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FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for)
Standard Service Offer, Corporate Separation,)
Reasonable Arrangements, and Transmission)
Riders for Electric Utilities Pursuant to)
Sections 4928.14, 4928.17, and 4905.31,)
Revised Code, as Amended by Amended)
Substitute Senate Bill No. 221.)

Case No. 08-777-EL-ORD

RULEMAKING COMMENTS OF NUCOR STEEL MARION, INC.

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In accordance with the Entry issued on July 2, 2008 by the Public Utilities Commission of Ohio (the "Commission") in the above-captioned proceeding, Nucor Steel Marion, Inc. ("Nucor") submits these comments on the Commission Staff's proposed rules to implement Amended Senate Bill No. 221 ("SB 221").

I. INTRODUCTION

Nucor is a large industrial customer of FirstEnergy that consumes millions of dollars worth of electricity each year. Like all other retail customers in Ohio, Nucor could be profoundly affected by the changes to Ohio's electric utility law made through SB 221. In developing the rules to implement SB 221, Nucor urges the Commission to exercise the broad discretion the Commission has under the statute to ensure that the rules are fair, that they provide customers with full procedural rights, and that the standard service offer ("SSO") plans ultimately approved, be they electric security plans ("ESPs") or market-rate options ("MROs"), will produce stable, just, and reasonable rates, and ensure reliable service.

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In general, Staff's proposed rules are well-crafted and consistent with SB 221. However, there are several areas where the proposed rules can be improved or clarified. Below Nucor provides comments on specific proposed rules, and offers suggested revised language. Additionally, redlined versions of the proposed rules reflecting all of Nucor's proposed revisions are included as Attachment A to these comments. Finally, Nucor also provides responses to some of the specific questions posed in the July 2nd Entry. Nucor reserves its right to suggest additional improvements based on its review of the comments and recommendations of other parties.

II. COMMENTS

A. Comments on Specific Proposed Rules

1. Chapter 4901:1-35 – Electric Utility Standard Service Offer

Section 4901:1-35-02(A) – This section establishes the purpose and scope of the rule. Nucor proposes to revise it as follows to clarify the utility's obligation to provide an SSO. It should be clear that while a firm supply of generation service is one necessary competitive retail electric service, it is not the only one. For example, transmission service is also required. Some customers require a nonfirm or interruptible generation service instead.

- (A) Pursuant to division (A) of section 4928.141 of the Revised Code, beginning January 1, 2009, each electric utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain a reasonable supply of essential electric service to consumers, including but not limited to a firm supply of electric generation and transmission service. Pursuant to this chapter, an electric utility shall file an application for commission approval of an SSO. Such application shall be in the form of an electric security plan or market rate offer pursuant to sections 4928.142 and 4928.143 of the Revised Code. The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.

Section 4901:1-35-03(C) – This section provides that the Commission “shall endeavor to make a determination on an application that substantially conforms to the requirements of this rule within one hundred fifty days of the filing of such complete application.” Nucor proposes that the following sentence be added at the end of this section:

The commission shall determine when the approved SSO rates will take effect, but in no case will SSO rates take effect earlier than ninety days after the rates have been approved.

A new SSO under the requirements of SB 221, whether it is an ESP or an MRO, could result in drastic changes to the rates Ohio customers currently pay. For this reason, a minimum three month buffer period should be required between when SSO rates are approved and when they go into effect. Such a buffer would serve two important purposes. First, it would provide customers with time to compare the SSO rates with rates available from other suppliers in the market, and to make an informed decision on which generation supply option to select. By giving customers a period of time to comparison shop after they know what the SSO rate will be, but before they have to decide whether to sign on to the SSO (particularly if there is a minimum time the customer must stay on the SSO after they have signed up), will strengthen retail competition because it would make it less likely that the customers would simply sign up for the SSO because they are under the gun to make a selection.

Second, a minimum three month buffer period would allow the Commission, the electric utility, and customers time to ensure that SSO rates are implemented properly. This is particularly important with respect to MRO, given that competitive bidding process (“CBP”) mechanisms, and the procedures the Commission has proposed for

reviewing and implementing such mechanisms, are largely untested. In this regard, it is worth noting that when FirstEnergy filed its competitive bidding proposal last year, it insisted that the mechanism needed to be approved by November 1, 2007, over a year in advance of January 1, 2009, when the rates developed under the competitive bidding mechanism would take effect.¹ A three month buffer period, therefore, is a reasonable minimum time period between when SSO rates are finally approved and when they may take effect.

Proposed New Section 4901:1-35-03(E) – Nucor proposes in this new section a requirement that the SSO application must demonstrate how the electric utility will transition from its existing rate structures to rate structures proposed in its SSO, as well as how the SSO will meet Ohio’s key energy policy objectives:

The SSO application must demonstrate how the electric utility will reasonably transition from its existing rate structures to the rate structures proposed in the SSO and how this transition is expected to impact customers (in the case of the first SSO application, the existing rates shall mean rates in effect prior to July 1, 2008 that include generation, transmission, and distribution costs). The electric utility shall demonstrate how its proposed SSO will achieve the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code, and shall provide for the inclusion of rates and rate options designed to provide accurate price signals to rate payers and encourage energy efficiency and demand response, including, but not limited to, interruptible rates, real-time pricing, time-of-use pricing, and critical peak pricing. At minimum, the SSO must provide for emergency/reliability and economic interruptible rate options, based on the long-term avoided cost of capacity and the avoided cost of energy, and time-of-use rate options.

As noted above, an electric utility’s SSO could mark a dramatic change from the rate structures customers are used to today. Electric utilities should recognize this possibility,

¹ Application of FirstEnergy to Establish a Competitive Bidding Process, Case Nos. 07-796-EL-ATA and 07-797-EL-AAM (July 10, 2007).

consider what processes to use to transition to new rate structures, and explain those processes in the SSO application.

This proposed revision to the rule also requires the electric utility to explain how its SSO proposal meets the state's energy policy objectives delineated in section 4928.02 of the Revised Code, as is required in other parts of the Staff's proposed rules. Nucor's proposed rule, however, includes a more specific requirement that the SSO rates provide for the inclusion of rates designed to provide accurate price signals for ratepayers and encourage energy efficiency and demand response, such as interruptible rates, real-time pricing, time-of-use pricing, and critical peak pricing. These particular rate structures should be singled out because in the coming years, they will be instrumental in reconciling Ohio's competing energy, environmental, and economic development policy objectives.

Interruptible rates, for example, advance the energy policy goals of the state by avoiding some of the need for new generation and transmission infrastructure investment, helping to ensure reliability by providing operating reserves, and preventing price spikes at times of peak demand. Interruptible rates support Ohio's environmental goals, again by limiting, avoiding or deferring the need for new generation, and by shifting usage from peak periods (often the hottest days of the year when the running of fossil fuel generation contributes to poor air quality) to off-peak periods. And interruptible rates are an ideal economic development tool because they allow interruptible customers, who are typically large manufacturers and other commercial and industrial customers, to obtain electric service at a lower rate than they could under firm service rates, making them more competitive.

Many existing customers, like Nucor, are already served on some form of interruptible rate. Customers on these rates should be entitled to have similar, and hopefully improved, options under future SSOs. This new provision will ensure that such options are made available by utilities and that rates reflect the cost avoided as a result of the ability to interrupt or curtail service when necessary. Moreover, by explicitly requiring that these rate structures be included in the SSO, there will be greater transparency than if these types of rate designs are left solely to contracts establishing special arrangements.

The General Assembly, in fact, recognized the importance of demand response such as interruptible rates in SB 221, both by including demand response in the definition of an “advanced energy resource” (Section 4928.01(A)(1)(34)(g)), and by mandating that distribution utilities meet specific annual peak demand reduction targets beginning in 2009 (Section 4928.66(A)(1)(b)). Similar arguments apply to the need for time-of-use and other rate options that provide proper price signals to customers that will encourage demand response and energy efficiency. Given the need for rate structures that encourage demand response, electric utilities should be required to explain their plans to implement such structures in their SSO applications.

