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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	
Company and The Toledo Edison Company for)	Case 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
Company)	

APPLICATION FOR REHEARING OF NUCOR STEEL MARION, INC.

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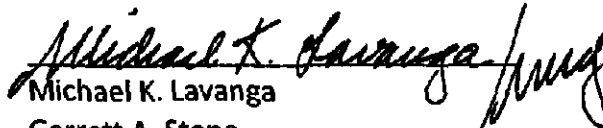
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Pursuant to R.C. § 4903.10 and Rule 4901-1-35 O.A.C., Nucor Steel Marion, Inc., ("Nucor") hereby requests rehearing of the Public Utilities Commission of Ohio's ("Commission") March 23, 2011 Opinion and Order ("March 23 Order") in the above-captioned proceedings. The March 23 Order was unjust and unreasonable because it failed to address Nucor's recommendation that the Commission require modifications to FirstEnergy's proposed rate design to recover EE/PDR costs, such as establishment of a cap on DSE2 charges for class GT customers. Consistent with R.C. § 4903.10 and as discussed in more detail in the attached

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Memorandum in Support, the Commission should grant rehearing of the March 23 Order and adopt a cap on DSE2 charges for class GT customers, or some other mechanism to limit excessive DSE2 cost exposure for such customers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael K. Lavanga". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for 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
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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
)		

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Nucor has been an active participant in this proceeding, which addresses the energy efficiency ("EE") and peak demand reduction ("PDR") program portfolios and initial benchmark reports of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy"). Nucor raised several issues with respect to FirstEnergy's EE/PDR proposals over the course of the proceeding, including the proper measurement of Rider ELR interruptible load that can be counted toward meeting FirstEnergy's

PDR benchmarks, and the proper cost allocation and rate design to recover EE/PDR program costs under Rider DSE2. Nucor's positions and proposals on these issues and others were supported by the expert testimony of Dr. Dennis W. Goins, which Nucor submitted on February 17, 2010.¹ Nucor also fully briefed these issues in our initial and reply briefs filed in this proceeding on March 29, 2010 and April 12, 2010, respectively.

The March 23 Order does not resolve several of the issues Nucor raised in this proceeding. For purposes of the Application for Rehearing, however, Nucor has focused on and respectfully requests that the Commission grant rehearing of a single issue – Nucor's recommendation to establish a reasonable cap on Rider DSE2 charges or some other form of rate mitigation for class GT customers.²

II. ARGUMENT

A. Standard of Review

Commission authority to grant an application for rehearing is governed by R.C. 4903.10 and Rule 4901-1-35 O.A.C. Under these authorities, the Commission may grant rehearing and

¹ Direct Testimony of Dr. Dennis W. Goins, Nucor Exhibit 1 ("Nucor Ex. 1").

² The March 23 Order does not address the concerns identified by Nucor regarding the proper PDR measurement for Rider ELR Interruptible load. Nucor's position was that the method FirstEnergy used to measure PDR savings while part of the Midwest ISO (*i.e.*, the level of ELR load that FirstEnergy registered with Midwest ISO as load modifying resource capacity) is incorrect and substantially understates the PDR value of interruptible load. However, according to FirstEnergy, this method of measuring the PDR benefit will no longer be used when FirstEnergy leaves Midwest ISO to join PJM later this year. Rebuttal Testimony of Katherine M. Kettlewell, FirstEnergy Ex. 11 at 5. At the hearing, FirstEnergy rebuttal witness Kettlewell testified that FirstEnergy was planning to use a new method of calculating the PDR benefit of Rider ELR when FirstEnergy joins PJM, and that she did not know whether this method will result in a higher level of PDR than under the Midwest ISO method. Tr. Vol. IV at 528. We do not know if FirstEnergy still plans to use the method Ms. Kettlewell outlined in rebuttal. Without more evidence (and the ability to conduct discovery) as to how this method would apply, we cannot reasonably address whether this new methodology would be reasonable. Finally, given that 2010 has passed, and there will be some new method for PJM in 2011, the 2010 method which FirstEnergy used now appears to be moot. For all of these reasons, Nucor is not requesting the Commission to rehear the PDR issue in this proceeding. However, Nucor reserves the right to address the issue of the proper measurement of PDR value of Rider ELR interruptible load in PJM in future proceedings.

“abrogate or modify” an order that is “unreasonable,” “unlawful,” or “unjust or unwarranted.”

