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FILE

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 No. 12-1230-EL-SSO
Authority to Provide For a Standard Service Offer	)	
Pursuant to R.C. § 4928.143 in the Form of an	)	
Electric Security Plan	)	

INITIAL BRIEF IN SUPPORT OF ESP BY NUCOR STEEL MARION, INC.

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THE PUBLIC UTILITIES COMMISSION OF OHIO

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INITIAL BRIEF IN SUPPORT OF ESP BY NUCOR STEEL MARION, INC.

Nucor Steel Marion, Inc. hereby submits its post-hearing brief in support of the application for approval of an electric security plan ("ESP") by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies"). FirstEnergy's ESP is presented in a stipulation and recommendation ("ESP III Stipulation" or "Stipulation") among FirstEnergy and numerous other parties which was filed with the Public Utilities Commission on April 13, 2012.

I. INTRODUCTION AND SUMMARY

In the ESP proposal before the Commission in this case ("ESP III"), FirstEnergy proposes to extend the current ESP ("ESP II")[1] for an extra two years. FirstEnergy's current ESP is slated to end as of May 31, 2014, but under the ESP III proposal, the ESP

[1] *See 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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (August 25, 2010) ("ESP II Order") (approving, as modified, ESP II proposal).

would be extended – in basically its current form – through May 31, 2016. Most of the details contained in ESP III, including rate design details and the competitive bid process for acquiring standard service offer generation, have been extensively vetted in the ESP II proceeding, as well as in proceedings to consider FirstEnergy's previous ESP and market rate offer ("MRO") proposals.

Nucor is a large industrial, interruptible customer of Ohio Edison. Nucor is a signatory to the Stipulation, and we support the proposed ESP extension. Our view is that the current ESP has generally worked well, and has produced reasonable rates. While there are several provisions of the current ESP that we would prefer to improve, we believe that, under the current circumstances, the ESP extension embodied in the ESP III proposal represents a fair compromise among many parties with varied interests. Given the success of ESP II and the circumstances surrounding the ESP III proposal, we believe that extending the current ESP (with limited changes) for an additional two years is a reasonable course of action that we can support.

The Stipulation is supported by ample evidence, including direct and supplemental testimony by Mr. William Ridmann of FirstEnergy and rebuttal testimony by Mr. Robert Stoddard on behalf of FirstEnergy, testimony by Mr. Robert Fortney and Mr. Peter Baker of the Staff, and evidence adduced at the hearing in this case that was held from June 4, 2012 through June 8, 2012. Moreover, the Stipulation is supported by the Commission's findings and decisions in previous MRO and ESP cases related to

FirstEnergy and the experience with ESP I and ESP II.[2] In our view, the Stipulation meets all of the criteria the Commission relies upon in considering whether to adopt a settlement,[3] and the record also shows that the provisions of the ESP Stipulation are more favorable in the aggregate as compared to the expected results of an MRO.[4] Accordingly, the Stipulation is just and reasonable and should be approved.

II. ARGUMENT

Under Commission precedent, the Commission will approve a settlement if the following criteria are met: (i) the settlement must be a product of serious bargaining among capable, knowledgeable parties; (ii) the settlement as a package must benefit ratepayers and be in the public interest; and (iii) the settlement as a package must not violate any important regulatory principle or practice.[5] The Stipulation in this case meets these criteria.

A. The Stipulation is the Product of Serious Bargaining Among Capable and Knowledgeable Parties

The parties to the Stipulation represent a broad cross-section of stakeholders with diverse interests. The signatory parties include the Companies, municipalities,

[2] At the hearing, the Hearing Examiner took administrative notice of portions of the record in Case Nos. 10-388-EL-SSO and 09-906-EL-SSO. Tr. Vol. III at 170-172. This decision was contested by some of the non-signatory parties to the Stipulation. We believe that the evidence from the previous cases provides additional information and context for the Commission in evaluating the ESP III proposal. However, even without these additional portions of the records from the previous cases, we believe that there is sufficient evidence on the record in this case to support approval of the ESP III proposal.

[3] *See* ESP II Order at 20.

[4] Direct Testimony of William R. Ridmann (Company Ex. 3) ("Ridmann Direct Testimony") at 14-19 and WRR-Attachment 1; Supplemental Testimony of William R. Ridmann (Company Ex. 4) at 7-8 (explaining that the ESP provides quantitative benefits to customers in excess of $200 million compared to an MRO); Prefiled Testimony of Robert B. Fortney (Staff Ex. 3) at 2-5 (discussing qualitative benefits of the ESP compared to an MRO).

[5] ESP II Order at 20; Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St.3d 123 at 125 (1992).

industrial customers, competitive suppliers, commercial customers, advocates for low and moderate income customers, and Staff.[6] Each of the signatory parties has a history of participation and experience in Commission proceedings and is represented by experienced and competent counsel.[7] Further, almost all the parties were parties to the ESP II proceedings, as well as to FirstEnergy's previous ESP and MRO proceedings, and the details of the current ESP II plan were fully vetted in litigation and settlement discussions in these previous proceedings. In the weeks leading up to the filing of the ESP III proposal, the parties engaged in a broad range of discussions regarding an extension of the current ESP, and in the end a large number of parties decided to sign onto a proposal that basically extends the current successful ESP with a limited number of modifications.[8] Accordingly, the Stipulation meets the first criterion of the three-prong test.