Finally, Nucor notes that proposed rule 4901:1-38-08(C) addresses revenue recovery under “special arrangements” in which incentives are given based on cost savings to the utility, including “nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates [and] real-time-pricing rates.” While Nucor agrees that these elements could be incorporated into particular special arrangements, it is important that the rules recognize that these rate structures must be included as part of an electric

utility's SSO, and not limited to special arrangements. Including these rates in the SSO would make clear that these types of rate structures are mandatory – not optional – on the part of electric utilities, and provide transparency and an opportunity for customer input into the development of such rates. Nucor's proposed rule 4901:1-35-03(E) would accomplish these objectives.

Section 4901:1-35-06(B) – This section addresses the rights of parties to intervene and participate in SSO proceedings. Nucor recommends that the following sentence be added at the end of this section to ensure reasonable and timely access to information through discovery:

Parties shall respond to discovery requests in SSO proceedings within ten calendar days unless granted additional time in an entry.

Under rule 4901-1-19, parties are allowed 20 days to submit answers to discovery requests, but the Commission or hearing examiner has the discretion to shorten the response time. The time prescribed for SSO hearings under SB 221 is short – 150 days for an ESP application and 90 days for an MRO application. Given these short time periods, it makes sense to establish a shorter turn-around time for discovery so that parties have a full and fair opportunity to obtain all the information they need to evaluate an SSO proposal and to prepare their cases.

Section 4901:1-35-07 – Nucor recommends that this section governing discoverable agreements be modified to include agreements between a utility and any of its affiliates and a utility and any supplier of generation:

Upon submission of an appropriate discovery request during a proceeding establishing or relating to a standard service offer, an electric utility shall make available to the requesting party every contract or agreement that is: (a) between the electric utility or any of its affiliates and a party to the proceeding, consumer, electric service company, or political subdivision

and that is relevant to the proceeding, (b) between an electric utility and any of its affiliates, or (c) between an electric utility and any supplier of generation, transmission or ancillary services, subject to such protection for proprietary or confidential information as is determined appropriate by the commission.

Section 4901:1-35-08(A) – Nucor recommends that this section be modified to clarify that the final selection of an independent third party must be reviewed and approved by the Commission:

An electric utility proposing a market-rate offer in its standard service offer application, pursuant to section 4928.142 of the Revised Code, shall propose a plan for a competitive bidding process (CBP). The CBP plan shall comply with the requirements set forth in appendix A to rule 4901:1-35-03 of this chapter. The electric utility shall use an independent third party to design an open, fair, and transparent bid solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The selection of the independent third party shall be reviewed and approved by the commission. The independent third party shall be accountable to the commission for all design, process, and oversight decisions. Any modifications or additions to the CBP made by the independent third party shall be submitted to staff prior to implementation. The independent third party shall incorporate into the solicitation such measures as the Commission or its staff may prescribe, and shall incorporate into the bidding process any direction the Commission may provide.

Section 4901:1-35-08(B) – Nucor recommends that two changes be made to this section, which addresses the report on a competitive bidding process produced by an independent third party:

Immediately upon the completion of the bidding process, the independent third party shall submit a report to the commission summarizing the results of the CBP. The report shall be made available at the same time to all interested persons. The report shall include, but not be limited to, the following items:

- (1) A description of the conduct of the bidding process, including a discussion of any aspects of the process that could have adversely affected the outcome, including whether the independent third

party observed any market manipulation or anticompetitive behavior.

The purpose of the first proposed change is to make clear that the independent third party's report will be made available to all parties that wish to see the report. In order to ensure that the CBP is fully transparent, it is critical that customers, as well as the Commission, have access to the independent third party's evaluations and conclusions concerning the CBP as well as all information relevant to the CBP. The second change simply makes explicit the requirement that the independent third party report any market manipulation or anticompetitive behavior it observes in the CBP.

Section 4901:1-35-08(D) – This section addresses the Commission's selection of the least-cost winning bidder of the CBP and the Commission's use of the independent third party report in making this selection. This section should be revised to make clear that, in making its determination, the Commission has the discretion to reject the results of the CBP altogether if it determines that the CBP is not the result of a competitive market or will not produce just and reasonable rates or to set the CBP for hearing if necessary. Accordingly, this section should be revised as follows:

The commission shall make the final selection of the least-cost winning bidder(s) of the CBP. The commission may rely upon the information provided in the independent third party's report in making its selection of the least-cost winning bidder(s) of the CBP. The commission may reject the results of the CBP if it determines that the CBP is not the result of a competitive market or that it will not result in just and reasonable rates. Upon its own motion or a motion of another person, the commission may set the results of the CBP or the CBP itself for hearing.

Section 4901:1-35-10(A) – This section implements SB 221's requirement that the Commission perform an annual excessive earnings review for utilities that have an ESP in place. The excessive earnings test is intended to determine whether the utility

over-recovered its costs plus its allowed rate of return through its ESP, and therefore goes hand in hand with the question whether customers were charged just and reasonable rates. The excessive earnings test by itself, however, might not tell the whole story about the ESP, and in some cases the Commission might have to look beyond the earnings test to determine whether the ESP has produced and will continue to produce just and reasonable rates. The rule should recognize this, and explicitly provide that the electric utility will demonstrate that its ESP produced just and reasonable rates during the period of review in its annual filing and will continue to do so. Nucor recommends that the section be revised as follows:

Within ninety days after the end of each annual period of an electric utility's electric security plan (ESP), the electric utility will make a separate filing with the commission demonstrating whether the ESP produced just and reasonable rates and will continue to do so and whether or not any rate adjustments authorized by the commission as part of the electric utility's ESP resulted in excessive earnings during the review period as measured by division (F) of section 4928.143 of the Revised Code. The electric utility's filing shall include the information set forth in appendix B to rule 4901:1-35-03 of this chapter as it relates to excessive earnings.

Section 4901:1-35-10(B) – This section addresses the right of parties to file comments on the electric utility's annual ESP review filing. This section should be revised to make clear that parties will have the right to conduct discovery on the electric utility's filing. Further, Nucor recommends that the time period for comments on the annual filing should be extended from thirty days to sixty days, to give parties adequate time to analyze the electric utility's filing and to conduct discovery if necessary:

Any person may file discovery on the electric utility's report after it is filed. Responses to any discovery will be due within ten calendar days unless additional time is permitted by an entry. Any person may file comments to on the electric utility's filing made pursuant to paragraph (A) of this rule within ~~thirty~~ sixty days of the filing.

Section 4901:1-35-10(C) – The Commission should consider whether the ESP produced just and reasonable rates when it performs its annual review of an electric utility's ESP, for the same reasons discussed above with respect to section 4901:1-35-10(A). Accordingly, section 4901:1-35-10(C) should be revised as follows:

Based upon the above filings, if the commission finds that there are reasonable grounds that such adjustments, in the aggregate, may have resulted in significant excess earnings for the electric utility, or if the commission otherwise finds that the ESP may not have produced or continue to produce just and reasonable rates, the commission may set the matter for hearing.

Section 4901:1-35-11(D)(5) – Section 4901:1-35-11(D) addresses the annual report that must be filed with the Commission by an electric utility with a CBP plan without a blending period. Electric utilities that have a CBP plan without a blending period in place will be obtaining 100% of its SSO supply from the market. Given this, it is critical that the Commission ensure that the markets are functioning properly and that just and reasonable rates result from the CBP. Nucor recommends that this section be revised to make clear that parties will have an opportunity to review and conduct discovery on the electric utility's annual report, and can petition the Commission for a hearing on the CBP. The electric utility's annual CBP report will be the only regular opportunity to look back on how the CBP performed, and for the Commission to determine, based on that performance, whether changes should be made to the CBP going forward. The opportunity for customers to review and provide input on the annual report is therefore essential.

Any person shall have the opportunity to review and conduct discovery on the report, may file comments with the commission, and may petition the commission for a hearing on the CBP. The commission, legal director, deputy legal director, or attorney examiner shall determine the level of

review required for any information, plans, or requests set forth in the annual CBP report, and set any necessary schedules through an entry.

