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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)	Case Nos. 12-2190-EL-POR
for Approval of Their Energy Efficiency and)	12-2191-EL-POR
Peak Demand Reduction Program Portfolio)	12-2192-EL-POR
Plans for 2013 through 2015)	

APPLICATION FOR REHEARING AND/OR CLARIFICATION OF NUCOR STEEL MARION, INC.

Pursuant to R.C. § 4903.10 and Rule 4901-1-35 O.A.C., Nucor Steel Marion, Inc., ("Nucor") hereby requests rehearing and/or clarification of the Public Utilities Commission of Ohio's ("Commission") March 20, 2013 Opinion and Order ("March 20 Order") in the above-captioned proceedings. The March 20 Order is unjust, unreasonable, or unlawful in the following respects:

- (1) The Commission did not provide a reasoned basis for declining to adopt, against the weight of the evidence, the recommendation by Nucor and the Ohio Energy Group ("OEG") to incorporate a reasonable cost cap on Rider DSE2 charges for Rate GT customers;
- (2) The Commission failed to make a ruling on the proper methodology to calculate the peak demand reduction benefit from interruptible load under Rider ELR; and
- (3) The March 20 Order is unclear as to whether FirstEnergy should be required to bid Rider ELR interruptible load into the annual PJM base residual auctions.

Consistent with R.C. § 4903.10 and as discussed in more detail in the attached Memorandum in Support, the Commission should grant rehearing and clarification of the March 20 Order with respect to these issues.

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Respectfully submitted,


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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In the March 20 Order, the Commission approved, as modified, FirstEnergy's application for approval of its energy efficiency ("EE") and peak demand reduction ("PDR") portfolio plans for 2013-15. In this case, Nucor had no objection to the vast majority of FirstEnergy's portfolio proposal. We recognize that FirstEnergy has an obligation under the law to implement EE and PDR programs aimed at achieving the annual benchmarks set forth in S.B. 221, and in general most aspects of FirstEnergy's portfolio as presented in the application appear to be reasonable, as the Commission recognizes in the March 20 Order.

However, the March 20 Order fails to adequately address several of the limited but important issues that Nucor raised in this case. The Commission declined to adopt the recommendation of Nucor and OEG to incorporate a cap on Rider DSE2 charges, apparently acceding to FirstEnergy's argument that the cap and other rate design issues related to EE/PDR program costs must be addressed in a standard service offer ("SSO") case. However,

FirstEnergy is wrong on this point and the Commission certainly could (and we recommend should) require that the cap be implemented in this case. The Commission also did not make a ruling on Nucor and OEG's proposed methodology for calculating the PDR savings attributable to Rider ELR interruptible load, despite the fact that FirstEnergy has stated that it is willing to perform the calculation consistent with our recommendation, and no other party opposed our methodology. Finally, while the March 20 Order states that FirstEnergy must bid 75% of its projected "energy efficiency" into the PJM base residual auctions ("BRA"), the order is unclear whether FirstEnergy must also bid in a portion of projected Rider ELR interruptible load into the BRAs.

As discussed below, Nucor requests that the Commission grant rehearing and/or clarification of the March 20 Order on these three issues.

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 "abrogate or modify" an order that is "unreasonable," "unlawful," or "unjust or unwarranted." Moreover, 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.¹

B. The Commission's Order Erred if it Declined to Adopt Nucor and OEG's Proposal for a Cap on Rider DSE2 Charges for Class GT Customers Because Rate Design Issues Must be Addressed in an SSO Case

The record in this case demonstrates that under FirstEnergy's initial EE/PDR portfolio plan, the Rider DSE2 charges were extremely volatile and high, particularly for large industrial customers on Rate GT.² The disproportionate impact on these very large customers is due to the combination of these customers' extremely high kWh usage and the per kWh rate design of the current DSE2 charge.³ To mitigate the impact of these high charges, Nucor and OEG's witness Dr. Dennis Goins recommended the incorporation of a rate cap to limit the level of DSE2 charges any individual customer will have to pay in a month.⁴ Nucor and OEG supported this recommendation in their briefs, and demonstrated that the cap was supported by the evidence in this case.

In the March 20 Order, the Commission declined to adopt the rate design recommendations by OEG and Nucor, stating that "issues regarding rate design for existing

¹ 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").