B. The Stipulation as a Package Benefits Ratepayers and is in the Public Interest

The ESP III Stipulation proposes to continue, in large part, the current ESP II for an extra two years. The Commission, of course, has already ruled that ESP II, as a package, benefits ratepayers and is in the public interest.[9] In that case, the Commission ruled that the ESP "provid[es] for stable and predictable rates, established by a competitive procurement process, for customers during the ESP period."[10] Among other

[6] Ridmann Direct Testimony at 9-10.

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

[8] *Id.* at 9.

[9] ESP II Order at 36-37.

[10] *Id.* at 36.

benefits, the Commission found that ESP II promotes competition, provides shareholder funding for economic development, provides flexibility for a phase-in of generation prices if necessary, provides additional benefits to interruptible industrial customers, schools, municipalities, and certain residential customers, and also promotes energy efficiency programs and renewable energy resource development.[11]

All of these features would continue under ESP III. Like ESP II, on balance and as a package, the proposed ESP III provides benefits to ratepayers and is in the public interest.

1. The Stipulation continues the existing cost allocation and rate design, which the Commission has found to be just and reasonable

Cost allocation and rate design, particularly industrial rate design, have been major concerns for Nucor in past FirstEnergy standard service offer cases. Nucor has consistently advocated for rate designs that provide better price signals to customers, more accurately reflect cost causation, and provide economic and reliability benefits to all customers. The Commission has consistently supported these rate design principles as well.[12] Certain types of rates that provide these benefits, such as interruptible and time-of-use rates, were incorporated into FirstEnergy's standard service rate design as a

[11] *Id.* at 36-37.

[12] *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of an Experimental Critical Peak Pricing Rider, a Revised Generation Service Rider Which Includes a Time-of-Day Option, and an Experimental Real Time Pricing Rider,* Case No. 09-541-EL-ATA, Finding and Order (January 20, 2010) (approving proposed time-differentiated rates); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service,* Case No. 08-936-EL-SSO, Opinion and Order at 24 (November 25, 2008) (rejecting proposed MRO rate design for failure to include time-of-day and interruptible rates).

result of FirstEnergy's initial ESP, and were continued in ESP II. In each of the previous two ESPs, the Commission approved the rate design, therefore these rates are presumed to be just and reasonable.[13]

Under the Stipulation, this existing and time-tested standard service offer cost allocation and rate design largely will be kept in place. For the most part, cost allocation and rate design have not been issues in this proceeding. No party submitted testimony arguing for major changes to the current cost allocation and rate design, and any minor cost allocation or rate design issues raised by non-signatory parties are insufficient to justify jeopardizing the ESP as proposed. Accordingly, the cost allocation and rate design as proposed in the ESP III Stipulation should be approved.

2. The improvements in the Stipulation addressing Rider AER provide additional benefits to customers

Over the last year, several FirstEnergy customers, including Nucor, have expressed concern over the level of FirstEnergy's Rider AER, the rider through which FirstEnergy recovers the costs of meeting its statutory alternative energy requirements. Earlier this year, in response to these concerns, the Commission initiated a process to evaluate FirstEnergy's Rider AER.[14] One of the few changes to the existing SSO rate design proposed in the ESP III Stipulation is a modification to the AER cost recovery mechanism that would allow FirstEnergy to spread the recovery of AER costs over several years, instead of having to recover those costs in the year the renewable energy

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

[14] *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-5201-EL-RDR, Entry (Jan. 18, 2012).

credits ("RECs") are utilized.[15] As FirstEnergy explains, this will allow FirstEnergy to reduce high AER charges by spreading recovery over a longer time period.[16] The Stipulation also improves upon the current AER by specifically providing for an audit process to evaluate costs recovered under Rider AER,[17] which provides a benefit to customers by increasing transparency.

The Retail Electric Supply Association, Direct Energy Services, LLC, and Direct Energy Business, LLC ("RESA") argue that spreading AER cost recovery over several years would skew FirstEnergy's price to compare as compared to CRES offers, which in turn would dampen shopping.[18] The implication from RESA's position is that spreading the AER cost as FirstEnergy proposes would somehow artificially depress the Rider AER charge, but in reality, the current Rider AER is artificially *high* today. There are two key factors in determining the Rider AER charge: (i) the renewable energy requirement, which is a statutorily-defined percentage of generation that must be from renewable sources and that increases each year; and (ii) the baseline load to which that percentage is applied to determine that actual amount of renewable energy FirstEnergy must acquire, which is determined by averaging the amount of SSO load the Companies have had over the previous three calendar years.[19]

As Mr. Ridmann explained at the hearing, since the renewable energy requirement is applied to an historical SSO baseline, and since there has been a

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[15] ESP III Stipulation at 11.