2. Appendix A – Requirements for Market-Rate Offers

Section (B)(1) – In Nucor’s view, a threshold question for the Commission before it approves an MRO proposal should be, does a competitive market for generation currently exist in the service territory of the electric utility seeking approval of the MRO? Without a competitive market for generation, it is difficult to see how a CBP can produce just and reasonable rates. The electric utility should be required to demonstrate the existence of a competitive market in its MRO filing, and this requirement should be reflected in the rules.

A complete description of the CBP plan and testimony explaining and supporting each aspect of the CBP plan, including a demonstration of the existence of competitive generation markets necessary to ensure that the rates resulting from the CBP are just and reasonable.

Proposed New Section (B)(10) – Under SB 221, some restrictions on customer shopping may be tolerated in the case of an ESP (although Nucor cautions that the restrictions must be fully justified and should be limited to the degree possible). See Revised Code Section 4928.143(B)(2)(d). However, there is no comparable provision in the sections of the statute addressing the MRO. While doubt has been expressed over whether competitive generation markets actually exist in Ohio today,² the option for customers to shop for generation supply among competitive suppliers must be preserved if vibrant and fully competitive markets are to be achieved at some point down the road. It follows that there should be no restrictions on the ability of customers to shop for generation supply when the electric utility provides SSO service through an MRO, or at

² See, e.g., Comments of Public Utilities Commission of Ohio Staff in Case Nos. 07-796-EL-ATA and 07-797-EL-AAM (September 21, 2007).

least that any restrictions must be kept to an absolute minimum. The new section (B)(10) should provide:

A demonstration that the MRO will not limit, impede or otherwise negatively affect the ability of a customer to shop for retail electric generation and/or transmission service in lieu of purchasing power under the SSO.

3. Chapter 4901:1-38 – Special Arrangements

Section 4901:1-38-01(F) –The definition of “energy efficiency production facilities” should expressly include facilities that use predominantly recycled raw materials in their production processes. By definition, recycling recaptures lost energy from a used product, resulting in energy efficiency in comparison to using virgin raw materials. Nucor recommends the following revision to the definition to achieve this purpose:

“Energy efficiency production facilities” means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy; or any customer that uses recycled material as a majority of its raw materials.

Section 4901:1-38-01(H) – As currently proposed, the definition of “nonfirm electric service” refers to an interruptible schedule or arrangement whereby a customer is required to curtail or interrupt electric service “during nonemergency circumstances.” This definition is too narrow for a typical interruptible arrangement, whereby an interruptible customer may be interrupted or asked to curtail for both reliability and economic reasons. While it is true that a utility has the right to interrupt *all* customers (not just interruptible customers) in emergency situations to ensure reliability, it is also

true that interruptible customers will be interrupted or asked to curtail before any firm customers (so that the utility may avoid interrupting firm customers to the extent possible). The definition of nonfirm electric customer, therefore, should be revised to reflect both the reliability and economic components of interruptible service.

“Nonfirm electric service” means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage ~~during nonemergency circumstances~~ either for emergency/reliability or economic purposes or both, upon notification by the electric utility.

Section 4901:1-38-03(A)(2) – This section describes the eligibility criteria a customer must meet to qualify for an economic development schedule for new or expanding customers. Nucor proposes several changes to this section aimed at ensuring that new or expanding customers that provide economic benefits are not denied a special arrangement.

First, Nucor proposes that, in order to qualify for a special arrangement, a customer would have to demonstrate that the project will *create* twenty-five new jobs *and/or* have a fixed asset investment of at least \$500,000. This entails combining sections 4901:1-38-03(A)(2)(b), (c) and (d) as follows:

At least twenty-five new, full-time jobs with an annual hourly base wage rate of at least one hundred and fifty percent of federal minimum wage must be created within three years of initial operations or the project must have a fixed asset investment in land, building, machinery/equipment, and infrastructure of at least five hundred thousand dollars.

Combining these two requirements as alternatives for qualification makes sense because new or expanded projects may make operations more efficient, which might provide significant economic benefits without necessarily creating twenty-five new jobs (or any

new jobs, for that matter) at the facility. For example, if an existing customer wants to expand its facility to increase production or to improve the efficiency of its plant, that expansion could increase economic activity for related and surrounding businesses, and provide other economic development benefits for the community in which the plant is located, even if the expansion results in only five or ten new jobs being created at the plant itself. Further, a customer that makes its plant more efficient through investment in new technologies without necessarily meeting or exceeding the twenty-five new job threshold would be more likely to stay in operation longer than a similar plant that has not made comparable improvements. There is no reason why a customer that makes significant capital improvements to its facility in order to increase efficiency should be denied a special arrangement for economic development purposes (assuming it meets the other criteria) simply because it does not meet the twenty-five job threshold.

Second, Nucor recommends that current section 4901:1-38-03(A)(2)(f) (re-designated (d) in Nucor's attached redline of the proposed rules) be revised as follows:

The applicant must identify any available local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.

The purpose of this revision is to make clear that the applicant only has to provide information on other incentives actually available to the applicant.

Third, Nucor recommends the following revisions to current section 4901:1-38-03(A)(2)(h) (re-designated (f) in Nucor's attached redline of the proposed rules):

The applicant must agree to use commercially reasonable efforts to maintain operations at the project site for at least twice the term of the incentives. If operations at the project are not maintained, the applicant may no longer receive the incentives.

A business cannot be forced to remain in operation if it is not profitable. There is no way that a business can guarantee to maintain its operations for twice the term of the incentives, even if the term of the incentives is just one year. Such a guarantee by an applicant, therefore, would be meaningless. A better course is to require the applicant to use commercially reasonable efforts to maintain its operations, and to make clear in the rule that the incentives will stop if operations are not maintained.

Section 4901:1-38-03(B) – This section describes the requirements for economic development special arrangements aimed at job retention. Nucor also has a number of recommended improvements for this section.

First, as currently written, the proposed rule would allow a customer considering relocation to qualify for such an arrangement only if the customer is considering relocating outside the state. Nucor recommends that the proposed rule be revised to provide that a customer considering locating outside its utility's service territory could be eligible for a special job retention arrangement, rather than limiting the incentive to customers looking to relocate outside the state. Ohio's economic development goals should focus on retaining jobs (manufacturing jobs in particular) in the communities where those jobs currently exist, especially if those communities have fallen on hard economic times. A business that shuts its operations and moves to a different part of the state might cause severe economic harm to the community it is leaving, even though Ohio might not realize a net decrease in jobs as a result.

For this reason, the proposed rules should be revised to provide that a customer considering relocating its operations outside its utility's service territory should be

eligible to receive a job retention incentive rate. Nucor recommends the following revisions:

Each electric utility shall file an application for an economic development schedule for the retention of existing customers likely to cease, reduce operations, or relocate the operations out of ~~state~~ the utility's service territory.

- (de) The customer must demonstrate that the cost of electricity is a "major factor" in its decision to cease, reduce, or relocate its facilities to ~~an out-of-state site~~ out of the utility's service territory. ~~In-state relocations are not eligible.~~ If the customer has the potential to relocate to ~~an out-of-state site~~ a site outside of its utility's service territory, the site(s) must be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses, including, but not limited to, labor and taxes.

Second, Nucor recommends that current section 4901:1-38-03(B)(2)(d), which includes the 10% electricity-intensity requirement, be eliminated:

~~The electricity intensity of the operations (i.e., the ratio of the cost of electricity to the total operational expenses) must be at least ten percent.~~

The ratio of the cost of electricity to the total operational expenses at a facility might be less than 10%, but the cost of electricity might nevertheless be a "major factor" in the decision of a business to cut jobs, relocate, or shutter its operations (particularly in the case of a business with narrow profit margins). In short, the requirement in section 4901:1-38-03(B)(2)(e) that a customer demonstrate that the cost of electricity is a major factor in its decision to cease, reduce, or relocate its facilities subsumes the 10% electricity-intensity requirement, making that requirement unnecessary.

Third, Nucor recommends making the identical change for current section 4901:1-38-03(B)(2)(g) (re-designated as (f) in Nucor's attached redline of the proposed rules) as recommended above for sections 4901:1-38-03(A)(2)(h):

The customer must agree to use commercially reasonable efforts to maintain its current operations for the term of the incentives. If operations at the project are not maintained, the applicant may no longer receive the incentives.

