically designed to provide peak demand reduction.⁶⁷

For these reasons, going forward, the Commission should require FirstEnergy to maintain robust peak demand programs and measures such as interruptible rates that provide direct and certain peak demand reduction, even if FirstEnergy technically could meet its PDR benchmarks using only peak demand reduction achieved through energy efficiency programs.

D. Allocation and Recovery of Energy Efficiency and Peak Demand Reduction Program Costs.

FirstEnergy proposes to recover the costs of its EE/PDR programs through Rider DSE. Rider DSE has two separate per kWh charges that are separately calculated for each rate schedule – the DSE1 charge, which recovers credits paid to customers served under Riders ELR and OLR, and the DSE2 charge, which recovers all other EE/PDR program costs other than those recovered through DSE1. There has been no issue raised in this case as to the DSE1 charge, but the appropriate design of the DSE2 charge is subject to dispute.

In developing the DSE2 charge, FirstEnergy first assigned “sector costs” by company to the relevant rate schedules.⁶⁸ Some sectors encompass more than one rate schedule. For purposes of this proceeding, Nucor is concerned with the program costs assigned to the Mercantile Utility – Large Enterprise Sector, which is comprised of rate

⁶⁷ *Id.* at 24.

⁶⁸ Direct Testimony of Stephen A. Ouellette (“FirstEnergy Ex. 3”) at 8 and Exhibits SEO-C1 through SEO-C3.

schedules GP, GSU, and GT.⁶⁹ FirstEnergy allocated the sector costs assigned to the Mercantile Utility – Large Enterprise to rate GP, GSU, and GT based on the forecasted 2010 kWh usage for each rate schedule.⁷⁰ After adjusting the allocated program costs to account for the Commercial Activity Tax, FirstEnergy divided the costs by forecasted kWh sales by rate schedule for 2010 to produce the DSE2 kWh charges.⁷¹ FirstEnergy proposes a reconciliation mechanism to correct any initial misallocation by ensuring that actual program costs are ultimately allocated to the rate schedules that actually use the programs.⁷²

Both FirstEnergy's initial allocation of DSE2 program costs among customer classes, and the class GT rate design are flawed. If not corrected, these flaws could result in Rate GT customers (particularly the customers with the largest kwh usage within that class) bearing responsibility for EE/PDR program costs that are wildly out of proportion to the benefits such customers actually receive from the programs. Although Nucor recommends both cost allocation and rate design improvements that would correct these problems, Nucor emphasizes the need for the Commission to adopt Dr. Goins' rate design proposals. While allocating costs correctly among customer classes is important, the impact of an improper initial allocation of costs is mitigated to a significant extent by FirstEnergy's proposal to reconcile the portion of DSE2 costs assigned to each class based on the actual use of the programs by each class. Unfortunately, FirstEnergy's proposal contains no comparable rate design mechanism

⁶⁹ FirstEnergy Ex. 3 at 8.

⁷⁰ *Id.*

⁷¹ *Id.*, Exhibit SEO-C1

⁷² *Id.* at 10.

that would mitigate the inequities among customers within class GT that will result from FirstEnergy's proposed straight kwh DSE2 charge.

- 1. The allocation and recovery of program costs from Rate GT customers through the DSE2 charge is flawed and would place an undue burden on Rate GT customers, particularly the largest Rate GT customers.**

FirstEnergy's proposed DSE2 cost allocation and recovery mechanisms likely would result in excessive EE/PDR program costs being recovered from Rate GT customers, and the largest GT customers (*i.e.*, those with the greatest kwh usage) would bear the brunt. To begin with, FirstEnergy's kwh allocation of Mercantile Utility – Large Enterprise sector costs to rates GP, GSU, and GT creates the potential for large short-term interclass subsidies among these rate schedules.⁷³ FirstEnergy attempts to mitigate this effect through the reconciliation mechanism intended to re-allocate costs based on actual use of the programs by customer class.⁷⁴ As Dr. Goins explains, however, using an energy allocator to initially allocate program costs across the GP, GSU, and GT classes does not match the ultimate reconciliation approach.⁷⁵ A rate class' kwh consumption bears no relation to the use of energy efficiency or peak demand reduction programs by that class. This disconnect creates the potential for substantial and unnecessary fluctuations in DSE2 charges.⁷⁶

Far more problematic than the proposed allocation of Rider DSE2 costs is the recovery of these costs through a kWh charge. Dr. Goins testified that a kWh-charge-based cost recovery mechanism for Rate GT:

⁷³ Nucor Ex. 1 at 25.

⁷⁴ *Id.*

⁷⁵ *Id.* at 25-26.

⁷⁶ *Id.* at 26.

