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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms	)	Case Nos.	09-1947-EL-POR
	)		09-1948-EL-POR
	)		09-1949-EL-POR
	)		
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Initial Benchmark Reports	)	Case Nos.	09-1942-EL-EEC
	)		09-1943-EL-EEC
	)		09-1944-EL-EEC
	)		
In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company	)	Case Nos.	09-580-EL-EEC
	)		09-581-EL-EEC
	)		09-582-EL-EEC
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REPLY BRIEF OF NUCOR STEEL MARION, INC.

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**REPLY BRIEF OF NUCOR STEEL MARION, INC.**

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Nucor Steel Marion, Inc. ("Nucor") hereby submits its reply brief in this proceeding.

**I. INTRODUCTION**

Nucor has addressed two categories of issues in this proceeding — interruptible rate issues and recovery of energy efficiency and peak demand reduction (EE/PDR) program costs. After review of the initial briefs of the parties, Nucor continues to believe that the Commission should adopt Dr. Goins' well-reasoned and supported

recommendations on these issues. As discussed in this reply brief, most of Dr. Goins' recommendations were not disputed by evidence submitted by any party on the record or in any of the initial briefs.

Dr. Goins' testimony first addressed the treatment of FirstEnergy's interruptible rates, Riders ELR and OLR, in FirstEnergy's energy efficiency and peak demand reduction program portfolio. With regard to these issues, Dr. Goins recommended that:

- the Commission should find that: (a) FirstEnergy's interruptible rates may be used by FirstEnergy to meet its peak demand reduction benchmarks, and (b) no additional Commission approval for these rates is necessary to continue them for the term of the current ESP;<sup>1</sup>
- the Commission should find that a total resource cost (TRC) test does not apply to interruptible rates;
- if the Commission uses a TRC test for interruptible rates, the flaws in how FirstEnergy proposes to measure the costs and benefits of these interruptible rates should be corrected, and long-run avoided capacity cost based on the PJM Cost of New Entry should be used in determining the demand reduction benefits of interruptible rates; and

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<sup>1</sup> The Commission recently clarified that Riders ELR and OLR may be used by FirstEnergy to meet its peak demand reduction benchmarks. See Case No. 09-535-EL-EEC *et al.*, Finding and Order at 5-6 (March 10, 2010). With regard to the approvals being sought in this proceeding, FirstEnergy has stated that it is not seeking any additional approval in this proceeding on top of the Commission approval already granted to continue Riders ELR and OLR for the term of the current ESP, nor is FirstEnergy seeking approval of interruptible arrangements in this proceeding for the period following the termination of the current ESP rate plan. Direct Testimony of Dr. Dennis W. Goins, Nucor Exhibit 1 ("Nucor Ex. 1"), Exhibit Goins-1, FirstEnergy Response to Nucor Set 1 DR-16. FirstEnergy has proposed to extend Riders ELR and OLR as part of a new ESP to take effect following the termination of the existing ESP in June of 2011. See Case No. 10-388-EL-SSO.

- the peak demand reduction provided by the interruptible rates should be quantified by using the “Curtable Load” measurement already included in the Rider ELR tariff, rather than the alternative methodology proposed by FirstEnergy.

Next, Dr. Goins addressed FirstEnergy’s proposals for recovery of EE/PDR costs. Focusing first on DSE2 cost allocation and rate design as applied to the GT class, he demonstrated that the per kWh rate design proposed would over-burden GT customers with the largest kWh usage with program portfolio costs well in excess of the actual benefits such customers will receive from the programs. Dr. Goins recommended specific improvements in initial cost allocation and in GT DSE2 rate design to address this issue. He also reviewed FirstEnergy’s shared savings proposal and recommended rejecting it.

Nucor’s positions, as outlined in Dr. Goins’ testimony on all of these issues, are supported by the overwhelming weight of evidence on the record. It is noteworthy that, aside from the proper method of quantifying peak demand reduction provided by Rider ELR interruptible load, FirstEnergy did not submit rebuttal testimony on any of the issues raised by Nucor. Nor did any party aside from FirstEnergy directly address the issues raised by Nucor in their initial briefs or in their own testimony, with the exception of the shared savings issue, which was also opposed by several other parties.

Nucor’s positions are fully explained and discussed in detail in Nucor’s initial brief. In this reply brief, we respond to the limited number of arguments made by the parties concerning the issues raised by Nucor in this case.