Section 4901:1-38-04 – As currently drafted, rule 4901:1-38-04(A) addresses special arrangements available for energy efficiency production facilities “with loads not more than one thousand kilowatts.” Similarly, rule 4901:1-38-04(B) addresses an “energy efficiency schedule that recognizes the efforts by a customer with loads not more than one thousand kilowatts to reduce its electricity consumption per unit of production.” The 1000 KW in both of these rules appears to be arbitrary and would have the effect of making large energy efficiency production facilities ineligible for a special arrangement. Keeping such large customers on the sidelines would be ill-advised, especially considering the aggressive energy efficiency and demand response targets established under SB 221. *See* Revised Code Section 4928.66(A)(1)(a) (requiring distribution utilities to achieve cumulative annual savings from energy efficiency in excess of 22% by the end of 2025); Revised Code Section 4928.66(A)(1)(b) (requiring distribution utilities to implement peak demand reduction programs designed to achieve a 1% reduction in peak demand in 2009 and an additional seventy-five hundredths of 1% reduction each year through 2018). Accordingly the 1000 kw requirement in sections 4901:1-38-04(A) and (B) should be eliminated:

Section 4901:1-38-04(A)

Each electric utility shall file an application for commission approval for an energy efficiency schedule applicable to energy efficiency production facilities ~~with loads not more than one thousand kilowatts.~~

(2)(d) ~~The load must be for no more than one thousand kilowatts.~~

Section 4901:1-38-04(B)

The electric utility shall file an application for an energy efficiency schedule that recognizes the efforts by a customer ~~with loads not more than one thousand kilowatts~~ to reduce its electricity consumption per unit of production.

- (2)(b) ~~The average billing load must be no more than one thousand kilowatts.~~

In addition, several of the customer eligibility criteria for an energy efficiency special arrangement under section 4901:1-38-04(A) are similar to customer eligibility criteria for special economic development arrangements for new or expanding customers in section 4901:1-38-03(A)(2). For the same reasons discussed above, Nucor recommends that the following revisions be made to section 4901:1-38-04(A)(2):

- (b) at least ten new full-time jobs with an hourly base wage rate of one hundred and fifty percent of federal minimum wage must be created or retained within three years of initial operations or the project must have a fixed asset investment in land, building, machinery/equipment, and infrastructure of at least two hundred fifty thousand dollars.
- (dg) The applicant must identify available local (city, county), state or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
- (eh) The applicant must agree to use commercially reasonable efforts to maintain operations at the project site for at least ~~twice~~ the term of the incentives. If operations at the project are not maintained, the applicant may no longer receive incentives.

Section 4901:1-38-07(C) – This section requires that approved special arrangements be posted on the Commission's docketing information system and be made accessible through the Commission's web page. Nucor recommends the following revision in order to provide for appropriate safeguards for proprietary or confidential information:

Upon commission approval of an application, and subject to such protection for proprietary or confidential information as determined appropriate by the commission, the schedule or arrangement, as approved, shall be:

Section 4901:1-38-08(C) – This section addresses cost recovery for special arrangements in which incentives are given based upon cost savings to the electric utility, and as currently drafted it prohibits an electric utility from obtaining delta revenue recovery for these types of arrangements. Nucor agrees that in many of these cases, it might be inappropriate to provide electric utilities with delta revenue recovery. However, by categorically denying delta revenue recovery for these types of arrangements in the rule, the Commission is unnecessarily tying its hands and potentially discouraging the development of beneficial special arrangements. For example, there might be an arrangement that combines incentives based upon costs savings to the electric utility with other types of incentives for which delta revenue recovery might be appropriate. The better approach would be to leave cost recovery for special arrangements with incentives based upon cost savings to the electric utility up to the Commission for evaluation and consideration on a case-by-case basis. Accordingly, Nucor recommends the following revisions:

~~Any~~In the case of a special arrangement in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates), ~~are not subject to the~~ commission will determine whether any level of delta revenue recovery ~~mechanism~~ is appropriate.

B. Responses to Questions Posed by the Commission

- 1. Should the rules on the competitive bidding process (Proposed Rule 4901:1-35-03, Appendix A, Part (B)) provide for consideration of alternative products and approaches to conducting competitive bidding?**

Yes. Section 4928.142(A)(2) of the Revised Code provides that the Commission “shall modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualification of bidders, which rules shall foster supplier participation in the bidding process and shall be consistent with the requirements of division (A)(1) of this section.” Recognizing the broad grant of discretion given to the Commission by the General Assembly, and given that one type of competitive bidding process has not been demonstrated as superior to all others, the Commission should avoid being overly prescriptive when it comes to the competitive bidding rules. Therefore, the rule should allow all parties the flexibility to propose alternative products and approaches to conducting competitive bidding and should require the utility to evaluate and explain all of the possible alternative approaches it can identify, the pros and cons of each, and why it has selected the method(s) it proposes. The Commission should consider all proposals by all parties, and select the approach that provides the lowest cost to ratepayers and best safeguards competition.

2. **Should the Commission require consideration of the value of lost load in ensuring that customers’ and the electric utilities’ expectations are aligned as required by Section 4928.143(B)(2)(h) of the Revised Code?**

No comment at this time.

3. **Should the Commission by rule invite an electric utility to identify in an ESP specific long-term objectives (e.g., objectives related to the implementation of state policies or meeting standards contained in SB 221), together with milestones and metrics for measuring progress? If so, are there specific topics which should be addressed?**

Yes. For example, utilities should be required to demonstrate how they plan to meet state policy objectives for energy efficiency and demand response.

4. **With respect to an energy efficiency schedule based on a reduction in electricity consumption (proposed rule 4901:1-38-04(B)), how should the rules define the baseline level of customer energy consumption from which a reduction would be measured?**

The rule should not define the baseline, but rather leave the development of appropriate approaches for promotion of energy efficiency to each utility, which should be required to file its proposed approach for input by its customers and review by the Commission.

5. **Should special arrangements provided for in Chapter 4901:1-38 be applicable only to customers of an electric utility providing service pursuant to an electric security plan?**

No. Even if an electric utility does not have an ESP, it still may be providing generation service to customers under its MRO. There might be numerous ways an electric utility can develop a special arrangement for a customer that is taking generation service from the utility under the MRO, or from a competitive supplier. Categorically denying customers the opportunity to qualify for a special arrangement simply because the electric utility that serves that customer does not have an ESP runs counter to the very purpose of allowing special arrangements in the first place. Indeed, it might be customers whose only generation supply options are an SSO rate derived through an MRO or a competitive generation supplier who will be most in need of a special arrangement. Finally, there is no basis in the statute for limiting special arrangements to customers who take service from an electric utility with an ESP.

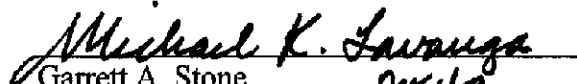
6. **Should there be a cap on the level of incentives for special arrangements authorized pursuant to Chapter 4901:1-38?**

No. It is better for the Commission to consider appropriate incentives on a case-by-case basis, rather than hardwiring a cap into the rules.

III. CONCLUSION

Nucor Marion respectfully requests that the Commission consider these comments and incorporate the revisions discussed herein into the proposed rules.

Respectfully submitted,


Garrett A. Stone
Michael K. Lavanga
E-Mail: gas@bbrslaw.com
E-Mail: mkl@bbrslaw.com
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
(202) 342-0800 (Main Number)
(202) 342-0807 (Facsimile)

per 4p authentication mkl

Attorneys for Nucor Steel Marion, Inc.

