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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 Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals.	))))))	Case No. 07-0551-EL-AIR Case No. 07-0552-EL-ATA Case No. 07-0553-EL-AAM Case No. 07-0554-EL-UNC

MEMORANDUM CONTRA TO FIRSTENERGY'S MOTION TO STRIKE NUCOR OBJECTION NO. 1 SUBMITTED BY NUCOR STEEL MARION, INC.

Pursuant to the December 21, 2007 Attorney Examiner's Entry in the above-captioned proceeding, Nucor Steel Marion, Inc. ("Nucor") respectfully submits this memorandum contra to the motion to strike objections of the Ohio Edison Company ("Ohio Edison"), the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively "FirstEnergy" or "Company"), which was filed on January 10, 2008 ("Motion to Strike"). In particular, Nucor opposes FirstEnergy's request to strike Nucor's first objection to the Staff Report of Investigation pertaining to Ohio Edison ("Staff Report"). As discussed further below, Nucor's objection meets the standards for objections set forth in Rule 4901-1-28(B), Ohio Administrative Code. Also, FirstEnergy's arguments for why Nucor's objection should be stricken are invalid and demonstrate a misunderstanding on the part of FirstEnergy as to the purpose and justifications for Nucor's objection. For these reasons, FirstEnergy's motion to strike Nucor's first objection should be rejected.

I. INTRODUCTION

In this proceeding, FirstEnergy proposes to eliminate its existing retail rate schedules containing generation, transmission, and distribution components, and replace those rates with distribution-only rates. The Staff Report on FirstEnergy's rate proposal was issued on December 4, 2007, and Nucor filed its objections to the Staff Report ("Nucor Objections") on January 3, 2008. Nucor made three objections: (i) FirstEnergy's bundled rates should not be eliminated before comparable utility provided rates are in place; (ii) Ohio Edison's existing interruptible rates should be retained until replaced by comparable and improved interruptible rates; and (iii) FirstEnergy's proposed method of calculating billing demand for General Service customers should be modified. In FirstEnergy's Motion to Strike, FirstEnergy moves to strike only Nucor's first objection.

II. MEMORANDUM CONTRA MOTION TO STRIKE

A. Nucor's First Objection Meets the Standards for Objections Set Forth in Rule 4901-1-28(B), Ohio Administrative Code.

Rule 4901-1-28(B) provides that objections to a report of investigation "may relate to the findings, conclusions, or recommendations contained in the report, *or to the failure of the report to address one or more specific items*" (emphasis provided). The rule also provides that objections "must be specific." On its face, Nucor's first objection meets these standards. First, Nucor's objection addresses the failure of the Staff report to address a specific item – namely, FirstEnergy's proposal to eliminate its current rates containing generation, transmission, and distribution components and replacing them with distribution-only rates before comparable generation and transmission rates are in effect.

Second, Nucor's objection is specific, both with respect to the issue it raises and to the solution Nucor urges the Commission to adopt. Nucor objects to FirstEnergy's proposal to eliminate its existing rates when there are currently no replacement generation or transmission rates in place, and none have been proposed in this proceeding. Nucor's recommended solution is that FirstEnergy be required to keep its existing rates in effect until comparable replacement rates are approved. Nucor's objection meets the specificity requirement of Rule 4901-1-28(B). It is worth noting, in fact, that FirstEnergy does not argue that Nucor's objection does not meet the specificity requirement of Rule 4901-1-28(B).

Given that Nucor's first objection clearly meets the standards for objections set forth in Rule 4901-1-28(B), the Commission should reject FirstEnergy's motion to strike the objection, notwithstanding FirstEnergy's arguments in favor of its motion.

B. FirstEnergy's Arguments as to Why Nucor's Objection Should be Stricken Are Invalid, and Demonstrate a Misunderstanding on the Part of FirstEnergy Regarding the Purpose and Justifications for Nucor's Objection.

FirstEnergy's arguments for why Nucor's first objection should be rejected can be summarized as follows: (i) Nucor argues that FirstEnergy's rates should be "rebundled," which FirstEnergy cannot lawfully do; (ii) Nucor's concerns about the lack of approved generation and transmission rates are invalid because those issues are being addressed in a different proceeding; and (iii) generation issues should not be addressed in this distribution case. All of these arguments are invalid, and thus provide no support for striking Nucor's first objection.