[p]rovides no direct linkage between benefits received and program costs paid within a class – thereby creating the potential for large intraclass subsidies. From a conceptual viewpoint, ratemaking fairness and general principles of cost responsibility dictate that a customer's share of FirstEnergy's EE/PDR program costs should correspond to the incremental system benefits the customer receives from the programs. However, FirstEnergy has not shown any direct linkage between a customer's energy use and costs paid through Rider DSE and the customer's share of incremental system benefits produced by class-specific EE/PDR programs.⁷⁷

Another problem with the kwh charge is that it ignores the capacity and peak demand reduction benefits provided by the programs whose costs will be recovered through the DSE2 charge. As FirstEnergy recognizes, many of the programs proposed in the portfolio plans provide both energy efficiency and peak demand reduction benefits.⁷⁸ A straight kwh charge, however, does not reflect the capacity benefits provided by the portfolio, and as a result, the kwh charge could result in higher load factor customers subsidizing lower load factor customers within class GT.⁷⁹

Finally, a straight kwh charge could impose significant rate impacts on the largest GT customers that are unrelated to the actual benefits such customers receive from FirstEnergy's EE/PDR programs, and that could hamper economic development and manufacturing job creation and retention. Dr. Goins provided the example of a 50 MW Ohio Edison rate GT customer with a 70% load factor, who, under Rider DSE as proposed, would pay a \$0.000460 DSE2 charge. Although the charge looks small, when applied to this hypothetical customer's annual usage, it results in a \$141,000 annual

⁷⁷ *Id.*

⁷⁸ Tr. Vol. II at 250 (Mr. Fitzpatrick agreed that many of the programs in the portfolio plans provide both energy efficiency and peak demand reduction benefits); see also, Ohio Edison Report at Section 8, Table 7E (illustrating the energy efficiency and peak demand reduction savings projected to be achieved by each program).

⁷⁹ Nucor Ex. 1 at 25-26.

cost, which is equal to the annualized cost of two full-time employees earning up to \$50,000 per year.⁸⁰ This cost impact will only get worse over time, as the statutory energy efficiency and peak demand reduction benchmarks increase each year.

2. The cost allocation and rate design for the Mercantile Utility – Large Enterprise sector should be modified to remedy these problems.

There are several ways that the problems discussed above can be addressed through changes in the cost allocation and rate design. To begin with, Nucor supports FirstEnergy's proposal to re-allocate EE/PDR program costs initially allocated to each class based on actual use of the programs by customer class. The class allocation could be significantly improved, however, by adopting the recommendations made by the Ohio Energy Group ("OEG") in its objections in this proceeding. FirstEnergy should initially allocate program costs among classes GP, GSU, and GT based on distribution revenue, then endeavor to spend only the amount of money initially allocated to a class on programs for that class.⁸¹ OEG's proposal would limit the fluctuations in the DSE2 charges identified by Dr. Goins that would result from the reconciliation process as currently proposed by FirstEnergy.

At the rate design level for Rate GT, Dr. Goins recommended that PDR costs (other than costs associated with Rider ELR and OLR credits, which are recovered through DSE1) be first classified as demand-related.⁸² A portion of the energy efficiency program costs should also be classified as demand-related, in recognition of the fact

⁸⁰ *Id.* at 26-27.

⁸¹ Objections of the Ohio Energy Group at 3.

⁸² Nucor Ex. 1 at 27.

that such programs provide peak demand reduction as well as energy efficiency benefits.⁸³ Dr. Goins recommended a 50/50 energy/demand split of these costs, but recognized that some other split could be reasonable.⁸⁴ Another reasonable approach would be to compare the energy and capacity cost savings projected to be achieved, which are summarized at Section 8.0 of the portfolio plans. Taking Ohio Edison as an example, Chart 7E chart shows that capacity savings accounts for approximately 1/3 of the savings in the Mercantile Utility – Large Enterprise sector, while energy savings account for 2/3.⁸⁵ Therefore, classifying DSE2 costs for Rate GT as 1/3 based demand and 2/3 energy would also be another reasonable alternative.

The DSE2 charge should be modified to include a demand charge to recover the demand-related EE/PDR program costs, and to retain an energy charge to recover the program costs classified as energy.⁸⁶ The demand charge should only apply to firm demands and should not apply to load under Riders ELR or OLR. This treatment would make DSE2 consistent with design for the DSE1 charge, reflecting the fact FirstEnergy incurs these PDR costs to avoid the capacity-related costs of serving firm, not interruptible, demands.⁸⁷

Finally – and most importantly – the aggregate impact of the DSE2 charges on any Class GT customer should be limited through the application of a cap, or some other

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Ohio Edison Report at Section 8, Table 7E. Savings associated with interruptible load were removed for purposes of this calculation, since those costs are recovered separately through DSE1. When adjusted to remove the impacts of Interruptible Demand Reduction, the total in the “Capacity Annual Benefits” column is approximately 32% of the total annual benefit, while the total in the “Energy Annual Benefits” column is approximately 68% of the total.

⁸⁶ Nucor Ex. 1 at 28.