ATTACHMENT A

Redline Versions of Nucor Marion's Proposed Revisions to the Proposed Rules

Appendix A

Requirements for Market-Rate Offers

- (A) The following electric utility requirements are to be demonstrated in a separate section of the standard service offer (SSO) application proposing a market-rate offer (MRO):
- (1) The electric utility shall establish one of the following: that it, or its transmission affiliate, belongs to at least one regional transmission organization (RTO) that has been approved by the Federal Energy Regulatory Commission; or, if the electric utility or its transmission affiliate does not belong to an RTO, then the electric utility shall demonstrate that alternative conditions exist with regard to the transmission system, which include non-pancaked rates, open access by generation suppliers, and full interconnection with the distribution grid.
 - (2) The electric utility shall establish one of the following: that its RTO retains an independent market monitor that has the ability to identify any potential for a market participant to exercise market power in any energy, capacity, and/or ancillary service markets necessary for a winning bidder to fulfill the contractual obligations resulting from the CBP, whether such market is administered by the RTO or whether it is a bilateral market necessary for a winning bidder to fulfill the contractual obligations resulting from the CBP, by virtue of access to the RTO and the market participant's data and personnel, and that has the authority to mitigate the conduct of the market participants so as to prevent or preclude the exercise of market power by any market participant; or, if no such market monitor exists, the electric utility shall demonstrate that an equivalent function exists which can monitor, identify, and mitigate conduct associated with the exercise of market power.
 - (3) The electric utility shall demonstrate that an independent and reliable source of electricity pricing information for any product or service necessary for a winning bidder to fulfill the contractual obligations resulting from the CBP is publicly available. The information may be offered through a pay subscription service, but the pay subscription service shall be available to any person requesting it, and the information shall be sufficiently reliable and available for use in a proceeding before the commission. The published information shall be relevant to the electric utility's electricity market, and shall identify pricing of on-peak and off-peak energy products that represent contracts for delivery, encompassing a time frame beginning at least two years from the date of

the publication. The published information shall be updated on at least a monthly basis.

- (B) Prior to establishing an MRO under division (A) of section 4928.142 of the Revised Code, an electric utility shall file a plan for a competitive bidding process (CBP) with the commission. Each CBP plan that is to be used to establish an MRO shall include the following:
- (1) A complete description of the CBP plan and testimony explaining and supporting each aspect of the CBP plan, including a demonstration of the existence of competitive generation markets necessary to ensure that the rates resulting from the CBP are just and reasonable.
 - (2) Pro forma financial projections of the effect of the CBP plan's implementation upon generation, transmission, and distribution of the electric utility or its affiliates for the duration of the CBP plan.
 - (3) Projected generation, transmission, and distribution rate impacts by customer class and rate schedules for the duration of the CBP plan.
 - (4) Provisions for an open, fair, and transparent competitive solicitation of the generation services necessary to serve the customer load that is the subject of the CBP.
 - (5) Detailed descriptions of the customer load(s) to be served by the winning bidder(s), and any known factors that may affect customer loads. The descriptions shall include, at a minimum, load subdivisions defined for bidding purposes, load and rate class descriptions, customer load profiles that include historical hourly load data for each load and rate class for at least the two most recent years, applicable tariffs, historical shopping behavior, and plans for meeting targets pertaining to load reductions, energy efficiency, renewable energy, advanced energy, and advanced energy technologies.
 - (6) Detailed descriptions of the generation and related services that are to be provided by the winning bidder(s). The descriptions shall include, at a minimum, capacity, energy, transmission, ancillary and resource adequacy services, and the term during which generation and related services are to be provided. The descriptions shall clearly indicate which services are to be provided by the winning bidder(s) and which services are to be provided by the electric utility.

- (7) Draft copies of all forms, contracts, or agreements that must be executed during or upon completion of the CBP.
- (8) A clear description of the proposed methodology by which all bids would be evaluated, in sufficient detail so that bidders and other observers can ascertain the evaluated result of any bids or potential bids.
- (9) A clear description of the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electric utility.
- (10) A demonstration that the MRO will not limit, impede or otherwise negatively affect the ability of a customer to shop for retail electric generation and/or transmission service in lieu of purchasing power under the SSO.
- ~~(11)~~ (10) If applicable, a description of the electric utility's proposed blending of the CBP rates pursuant to division (D) of section 4928.142 of the Revised Code. The proposed blending shall show the generation service price(s) that will be blended with the CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending will be accomplished. The proposed blending shall show all adjustments, to be made on a quarterly basis, included in the generation service price(s) that the electric utility proposes for changes in costs of fuel, purchased power, portfolio requirements, and environmental compliance incurred during the blending period. The electric utility shall provide its best current estimate of anticipated adjustment amounts for the duration of the blending period, and compare the projected adjusted generation service prices under the CBP plan to the projected adjusted generation service prices under its proposed electric security plan.
- ~~(12)~~ (11) The electric utility's application to establish a CBP shall include such information as necessary to demonstrate whether or not, as of July 31, 2008, the electric utility directly owned, in whole or in part, operating electric generation facilities that had been used and useful in the state of Ohio.
- ~~(13)~~ (12) The CBP plan shall provide for funding of a consultant that may be selected by the commission to assess and report to the commission on the design of the solicitation, the oversight of the bidding process, the clarity of the product definition, the fairness, openness, and transparency of the solicitation and bidding process, the market factors that could affect the solicitation, and other relevant criteria as directed by the commission.

- (~~1413~~) The electric utility may propose, as part of its CBP plan, a portfolio approach to the procurement of SSO generation supply, including such aspects as staggered procurements and spot solicitations during peak periods.
- (~~1514~~) The initial filing of a CBP plan shall include a detailed account of how the plan achieves the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include how the state policy is advanced by the plan.
- (C) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the Commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the Commission pursuant to Chapter 4901:1-37 of the Administrative Code.
- (D) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I) and (J) of section 4928.20 of the Revised Code.

Chapter 4901:1-35

Electric Utility Standard Service Offer

- 4901:1-35-01 Definitions.
- 4901:1-35-02 Purpose and scope.
- 4901:1-35-03 Filing and contents of applications.
 - Appendix A
 - Appendix B
- 4901:1-35-04 Service of application.
- 4901:1-35-05 Technical conference.
- 4901:1-35-06 Hearings.
- 4901:1-35-07 Discoverable agreements.
- 4901:1-35-08 Competitive bidding process requirements and use of independent third party.
- 4901:1-35-09 Electric security plan fuel and purchased power adjustments.
- 4901:1-35-10 Annual review of electric security plan.
- 4901:1-35-11 Competitive bidding process ongoing review and reporting requirements.

4901:1-35-01 Definitions.

- (A) "Application" means an application for standard service offer pursuant to this chapter.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Competitive bidding process" means a bidding process established pursuant to section 4928.142 of the Revised Code.
- (D) "Electric utility" has the same meaning as in division (A)(11) of section 4928.01 of the Revised Code.
- (E) "Electric security plan" means an electric utility plan for the supply and pricing of electric generation service pursuant to section 4928.143 of the Revised Code.
- (F) "Market development period" has the meaning set forth in division (A)(17) of section 4928.01 of the Revised Code.
- (G) "Market-rate offer" means an electric utility plan for the supply and pricing of electric generation service pursuant to section 4928.142 of the Revised Code.
- (H) "Person" has the same meaning as in division (A)(24) of section 4928.01 of the Revised Code.
- (I) "Rate plan" means an electric utility's standard service offer approved by the commission prior to January 1, 2009 that established rates for electric service at the expiration of an electric utility's market development period.
- (J) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.
- (K) "Staff" means the staff of the commission or its authorized representative.

4901:1-35-02 Purpose and scope.

- (A) Pursuant to division (A) of section 4928.141 of the Revised Code, beginning January 1, 2009, each electric utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain

a reasonable supply of essential electric service to consumers, including but not limited to a firm supply of electric generation and transmission service. Pursuant to this chapter, an electric utility shall file an application for commission approval of an SSO. Such application shall be in the form of an electric security plan or market rate offer pursuant to sections 4928.142 and 4928.143 of the Revised Code. The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.

- (B) The commission may waive any requirement of Chapter 4901:1-35 of the Administrative Code for good cause shown.

4901:1-35-03 Filing and contents of applications.

Each electric utility in this state filing an application for a standard service offer (SSO) in the form of an electric security plan (ESP), a market-rate offer (MRO), or both, shall comply with the requirements set forth in this rule.