1. Nucor does <u>not</u> argue that FirstEnergy's rates should be "rebundled."

FirstEnergy's motion to strike Nucor's first objection is listed under a heading entitled "Objections directed to the Staff's failure to make recommendations which are impossible to effect or are contrary to law." Motion to Strike at 4. FirstEnergy then explains that S.B. 3 required that utility rates be unbundled, and that the Commission "cannot lawfully order the Companies to rebundle their rates in a manner contrary to statute." *Id.* at 5. FirstEnergy fundamentally misconstrues the point of Nucor's first objection.

Nowhere in Nucor's first objection does Nucor argue that FirstEnergy's rates should be "rebundled." Rather, Nucor argues that FirstEnergy's existing rates – which contain separately-stated generation, transmission, and distribution components – should not be eliminated and replaced with distribution-only rates until comparable generation and transmission rates are approved. Nucor's first objection does refer to FirstEnergy's "bundled" rate schedules and rates, but this is simply shorthand terminology used to explain the structure of FirstEnergy's existing rates. As Nucor witness Dr. Dennis Goins explains in his Direct Testimony in this proceeding:

> Although current rates include separate generation, transmission, distribution, and transition components, the rates are essentially bundled because of the way in which they were developed. After Senate Bill 3 was implemented, the FirstEnergy operating companies in 2001 separated their existing retail base rates into generation, transmission, distribution, and transition components. In developing these rate components, they made no changes to the basic design structure of the bundled rates. As a result, the bundled rate design that was approved in each company's last base rate case was effectively continued in the current rates.

Direct Testimony of Dr. Dennis W. Goins on Behalf of Nucor Steel Marion, Inc. at 7 (January 10, 2008). In other words, customers on FirstEnergy's existing retail rate schedules that contain generation, transmission and distribution components are essentially taking bundled *service* from FirstEnergy, notwithstanding the fact that FirstEnergy has unbundled its rates into separately stated *components* for generation, transmission, and distribution within the rate schedules, as S.B. 3 directed FirstEnergy to do.

To be clear – Nucor's first objection does not argue that FirstEnergy should rebundle its rates. Nucor recognizes that S.B. 3 required FirstEnergy to unbundle its rates, and Nucor does not advocate the rebundling of FirstEnergy's generation, transmission, and distribution components into a single rate. Rather, Nucor maintains that the existing rate schedules – which include the separately-stated, unbundled rates for generation, transmission, and distribution – should not be eliminated and replaced with distribution-only rates until such time as comparable generation and transmission rates are in place. By no means is this recommendation "impossible to effect or . . . contrary to law," as FirstEnergy incorrectly concludes. That rationale, therefore, is an invalid basis for striking Nucor's first objection.

2. The uncertainty regarding FirstEnergy's standard service offer proposal is a strong justification for retaining FirstEnergy's existing rate schedules until comparable generation and transmission rates are in place.

A key reason for Nucor's position that FirstEnergy's existing generation, transmission, and distribution rates should not be eliminated before comparable utility-provided rates are in place is the uncertainty surrounding FirstEnergy's market-based standard service offer ("SSO") proposal, currently pending in Case Nos. 07-796-EL-ATA and 07-797-EL-AAM. As Nucor explains in its first objection, the SSO proposal has met with considerable opposition from various parties, and Commission Staff has recommended that the proposal be rejected outright due to the lack of competitive wholesale or retail markets. Also, legislation currently working its way through the Ohio legislature (S.B. 221) would allow utilities to offer a regulated SSO, and would place much stricter requirements on utilities that wish to offer a market-based SSO. Given the uncertainty surrounding when (and if) FirstEnergy's SSO proposal will be approved, Nucor explained that if FirstEnergy's existing rates are replaced with distribution-only rates, there is a reasonable possibility that the new distribution rates would go into effect in 2009 without comparable rates for the other components of electric supply (*i.e.*, generation and transmission) being in place for customers who wish to take generation, transmission, and distribution service from FirstEnergy. Consequently, Nucor objected to the Staff Report for not recognizing that FirstEnergy's existing rates – which include generation, transmission, and distribution components – should not be eliminated and replaced with distribution-only rates unless and until comparable generation and transmission rates also have been approved.

