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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, Revised Code, in the Form of an Electric Security Plan	)	Case No.	08-935-EL-SSO
In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Rider FUEL and Related Accounting Authority	)	Case Nos.	09-21-EL-ATA 09-22-EL-AEM 09-23-EL-AAM

MOTION OF NUCOR STEEL MARION, INC. FOR AN ORDER DIRECTING FIRSTENERGY TO APPLY STATUTORY 3% COST CAP AND TO INITIATE AN INVESTIGATION OF FIRSTENERGY ALTERNATIVE ENERGY COMPLIANCE COSTS

On September 1, 2011, FirstEnergy filed its quarterly updates for several riders ("September 1 Filing"), including the Alternative Energy Resource Rider ("Rider AER"), for the Ohio Edison Company ("Ohio Edison").[1] It appears that the alternative energy compliance costs that FirstEnergy is recovering through Rider AER are in excess of the 3% cost cap applicable to alternative energy compliance costs as set forth in Section 4928.64(C)(3) of the Revised Code. Pursuant to Rule 4901-1-12 O.A.C., and as discussed further in the attached memorandum in support, Nucor Steel Marion, Inc. ("Nucor") respectfully moves the Commission to:

[1] FirstEnergy also submitted quarterly Rider AER update filings for the Cleveland Electric Illuminating Company ("CEI") and the Toledo Edison Company ("Toledo Edison").

- direct FirstEnergy to reduce the proposed Rider AER charge to a level no greater than 3% of FirstEnergy's cost of standard service offer generation, effective October 1, 2011; and
- initiate an investigation of FirstEnergy's alternative energy compliance costs and whether and how FirstEnergy is applying the Section 4928.64(C)(3) cost cap, consistent with the Commission's recent Finding and Order in Case No. 11-2479-EL-ACP.[2]

Respectfully submitted,

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[2] Case No. 11-2479-EL-ACP, In the Matter of the Annual Alternative Energy Status Report of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Finding and Order (August 3, 2011).

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MEMORANDUM IN SUPPORT

In the September 1 Filing, FirstEnergy requests approval of Rider AER charges for the fourth quarter of 2011 for Ohio Edison. For class GT, the proposed Rider AER charge is 0.2654 cents/kWh. Rider AER is a straight per-kWh charge applied to all of a customer's usage. Even today, with a Rider AER charge intended to recover costs to meet only the 1% of the alternative energy benchmark for 2011, the cost impacts for customers are severe. The following table shows the cost impact of the proposed Ohio Edison Rider AER charge for large customers at several different usage levels over the fourth quarter:

Monthly kWh Usage	Monthly AER Cost	4rth Quarter AER Cost
1,000,000	$2,654	$7,962
2,000,000	$5,308	$15,924
6,000,000	$15,924	$47,772
10,000,000	$26,540	$79,620
12,000,000	$31,848	$95,544
15,000,000	$39,810	$119,430

Depending on several other factors, such as FirstEnergy's cost of generation and the level of standard service offer load being served by Ohio Edison, it is possible that these cost impacts will get much more severe as the renewable energy benchmarks get higher. For example, in 2016, FirstEnergy's renewable energy benchmark is more than four times the level in 2011, and the benchmark increases to more than twelve times the 2011 level by 2024.[3]

While Section 4928.64(B)(2)'s renewable energy benchmarks are aggressive, the General Assembly did not intend for utilities to meet the benchmarks without regard to cost. Instead, the General Assembly sought to limit the cost impact on utility customers by establishing a 3% cost cap under Section 4928.64(C)(3):

> An electric distribution utility or an electric services company need not comply with a benchmark under division (B)(1) or (2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three per cent or more.