- (A) SSO applications shall be case captioned as (XX-XXX-EL-SSO). Twenty copies plus an original of the application shall be filed. The application must include a complete set of testimony of the electric utility personnel or other expert witnesses. This testimony shall be in question and answer format and shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.
- (B) An SSO application that contains a proposal for an MRO shall comply with the requirements of appendix A to this rule. An SSO application that contains a proposal for an ESP shall comply with the requirements of appendix B to this rule.
- (C) The first application for an SSO by each electric utility shall include an ESP and shall be filed at least one hundred fifty days before the electric utility proposes to have such SSO in effect. The first application may also include a proposal for an MRO. First applications that are filed with the commission prior to the effective date of this rule and that are determined by the commission to be not in substantive compliance with this rule, shall be refiled at the direction of the commission. The commission shall endeavor to make a determination on an application that substantively conforms to the requirements of this rule within one hundred fifty days of the filing of such complete application. The commission shall determine when the approved SSO rates will take effect, but in no case will SSO rates take effect earlier than ninety days after the rates have been approved.

- (D) Subsequent applications for an SSO may include an ESP and/or MRO; however, an ESP may not be proposed once the electric utility has implemented an MRO approved by the commission. An SSO application that contains a proposal for an MRO shall comply with the requirements of appendix A to this rule. An SSO application that contains a proposal for an ESP shall comply with the requirements of appendix B to this rule.
- (E) The SSO application must demonstrate how the electric utility will reasonably transition from its existing rate structures to the rate structures proposed in the SSO and how this transition is expected to impact customers (in the case of the first SSO application, the existing rates shall mean rates in effect prior to July 1, 2008 that include generation, transmission, and distribution costs). The electric utility shall demonstrate how its proposed SSO will achieve the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code, and shall provide for the inclusion of rates and rate options designed to provide accurate price signals to rate payers and encourage energy efficiency and demand response, including, but not limited to, interruptible rates, real-time pricing, time-of-use pricing, and critical peak pricing. At minimum, the SSO must provide for emergency/reliability and economic interruptible rate options, based on the long-term avoided cost of capacity and the avoided cost of energy, and time-of-use rate options.
- (FE) The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and achieves the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. If any waivers of the corporate separation plan have been granted and are to be continued, the applicant shall justify the continued need for those waivers.
- (GF) A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, any and all documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers shall be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.
- (HG) All schedules, tariff sheets, and work papers included in the application must be available in spreadsheet, word processing, or an electronic non-image-based format compatible with personal computers. The electronic form does not have to be filed with the application but must be made available within two business days to staff and any intervening party that requests it.

4901:1-35-04 Service of application.

- (A) Concurrent with the filing of a standard service offer (SSO) application and the filing of any waiver requests, the electric utility shall provide notice of proposed filings to each party in its most recent SSO or, if this is its first SSO filing, then its last rate plan proceeding. At a minimum, that notice shall state that a copy of the application and any waiver requests are available through the electric utility's and commission's web sites, available at the electric utility's main office, available at the commission's offices, and any other sites at which the electric utility will maintain a copy of the application and any waiver requests.
- (B) The electric utility shall provide copies of the application upon request, without cost, and within a reasonable period of time.

4901:1-35-05 Technical conference.

Upon filing of a standard service offer (SSO) application, the commission, legal director, deputy legal director, or attorney examiner shall schedule a technical conference. The purpose of the technical conference is to allow interested persons an opportunity to better understand the electric utility's application. The electric utility will have the necessary personnel in attendance at this conference so as to explain, among other things, the structure of the filing, the work papers, the data sources, and the manner in which methodologies were devised. The conference will be held at the commission offices, unless the commission, legal director, deputy legal director, or attorney examiner determines otherwise.

4901:1-35-06 Hearings.

- (A) After the filing of a standard service offer application that conforms with the commission's rules, the commission shall set the matter for hearing and shall publish notice of the hearing one time in a newspaper of general circulation in each county in the electric utility's certified territory. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable and achieve the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code shall be upon the electric utility.
- (B) Interested persons wishing to participate in the hearing shall file a motion to intervene no later than thirty days after the issuance of the entry scheduling the hearing, unless ordered otherwise by the commission, legal director, deputy legal director, or attorney examiner. This rule does not prohibit the filing of a

motion to intervene and conducting discovery prior to the issuance of an entry scheduling a hearing. Parties shall respond to discovery requests in SSO proceedings within ten calendar days unless granted additional time in an entry.

4901:1-35-07 Discoverable agreements.

Upon submission of an appropriate discovery request during a proceeding establishing or relating to a standard service offer, an electric utility shall make available to the requesting party every contract or agreement that is: (a) between the electric utility or any of its affiliates and a party to the proceeding, consumer, electric service company, or political subdivision and that is relevant to the proceeding, (b) between an electric utility and any of its affiliates, or (c) between an electric utility and any supplier of generation, transmission or ancillary services, subject to such protection for proprietary or confidential information as is determined appropriate by the commission.

4901:1-35-08 Competitive bidding process requirements and use of independent third party.

- (A) An electric utility proposing a market-rate offer in its standard service offer application, pursuant to section 4928.142 of the Revised Code, shall propose a plan for a competitive bidding process (CBP). The CBP plan shall comply with the requirements set forth in appendix A to rule 4901:1-35-03 of this chapter. The electric utility shall use an independent third party to design an open, fair, and transparent bid solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The selection of the independent third party shall be reviewed and approved by the commission. The independent third party shall be accountable to the commission for all design, process, and oversight decisions. Any modifications or additions to the CBP made by the independent third party shall be submitted to staff prior to implementation. The independent third party shall incorporate into the solicitation such measures as the Commission or its staff may prescribe, and shall incorporate into the bidding process any direction the Commission may provide.
- (B) Immediately upon the completion of the bidding process, the independent third party shall submit a report to the commission summarizing the results of the CBP. The report shall be made available at the same time to all interested persons. The report shall include, but not be limited to, the following items:
 - (1) A description of the conduct of the bidding process, including a discussion of any aspects of the process that could have adversely affected the

outcome, including whether the independent third party observed any market manipulation or anticompetitive behavior.

- (2) The level(s) of oversubscription for each product.
 - (3) The number of bidders for each product.
 - (4) The percentage of each product that was bid upon by persons other than the electric utility.
 - (5) The independent third party's evaluation of the submitted bids.
 - (6) The independent third party's final recommendation of the least cost winning bidder(s).
 - (7) A listing of the retail rates that would result from the least cost winning bids, along with any descriptions, formulas, and/or tables necessary to demonstrate how the conversion from winning bid(s) to retail rates was accomplished.
- (C) The electric utility shall provide access to staff and any consultant hired by the commission to assist in review of the CBP of any and all data, information, and communications pertaining to the bidding process, on a real time basis, regardless of the confidential nature of such data and information.
- (D) The commission shall make the final selection of the least-cost winning bidder(s) of the CBP. The commission may rely upon the information provided in the independent third party's report in making its selection of the least-cost winning bidder(s) of the CBP. The commission may reject the results of the CBP if it determines that the CBP is not the result of a competitive market or that it will not result in just and reasonable rates. Upon its own motion or a motion of another person, the commission may set the results of the CBP or the CBP itself for hearing.

4901:1-35-09 Electric security plan fuel and purchased power adjustments.

- (A) Each electric utility for which the commission has approved an electric security plan (ESP) which includes automatic adjustments under division (B)(2)(a) of section 4928.143 of the Revised Code shall file for such adjustments in accordance with the provisions of this rule.

- (B) The electric utility shall calculate a proposed quarterly adjustment based on projected costs by filing an application four times per year. The staff shall review the quarterly filing for completeness and computational accuracy. If staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date. Although rates are to be adjusted and provided on a quarterly basis, the cost information shall be summarized monthly.
- (C) On an annual basis, the prudence of the costs incurred and recovered through quarterly adjustments shall be reviewed in a separate proceeding outside of the automatic recovery provision of the electric utility's ESP. The process and timeframes for that separate proceeding shall be set by order of the commission, the legal director, deputy legal director, or attorney examiner.
- (D) The commission may order that consultants be hired, with the costs billed to the electric utility, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments.

4901:1-35-10 Annual review of electric security plan.