² Case No. 12-2190-EL-POR, et al, Initial Brief by Nucor Steel Marion, Inc. at 8-10 (November 20, 2012) ("Nucor Initial Brief").

³ *Id.* at 10-11.

⁴ *Id.* at 12-14. Nucor also recommended changes to how EE/PDR program costs are allocated among the three rate schedules in the mercantile customer class – GP, GSU, and GT. In its Reply Brief, FirstEnergy clarified that it will allocate costs among these rate schedules based on forecasted program costs on a rate-schedule specific basis. Case No. 12-2190-EL-POR, et al, Reply Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company in Support of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 Through 2015 at 70 (November 30, 2012) ("FirstEnergy Reply Brief"). Accordingly, Nucor is not requesting rehearing on the cost allocation issue.

riders are better addressed in the Companies' next standard service offer proceeding."⁵ The March 20 Order did not explain the basis for this determination, so it is unclear whether the Commission was swayed by FirstEnergy, who argued in its Reply Brief that addressing OEG and Nucor's rate design recommendations in this case would be improper because it would constitute "single-issue ratemaking" of the type allowed in electric security plan ("ESP") proceedings, but not in an EE/PDR portfolio case.⁶

If the Commission relied on FirstEnergy's single-issue ratemaking argument in declining to adopt the cost cap recommendation, then the Commission's decision was unjust and unreasonable, and Nucor requests rehearing on this issue. FirstEnergy's claim that it is improper to address rate design issues in this case is wrong. FirstEnergy's currently-effective ESP specifically reserves rate design issues associated with the DSE2 charge for portfolio cases. FirstEnergy's ESP III was approved last year, but the ESP III stipulation clearly states that the term of ESP III is June 1, 2014 to May 31, 2016, and that the "current ESP is in place through May 31, 2014."⁷ The ESP II stipulation, which was in effect throughout the course of this case and is currently in effect, provides:

Rider DSE also remains subject to and, except as otherwise provided in this Stipulation, will be amended to reflect any changes approved by the Commission in Case No. 09-1947-EL-POR, et al not inconsistent with the terms and conditions of this Stipulation. With respect to the DSE2 charge for Rate GT customers under Rider DSE as modified herein, nothing in this Stipulation affects the parties' rights in Case No. 09-1947-EL-POR et al. or future cases to advocate and support alternative rate designs for the DSE2 charge applicable to Rate GT customers and

⁵ March 20 Order at 42.

⁶ FirstEnergy Reply Brief at 69.

⁷ Case No. 12-1230-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 Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Stipulation and Recommendation at 44 (April 13, 2012).

the rate design for the DSE2 charge for Rate GT ultimately ordered by the Commission in such case(s) shall be utilized for the DSE2 charge thereafter.⁸

The current ESP does not preclude, and indeed explicitly anticipates and allows for, the consideration of alternative rate designs for the DSE2 charge in the first EE/PDR portfolio proceeding and subsequent portfolio proceedings such as the current proceeding. This is entirely reasonable because it makes sense to evaluate the continued fairness and reasonableness of the DSE2 rate design in the light of the increased benchmarks and new EE/PDR programs and budgets under consideration each time FirstEnergy seeks Commission approval for a new three-year portfolio. Moreover, there is more time to address and more opportunity to focus on EE/PDR costs and their recovery in a portfolio proceeding than in the context of the ESP.

Nucor recognizes that, notwithstanding this reservation to address rate design issues related to the DSE2 charge outside the context of an ESP, the Commission might decline to adopt the cost cap recommendation here, and instead to address it in a future case. If that is the Commission's decision, we will plan to reintroduce the cap proposal at a later time. But it is clear that the Commission *may* address the cost cap in this case, and we respectfully request that the Commission do so.

Since the cost cap issue has already been fully litigated in this case, administrative efficiency favors ruling on the cap now. Moreover, this case is not the first time Nucor has recommended a cap on Rider DSE2 charges. We recommended a similar cap in FirstEnergy's

⁸ 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*, Stipulation at 21, fn.8 (March 23, 2010).

initial portfolio plan case. There, the Commission declined to adopt a cap.⁹ In this case, the evidence on the record from both Nucor and OEG shows that the concerns Nucor raised in the first portfolio case were substantiated over the time the first portfolio plan was in effect. Specifically, Rate GT customers were subject to volatile and at times extremely high Rider DSE2 charges.¹⁰ As Dr. Goins explained in his testimony, the current DSE2 charge does not accurately reflect cost causation, and imposes a significant burden on very large industrial customers.¹¹ Also, the negative impacts on large customers are likely to increase as FirstEnergy's EE and PDR benchmarks increase over the next three years.