The March 23 Order fails to address Nucor’s proposal to cap Rider DSE2 charges for class GT customers in order to mitigate the impact of volumetric DSE2 charges on large industrial customers who use very large amounts of electric energy – this result is unreasonable, unlawful unjust and unwarranted.

B. The Commission Erred by Failing to Address Nucor’s Proposal for a Cap on Rider DSE2 Charges for Class GT Customers.

Under R.C. 4903.09, in contested cases heard by the Commission, written opinions must set forth “the reasons prompting the decisions arrived at” based upon the findings of fact. This requirement reflects the well-established tenet of administrative law that agency decisions must address well-founded objections in order to be considered reasonable.³

Despite the record evidence supporting the need for a cap on rider DSE2 charges for class GT customers, and the full briefing of this issue in Nucor’s initial and reply briefs, the March 23 Order does not directly address the issue. The Order acknowledges that Nucor “raised concerns that the Companies’ proposed rate design for the GT class would result in customers in this class paying for program portfolio costs in excess of the actual benefits received by these customers.”⁴ However, in rendering its decision, the Commission addresses only the *cost allocation* proposal made by the Ohio Energy Group, entirely ignoring the *rate*

³ See e.g., *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001) (stating “[u]nless [an agency] answers objections that on their face seem legitimate, its decision can hardly be classified as reasoned”).

⁴ March 23 Order at 16.

design proposals made by Nucor.⁵ The Commission should grant rehearing in order to address Nucor's rate design proposals.

Under FirstEnergy's proposal, FirstEnergy would recover the costs of its EE/PDR portfolio program through the DSE2 charge, which is a straight per kWh energy charge. Dr. Goins testified that, because of the volumetric DSE2 charge, a cost cap or some other mechanism is necessary to ensure that the very largest customers in class GT would not pay in excess of the benefits they are likely to receive from the programs.⁶ Dr. Goins specifically recommended a monthly cap of \$3,000 per customer, or \$36,000 per year, and also recommended that any increase in the monthly cap for a rate class should be limited to the percentage increase in the class' EE/PDR program costs from the preceding year, or 10%, whichever is less.⁷ In Nucor's Initial Brief, we recommended that if the Commission does not adopt the cap as proposed by Dr. Goins, that it adopt some other mechanism to mitigate the asymmetric impact the volumetric DSE2 charge will have on the largest customers, such as converting DSE2 to a customer charge, or adopting a declining block charge, with a higher charge applicable to a

⁵ *Id.* (Noting that the Commission "is not persuaded that the evidence in this proceeding demonstrates that the Companies' proposed allocation of EE/PDR program costs disproportionately impacts large C&I customers or that Companies' proposed allocation of EE/PDR program costs for large C&I customers is improper or inconsistent with the stipulation in the ESP case," and "[t]herefore, we decline to modify the proposed allocation of EE/PDR program costs as proposed by OEG." While large C&I customers, as a class, may not be disproportionately impacted, this does not address disproportionate impacts within the GT class, which is Nucor's complaint.

⁶ Nucor Ex. 1 at 25-28. Dr. Goins also recommended that a portion of the EE/PDR portfolio costs be recovered through a demand charge, rather than recovering 100% through an energy charge, in recognition that the portfolio programs are intended to provide peak demand savings along with energy savings. *Id.* at 27-28. The establishment of a reasonable cap or some other mechanism to control the cost exposure for large industrial customers, however, would reduce the necessity of recovering a portion of the EE/PDR program costs through a demand charge.

⁷ Nucor Ex. 1 at 28.

customer's first block of usage, and a lower charge applicable to all additional kWh usage above the first block.⁸

The DSE2 charge proposed by FirstEnergy for Ohio Edison for class GT is 0.0460 cents/kWh. To illustrate the impact to this charge, consider two industrial customers, neither of which has received any incentives from a FirstEnergy EE or PDR program. For an industrial customer with an average monthly usage of 10,000,000 kWh, this charge will result in a monthly cost of \$4,600, and an annual cost of \$55,200. Meanwhile, a smaller industrial customer with only 2,000,000 kWh per month usage would only pay \$920 per month or \$11,040 per year. In neither case is there any specific benefit to the customer, yet one pays a substantial multiple of that paid by the other.