## II. ARGUMENT

### A. FirstEnergy Sees the Merit In Dr. Goins' Recommendation That a TRC Test is Inappropriate to Evaluate an Interruptible Rate.

In Nucor's view, a TRC test should not be applied to rate designs with peak demand reduction benefits, such as interruptible rates, which are subject to review and approval under specific ratemaking standards. In the current case, this concept is particularly compelling when it comes to already-approved, existing interruptible rates, such as Riders ELR and OLR, since these riders have already been approved by the Commission as part of FirstEnergy's current ESP rate plan. In approving these rates, the Commission applied the standards set forth in the statutes and the Commission's regulations applicable to ratemaking and standard service offer plans, and determined the rates are just and reasonable.

Although FirstEnergy initially applied a TRC test to these riders in its Application, in its initial brief, FirstEnergy states that it "see[s] some merit in Dr. Goins' recommendation that a TRC test should not be applied to Riders ELR and OLR because the Commission already has approved those rates as just and reasonable."<sup>2</sup> Moreover, at the hearing, FirstEnergy's witness, George Fitzpatrick testified that a TRC test should not be performed on Rider ELR since it is a rate.<sup>3</sup> No other party or witness specifically addressed this issue. Thus, the only two witnesses to testify on this issue (Dr. Goins and Mr. Fitzpatrick) agreed that the TRC should not apply to interruptible rates. As a result,

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<sup>2</sup> FirstEnergy Post-Hearing Brief at 14, fn.68.

<sup>3</sup> Tr. Vol. II at 263.

there is no evidence on the record opposing Dr. Goins' recommendation on the application of the TRC test to such rates.

The purpose of a TRC test is to evaluate the cost effectiveness of a program or measure to determine whether such a program or measure should be included in a utility's EE/PDR portfolio. The Commission has already made an evaluation on the justness and reasonableness of Riders ELR and OLR in the context of FirstEnergy's ESP rate proposal, so performing a TRC test on the rates in this case is unnecessary and improper. Should the Commission nonetheless determine that the Green Rules<sup>4</sup> require a TRC test to be performed on an interruptible rate, the Commission should grant a waiver of this requirement. If the TRC test is applied despite the compelling evidence otherwise, then Dr. Goins' recommended corrections should be applied to the test as well as discussed in detail in Nucor's initial brief.<sup>5</sup>

**B. FirstEnergy Has Provided No Evidence to Demonstrate That its Proposed Methodology for Measuring the Peak Demand Reduction Provided by Rider ELR Interruptible Load Accurately Reflects the Actual Benefit Provided by Such Load.**

In its post-hearing initial brief, FirstEnergy explains that it currently registers its ELR interruptible capability as a capacity resource with Midwest ISO through Module E of the Midwest ISO open access transmission tariff, and that it plans to use the valuation of this interruptible capacity registered through Module E as the amount of peak demand reduction to count toward meeting the benchmarks.<sup>6</sup> This revised approach results in a significant increase in the amount of interruptible load FirstEnergy will count

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<sup>4</sup> Chapter 4901:1-39, Ohio Administrative Code.

<sup>5</sup> See Nucor Ex. 1 at 14-17.

<sup>6</sup> FirstEnergy Post-Hearing Brief at 11-12.

toward the benchmark as compared to the amount FirstEnergy proposed to use in its Application. Using this revised approach, FirstEnergy states that it plans to count 258 MW of Rider ELR load on a total company basis toward meeting the benchmarks.<sup>7</sup>

While an improvement over the methodology initially proposed, FirstEnergy's revised methodology still likely understates that peak demand reduction benefit provided by Rider ELR interruptible load. Dr. Goins recommends that FirstEnergy should use the calculation of Curtailable Load (CL) in Rider ELR (*i.e.*, the customer's monthly peak demand during weekdays from 11:00 AM to 5:00 PM minus the customer's firm demand) to determine the quantity of peak demand reduction that should be counted toward meeting the benchmarks.<sup>8</sup> In its initial brief, FirstEnergy states that it does not believe using the CL measurement is consistent with Rule 4901:1-39-05(E)(2), and would overstate operational capability.<sup>9</sup> Nevertheless, FirstEnergy states that it would not oppose using Nucor's methodology should the Commission order it.<sup>10</sup>

FirstEnergy's reservations about using the CL measurement are unwarranted.