- (A) Within ninety days after the end of each annual period of an electric utility's electric security plan (ESP), the electric utility shall make a separate filing with the commission demonstrating whether the ESP produced just and reasonable rates and will continue to do so and whether or not any rate adjustments authorized by the commission as part of the electric utility's ESP resulted in excessive earnings during the review period as measured by division (F) of section 4928.143 of the Revised Code. The electric utility's filing shall include the information set forth in appendix B to rule 4901:1-35-03 of this chapter as it relates to excessive earnings.
- (B) Any person may file discovery on the electric utility's report after it is filed. Responses to any discovery will be due within ten calendar days unless additional time is permitted by an entry. Any person may file comments to on the electric utility's filing made pursuant to paragraph (A) of this rule within ~~thirty~~ sixty days of the filing.
- (C) Based upon the above filings, if the commission finds that there are reasonable grounds that such adjustments, in the aggregate, may have resulted in significant excess earnings for the electric utility, or if the commission otherwise finds that the ESP may not have produced or continue to produce just and reasonable rates, the commission may set the matter for hearing.

4901:1-35-11 Competitive bidding process ongoing review and reporting requirements.

- (A) The initial MRO implemented by each electric utility subject to the provisions of division (D) of section 4928.142 of the Revised Code shall include a blended price for electric generation services.
- (B) Once a competitive bidding process (CBP) plan subject to a price blending period is approved by the commission pursuant to section 4928.142 of the Revised Code, the electric utility shall file its proposed adjustments to the standard service offer (SSO) portion of the blended rates of its CBP in a filing to the commission on a quarterly basis (quarterly filing) for the duration of the price blending period of the CBP plan, on specific dates to be determined by the commission.
 - (1) The quarterly filing shall include a separate listing of each cost or cost component including costs for fuel, purchased power, portfolio requirements, and environmental compliance, in comparison with the costs or cost components included in the most recent SSO and the previously existing level of each cost. Any offsetting benefits, as defined in division (D) of section 4928.142 of the Revised Code, obtained in the specified cost areas shall be listed separately and be used to reduce the cost levels requested for recovery. Rates are to be adjusted on a quarterly basis. The cost information shall consist of monthly data submitted on a quarterly basis.
 - (2) The quarterly filing shall include any descriptions, formulas, and/or tables necessary to show how the adjusted cost levels are translated into blended CBP rates.
 - (3) The electric utility shall provide projections, in its quarterly filing, of any impacts that the proposed adjustments will have on its return on common equity.
 - (4) The staff shall review the quarterly filing for completeness and computational accuracy. If the staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date.
 - (5) On an annual basis, or other basis as determined by the commission, the prudence of the costs incurred and recovered through quarterly adjustments to the electric utility's SSO portion of the blended rates shall be reviewed. The commission shall determine the frequency of the review and shall establish a schedule for the review process. The commission may order that consultants be hired, with the cost to be billed to the company, to conduct

prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments.

- (C) If the CBP plan is approved by the commission subject to a price blending period, approximately one year after filing the CBP plan, and annually thereafter for the duration of the price blending period of the CBP plan, on dates to be determined by the commission, the electric utility shall file an annual status report on its CBP.
- (1) The annual status report shall provide a general statement about the operation of the CBP to date. The annual status report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP service and the resulting blended rates on the electric utility's customers.
 - (2) The annual status report shall describe any defaults and/or other difficulties encountered in obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.
 - (3) The annual status report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated and/or known for the following year.
 - (4) The annual status report shall describe the financial condition of the electric utility, its current return on common equity, and the return on common equity of publicly traded companies that face comparable business and financial risk. The electric utility shall show that its earnings under the price blending period have not been significantly excessive as compared with similarly situated companies. Information submitted by the electric utility shall include, but not be limited to, balance sheet information, income statement information, and capital budget requirements for future investments in Ohio. This information should be provided for generation, transmission, and distribution for the electric utility and its affiliates, as well as functionalized as to distribution, transmission, and generation activities. Additionally, the electric utility shall provide testimony and analysis demonstrating the return on equity that was earned by publicly traded companies that face comparable business and financial risks as the electric utility.
 - (5) If in an emergency situation the electric utility claims that its financial integrity is threatened by the operation of the CBP price blending period, it

shall demonstrate its claim through information and data filed in its annual status report.

- (6) The electric utility shall discuss, in its annual status report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.
 - (7) The annual status report shall describe the blended phase-in rates projected to be charged to its customers under the continuation of the CBP plan, as modified pursuant to paragraph (B)(6) of this rule. The rate projections shall show the existing and projected generation service price(s) blended with the CBP determined rates and projected CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending is accomplished. The projected blended phase-in rates shall be compared in the annual status report to the existing blended phase-in rates.
 - (8) The annual report shall include a status report of the market conditions necessary and prerequisite for a utility to propose an MRO - namely, whether prices for each service necessary for a winning bidder to fulfill its contractual obligations resulting from the CBP are published for at least two years in the future, whether the electric utility or its affiliate still belongs to an RTO, and whether the RTOs market monitoring function has mitigation authority over the transactions resulting from the CBP.
 - (9) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual status report, and set any necessary schedules through an entry.
- (D) If the CBP plan is approved by the commission without the requirement of a price blending period, or after the expiration of any such required price blending period, on an annual basis, on dates to be determined by the commission, the electric utility shall file an annual CBP report with the commission.
- (1) The annual CBP report shall provide a general statement about the operation of the CBP to date. The annual CBP report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP on the electric utility's customers' rates.

- (2) The annual CBP report shall describe any defaults or other difficulties encountered in obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.
- (3) The annual CBP report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated or known for the following year.
- (4) The electric utility shall discuss, in its annual CBP report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.
- (5) Any person shall have the opportunity to review and conduct discovery on the report, may file comments with the commission, and may petition the commission for a hearing on the CBP. The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual CBP report, and set any necessary schedules through an entry.

Chapter 4901:1-38

Special Arrangements

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4901:1-38-01 Definitions.

- (A) "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Delta revenue" means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any economic development schedule, energy efficiency schedule, or unique arrangement.
- (D) "Economic Development," for the purpose of this chapter, includes, but is not limited to, incremental job creation, job retention, incremental capital investment, incremental or retained load, and incremental or retained benefits (e.g., local and state tax dollars, employment from business opportunities related to the core business of the customer).
- (E) "Electric utility" has the same meaning as in division (A)(11) of section 4928.01 of the Revised Code.
- (F) "Energy efficiency production facilities" means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy; or any customer that uses recycled material as a majority of its raw materials.
- (G) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.
- (H) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances either for emergency/reliability or economic purposes or both, upon notification by the electric utility.

- (I) "Staff" means the staff of the commission or its authorized representative.

4901:1-38-02 Purpose and scope.

- (A) The purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency and to provide means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates in furtherance of the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (B) The commission may waive any requirement of Chapter 4901:1-38 of the Administrative Code for good cause shown.

4901:1-38-03 Economic development schedule.

- (A) Each electric utility shall file an application for commission approval for an economic development schedule applicable to new or expanding customers.
- (1) The filing shall include a standard application form for customers.
- (2) Each customer applying for the schedule must meet the criteria set forth in paragraphs (a) to (h) below and must submit to the electric utility verifiable information detailing how the criteria are met, and must provide an affidavit from a company official as to the veracity of the information provided.
- (a) Eligible projects must be for non-retail purposes.
- (b) At least twenty-five new, full-time jobs with an annual hourly base wage rate of at least one hundred and fifty percent of federal minimum wage must be created within three years of initial operations or the project must have a fixed asset investment in land, building, machinery/equipment, and infrastructure of at least five hundred thousand dollars.
- ~~(c) The average hourly base wage rate of the new, full-time jobs must be at least one hundred fifty per cent of federal minimum wage.~~