Explaining the purpose of the cap in the rulemaking proceeding establishing the rules implementing the alternative and renewable energy provisions of S.B. 221, the Commission

[3] *See* Revised Code Section 4928.64(B)(2).

observed that the "function of the cost cap is to protect consumers from significant increases in their electric bills."[4]

There can be no question that the cost impacts shown in the table above constitute a "significant increase" to the electric bills of FirstEnergy's large commercial and industrial customers. As discussed below, based on the plain meaning of the statutory language and the applicable rules, the proposed fourth quarter Rider AER charge for Ohio Edison far exceeds the 3% cap. Particularly at a time when job creation is the central focus of state and national policy makers and regulators,[5] it is critical that the Commission enforce the statutory protections *already at the Commission's disposal* that are specifically designed to protect customers from excessive cost increases resulting from the alternative energy mandates, as one way to encourage economic development and job retention. Accordingly, Nucor is making this motion seeking an order from the Commission directing FirstEnergy to reduce the Rider AER charge to within the 3% cap for the fourth quarter, and to conduct an investigation of FirstEnergy's alternative energy compliance costs and the application of the cap going forward.

I. The Commission Should Direct FirstEnergy to Reduce its Rider AER Charge to the Level of 3% of the Cost of SSO Generation for the Fourth Quarter of 2011

Based on a straightforward and reasonable interpretation of the statute and the Commission's rules pertaining to the cost cap, FirstEnergy's reasonably expected cost of compliance with the alternative energy mandates as reflected in Rider AER will exceed FirstEnergy's reasonably expected cost of acquiring generation for its SSO customers by more than 3% in the fourth quarter of 2011. The process for calculations related to the 3% cap is

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[4] Case No. 08-888-EL-ORD, Opinion and Order at 37 (April 15, 2009).

[5] *See generally*, Case No. 11-4304-EL-UNC, In the Matter of the Staff Proposal for An Economic Development Tariff Template.

spelled out in the Commission's rules at Section 4901:1-40-07 of the Ohio Administrative Code. In particular, Section 4901:1-40-07(C) provides:

> Calculations involving a three per cent cost cap shall consist of comparing the total expected cost of generation to customers of an electric utility or electric services company, while satisfying an alternative energy portfolio standard requirement, to the total expected cost of generation to customers of the electric utility or electric services company without satisfying that alternative energy portfolio standard requirement.

Starting in June 2011, the Blended Competitive Bid price that formed the basis for the generation charges recovered through the Generation Service Rider ("Rider GEN") is 5.560 cents/kWh.[6] This figure is the "cost of generation to customers of the electric utility or electric services company without satisfying [the] alternative energy portfolio standard requirement." For the fourth quarter of 2011, FirstEnergy proposes to continue the current the Ohio Edison class GT Rider AER charge of 0.2654 cents/kWh. Therefore, the "cost of generation . . . while satisfying [the] alternative energy portfolio standard requirement" is 5.8254 cents/kWh (5.560 cents/kWh + 0.2654 cents/kWh).

As required by Section 4901:1-40-07(C), the final step is to compare the cost of generation to customers while satisfying the alternative energy portfolio standard requirement (5.8254 cents/kWh) to the total cost of generation to customers without satisfying the alternative energy portfolio standard requirement (5.560 cents/kWh). Performing this calculation (5.8254 / 5.560) results in a ratio of 1.048, which demonstrates that the total cost of

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[6] *See* January 27, 2011 Press Release, PUCO accepts results of FirstEnergy generation auction, available at: http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-accepts-results-of-firstenergy-generation-auction/; *see also*, Case No. 10-1284-EL-UNC, In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Finding and Order (January 27, 2011).

generation while satisfying the alternative energy portfolio standard exceeds the total cost of generation without satisfying the requirement by approximately 4.8% for Ohio Edison,[7] well in excess of the 3% cap.[8]

Since the proposed Rider AER charge for Ohio Edison exceeds the 3% cost cap, the Commission should not approve the AER charge or allow it to take effect for the fourth quarter. Instead, the Commission should direct FirstEnergy to apply the cost cap and reduce the Ohio Edison Rider AER charge that will be in effect for the fourth quarter of 2011 accordingly. This can be accomplished by simply capping the Rider AER charge at 3% of the blended competitive bid price forming the basis for the generation costs recovered through Rider GEN – 3% x 5.560 cents/kWh = 0.1668 cents/kWh. FirstEnergy also should be ordered to follow this same approach in future quarters. FirstEnergy should acquire the renewable energy credits ("RECs") that it can at that cost recovery level, and be granted an exemption from further meeting the benchmarks as provided under Section 4928.64(C)(3) of the Revised Code.