[16] Ridmann Direct Testimony at 8.

[17] ESP III Stipulation at 11.

[18] Direct Prepared Testimony of Teresa L. Ringenbach (RESA Ex. No. 3) at 15.

[19] Section 4928.64(B), Revised Code.

dramatic drop in FirstEnergy's SSO load due to shopping, a much smaller amount of SSO load is today carrying renewable energy costs that are reflective of a much larger (historical) baseline amount of SSO load,[20] placing a disproportionate burden on current FirstEnergy SSO customers. FirstEnergy's proposal to spread AER recovery over a longer period of time is simply a way to bring artificially high renewable energy costs more in line with the actual amount of SSO load being served by FirstEnergy today.

Further, Rider AER costs are already spread out (deferred) today due to timing differences between when REC costs are incurred by FirstEnergy and when the revenue is recovered from customers under Rider AER, and also because FirstEnergy has made an effort to smooth out Rider AER to the extent FirstEnergy believed it could under ESP II.[21] All the ESP III proposal would do with regard to Rider AER is give FirstEnergy the discretion to spread AER cost recovery over a longer period of time when necessary, allowing for some relief from high Rider AER costs for SSO customers. It should also be noted that retail electric suppliers have full discretion to recover their own alternative energy costs from their customers in whatever manner they choose.[22]

3. Parties opposing the Stipulation have not demonstrated that a three-year generation product necessarily will produce higher rates

One of the main issues in this case has been the potential impact of high capacity prices in the ATSI zone in the 2015-16 capacity year, and how best to design the competitive bid product in light of these results. At the outset, we note that we share

[20] Tr. Vol. I at 257-58.

[21] *Id.* at 252-53.

[22] Tr. Vol. III at 83.

the serious and legitimate concerns raised by other parties about the results of the 2015/16 PJM BRA in the ATSI zone, and the possible impact of these capacity prices on SSO generation rates. However, we do not believe that the current ESP proceeding is the place to address these concerns. In short, the evidence in this case does not demonstrate that using an auction product shorter than three years will necessarily result in a lower generation prices over the course of the proposed ESP III than the methodology proposed by FirstEnergy.

The evidence in this case shows that unfortunately there is a great deal of uncertainty involved in the determination of SSO generation prices over the course of any SSO rate plan.[23] While capacity is undoubtedly a cost that will be reflected in some way in the SSO generation price, it is only one such cost, and it is impossible to tell what the actual impact will be since bidders into the SSO auction essentially make black-box bids for a generation product that includes energy, capacity, resource adequacy requirements, market-based transmission service, and market-based transmission ancillary services.[24] Many other factors in addition to capacity costs will determine the SSO generation prices, including fuel prices, the state of the economy, the level of shopping, and potential regulatory changes.[25]

Accordingly, there is no way to tell whether customers would be better off (in terms of getting a lower SSO generation rate) if FirstEnergy went with a shorter product

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[23] Tr. Vol. II at 114-115.

[24] ESP III Stipulation at 7.

[25] Tr. Vol. II at 114-115.

for the proposed October 2012 and February 2013 auctions than a three-year product.[26] However, there is evidence that the proposed three-year product will provide greater price stability than if FirstEnergy provided only one-year products in the next two auctions.[27] It should be further recognized that the three-year product to be bid out in the next two auctions under ESP III would be for only a portion of the SSO for the June 2013 through May 2016 period. The rest of the supply for that time period would be acquired through subsequent auctions for two-year and one-year products.[28] This "laddering" approach will result in a blend of longer-term and shorter-term generation products, and should produce smoother and less volatile rates for customers over time as compared to if there were no laddering.[29]

C. The Stipulation Does Not Violate Any Important Regulatory Principle or Practice

In the ESP II case, the Commission found that the ESP II settlement did not violate any important regulatory principle or practice.[30] Since ESP III is basically an extension of ESP II, the Stipulation in the instant proceeding likewise does not violate any important regulatory principle or practice. In fact, the Stipulation advances the policy objectives enumerated in Section 4928.02 of the Revised Code.[31]

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[26] *Id.* at 115-116.

[27] Ridmann Direct Testimony at 15.

[28] ESP III Stipulation, Attachment A.

[29] Tr. Vol. II at 154, 164.

[30] ESP II Order at 39-42.

[31] For example, the Stipulation ensures the continued availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric service (Section 4928.02(A), Revised Code); ensures the availability of unbundled and comparable retail electric service that provides consumers with

III. CONCLUSION

Nucor respectfully requests that the Commission approve FirstEnergy's ESP III Stipulation.

Respectfully submitted,

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supplier, price, terms, conditions, and quality options (Section 4928.02(B), Revised Code); and facilitates the State's effectiveness in the global economy (Section 4928.02(N)), Revised Code).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission on this 22nd day of June, 2012 upon the following:

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