Rule 4901: 1-39-05(E)(2) provides:

For demand response programs, an electric utility may count demand reductions towards satisfying some or all of the peak-demand reduction benchmarks by demonstrating that either the electric utility has reduced its actual peak demand, or has the capability to reduce its peak demand and such capability is created under either of the following circumstances:

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<sup>7</sup> Rebuttal Testimony of Katherine M. Kettlewell ("FirstEnergy Ex. 11") at 4. In the Application, FirstEnergy proposed to count 147 MW of interruptible load toward meeting the benchmark. Application, Ohio Edison Energy Efficiency & Peak Demand Reduction Program Portfolio and Initial Benchmark Report at 26.

<sup>8</sup> Nucor Ex. 1 at 23.

<sup>9</sup> FirstEnergy Post-Hearing Brief at 12, fn.54.

<sup>10</sup> *Id.*



- (a) A peak-demand reduction program meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the Federal Energy Regulatory Commission.
- (b) A peak-demand reduction program equivalent to a regional transmission organization program, which has been approved by this commission.

Nothing about using the CL measurement in Rider ELR is inconsistent with this rule. FirstEnergy currently commits Rider ELR load as a capacity resource under Module E to Midwest ISO, but the rule does not limit the quantity of peak demand reduction claimed toward meeting the benchmark to the amount of load FirstEnergy reports to the RTO. Rider ELR interruptible load “meets the requirements to be counted as a capacity resource” under the Midwest ISO tariff, regardless of how much interruptible load under that rate that FirstEnergy elect to commit. In other words, Rule 4901: 1-39-05(E)(2) speaks to the threshold requirements interruptible load must meet in order that a utility may use that load to meet its benchmarks. It does not speak to the correct quantity of interruptible load under the rate that a utility may count toward meeting the benchmark. Accordingly it is not the case that using the CL measurement specified in Rider ELR as the amount of ELR load that can be counted toward meeting the benchmarks is inconsistent with Rule 4901: 1-39-05(E)(2).

FirstEnergy’s concern that using the CL would “overstate operational capability” also is not supported by the evidence. As described in Ms. Kettlewell’s rebuttal testimony, the calculation FirstEnergy performs to determine the amount of ELR interruptible load to report to Midwest ISO through Module E is an attempt by FirstEnergy to estimate the amount of interruptible load that might be available for

curtailment at the time an interruption is called.<sup>11</sup> But as addressed by Dr. Goins and discussed in Nucor's initial brief, the avoided capacity benefit provided by interruptible load is not limited to the amount of interruptible load that is actually reduced at the instant an interruption is called. The benefit is also in the interruptible load being kept off the system for the duration of the interruption, regardless of how much load was initially dropped.<sup>12</sup> For this reason, an interruptible customer that has none of its interruptible load on line when an interruption is called is still providing a benefit (and incurring a cost) since that customer is precluded from putting its load – up to or even above the customer's peak demand – on the system for the duration of the interruption, which the customer otherwise would have the right to do. In this way, using the CL measurement would not overstate FirstEnergy's operational capability. In fact, trying to guess the amount of interruptible load that will be on the system at the time of an interruption to calculate the quantity of peak demand reduction, as FirstEnergy proposes to do, likely would *understate* the peak demand reduction benefit provided by interruptible load.

**C. There is No Reasonable Basis for FirstEnergy's Proposal to Limit the Amount of Interruptible Load That Can be Counted Toward Meeting the Benchmarks Starting in 2011 to the Amount of Interruptible Load That Clears in the PJM Interconnection RPM Auction.**

In its initial brief, FirstEnergy states that the compliance value for purposes of calculating peak demand reduction of interruptible load starting in 2011 will be the

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<sup>11</sup> FirstEnergy Ex. 11 at 4-5.

<sup>12</sup> Nucor Ex. 1 at 22; Nucor Initial Brief at 19-23.

value of demand resources that clear in the applicable PJM RPM auction.<sup>13</sup> There is no reasonable basis for FirstEnergy's proposal to count only interruptible load that clears in the RPM auction toward meeting the benchmarks. There is no such requirement spelled out in the rules.