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 general concerns in its Reply Brief about the impact of the cap recommendation on customers.¹² FirstEnergy, however provided no rebuttal testimony demonstrating a negative impact on customers from the cap proposal, and no concerns about the cap were expressed by other customers in the case. In short, the evidence is compellingly one-sided and justifies action here.

It should be noted that the cap recommendation is not a dramatic redesign of the current DSE2 rate structure. It is a limited mechanism intended to mitigate very high DSE2

⁹ Case No. 09-1947-EL-POR et al, *In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2010 through 2012 and Associated Cost Recovery Mechanism*, Entry on Rehearing at 10-11 (September 7, 2011).

¹⁰ Case No. 12-2190-EL-POR et al, Direct Testimony of Dr. Dennis W. Goins on Behalf of the Ohio Energy Group and Nucor Steel Marion, OEG/Nucor Ex. 1 at 8-9.

¹¹ *Id.* at 12; Nucor Initial Brief at 10-11.

¹² FirstEnergy Reply Brief at 71.

charges for the largest customers, not to absolve such customers of their fair share of cost responsibility for FirstEnergy's EE and PDR programs. Moreover, Nucor's cap recommendation is flexible – although we support Dr. Goins' recommended \$10,000 monthly cap on DSE2 charges per customer, we could also support an alternative mechanism (or even a higher cap) that mitigates the very significant cost impacts on the largest Rate GT customers while also minimizing the impact on other customers.¹³

In summary, there is no reason why the Commission should not adopt the cap proposed by OEG and Nucor in this case. Strong and un rebutted evidence in the case supports the establishment of a rate cap or a similar measure for Rate GT customers. The Commission should grant rehearing and adopt the OEG and Nucor rate design recommendation. However, if the Commission declines to adopt the cap mechanism in this case, Nucor will address the issue in a future case.

C. The Commission's Order Erred by Failing to Rule on Nucor and OEG's Proposed Methodology for Measuring Peak Demand Reduction Attributable to Rider ELR Interruptible Load

Nucor and OEG recommended that, in calculating the amount of PDR from Rider ELR interruptible load that FirstEnergy may count toward meeting its annual PDR benchmarks, FirstEnergy should be required to use the definition of Curtailable Load in Rider ELR instead of using the amount of Rider ELR interruptible load FirstEnergy chooses to register with PJM.¹⁴ In its Reply Brief, FirstEnergy stated that it is not opposed to using this methodology should the

¹³ Nucor Initial Brief at 14-15.

¹⁴ *Id.* at 25-27.

Commission order it.¹⁵ In the March 20 Order, the Commission explains the OEG and Nucor PDR measurement proposal and notes FirstEnergy's willingness to use the methodology, but fails to rule on the issue.¹⁶

Nucor requests that the Commission grant rehearing and affirmatively rule on this issue by directing FirstEnergy to use the definition of Curtailable Load in Rider ELR to calculate the amount of PDR from Rider ELR that FirstEnergy may credit toward meeting its annual PDR benchmarks. Dr. Goins testified that using Curtailable Load more accurately reflects the peak demand reduction benefit Rider ELR customers provide.¹⁷ Using this methodology would also produce a larger amount of PDR benefit from Rider ELR than is being produced using FirstEnergy's current methodology. Obtaining a greater amount of required PDR from Rider ELR would reduce the need for FirstEnergy to obtain additional PDR in order to meet its benchmarks, which in turn should reduce the overall portfolio costs for all of FirstEnergy's customers.¹⁸

As noted above, FirstEnergy does not oppose using Curtailable Load to calculate the PDR benefit of Rider ELR load, and no other party addressed the issue in their testimony or briefs. The evidence in this case, therefore, compellingly supports approval of this methodology. We respectfully request that the Commission grant rehearing and direct FirstEnergy to adopt this methodology going forward.