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[7] Performing this calculation for Toledo Edison and CEI, which have even higher proposed fourth quarter Rider AER charges than Ohio Edison, shows that the total cost of generation while satisfying the alternative energy portfolio standard exceeds the total cost of generation without satisfying the requirement for these companies by approximately 6.4% and 8%, respectively.

[8] This calculation is essentially the same calculation performed in Nucor's May 16, 2011 comments in Case No. 11-2479-EL-ACP (*see infra*, note 10). In those comments, we evaluated FirstEnergy's alternative energy compliance costs for the year 2010, using an average of FirstEnergy's Rider AER charges over the four quarters of 2010, and the blended competitive bid price forming the basis for the Rider GEN charges under the electric security plan in effect prior to June of 2011. In the May 16 Comments, we also incorporated SSO sales for 2010 based on sales figures reported by FirstEnergy in its Ten Year Alternative Energy Resource Plan (Case No. 11-2491-EL-ACP). It is not necessary to incorporate kWh sales into the cost cap calculation, however, since, in our view (and consistent with the language of the applicable statute and rule), the ratio of the cost of generation while satisfying the alternative energy requirement to the cost of generation without satisfying the alternative energy requirement is what determines whether FirstEnergy is exceeding the cost cap. In this case, since we know FirstEnergy's cost of generation for the fourth quarter, and we know what the proposed Rider AER charges are, we know that FirstEnergy will exceed the cost cap in the fourth quarter of 2011, regardless of the volume of kWh sales. Including kWh sales would produce exactly the same ultimate result.

If, however, the Commission decides that the proposed Rider AER charge should take effect pending further investigation of FirstEnergy's alternative energy costs and the application of the 3% cost cap, then Nucor requests that the Commission provide a remedy for customers in the event that FirstEnergy is determined to be recovering alternative energy costs in excess of the cost cap in the fourth quarter. In particular, if the costs under the proposed fourth quarter Rider AER are found to have exceed the cost cap, FirstEnergy should be directed to "true up" Rider AER by reducing the Rider AER charge the next time it is updated (after applying the 3% cap) by the difference between the costs FirstEnergy recovered in the fourth quarter, and the costs it would have recovered had the cap been applied.

II. The Commission Should Conduct an Investigation of FirstEnergy's Alternative Energy Compliance Costs and the FirstEnergy's Status With Respect to the Cost Cap

On April 15, 2011, FirstEnergy filed its annual status report on compliance with the statutory alternative energy requirements for the year 2010 in Case No. 11-2479-EL-ACP.[9] This report addressed FirstEnergy's 2010 alternative energy benchmarks and baselines, and it requested a force majeure determination related to FirstEnergy's Ohio solar energy benchmark.

On May 16, 2011, Nucor filed comments in response to the FirstEnergy status report.[10] Nucor explained that the report contained no detail on the costs FirstEnergy incurred in meeting the alternative energy benchmarks, how those costs were translated into rates and recovered through Rider AER, and whether and how FirstEnergy was applying the 3%

[9] Case No. 11-2479-EL-ACP, In the Matter of the Annual Alternative Energy Status Report of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("Alternative Energy Status Report Proceeding.").

[10] Case No. 11-2479-EL-ACP, Comments of Nucor Steel Marion, Inc. on FirstEnergy Annual Alternative Energy Status Report (May 16, 2011) ("May 16 Comments").

alternative energy cost cap under Section 4928.64(C)(3) of the Revised Code.[11] The May 16 Comments also discussed the statute establishing and the regulations implementing the 3% cost cap, and explained that it appears FirstEnergy exceeded the cost cap in 2010, and continues to exceed the cap in 2011.[12] Nucor requested that the Commission direct FirstEnergy to provide more information supporting its alternative energy costs and how these costs are passed through rates, to explain how FirstEnergy is applying the 3% cost cap and, to the extent FirstEnergy is not applying the cap, that the Commission grant any necessary waivers and direct FirstEnergy to apply the cap.[13]

