

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for)	
Alternative and Renewable Energy)	
Technologies and Resources, and Emission)	
Control Reporting Requirements, and)	
Amendments of Chapters 4901:5-1, 4901:5-3,)	Case No. 08-888-EL-ORD
4901:5-5, and 4901:5-7 of the Ohio)	
Administrative Code, pursuant to Chapter)	
4928, Revised Code, to Implement Senate Bill)	
No. 221.)	

REPLY COMMENTS OF NUCOR STEEL MARION, INC.

In accordance with the Entry issued on August 20, 2008 by the Public Utilities Commission of Ohio (the "Commission") in the above-captioned proceeding, Nucor Steel Marion, Inc. ("Nucor") submits these reply comments in response to comments filed by various parties on the Commission Staff's proposed rules to implement Amended Senate Bill No. 221 ("SB 221"). Nucor submitted initial comments on Staff's proposed rules on September 9, 2008.

I. GENERAL COMMENTS

The Industrial Energy Users-Ohio ("IEU-Ohio") recommend that the proposed rules state that compliance with SB 221's energy efficiency, demand reduction and alternative energy mandates are applicable to an electric distribution utility ("EDU") regardless of whether the EDU is operating under a market rate option ("MRO") or an electric security plan ("ESP"). Nucor agrees with IEU-Ohio's recommendation. SB 221 is clear that these mandates must be met regardless of whether an EDU has an MRO or

an ESP (*see* Revised Code Section 4928.64(B)), and the rules should be clarified to reflect this statutory requirement.

II. COMMENTS ON SPECIFIC PROPOSED RULES

4901:1-39-01(A) – This proposed section defines “demand response.” In its initial comments, Nucor suggested the following revisions to this definition:

“Demand response” means a change in customer behavior or a change in customer owned or operated assets that effects the quantity and/or timing of electricity consumed as a result of price signals or other incentives. Demand response can reduce kilowatts of demand and/or kilowatt-hours of energy usage. Demand response includes participation in various interruptible programs, emergency/reliability interruption, economic interruption or reduction of customer load, peak demand reduction, and may include certain types of energy conservation.

Several other parties proposed revisions to the Staff definition. After review of the comments of other parties, Nucor wishes to propose one additional change to the definition of “demand response.” Following is the Staff proposed definition, as modified by Nucor in its initial comments, with the additional change highlighted:

“Demand response” means a change in customer behavior or a change in customer owned or operated assets that effects the quantity and/or timing of electricity consumed as a result of price signals or other incentives. Demand response can reduce kilowatts of demand and/or kilowatt-hours of energy usage. Demand response includes participation in various interruptible programs, emergency/reliability interruption **under an interruptible program or rate**, economic interruption or reduction of customer load, peak demand reduction, and may include certain types of energy conservation.

The additional language makes clear that emergency/reliability interruptions *under an interruptible program or rate* (as opposed to involuntary load interruptions in the case of an emergency, such as a blackout) will be included in the definition of demand response. Nucor believes that this concept is already included in the definition as proposed by Staff, but that the proposed revision simply makes the definition more clear.

The definitions of demand response proposed by other parties in their initial comments generally are not inconsistent with the definition Nucor has proposed, and Nucor is of the opinion that, for the most part, the elements other parties proposed to add to Staff's definition are subsumed under the Staff definition as modified by Nucor. The Commission should adopt Staff's proposed definition of demand response, as modified by Nucor in its initial comments and herein.

4901:1-39-05(A)(2) – This proposed rule provides that mercantile customers who commit their peak demand reduction, demand response, or energy efficiency programs for integration with the electric utility's programs may apply for exemption from such recovery as set forth in rule 4901:1-39-06. Dayton Power and Light Company ("DPL") proposes that this rule be amended to state that a mercantile customer's exemption must be "in proportion to the amount of their load they have saved in relation to the then current annual energy efficiency and demand reduction target." DPL at 12. The Ohio Consumer and Environmental Advocates ("OCEA") go even further, maintaining that, in order to qualify for the exemption, a mercantile customer must meet or exceed the statutory benchmarks. OCEA at 28-29.

The Commission should reject these proposed changes because they would inappropriately tie a mercantile customer's exemption to its performance in relation to the statutory peak demand reduction and energy efficiency benchmarks. The statutory benchmarks for energy efficiency and demand reduction apply to electric distribution utilities, not to customers. *See* Revised Code at Section 4928.66. A mercantile customer's own energy efficiency or demand reduction is merely one resource a distribution utility can (and should) use to help meet the benchmark requirements.

Requiring that a mercantile customer must meet the statutory benchmarks to qualify for an exemption from the cost recovery mechanism set forth in proposed rule 4901:1-39-05, or that the mercantile customer's exemption must be in proportion to the load it has saved in relation to the energy efficiency and demand reduction targets (which increase year to year), would be a disincentive for such a customer to implement its own energy efficiency and demand response measures, which in turn would reduce the pool of resources available to the distribution utility to meet the statutory benchmarks.

