

**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
)	

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY'S
MEMORANDUM CONTRA THE APPLICATIONS FOR REHEARING BY
THE OHIO ENERGY GROUP AND NUCOR STEEL MARION, INC.**

The Applications for Rehearing separately filed by the Ohio Energy Group (“OEG”) and Nucor Steel Marion, Inc. (“Nucor”) raise nothing new that was not considered and correctly determined by the Commission in its March 23, 2011 Opinion and Order (the “Order”). Indeed, the Commission acted reasonably and lawfully in considering and rejecting OEG’s and Nucor’s arguments regarding the recovery by Ohio Edison Company, The Cleveland Electric

Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) of Energy Efficiency and Peak Demand Reduction (“EE/PDR”) costs. Neither OEG nor Nucor has shown grounds for rehearing and, accordingly, their respective Applications for Rehearing should be denied.

I. OEG’s Cost Allocation Complaint Is Contrary to Record Evidence.

OEG complains, as it did in its post-hearing brief, that the Companies are allocating EE/PDR program costs to the Mercantile-Utility (Large Enterprise) sector instead of to rate schedules GP, GSU and GT.¹ OEG’s complaint ignores all record evidence, as the Companies’ testimony and briefing could not have been more clear: program costs are allocated on a rate schedule basis, not by sector.² Thus, each class will pay its appropriate share.

Remarkably, OEG goes so far as to misrepresent the Companies’ position in order to invent a basis for its argument. OEG says this, at page 2 of its Application for Rehearing (emphasis by OEG):

“The Companies argue that combining Rates GP, GSU and GT into one sector *“continues the parties’ agreement in the [2009] ESP Case that allocation of costs would be in a rate schedule basis.* (FirstEnergy Initial Brief at 19).”

This statement does not reflect the Companies’ position, and the highlighted sentence is taken out of context. The Companies actually said this, at page 19 of their Initial Brief (emphasis added):

“The costs are tracked by six customer sectors: Residential, Low-Income Residential, Small Enterprise, Mercantile Self-Direct, Mercantile-Utility (Large Enterprise), and Governmental sectors, *and directly allocated to the appropriate rate schedule as explained in Mr. Ouellette’s testimony.* This continues the

¹ OEG AFR at p. 2; OEG Initial Brief filed Mar. 29, 2010, at pp. 1-3.

² Company Exhibit 3, Direct Testimony of Steven E. Ouellette (“Ouellette Testimony”), at pp. 8, 10-11.

parties' agreement in the ESP Case that allocation of costs would be on a rate schedule basis.”

Clearly, costs are tracked by customer sector. Also clear, however, is that costs will be directly allocated to rate schedules GP, GSU and GT based on per-customer tracking of incentives and energy savings.³

Thus, OEG's criticism of the Companies' EE/PDR portfolio plans lacks any basis in fact.

The Commission should deny OEG's application for rehearing.

II. **The Commission Properly Rejected Nucor's Rate Cap Proposal for Ohio Edison's Rate GT Class Customers.**

Nucor's application for rehearing focuses exclusively on obtaining relief for “the very largest customers” in Ohio Edison's GT class, apparently because Nucor believes it is one of those customers.⁴ This argument is not new. Nucor made the same argument in its post-hearing brief and through the testimony of Dr. Goins, who recommended that Ohio Edison's portfolio plan should include a cap on DSE2 charges to shift costs away from Nucor.⁵ Dr. Goins refused to say, however, who should bear those costs.⁶ The Commission did not err in rejecting Nucor's call for rate mitigation that would benefit Nucor.

The Companies proposed, through Mr. Ouellette, a reasonable approach to paying for the EE/PDR programs by appropriate allocation of costs to each rate schedule.⁷ He was not cross-examined on any aspect of this testimony.⁸ Instead, Nucor simply offered the opinion of Dr.

³ Ouellette Testimony, pp. 8, 10 (“Incentives and energy savings will be tracked for each customer in the non-residential sectors, thereby allowing a very specific reconciliation of incentive costs and variable distribution costs not collected by Rate Schedule.”); *see also* Companies' Reply Brief filed April 12, 2010, at pp. 36-37.

⁴ Nucor AFR at p. 2, 4; Tr. Vol. III, pp. 418-19.

⁵ Nucor Brief at pp. 33-34; Tr. Vol. III, pp. 418-20.

