

**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. 14-1297-EL-SSO
Authority to Provide For a Standard Service Offer	)	
Pursuant to R.C. § 4928.143 in the Form of an	)	
Electric Security Plan	)	

---

**MEMORANDUM CONTRA OF NUCOR STEEL MARION, INC.  
TO APPLICATIONS FOR REHEARING OF MARCH 31 OPINION AND ORDER**

---

Pursuant to Ohio Administrative Code Section 4901-1-35(B), Nucor Steel Marion, Inc. hereby submits this Memorandum Contra the applications for rehearing by the Ohio Manufacturers' Association Energy Group ("OMAEG"), the Retail Energy Supply Association ("RESA") and the Environmental Law & Policy Center, Ohio Environmental Council, and Environmental Defense Fund (collectively, "Environmental Intervenors").

**I. INTRODUCTION**

On March 31, 2016, the Commission issued an Opinion and Order ("March 31 Order") in the above-captioned proceeding modifying and approving a Stipulation<sup>1</sup> entered into by FirstEnergy, Staff, and many other parties (including Nucor) establishing an electric security plan for the period June 1, 2016 through May 31, 2024 ("ESP IV"). Nucor fully supported the

---

<sup>1</sup> The Stipulation is comprised of FirstEnergy's April 4, 2014 application, as modified by the December 22, 2014 Stipulation and Recommendation, the January 21, 2015 Errata to the Stipulation and Recommendation, the May 28, 2015 Supplemental Stipulation and Recommendation, the June 4, 2015 Second Supplemental Stipulation and Recommendation, and the December 1, 2015 Third Supplemental Stipulation and Recommendation.

Commission's approval of the Stipulation. Applications for rehearing of the March 31 Order were filed on April 29, 2016 and May 2, 2016.

In this Memorandum Contra, Nucor addresses certain specific arguments raised by OMAEG, RESA, and Environmental Intervenors in their applications for rehearing.<sup>2</sup> The Commission should reject these arguments and deny the applications for rehearing. FirstEnergy also submitted an application for rehearing in which it proposed certain modifications to the Rider RRS as proposed in the Stipulation. It should also be noted that Nucor does not address FirstEnergy's application in this Memorandum Contra, since Nucor supports FirstEnergy's modified Rider RRS proposal.

## **II. DISCUSSION**

### **A. The Commission's Approval of the Elements of the ESP IV Stipulation Related to Rider ELR Is Reasonable and Supported by the Record**

In Nucor's view, the improvement and extension of Rider ELR is one of the most significant benefits of ESP IV. Nucor's detailed views on the benefits and reasonableness of Rider ELR are set forth in Nucor's post-hearing briefs. No party argues in its application for rehearing that Rider ELR should not have been approved, and very few of the requests for rehearing even mention Rider ELR in a substantive way. In fact, OMAEG, the party that addresses Rider ELR in the greatest detail in its rehearing request, acknowledges that interruptible programs provide benefits to customers, and takes the Commission to task only for not adopting certain modifications OMAEG proposed to Rider ELR.<sup>3</sup> As discussed below, the Commission's decision to approve Rider ELR as

---

<sup>2</sup> Nucor's failure to address other claimed errors in the applications for rehearing of OMAEG, RESA and Environmental Intervenors, or of any other party, should not be construed as agreement with such claims. In this memorandum contra we have just focused on the claims that go most directly to the issues related to Nucor.

<sup>3</sup> OMAEG Application for Rehearing at 18.

proposed in the ESP IV Stipulation was reasonable and supported by strong evidence on the record, as well as long-standing Commission precedent.<sup>4</sup> The Commission should not grant rehearing on this issue.