OCEA also proposes that a mercantile customer who qualifies for an exemption be exempt only from the utility's DSM program costs, but that such customer would continue to pay for recovery of lost revenues, utility incentives, and monitoring and verification costs necessitated by that customer class. OCEA at 29. OCEA's proposal should be rejected. Providing an exemption only from DSM program costs (which might turn out to be small) would likely provide little or no incentive for mercantile customers to implement demand side management and energy efficiency measures.

4901:1-39-06(A) – DPL proposes to revise this proposed rule to state that a mercantile customer may enter into a special arrangement to integrate its demand reduction, demand response, or energy efficiency programs into an electric utility's programs provided that "the EDU shall control and accrue the benefit from the mercantile customer's committed energy efficiency resources in any and all PJM and MISO demand response or other programs or markets where the mercantile customer's committed energy efficiency resources have value." DPL at 13. DPL explains that a mercantile customer or such customer's supplier should be able to obtain the benefits of payments

from PJM for participation in a PJM demand response program, or avoid paying a share of costs associated with the EDU's demand reduction programs, but not both. *Id.*

The Commission should reject DPL's proposed revision. Aside from DPL's bald assertion that a "mercantile customer's avoidance of the EDU's energy efficiency cost recovery provides ample compensation for the mercantile customer and that customer should not be entitled to further compensation" (DPL at 13), DPL provides no basis or authority for such a restriction. While Nucor generally agrees that a customer should not be compensated twice (by two different programs) for the same demand reduction or energy efficiency, the language DPL proposes goes far beyond a restriction on double compensation. DPL's proposed requirement that the "EDU shall control and accrue the benefit" of any participation by a mercantile customer in PJM and MISO demand response programs would severely reduce, or eliminate altogether, any incentive a mercantile customer might have to participate in the PJM and MISO markets, if that customer also has integrated or wishes to integrate its energy efficiency or demand response measures with those of the distribution utility. RTO-level demand response programs and energy efficiency programs are different from demand response and energy efficiency measures implemented by a mercantile customer, and such programs might have very different purposes and goals. To the extent a mercantile customer can participate in both state-level and RTO-level demand response and energy efficiency programs, therefore, the rules should permit such a customer to do so. DPL's proposed revision to this rule should be rejected.

4901:1-39-06(A)(3) – Proposed rule 4901:1-39-06 addresses the integration of a mercantile customer's demand reduction, demand response, or energy efficiency

programs with an electric utility's demand reduction, demand response, and energy efficiency programs. As drafted by Staff, rule 4901:1-39-06(A)(3) provides that a special arrangement between a mercantile customer and an electric utility shall "[g]rant permission to the electric utility and staff to measure and verify energy savings and/or demand reductions resulting from customer-sited programs or resources." The Ohio Environmental Council ("OEC") and OCEA propose that this section be revised to provide that, in the case of mercantile customer requesting exemption from the cost recovery mechanism set forth in proposed rule 4901:1-39-05 (which addresses recovery costs due to peak demand reduction, demand response, and energy efficiency), the mercantile customers' energy savings and demand reductions meet or exceed the percentage reductions required under the statutory benchmarks to which the electric utility is subject.

This proposed revision should be rejected for the same reasons DPL's and OCEA's proposed revisions to rule 4901:1-39-05(A)(2) should be rejected. The statutory benchmarks for energy efficiency and demand reduction apply to electric distribution utilities, not to customers, and imposing the requirement proposed by OEC and OCEA would be a disincentive for mercantile customers to implement their own peak demand reduction and energy efficiency measures.

4901:1-40-03(A)(3) – This proposed rule provides that "all costs incurred by an electric utility in complying with the requirements of the alternative energy portfolio standard shall be avoidable by any consumer that has exercised choice of electricity supplier." Duke Energy Ohio, Inc. ("Duke") proposes that the rule be amended to provide that all *energy* costs incurred in complying with the requirements would be

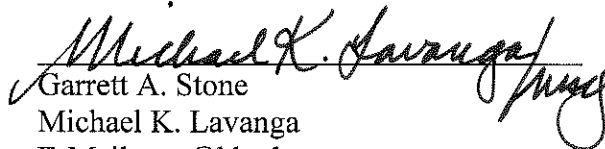
avoidable. Duke at 7. Duke explains that there is nothing in the statute that mandates avoidability of capacity costs, and that there should be an unavoidable capacity charge to encourage utilities to invest in renewable capacity additions. *Id.* at 8.

If adopted, this proposed change would be a disincentive for customer shopping. Under SB 221, an electric service company will have to meet the same alternative energy requirements as an electric utility. Allowing an electric utility to recover a portion of its alternative energy supply costs through a non-bypassable capacity charge would put electric service companies at a distinct competitive disadvantage, because a customer of an electric service company would have to bear the electric service company's cost to meet the alternative energy requirements, along with a portion of the distribution utility's compliance costs. Accordingly, the Commission should reject Duke's proposed amendment to this rule.

III. CONCLUSION

Nucor Steel Marion, Inc. respectfully requests that the Commission consider these reply comments and incorporate the recommendations discussed herein and in Nucor's September 9, 2008 rulemaking comments 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)

Attorneys for Nucor Steel Marion, Inc.

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Summary: Comments electronically filed by Mr. Matt S White on behalf of Nucor Steel Marion, Inc.