¹⁵ FirstEnergy Reply Brief at 46.

¹⁶ March 20 Order at 20.

¹⁷ Goins Testimony, OEG/Nucor Ex. 1 at 19-20.

¹⁸ *Id.* at 20.

D. The Commission Should Grant OEG's Request for Clarification on Bidding Rider ELR Load into the PJM BRAs or, in the Alternative, Grant Rehearing on the Issue

Numerous parties argued in this case that FirstEnergy should bid its energy efficiency and peak demand reduction resources into the PJM BRAs. In the March 20 Order, the Commission discusses the recommendations to bid planned energy efficiency resources and interruptible load under Riders ELR and OLR in the BRAs, then states that it "will require the Companies to bid into the upcoming May 2013 BRA 75 percent of the planned energy efficiency resources for the 2016/2017 planning year under their program portfolio."¹⁹ On April 3, 2013, OEG filed an Application for Clarification stating that it is unclear whether the Commission intended the term "planned energy efficiency resources" to include interruptible load under Riders ELR and OLR, and requesting that the Commission expressly clarify that FirstEnergy is required to bid 75% of its Rider ELR and OLR interruptible load into the upcoming BRA.²⁰

Nucor agrees that the March 20 Order is unclear whether Rider ELR and OLR interruptible load was supposed to be included under the term "planned energy efficiency resources," given that the Commission specifically addresses Rider ELR and OLR in the discussion immediately preceding its direction to bid 75% of planned energy efficiency resources into the upcoming BRA, and given that the Commission does not rule elsewhere in the order on the issue of whether FirstEnergy should bid interruptible load into the BRAs. Accordingly, Nucor supports OEG's request for clarification that the Commission intended to include Rider ELR and OLR interruptible load when it directed FirstEnergy to bid 75% of its planned energy efficiency resources into the BRA, or, in the alternative, Nucor requests that the

¹⁹ March 20 Order at 20.

²⁰ Case No. 12-2190-EL-POR et al, Application for Clarification of the Ohio Energy Group at 1-2 (April 5, 2013).

Commission grant rehearing on this issue. FirstEnergy should be required to bid 75% of its current Rider ELR and OLR interruptible load (that is, 75% of the amount MWs associated with the current Rider ELR and OLR load that would be eligible to be bid in under PJM's rules) into the May 2013 BRA.

Rider ELR interruptible load is an ideal capacity resource and it makes no sense to leave this load sitting on the sidelines in the BRAs when bidding such resources in the auctions could lower costs for customers, both by potentially lowering the capacity price resulting from the auction, and by generating payments that FirstEnergy can pass back to customers.²¹ Customers on Rider ELR are long-time interruptible customers of FirstEnergy, and they likely will remain so if Rider ELR is continued, and ideally improved, beyond the termination of the ESP III rate plan in May of 2016.²² If FirstEnergy commits to continue offering an interruptible rate similar to Rider ELR in its next SSO rate plan, bidding in 75% of the current ELR interruptible load into the May BRA should be a low risk proposition.²³ Any risk to FirstEnergy, moreover, could be wiped out entirely if the Commission finds in this case that FirstEnergy is prudent in bidding this amount of current interruptible load into the BRA with the understanding that FirstEnergy will continue to offer an interruptible rate with terms similar to or better than the current ELR in its next SSO rate plan, and agreeing that FirstEnergy will be held harmless from any replacement capacity costs or penalties if it offers such a rate and less than 75% of the Rider ELR load is available in the 2016/2017 capacity year.²⁴

²¹ Nucor Initial Brief at 21.

²² *Id.* at 23.

²³ *Id.* at 23-24.

²⁴ *Id.* at 24.

III. CONCLUSION

For the reasons discussed above, Nucor respectfully requests that the Commission grant rehearing and/or clarification of the March 20 Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael K. Lavanga" followed by a stylized flourish.

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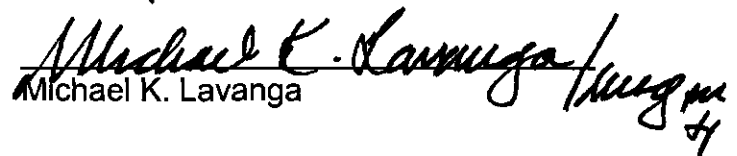
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