⁶ Tr. Vol. III, pp. 421-22.

⁷ *See* Ouellette Testimony, pp. 8-11 and Exhibits SEO-C1, SEO-C2 and SEO-C3.

⁸ *See* Tr. Vol. I, pp. 158-186.

Goins that the Companies' proposal is unfair to the largest industrial customers because it allocates costs using kilowatt-hours.⁹ However, when Dr. Goins was asked for evidence that a per-kilowatt-hour rate design would lead to over recovery of program costs, he confessed that (1) he has "seen no evidence" that a per-kilowatt-hour rate design would create this problem; and (2) "no one knows" whether it even could be a problem.¹⁰ Thus, Nucor lacks any record evidence that the Companies' use of per-kilowatt-hour rates to recover EE/PDR costs is generally unreasonable.

Because Nucor lacks any such evidence, Nucor's residual position is that the largest customers simply will pay too much. But Nucor failed to show that large C&I customers paying a larger dollar amount than smaller C&I customers (but the same percentage based on consumption) is unreasonable. Nucor offers an example in its application for rehearing of a theoretical large industrial customer paying more than a theoretical small industrial customer because of the per-kilowatt-hour design,¹¹ but this is not proof that the rate design itself is unreasonable or that a rate cap would provide a remedy. Indeed, Dr. Goins could not explain how Ohio Edison would go about tracking any such rate cap and had no understanding of what might happen if the cap were exceeded.¹² If the largest customers do not pay their allocated share, other customers must absorb those costs.¹³ Yet Nucor failed to explain why it would be reasonable for other customers to pay those costs. Dr. Goins lacked a *reasoned* basis for shifting

⁹ Nucor Ex. 1, Goins Testimony, at pp. 26-27.

¹⁰ Tr. Vol. III, pp. 429-30.

¹¹ Nucor AFR at p. 5.

¹² Tr. Vol. III, pp. 419-22.

¹³ Using Nucor's example of a large industrial customer paying \$55,200 annually (Nucor AFR at p. 5), Dr. Goins' proposal would require that \$19,200 of that allocated cost be paid by other customers. Yet other customers already are responsible for paying their own allocated costs.

costs among customers, which would be required if the Companies were ordered to implement a rate cap.

Nucor now argues in its application for rehearing that the Commission erred by addressing Nucor's cost allocation proposals but not its rate design proposals.¹⁴ As a preliminary matter, Nucor's rate design "solutions" need not be addressed absent proof from Nucor that a problem exists that is in need of a solution. As explained above and in the Companies' Reply Brief,¹⁵ Nucor failed to make that showing. Moreover, the Commission expressly noted in its Order that it considered Nucor's rate design concerns but was not persuaded by them.¹⁶ In order to satisfy R.C. § 4903.09, "[a]ll that is required is that the commission set forth 'some factual basis and reasoning based thereon in reaching its conclusion.'"¹⁷ Here, the Commission determined that it simply could not order the Companies to modify their portfolio plan based on the conjecture and speculation of Nucor's witness. Dr. Goins' general support for a price cap, without justifying the need for such a cap or explaining how it could be implemented, does not constitute "record evidence supporting the need for a cap."¹⁸ Because of the lack of record evidence supporting Nucor's position, the Commission acted reasonably in finding that Nucor's position was not persuasive.

III. CONCLUSION

In light of the foregoing, the Companies respectfully ask the Commission to deny the applications for rehearing submitted by OEG and Nucor.

¹⁴ Nucor AFR at p. 3-4.

¹⁵ Companies' Reply Brief filed April 12, 2010, at pp. 37-38.

¹⁶ Order at p. 16 (referencing Nucor's concerns regarding the Companies' proposed rate design).

¹⁷ *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St. 3d 451, 455 (2004) (citing *Allnet Commc'ns. Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St. 3d 202, 209 (1994)).

¹⁸ Nucor AFR at p. 3.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that this Memorandum Contra submitted by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company was filed electronically this 2nd day of May, 2011, with the Public Utilities Commission of Ohio Docketing Information System. Notice of this filing will be sent via e-mail to the attached list.



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Summary: Memorandum Contra Applications for Rehearing of Nucor Steel Marion, Inc. and the Ohio Energy Group electronically filed by Ms. Kathy J Kolich on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company