FirstEnergy will obtain interruptible load (if the ESP stipulation is approved, at least some of this interruptible load is expected to be provided through Rider ELR), and it will have this interruptible load available whether such load is bid into PJM or not, or even if such load is bid into, but does not clear, the PJM RPM. Even if some portion of the interruptible load does not clear the PJM RPM, the relevant FirstEnergy operating company and ATSI (FirstEnergy's transmission affiliate) will still be able to call on this interruptible load if needed.<sup>14</sup> It would make no sense to treat such interruptible load as having no peak demand reduction value if it is not accepted in the PJM RPM. The Commission should reject this proposed requirement, and should make clear that FirstEnergy is not precluded from counting interruptible load toward meeting the peak demand reduction benchmarks even if such load does not clear the RPM.<sup>15</sup> Instead, the peak demand reduction effects of FirstEnergy's interruptible load should be determined under PJM in the same manner as Dr. Goins recommended – based on the aggregate customer Curtailable Load as measured in accordance with Rider ELR.<sup>16</sup>

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<sup>13</sup> FirstEnergy Post-Hearing Brief at 12.

<sup>14</sup> See Nucor Ex. 1 at Exhibit Goins-2, Exhibit DWG-2 (containing currently-effective Riders ELR and OLR).

<sup>15</sup> If interruptible load qualifies to be used by PJM as capacity but for some reason does not clear the RPM, the Green Rules still allow such load to be counted toward the benchmark because the interruptible load would be "[a] peak-demand reduction program equivalent to a regional transmission organization program, which has been approved by this commission." Rule 4901: 1-39-05(E)(2)(b).

<sup>16</sup> Nucor Ex. 1 at 23.

**D. Dr. Goins' Rate Design Proposals for the Rate GT DSE2 Charge Are Reasonable and There is No Evidence on the Record Opposing these Proposals.**

Dr. Goins proposed the following rate design modifications for the DSE2 charge for Rate GT:

- recover some portion of the DSE2 costs (he recommended 50%) on the basis of firm demand, in recognition of the fact that FirstEnergy's EE/PDR programs will provide peak demand reduction benefits in addition to energy savings;
- like the DSE1 charge, do not apply the demand portion of the DSE2 charge to interruptible customers; and
- apply a cap or some reasonable mechanism to reduce the potential for intra-class subsidies and to ensure that the Rate GT customers with the largest kwh usage are not exposed to excessive DSE2 costs.

FirstEnergy filed no rebuttal testimony opposing these rate design proposals, and there is no evidence on the record opposing them. No party opposed these rate design proposals in its initial brief.

As discussed in Nucor's initial brief, the kWh-based methodology FirstEnergy proposes to use to initially allocate EE/PDR program costs to Class GT and to recover costs from customers within this class is flawed. Although Nucor supports the concept of reconciling program costs based on actual class usage of the programs, as FirstEnergy proposes, since the initial energy allocation bears no relation to the ultimate allocation reflecting program use by class, customers could be subject to wildly fluctuating DSE2

charges.<sup>17</sup> More problematic than the allocation, however, is the straight per-kWh DSE2 charge through which FirstEnergy proposes to recover program costs from Class GT. Energy efficiency and peak demand reduction program costs are not driven by a customer's energy use, so recovering these costs through an energy charge is arbitrary. A straight per-kWh energy charge would also likely result in the very largest GT customers – those with the largest kWh usage – paying EE/PDR program costs through the DSE2 charge well in excess of the benefits such customers are likely to receive from the programs.<sup>18</sup>

There are several ways to address these problems. First, for initial cost-allocation purposes, FirstEnergy should estimate the amount it expects to expend on programs for the GT, GP, and GSU classes, and directly assign these costs to each class in the initial allocation. Then, FirstEnergy should endeavor to control its expenditures in an effort not to exceed the amounts initially allocated to each class as a way to reduce volatility in the reconciliation charge.<sup>19</sup>

At the rate design level, Dr. Goins proposed that for Rate GT, a reasonable portion of DSE2 costs (e.g., 50%) should be recovered on the basis of firm demand in recognition of the fact that FirstEnergy's EE/PDR programs provide peak demand reduction benefits in addition to energy savings benefits. These demand charges would be avoidable by interruptible customers, who do not cause capacity to be acquired to meet their peak demands due to their interruptibility. Most importantly, Dr. Goins

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<sup>17</sup> Nucor Ex. 1 at 25-26.

<sup>18</sup> *Id.* at 26-27.