Two other parties, the Ohio Energy Group and the OMA Energy Group, each filed comments in the Alternative Energy Status Report Proceeding expressing concerns about the Rider AER costs and the application of the 3% cap.[14] On June 27, 2011, Staff filed responsive comments noting that the issues raised by the parties concerning the 3% cap "are important questions that warrant further investigation."[15] Staff recommended that an external auditor be retained "in order to complete a review of the Companies' status relative to R.C. 4928.64(C)(3), as well as the reasonableness of all cost components contributing to the Companies' aggregate compliance costs," and that further examination of these issues should take place in FirstEnergy's Rider AER proceedings rather than in the Alternative Energy Status Report

[11] *Id.* at 2-3.

[12] *Id.* at 3-8.

[13] *Id.* at 8-9.

[14] Case No. 11-2479-EL-ACP, Comments of the Ohio Energy Group (May 16, 2011); Case No. 11-2479-EL-ACP, Initial Comments of the OMA Energy Group (June 3, 2011).

[15] Staff Comments at 10.

Proceeding.[16] In reply comments, Nucor supported Staff's recommendation for a detailed review of FirstEnergy's alternative energy compliance costs and FirstEnergy's status relative to the 3% cap, and requested that even if an independent auditor is retained, the Commission clarify that parties will still be given the opportunity to conduct their own discovery and analyses of FirstEnergy's compliance costs.[17]

In an August 3 finding and order, the Commission agreed with Staff that FirstEnergy's application in the Alternative Energy Status Report Proceeding was limited to FirstEnergy's request for a force majeure determination, and further agreed that issues concerning the 3% cost cap would be more appropriately addressed in the Rider AER proceedings.[18] Nucor has requested rehearing of the August 3 Order requesting that the Commission clarify that the instant proceeding is the "Rider AER proceeding" the Commission referred to in the order, and to clarify the process the Commission will use to evaluate FirstEnergy's alternative energy compliance costs and the application of the cost cap.[19]

Notwithstanding our request in this motion to immediately apply the cost cap and reduce FirstEnergy's Rider AER charges for the fourth quarter of this year, and consistent with the Commission's direction in the August 3 Order, Nucor requests that the Commission conduct a broader evaluation of FirstEnergy's historical alternative energy compliance costs, and how cost cap considerations should be taken into account going forward. As noted above, the alternative energy compliance targets are rapidly increasing from year to year, and unless these

[16] *Id.* at 10-11.

[17] *See* Case No. 11-2479-EL-ACP, Reply Comments of Nucor Steel Marion, Inc. (July 11, 2011).

[18] Case No. 11-2479-EL-ACP, Finding and Order at ¶ 27 (August 3, 2011) ("August 3 Order").

[19] *See* Case No. 11-2479-EL-ACP, Application for Rehearing and Clarification of Nucor Steel Marion, Inc. (September 2, 2011).

costs are kept in check through the use of the statutory cost cap, the economic impact on customers, particularly large commercial and industrial customers, could be devastating. Such an investigation would assist the Commission and customers in fully understanding the basis for the alternative energy costs passed through Rider AER (as of now, very little is known about these costs, since FirstEnergy does not file cost support with its quarterly update filings). The investigation could also help inform FirstEnergy's REC procurement strategies and other efforts to comply with the alternative energy requirements.

III. CONCLUSION

For the reasons set forth above, Nucor respectfully moves that the Commission: (i) direct FirstEnergy to reduce the proposed Rider AER charge to a level no greater than 3% of FirstEnergy's cost of standard service offer generation, effective October 1, 2011; and (ii) initiate an investigation of FirstEnergy's alternative energy compliance costs and whether and how FirstEnergy is applying the Section 4928.64(C)(3) cost cap, consistent with the Commission's recent Finding and Order in Case No. 11-2479-EL-ACP.

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CERTIFICATE OF SERVICE

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