**1. Limiting participation on Rider ELR to certain long-standing industrial, interruptible customers is reasonable**

OMAEG complains that participation on Rider ELR is limited to only certain customers and that the economic development and job retention benefits are limited to only those customers on the rider.<sup>5</sup> The limitation on participation on Rider ELR has been a feature of the rider since it was first approved as part of FirstEnergy's initial ESP. It is not new; it was consistently found to be a reasonable restriction in the past, and continues to be now. As the evidence in the case demonstrates, Rider ELR customers are large industrial customers that face stiff national and international competition for their products.<sup>6</sup> These customers have demonstrated a need for economic development support.<sup>7</sup> Moreover, these customers have demonstrated an ability and

---

<sup>4</sup> The March 31 Order is just the latest in a long line of cases recognizing that Rider ELR provides "reliability, economic and energy efficiency benefits to customers." March 31 Order at 94. *See also 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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Second Entry on Rehearing at 14 (January 30, 2013) (finding that Rider ELR tends to "lower SSO generation prices as well as promote both economic development and compliance with the peak demand reduction provisions of Section 4928.66, Revised Code."); *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) (rejecting arguments by a group of curtailment service providers calling for the termination of Rider ELR); *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. 08-935-EL-SSO, Second Opinion and Order (March 25, 2009) (approving Rider ELR as part of FirstEnergy's initial ESP).

<sup>5</sup> OMAEG Application for Rehearing at 61-62.

<sup>6</sup> Direct Testimony of Dennis W. Goins, Nucor Ex. 1 at 12; Supplemental Testimony of Stephen J. Baron, OEG Ex. 1 at 9-10; Tr. Vol. XXII at 4329.

<sup>7</sup> Rebuttal Testimony of Eileen M. Mikkelsen, Company Ex. 146 ("Mikkelsen Rebuttal Testimony") at 19; Tr. Vol. XXX at 6172-75.

a willingness to provide valuable interruptible benefits to the system over the course of many years.<sup>8</sup> Given the unique needs, characteristics, and capabilities of Rider ELR customers, it is reasonable to limit participation on the rider as proposed in the ESP IV Stipulation.

It is also incorrect that the economic development and job retention benefits of Rider ELR are limited only to the customers on the rider. Evidence in the case demonstrates that by helping to keep the large industrial customers under Rider ELR operating in Ohio, the economic development/job retention benefits accrue to other businesses in the communities where those plants are located.<sup>9</sup> In other words, the economic development benefits are broad and are shared by all customers, not just the ELR customers themselves.

Along these same lines, OMAEG states that new customers who enter into the service territory are disadvantaged because they will not be eligible for Rider ELR.<sup>10</sup> But such customers have other economic development tools, such as reasonable arrangements, available to them. Rider ELR clearly is not targeted at new customers, but instead is aimed at supporting existing Ohio industry, and ensuring that ELR customers, through their unique capabilities, continue to provide important reliability benefits by making large amounts of interruptible load available in the case of a system emergency. Helping to maintain existing industry and seeking to attract new customers are not conflicting goals, and it is reasonable to pursue both goals using different methods.

---

<sup>8</sup> Tr. Vol. XXX at 6136-37.

<sup>9</sup> Tr. Vol. XXI at 4040; Tr. Vol. XXXIV at 7109.

<sup>10</sup> OMAEG Application for Rehearing at 61-62.

## **2. The cost recovery mechanism for the Rider ELR credit is reasonable**

OMAEG also argues that it is unreasonable that a portion of the costs of the Rider ELR credit are recovered only from the GP and GS classes under Rider EDR.<sup>11</sup> While other methods could also be chosen, this feature of Rider ELR has been approved by the Commission as reasonable in past ESP cases and has been in effect for several years. In other words, ESP IV simply maintains the status quo. It is also worth noting that the share of the cost of the Rider ELR credit assigned to the GP and GS classes was much larger under FirstEnergy's initial ESP – at that point, the bulk of the cost of the combined \$10/kW credit customers under Rider ELR received (\$8.05) was recovered from these classes.<sup>12</sup> The current split (half of the cost of the credit recovered from all customers under Rider DSE1 and half recovered from the GP and GS classes under Rider EDR(e)) spreads the cost responsibility more evenly, and reduces the impact on the GP and GS classes. Finally, the cost split is reasonable because, although Rider ELR provides job retention and reliability benefits to all customers, commercial customers in or near communities where large industry is located are particularly benefited by the retention of those nearby large industrial customers, since shuttering a factory could have significant negative impacts on the local economy.

---

<sup>11</sup> *Id.* at 61.

<sup>12</sup> Case No. 08-935-EL-SSO, Second Opinion and Order (approving stipulation and recommendation that allocated the cost of the \$8.05 economic development credit for Rider ELR customers to the GP and GS classes under Rider EDR).