In its Motion to Strike, FirstEnergy tersely notes that "[a]ny uncertainty that Nucor may be experiencing with regard to generation rates is because the generation procurement and pricing has not yet been resolved in the generation case" (Motion to Strike at 5-6), but brushes aside the notion that this uncertainty warrants safeguards for customers such as the temporary retention of FirstEnergy's existing rates until adequate replacement rates are in place.

FirstEnergy's position on Nucor's proposal is puzzling, given that FirstEnergy cites the very same uncertainty surrounding its SSO proposal as justification for a higher return on equity in this proceeding. FirstEnergy's Objection III.6 states that the Staff Report:

> [U]nlawfully and unreasonably fails to consider any "additional risk factors relating to the provision of electric generation service" which risk factors contribute to the Company's cost of equity capital and are not alleviated by the "proposed auction plan" referred to in said report, *which proposed plan has not been approved by the Commission and is pending before the Commission without a procedural schedule for further proceedings.* Objections to the Staff Reports of Investigation of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company at 8.(emphasis provided).

In his supplemental testimony, FirstEnergy witness Michael J. Vilbert addresses Objection III.6 in more detail and explains that the SSO proposal increases the Company's risk because "the outcome of the auction proposed by FirstEnergy is uncertain," the proposal "has been filed with the Commission but has not been approved," and "it is unknown when or whether the proposal may be approved by the Commission as filed or whether it will be modified in some way." Supplemental Testimony of Michael J. Vilbert at 16 (January 10, 2008). Mr. Vilbert also explains that S.B. 221 creates increased uncertainty and risk for FirstEnergy. *Id.* at 17. To account for the uncertainties and risks created by the SSO proceeding and S.B. 221, Mr. Vilbert maintains that the Staff Report should have recommended a return on equity for FirstEnergy at the upper end of the zone of reasonableness. *Id.* at 17-18.

Apparently, FirstEnergy believes that the risk factors associated with the SSO proposal and S.B. 221 justify a higher rate of return for the Company's shareholders, but these same risk factors do not warrant measures to safeguard the Company's ratepayers against the possibility of there being no SSO rate to fill the gap left by the elimination of FirstEnergy's existing rate schedules and the establishment of distribution-only rates.

FirstEnergy cannot have it both ways. The Commission should reject FirstEnergy's motion to strike Nucor's objection to the Staff Report for failing to recommend the retention of FirstEnergy's existing rates until comparable generation and transmission rates are in place. As FirstEnergy itself recognizes, it is anyone's guess at this point when and if FirstEnergy's SSO proposal will be approved.

3. **FirstEnergy, not Nucor, proposed to eliminate rate schedules containing generation and transmission rate components in this proceeding. Nucor does not argue that generation rates must be addressed in this proceeding, only that existing rate schedules containing generation and transmission rate components should not be eliminated until replacement rates have been approved.**

Finally, FirstEnergy states that there is "no basis to hash out issues pertaining to generation rates in this distribution rate case." Motion to Strike at 6. Nucor does not object to the Staff Report on the grounds that generation issues have not been addressed in this proceeding. Nucor's objection is that FirstEnergy proposes to eliminate all rate schedules containing generation and transmission rate components in this proceeding without replacement rates containing these components being approved. In other words, it is FirstEnergy's actions, not Nucor's actions, which have made this an issue in this proceeding.

While Nucor recognizes the possibility that the Commission might choose to address generation rates in this proceeding, Nucor's position is that FirstEnergy's existing rates should not be eliminated and replaced with distribution-only rates until new utility-provided rates including generation, transmission, and distribution components are approved in this docket or some other docket. Nucor Objections at 5. Since Nucor's first objection does not fault the Staff Report for failing to address generation issues, but rather for failing to object to FirstEnergy's proposal to eliminate such rates, FirstEnergy's insistence that generation rates should not be addressed in a distribution rate case is an invalid basis for striking Nucor's objection.

III. CONCLUSION

For the reasons discussed above, FirstEnergy's motion to strike Nucor's first objection to the Staff Report should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra to FirstEnergy's Motion to Strike Nucor Objection No. 1 Submitted by Nucor Steel Marion, Inc. was served upon the following parties of record or as a courtesy, via ordinary U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on January 15, 2008.

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