

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

NUCOR STEEL MARION, INC. )  
Complainant )  
v. )  
OHIO EDISON COMPANY; )  
THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY; AND )  
THE TOLEDO EDISON COMPANY )  
Respondents )

Case No. 09-46-EL-CSS

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**NUCOR STEEL MARION, INC.'S MEMORANDUM CONTRA  
THE MOTION TO DISMISS THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY AND THE TOLEDO EDISON COMPANY  
AS PARTIES TO THIS PROCEEDING**

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Pursuant to Ohio Administrative Code 4901-1-12(B)(1), Nucor Steel Marion, Inc. ("Nucor") submits this Memorandum Contra the Motion to Dismiss the Cleveland Electric Illuminating Company ("CEI") and the Toledo Edison Company ("Toledo Edison") as Parties to This Proceeding ("Motion to Dismiss") and Memorandum in Support. The Motion to Dismiss should be denied.

**I. INTRODUCTION**

On January 21, 2009, Nucor filed a complaint in this proceeding against all three FirstEnergy Ohio operating companies ("Complaint"). The Complaint addressed a new internal policy for calling economic interruptions that resulted in economic interruptions being called in every hour of every day, and a drastic increase in rates for Nucor. The Complaint explained that, although Nucor is a customer only of Ohio Edison, Nucor was naming all three FirstEnergy Ohio operating companies because of the belief that the

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interruptible rates operate in the same way for all three operating companies, and that joining the three companies would permit the Commission to decide the issues for the three companies in a single proceeding for purposes of administrative efficiency. In the Memorandum in Support of their Motion to Dismiss, CEI and Toledo Edison argue that: (i) Section 4905.26 of the Revised Code and Section 4901-9-01 of the Ohio Administrative Code allow a complaint to be brought against only one utility; (ii) Nucor has failed to state reasonable grounds for the Complaint against CEI and Toledo Edison; and (iii) Nucor lacks the standing necessary to maintain an action against either CEI or Toledo Edison.

## II. ARGUMENT

Although Nucor is a customer only of Ohio Edison, Nucor named CEI and Toledo Edison in the Complaint in addition to Ohio Edison out of an abundance of caution and in order to permit the Commission to address the interruptible issues raised by the Complaint once in a single proceeding for all customers. As noted in the Complaint, it is Nucor's understanding and belief that the interruptible program has in the past, and continues to operate in the same way for all three Ohio operating companies. This has been confirmed by the recent complaint filed by Praxair Inc., an interruptible customer of CEI who complains of the same 24 x 7 economic interruptions being experienced by Nucor.<sup>1</sup> What is unclear at this point is whether the three operating companies operate a single interruptible program together, or whether they operate three distinct interruptible programs using a common protocol for economic interruptions. In either event, it is appropriate that CEI and Toledo Edison be parties to this Complaint along with Ohio

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<sup>1</sup> *In the Matter of the Complaint of Praxair, Inc. v. The Cleveland Electric Illuminating Company*, Case No. 09-88-EL-CSS.

Edison in order to permit the Commission to comprehensively address the issues raised in the Complaint.

Although it is unclear exactly how the Ohio operating companies' interruptible program works at this point in the proceeding, there seems to be at least a reasonable possibility the three operating companies operate a single interruptible program for purposes of economic interruptions. In both the ESP and MRO proceedings, all three operating companies put forth and supported a single standard service offer ("SSO"), including a proposed interruptible rate in the ESP proceeding. Under both of these proposals, SSO supply was to have been procured for all three operating companies – there was to have been no "Ohio Edison load" or "CEI load." Further, the FirstEnergy operating companies recently conducted a competitive bid process to procure SSO supply from between January 5, 2009 to March 31, 2009. The request for proposals was to supply the SSO load of all three operating companies, so the winning bidders are serving all of this load, not load broken out by operating company. Given this, it is unclear how the interruptible program is being operated for the companies, and who is operating the program. It is at least plausible at this point that there is a single interruptible program for all three operating companies. If the interruptible program is operated as a single program for all three operating companies, then there should be no question that CEI and Toledo Edison are appropriately joined as parties to Nucor's Complaint.


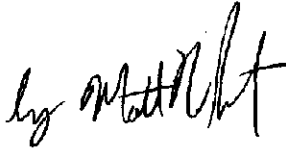
Even if Ohio Edison operates its interruptible program for its interruptible customers alone, and not in conjunction with CEI and Toledo Edison, the Commission would still have good reason to retain CEI and Toledo Edison as parties in this case, if they are both using the same flawed internal policy for calling economic interruptions as

Ohio Edison. In that case, including CEI and Toledo Edison as parties in this proceeding would serve the interests of administrative efficiency and would ensure that a consistent policy for economic interruptions for all three FirstEnergy Ohio operating companies results from this proceeding.

### III. CONCLUSION

For the reasons discussed above, Nucor respectfully requests that the Commission deny the Motion to Dismiss of CEI and Toledo Edison.

Respectfully submitted,

 by 

Garrett A. Stone

Counsel of Record

E-Mail: [gas@bbrslaw.com](mailto:gas@bbrslaw.com)

Michael K. Lavanga

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

Brickfield, Burchette, Ritts & Stone, P.C.

1025 Thomas Jefferson Street, N.W.

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

Washington, D.C. 20007

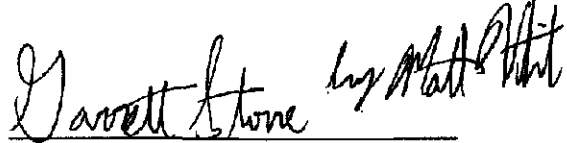
(202) 342-0800 (Main Number)

(202) 342-0807 (Facsimile)

**Attorneys for Nucor Steel Marion, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served upon the following party of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission on February 17, 2009.

  
Garrett A. Stone

Kathy J. Kolich  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308

kjkolich@firstenergycorp.com