- ~~(d) The project must have a fixed asset investment in land, building, machinery/equipment, and infrastructure of at least five hundred thousand dollars.~~
 - (ce) The applicant must demonstrate financial viability.
 - (df) The applicant must identify any available local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - (eg) The applicant must identify potential secondary and tertiary benefits resulting from its project including, but not limited to, local/state tax dollars and related employment or business opportunities resulting from the location of the facility.
 - (fh) The applicant must agree to use commercially reasonable efforts to maintain operations at the project site for at least twice the term of the incentives. If operations at the project are not maintained, the applicant may no longer receive the incentives.
- (B) Each electric utility shall file an application for an economic development schedule for the retention of existing customers likely to cease, reduce operations, or relocate the operations out of ~~state~~ the utility's service territory.
- (1) The filing shall include a standard application form for customers.
 - (2) Each customer applying with the utility for the schedule must meet the criteria set forth in paragraphs (a) to (g) below, must submit to the electric utility verifiable information detailing how the criteria are met, and must provide an affidavit from a company official as to the veracity of the information provided.
 - (a) Eligible projects must be for non-retail purposes.
 - (b) The number of full-time jobs to be retained must be at least twenty-five.
 - (c) The average billing load (in kilowatts to be retained) must be at least two hundred fifty kilowatts.
 - (d) ~~The electricity intensity of the operations (i.e., the ratio of the cost of electricity to the total operational expenses) must be at least ten per cent.~~

- (de) The customer must demonstrate that the cost of electricity is a "major factor" in its decision to cease, reduce, or relocate its facilities to an out-of-state site out of the utility's service territory. ~~In-state relocations are not eligible.~~ If the customer has the potential to relocate to an out-of-state site a site outside of its utility's service territory, the site(s) must be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses including, but not limited to, labor and taxes.
 - (ef) The customer must identify any other local, state, or federal assistance sought and/or received in order to maintain its current operations.
 - (fg) The customer must agree to use commercially reasonable efforts to maintain its current operations for the term of the incentives. If operations at the project are not maintained, the applicant may no longer receive the incentives.
- (C) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall remain confidential by the electric utility. Nonetheless, the name and address of customers eligible for the schedules shall be public information.
 - (D) The staff shall have access to all customer and electric utility information related to service provided pursuant to these schedules for periodic and random audits.

4901:1-38-04 Energy efficiency schedule.

- (A) Each electric utility shall file an application for commission approval for an energy efficiency schedule applicable to energy efficiency production facilities ~~with loads not more than one thousand kilowatts.~~
- (1) The filing shall include a standard application form for customers.
- (2) Each customer applying with the utility for the schedule must meet the criteria set forth in paragraphs (a) to (h) below and must submit to the electric utility verifiable information detailing how the criteria are met, and must provide an affidavit from a company official as to the veracity of the information provided.

- (a) The customer must be an energy efficiency production facility as defined in this chapter.
 - (b) At least ten ~~new~~, full-time jobs with an hourly base wage rate of one hundred and fifty percent of federal minimum wage must be created or retained within three years of initial operations or the project must have a fixed asset investment in land, building, machinery/equipment, and infrastructure of at least two hundred fifty thousand dollars.
 - ~~(c) The average hourly base wage rate of the new, full time jobs must be at least one hundred fifty per cent of federal minimum wage.~~
 - ~~(d) The load must be for no more than one thousand kilowatts.~~
 - ~~(e) The project must have a fixed asset investment in land, building, machinery/equipment, and infrastructure of at least two hundred fifty thousand dollars.~~
 - (cf) The applicant must demonstrate financial viability.
 - (dg) The applicant must identify available local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - (eh) The applicant must agree to use commercially reasonable efforts to maintain operations at the project site for at least twice the term of the incentives. If operations at the project are not maintained, the applicant may no longer receive incentives.
- (B) The electric utility shall file an application for an energy efficiency schedule that recognizes the efforts by a customer ~~with loads not more than one thousand kilowatts~~ to reduce its electricity consumption per unit of production.
- (1) The filing shall include a standard application form for customers.
 - (2) Each customer applying with the utility for the schedule must meet the criteria set forth in paragraphs (a) to (e) below and must submit to the electric utility verifiable information detailing how the criteria are met, and must provide an affidavit from a company official as to the veracity of the information provided.
- (a) Eligible projects must be for manufacturing.

- ~~(b) The average billing load must be no more than one thousand kilowatts.~~
 - (be) The customer must identify its capital investments and expenses related to energy efficient measures.
 - (cd) The customer must provide sufficient financial data to illustrate that it has reduced its electricity consumption per unit of production.
 - (de) The customer must agree that the electric utility may count the reduction in electricity consumption attributable to its investments and expenses toward its energy efficiency targets as set forth in section 4928.66 of the Revised Code.
- (C) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall remain confidential by the electric utility. Nonetheless, the name and address of customers eligible for the schedules shall be public information.
- (D) The staff shall have access to all customer and electric utility information related to service provided pursuant to these schedules for periodic and random audits.

4901:1-38-05 Unique arrangements.

- (A) Notwithstanding rules 4901:1-38-03 and 4901:1-38-04 of this chapter, an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a reasonable arrangement with one or more of its customers, consumers, or employees.
- (1) An electric utility filing an application for commission approval of a reasonable arrangement with one or more of its customers, consumers, or employees bears the burden of proof as to the reasonableness of the arrangement and shall submit to the commission verifiable information detailing the rationale for the arrangement.
 - (2) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
 - (3) The arrangement is subject to change, alteration, or modification by the commission.

- (B) A mercantile customer, or a group of mercantile customers, of an electric utility may apply to the commission for a reasonable arrangement with the electric utility.
 - (1) Each customer applying for an arrangement bears the burden of proof as to the reasonableness of the arrangement and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement.
 - (2) The customer shall provide an affidavit from a company official as to the veracity of the information provided.
 - (3) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
 - (4) The arrangement is subject to change, alteration, or modification by the commission.
- (C) Reasonable arrangements must reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.

4901:1-38-06 Reporting requirements.

- (A) Each customer served under any schedule or unique arrangement established pursuant to this chapter must submit an annual report to the electric utility no later than April 30th of each year. The format of that report shall be determined by the electric utility and staff such that a determination of the compliance with the eligibility criteria can be determined.
- (B) The burden of proof to demonstrate on-going compliance with the schedule or unique arrangement lies with the customer. The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and submit such summary to staff for review and audit no later than June 15th of each year.

4901:1-38-07 Level of incentives.

- (A) The level of the incentives associated with any schedule or unique arrangement established pursuant to this chapter shall be determined as part of the

commission's review and approval of the applications filed pursuant to this chapter.

- (B) Incentives may be based on, but not limited to:
 - (1) Demand discounts.
 - (2) Percentages of total bills, or portions of bills.
 - (3) Direct contributions.
 - (4) Reflections of cost savings to the electric utility.
 - (5) Shared savings.
 - (6) Some combination of the required criteria.
- (C) Upon commission approval of an application, and subject to such protection for proprietary or confidential information as determined appropriate by the commission, the schedule or arrangement, as approved, shall be:
 - (1) Posted on the commission's docketing information system.
 - (2) Accessible through the commission's web page.
 - (3) Under the supervision and regulation of the commission, and subject to change, alteration, or modification by the commission.
- (D) No customer shall be provided incentives from more than one schedule or arrangement approved by the commission pursuant to this chapter.

4901:1-38-08 Revenue recovery.

- (A) Each electric utility may apply for a rider for the recovery of certain costs associated with its delta revenue in accordance with the following:
 - (1) The rider is subject to commission approval.
 - (2) The rider may be updated, by application to the commission, semi-annually by the electric utility. All data submitted in support of the rider update is subject to commission review and audit.

- (3) The approval of the request for revenue recovery, including the level of such recovery, is at the commission's discretion and the application is subject to change, alteration or modification by the commission.
- (4) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
- (B) The electric utility may request recovery of administrative costs related to the programs as part of the rider. Such request is subject to audit, review and approval by the commission.
- (C) ~~Any~~ In the case of a special arrangement in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates) are not subject to the commission will determine whether any level of delta revenue recovery mechanism is appropriate.
- (D) The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change, alteration, or modification by the commission.

4901:1-38-09 Failure to comply.

- (A) If the customer being provided with service pursuant to a schedule or unique arrangement established pursuant to this chapter fails to substantially comply with any of the criteria for eligibility, the electric utility after reasonable notice to the customer shall terminate the arrangement unless otherwise ordered by the commission.
- (B) The commission may also direct the electric utility to charge the customer for all or part of the incentives previously provided by the electric utility.
- (C) If the customer is required to pay for all or part of the incentives previously provided, such amounts shall be reflected in the calculation of the revenue recovery rider established pursuant to rule 4901:1-38-08 of this chapter.