**3. Allowing Rider ELR customers to opt-out of FirstEnergy's energy efficiency/peak demand reduction portfolio does not violate Section 4928.6613, Revised Code**

Other than OMAEG, the only party to request rehearing of an ELR-related issue was Environmental Intervenors. Environmental Intervenors assert that the ESP IV Stipulation violated Section 4928.6613, Revised Code, which provides that if a customer opts out of paying for a utility's energy efficiency and peak demand reduction programs as permitted by Section 4928.6611, Revised Code, the customer is no longer "eligible to participate in, or directly benefit from, programs arising from" the utility's energy efficiency and peak demand reduction portfolio plan. Environmental Intervenors reason that, since Rider ELR customers are receiving a credit, a portion of the cost of which is recovered under Rider DSE1, such customers may not exercise their right to opt out without running afoul of Section 4928.6613.<sup>13</sup>

What Environmental Intervenors fail to recognize is that Rider ELR is not derived from FirstEnergy's energy efficiency and peak demand reduction portfolio plan. Rider ELR has always led a separate existence as an approved rate under FirstEnergy's ESP plans.<sup>14</sup> In fact, Rider ELR was in place before FirstEnergy's first energy efficiency and peak demand reduction portfolio was even filed, much less approved and implemented. Moreover, Rider ELR is an outgrowth of previous interruptible programs that have existed for many years.<sup>15</sup> Although FirstEnergy properly counts the peak demand reduction provided by Rider ELR toward meeting its

---

<sup>13</sup> Environmental Intervenors Application for Rehearing at 23-24.

<sup>14</sup> Tr. Vol. III at 498.

<sup>15</sup> Mikkelsen Rebuttal Testimony at 19.

benchmarks, Rider ELR is not, and has never been, a program developed, funded or approved under FirstEnergy's portfolio plan.

Further, if an ELR customer were to exercise its opt out right under Section 4928.6611, that customer would unequivocally be opting out of its ability to participate in any of the programs under FirstEnergy's energy efficiency and peak demand reduction portfolio plan, the costs of which are recovered under Rider DSE2. The customer would not pay Rider DSE2, and it would be precluded from participating in the any of the portfolio programs. This is exactly how the Section 4928.6611 opt out is supposed to work. The Commission was correct in declining to adopt Environmental Intervenors' position on the ability of Rider ELR customers to opt out, and the Commission should not revisit the issue on rehearing.

**B. Limiting Participation in the Rider NMB Pilot is Reasonable**

Both RESA and OMAEG argue that the Rider NMB pilot is discriminatory because all eligible customers do not have an equal opportunity to participate in the pilot.<sup>16</sup> However, there is no prohibition on the Commission approving a pilot program, which by its nature is experimental, with a limited number of participants. Limiting participation is a reasonable way to keep the sample size small so as to make it easier to evaluate the effects of the program. The Commission should deny rehearing on this point.

---

<sup>16</sup> RESA Application for Rehearing at 97; OMAEG Application for Rehearing at 57.

### III. CONCLUSION

Nucor respectfully requests that the Commission deny the applications of OMAEG, RESA, and Environmental Intervenors for rehearing of the March 31 Order as discussed above.

Respectfully submitted,

/s/ Michael K. Lavanga

Michael K. Lavanga

Counsel of Record

PHV #1014-2016

E-Mail: [mkl@smxblaw.com](mailto:mkl@smxblaw.com)

Stone Mattheis Xenopoulos & Brew, PC

1025 Thomas Jefferson Street, N.W.

8<sup>th</sup> Floor, West Tower

Washington, D.C. 20007

(202) 342-0800 (Main Number)

(202) 342-0807 (Facsimile)

Attorney for Nucor Steel Marion, Inc.



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record or as a courtesy, via electronic mail on May 12, 2016.