Moreover, while this additional cost might seem relatively small when compared to the overall electricity costs of a large industrial customer, it is important to recognize that this cost is what is required for FirstEnergy to achieve energy efficiency savings of only 2.3% by 2012.⁹ The energy efficiency requirements of R.C. 4928.66 alone call for FirstEnergy to achieve energy savings triple the amount of the savings that the just-approved EE/PDR portfolio was designed to achieve by 2017, and cumulative annual energy savings *in excess of* 22% by the end of 2025.¹⁰ Even assuming the costs for FirstEnergy to implement energy efficiency programs to meet its benchmarks do not increase (which seems unlikely), it is clear that in a few short years, a large industrial customer could have to bear DSE2 charges worth hundreds of thousands of dollars a year in the absence of a cap or some other mechanism to limit the cost exposure. In

⁸ Nucor Initial Brief at 34.

⁹ Ohio Edison Energy Efficiency & Peak Demand Reduction Program Portfolio and Initial Benchmark Report at 1.1.

¹⁰ R.C. 4928.66(A)(1)(a)

short, by choosing to recover these costs through a simple per kWh charge, FirstEnergy has chosen the rate design that produces the worst possible results for the largest class GT customers among any of the rate designs FirstEnergy could have chosen.

FirstEnergy is required by law to meet the aggressive EE and PDR benchmarks specified in R.C. 4928.66, and Nucor recognizes that, due to the societal nature of the programs (mandated by statute), the costs may be, at least to some extent, “socialized” among all of FirstEnergy’s customers. Nucor does not object to bearing a reasonable share of the costs of these programs, even if Nucor does not actually take advantage of the programs. However, we do not believe that a simple volumetric recovery of these costs on an intra-class basis represents a reasonable or fair share, when such recovery is inconsistent with how the costs are allocated to customer classes, and when there are other more reasonable rate design options available.

FirstEnergy’s large industrial customers should not be required to bear EE/PDR program costs far out of proportion to any benefit they receive simply because FirstEnergy chose to recover these costs through a volumetric rate design that disproportionately impacts customers that consume very large amounts of energy. A reasonable rate mitigation mechanism such as a cost cap as proposed by Dr. Goins would protect against this result, while ensuring that large industrial customers continue to make a significant contribution to the costs of the EE/PDR programs.¹¹

¹¹ An industrial customer could, of course, be granted an exemption from the DSE2 rider if it commits a mercantile self-direct program to FirstEnergy. See R.C. § 4928.66(A)(2)(c); Rule 4101:1-39-08, O.A.C. Even in such a case, the customer would have made a contribution by spending its own money to institute measures that, when committed to FirstEnergy, will reduce the level of EE/PDR FirstEnergy will need to obtain from other programs.

No party submitted rebuttal testimony in response to Dr. Goins' rate design recommendations, and no party addressed Nucor's recommendations in its initial brief. The only opposition to the cap came from FirstEnergy, who raised concerns in its Reply Brief about how the cap would be tracked, and what would happen if the cap were exceeded.¹² FirstEnergy provided no evidence that over or under-recoveries would be more likely under Dr. Goins' proposed rate design and cap than under FirstEnergy's proposed rate design, and that even if such over or under-recoveries were to occur, they would have a significant impact on other customers.¹³ FirstEnergy's concerns about the cap do not effectively rebut Dr. Goins' recommendations, or undermine the rationale behind them.

In summary, there is strong and unrebutted evidence on the record in the case supporting the establishment of a rate cap or a similar measure for class GT customers. The Commission should grant rehearing and adopt Nucor's rate design recommendation.

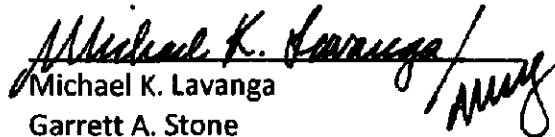
¹² FirstEnergy Reply Brief at p. 38.

¹³ Tr. Vol. III at 429-430.

III. CONCLUSION

For the reasons discussed above, Nucor respectfully requests that the Commission grant rehearing of the March 23 Order.

Respectfully submitted,


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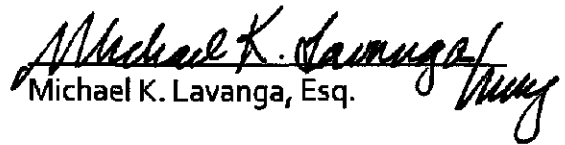
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