⁸⁷ *Id.*

mechanism. Without a cap or some other mechanism, larger GT customers will pay far in excess of the benefits they are likely to obtain from the programs. Dr. Goins specifically recommends a monthly cap of \$3,000 per customer, or \$36,000 per year.⁸⁸ Under this approach, DSE2 demand and energy charges in each program year for the GT class would be adjusted proportionately to reflect any cost-recovery adjustments necessitated by the cap.⁸⁹ Dr. Goins also recommends that any increase in the monthly cap for a rate class be limited to the percentage increase in the class' EE/PDR program costs from the preceding year, or 10%, whichever is less.⁹⁰

Although a cap such as the one proposed by Dr. Goins is one reasonable and straightforward way of limiting the cost exposure of the largest class GT customers to DSE2 costs, other approaches could work as well. One alternative would be to make the DSE2 charge a customer charge, rather than an energy or demand charge. Another alternative would be to use a declining block charge, with a higher charge applicable to a customer's first block of usage (for example, the first 3,000,000 kwhs), and a lower charge applicable to additional kwh usage above the first block. Any one of these alternatives, if properly designed and implemented, would be an improvement over the DSE2 rate as currently designed.

E. FirstEnergy's Shared Savings Proposal is Unsupported and Should Be Rejected.

FirstEnergy requests that the Commission allow each operating company to earn a "shared savings" incentive on its EE/PDR programs equal to 15% of the net benefits

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

for results achieved in excess of the company's required benchmarks.⁹¹ FirstEnergy's proposal is to charge ratepayers for an amount equal to 15% of the estimated savings that would otherwise accrue to the benefit of ratepayers. This shared savings proposal should be rejected because it is unsupported.

There is no statutory requirement that a utility be allowed to recover shared savings on its EE/PDR programs. Although the Green Rules permit a utility to request shared savings,⁹² it is within the Commission's discretion whether to grant such a request. In other words, FirstEnergy has no "right" to shared savings. FirstEnergy has provided no evidence that the shared savings mechanism it has proposed is necessary, or that it is reasonably designed.⁹³ For example, FirstEnergy provided no analysis, study, or other evidence to support the proposed 15% level of shared savings.⁹⁴ In response to a discovery request, FirstEnergy explained that the 15% is comparable to the shared savings requests of Duke and AEP.⁹⁵ However, both the proposed AEP cap and the Duke cap are significantly different from the one proposed by FirstEnergy.⁹⁶ Moreover, any claim by a utility that it deserves a bonus reward system simply because its proposal is similar to the proposal of another utility is hardly a justification for the proposal.

⁹¹ FirstEnergy Ex. 3 at 10.

⁹² O.A.C. 4901:1-39-07(A)

⁹³ Tr. Vol. III at 433-34.

⁹⁴ Nucor Ex. 1 at 29.

⁹⁵ Nucor Ex. 1, Exhibit Goins-1, FirstEnergy Response to Nucor Set 1, DR-17(c).

⁹⁶ Under Duke's shared savings mechanism, Duke would receive 15% shared savings only if Duke achieves savings that are greater than 125% of the benchmarks, and would receive lower amounts of shared savings for achieving various threshold savings levels between 101% and 125% of the benchmarks. Tr. Vol. I at 165-68. AEP's shared savings mechanism (which was proposed as part of a settlement but has not yet been approved) incorporates a cost cap that is a percentage of program investment, which is not included in FirstEnergy's proposal. *Id.* at 170-71.

FirstEnergy's shared savings proposal should be rejected. Nucor is not convinced as a matter of principle that this type of shared savings could be justified. After all, FirstEnergy has the obligation to supply energy and capacity and other utility services at a reasonable price, including the acquisition of the appropriate level of energy efficiency and demand response. Providing an additional reward seems questionable and, at minimum, should be an extraordinary measure. Indeed, if the state had intended for FirstEnergy to exceed statutory goals, the state could have set higher goals in the first place. However, even if one assumes that such an approach can be justified, for any such proposal to deserve any real consideration, it must be supported with much more detail and justification than offered by FirstEnergy in this case.

In response to a discovery request asking whether a percentage of shared savings less than 15% could provide an incentive to achieve energy efficiency and peak demand reduction savings in excess of the benchmarks, FirstEnergy responded "it might," but that the Companies had not made such calculations, instead choosing to use the same savings percentages used by Duke and AEP.⁹⁷ The Commission should not permit FirstEnergy to take this shortcut, especially when the dollars FirstEnergy proposes to charge would come from customers (who, after all, will be the ones generating the savings by participating in the EE/PDR programs). FirstEnergy should be required to show that: (i) an incentive like shared savings is necessary and appropriate in the particular instance and that an important public policy objective would not be achieved without it, (ii) shared savings as proposed is the best incentive mechanism to

⁹⁷ Nucor Ex. 1, Exhibit Goins-1, FirstEnergy Response to Nucor Set 1, DR-17(j).

achieved the objective, (iii) additional energy efficiency and peak demand reduction beyond the statutory benchmarks that is encouraged by the shared savings would be beneficial, and (iv) any percentage of shared savings FirstEnergy proposes to keep is necessary and justified. FirstEnergy has made none of these showings.

III. CONCLUSION

Nucor respectfully requests that the Commission require FirstEnergy to modify its EE/PDR Application as recommended above.

Respectfully submitted,

per Andrew

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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 March 29th 2010.

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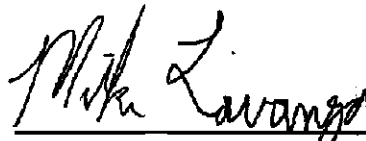
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for now