/s/ Michael K. Lavanga

Michael K. Lavanga

[burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)  
[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)  
[jang@calfee.com](mailto:jang@calfee.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[william.wright@ohioattorneygeneral.gov](mailto:william.wright@ohioattorneygeneral.gov)  
[mandy.willey@ohioattorneygeneral.gov](mailto:mandy.willey@ohioattorneygeneral.gov)  
[gregory.price@ohioattorneygeneral.gov](mailto:gregory.price@ohioattorneygeneral.gov)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[yalami@aep.com](mailto:yalami@aep.com)  
[jennifer.spinosi@directenergy.com](mailto:jennifer.spinosi@directenergy.com)  
[ghull@eckertseamans.com](mailto:ghull@eckertseamans.com)  
[schmidt@sppgrp.com](mailto:schmidt@sppgrp.com)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[dparram@taftlaw.com](mailto:dparram@taftlaw.com)  
[Larry.sauer@occ.ohio.gov](mailto:Larry.sauer@occ.ohio.gov)  
[Maureen.grady@occ.ohio.gov](mailto:Maureen.grady@occ.ohio.gov)  
[William.michael@occ.ohio.gov](mailto:William.michael@occ.ohio.gov)  
[Kevin.moore@occ.ohio.gov](mailto:Kevin.moore@occ.ohio.gov)  
[Ajay.kumar@occ.ohio.gov](mailto:Ajay.kumar@occ.ohio.gov)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[ricks@ohanet.org](mailto:ricks@ohanet.org)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[ghiloni@carpenterlipps.com](mailto:ghiloni@carpenterlipps.com)  
[BarthRoyer@aol.com](mailto:BarthRoyer@aol.com)  
[athompson@taftlaw.com](mailto:athompson@taftlaw.com)  
[wttplmc@aol.com](mailto:wttplmc@aol.com)  
[Christopher.Miller@icemiller.com](mailto:Christopher.Miller@icemiller.com)  
[Gregory.Dunn@icemiller.com](mailto:Gregory.Dunn@icemiller.com)

[Jeremy.Grayem@icemiller.com](mailto:Jeremy.Grayem@icemiller.com)  
[lhawrot@spilmanlaw.com](mailto:lhawrot@spilmanlaw.com)  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[blanghenry@city.cleveland.oh.us](mailto:blanghenry@city.cleveland.oh.us)  
[hmadorsky@city.cleveland.oh.us](mailto:hmadorsky@city.cleveland.oh.us)  
[kryan@city.cleveland.oh.us](mailto:kryan@city.cleveland.oh.us)  
[meissnerjoseph@yahoo.com](mailto:meissnerjoseph@yahoo.com)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)  
[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)  
[LeslieKovacik@toledo.oh.gov](mailto:LeslieKovacik@toledo.oh.gov)  
[marilyn@wflawfirm.com](mailto:marilyn@wflawfirm.com)  
[matt@matthewcoxlaw.com](mailto:matt@matthewcoxlaw.com)  
[todonnell@dickinsonwright.com](mailto:todonnell@dickinsonwright.com)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)  
[mfleisher@elpc.org](mailto:mfleisher@elpc.org)  
[jeffrey.mayes@monitoringanalytics.com](mailto:jeffrey.mayes@monitoringanalytics.com)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[Sechler@carpenterlipps.com](mailto:Sechler@carpenterlipps.com)  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)  
[callwein@keglerbrown.com](mailto:callwein@keglerbrown.com)  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)  
[rsahli@columbus.rr.com](mailto:rsahli@columbus.rr.com)  
[tony.mendoza@sierraclub.org](mailto:tony.mendoza@sierraclub.org)  
[kristin.henry@sierraclub.org](mailto:kristin.henry@sierraclub.org)  
[msoules@earthjustice.org](mailto:msoules@earthjustice.org)  
[sfisk@earthjustice.org](mailto:sfisk@earthjustice.org)  
[charris@spilmanlaw.com](mailto:charris@spilmanlaw.com)  
[dwolff@crowell.com](mailto:dwolff@crowell.com)  
[rlefeldt@crowell.com](mailto:rlefeldt@crowell.com)  
[DFolk@akronohio.gov](mailto:DFolk@akronohio.gov)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/12/2016 3:03:53 PM**

**in**

**Case No(s). 14-1297-EL-SSO**

Summary: Memorandum Memorandum Contra of Nucor Steel Marion, Inc. to Applications for Rehearing of March 31 Opinion and Order electronically filed by Mr. Michael K. Lavanga on behalf of Nucor Steel Marion, Inc.