<sup>19</sup> Nucor Initial Brief at 32.

recommended that a \$3,000/month cap should be instituted for Rate GT customers to ensure that GT customers with very large kwh consumption do not wind up paying EE/PDR program costs well out of proportion with the benefits they receive from such programs.<sup>20</sup> As an alternative to a cap, Nucor could also support a reasonably designed declining block rate for Class GT, a customer charge, or some other reasonable mechanism to limit the cost exposure of the largest GT customers.<sup>21</sup>

As noted above, no party, including FirstEnergy, provided evidence in opposition to these rate design proposals in this proceeding. FirstEnergy did not file rebuttal testimony responding to Nucor's GT DSE2 rate design proposals and no other party addressed them in its initial brief. The only evidence on the record in this case aside from the testimony of Dr. Goins on his rate design proposals were several questions asked by FirstEnergy at the hearing. In particular, FirstEnergy asked Dr. Goins several questions about how over- or under-recoveries of program costs resulting from the application for the proposed cap would be handled.<sup>22</sup> No evidence was presented, however, that over- or under-recoveries are more likely to occur under Dr. Goins' proposed rate design and cap than under FirstEnergy's proposed rate design, or that, even if such over- or under-recoveries were to occur, that the impacts on other Rate GT customers would be significant.<sup>23</sup> After all, FirstEnergy's own proposal requires reconciliation to address any over or under-recoveries. Further, as discussed in Nucor's initial brief, Nucor is open to other rate design options that will limit the exposure of the

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<sup>20</sup> Nucor Ex. 1 at 27-28.

<sup>21</sup> Nucor Initial Brief at 34.

<sup>22</sup> Tr. Vol. III at 420-22.

<sup>23</sup> *Id.* at 430.

largest Class GT customers to excessive DSE2 charges, while also ensuring an equitable spread of EE/PDR programs costs among all Class GT customers.

**E. FirstEnergy Has Failed to Demonstrate that its Shared Savings Proposal is Reasonable.**

FirstEnergy bears the burden of proof to demonstrate that its shared savings proposal is reasonable, and FirstEnergy has failed to carry this burden. In its initial brief, FirstEnergy states that “[n]o intervenor witness proposed an alternative to the 15% shared savings level.”<sup>24</sup> While this may be true, it has no bearing on the question of whether FirstEnergy’s shared savings proposal should be approved. At least in Nucor’s case, we did not propose an alternative because we do not see any reason for any shared savings at any level at this point. FirstEnergy has no “right” to shared savings. The Green Rules permit a utility to request shared savings,<sup>25</sup> but nothing in the statute or the rules provides that utilities are entitled to shared savings. In other words, FirstEnergy not only bears the burden to prove what level of shared savings is appropriate, but also whether any shared savings mechanism is justified at all.

That no party proposed an alternative to the 15% shared savings level, therefore, is irrelevant. FirstEnergy notes that Dr. Goins had no specific recommendation for what would be an appropriate level of shared savings.<sup>26</sup> But just because Dr. Goins did not have a specific recommendation on an appropriate level of shared savings does not mean that he believes FirstEnergy’s shared savings level is reasonable – or that any shared savings mechanism would be reasonable at this point. Dr. Goins made clear that

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<sup>24</sup> FirstEnergy Post-Hearing Brief at 23.

<sup>25</sup> O.A.C. 4901:1-39-07(A).

<sup>26</sup> FirstEnergy Post-Hearing Brief at 23 fn.121.

FirstEnergy's shared savings proposal should not be approved at this time because it is unsupported.<sup>27</sup> Several other parties agree that the proposal is unsupported and should not be approved at this time.<sup>28</sup>

### III. CONCLUSION

Nucor respectfully requests that the Commission direct FirstEnergy to adopt the modifications to its EE/PDR portfolio application recommended in Nucor's initial brief and this reply brief.

Respectfully submitted,



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<sup>27</sup> Tr. Vol. III at 435; Nucor Ex. 1 at 29-30.

<sup>28</sup> Joint Initial Brief of the Ohio Manufacturers' Association and the Ohio Hospital Association at 2-3; The Ohio Environmental Council's Initial Post Hearing Brief at 16-20; Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel, Citizen Power, Natural Resources Defense Council and the Citizens Coalition at 32-39.



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission on April ~~12~~<sup>12</sup>, 2010.

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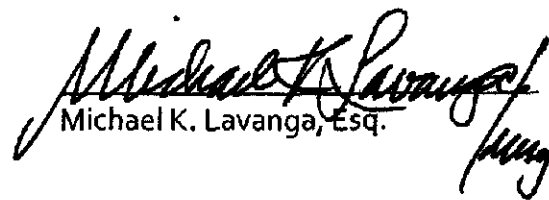
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