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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Alternative Energy Status Report of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company) Case No. 11-2479-EL-ACP

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for a Force Majeure Determination for Their In-State Solar Resources Benchmark Pursuant to 4928.64(C)(4)(a), Revised Code)

COMMENTS OF NUCOR STEEL MARION, INC. ON
FIRSTENERGY ANNUAL ALTERNATIVE ENERGY STATUS REPORT

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**BEFORE
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In the Matter of the Annual Alternative Energy)	
Status Report of Ohio Edison Company, The)	
Cleveland Electric Illuminating Company and)	Case No. 11-2479-EL-ACP
The Toledo Edison Company)	

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating)
Company and the Toledo Edison Company for a)
Force Majeure Determination for Their In-State)
Solar Resources Benchmark Pursuant to)
4928.64(C)(4)(a), Revised Code)

**COMMENTS OF NUCOR STEEL MARION, INC. ON
FIRSTENERGY ANNUAL ALTERNATIVE ENERGY STATUS REPORT**

Pursuant to Rule 4901:1-40-05(B) of the Ohio Administrative Code, Nucor Steel Marion, Inc. ("Nucor") hereby submits these comments in response to the Annual Alternative Energy Status Report ("Status Report") of Ohio Edison Company ("Ohio Edison"), the Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively "FirstEnergy") on April 15, 2011 in the above-captioned proceeding.

As discussed further below, the Status Report provides no detail on the basis for the renewable energy credit ("REC") and solar renewable energy credit ("SREC") costs that FirstEnergy recovered in 2010, or explanation for how the REC and SREC costs are converted into rates under Rider AER. Also, it appears that in 2010, FirstEnergy's renewable energy costs recovered through Rider AER exceeded the 3% cost cap set forth in Section 4928.64(C)(3) of the Revised Code, and that FirstEnergy's renewable energy costs will continue to exceed the cap in

2011. FirstEnergy should clarify how (if at all) it is applying the 3% cap. At a minimum, FirstEnergy should apply the cap on a going forward basis to mitigate the impact of the AER charge on all customers.

I. The Status Report Does Not Contain Enough Information to Assess Whether FirstEnergy's REC Purchases are Reasonable and Prudent

FirstEnergy states that it is in compliance with its statutory non-solar 2010 benchmarks and its out-of-state solar benchmark.¹ FirstEnergy also states that despite its best efforts, it was unable to meet its in-state solar benchmark.² According to the report, FirstEnergy meets all of these benchmarks through the purchase of RECs or SRECs.³

Although the Status Report describes how FirstEnergy calculates the statutory renewable energy benchmarks and baselines,⁴ the report provides no information on the actual quantity and cost of the RECs and SRECs FirstEnergy has acquired to meet the renewable energy requirements. Nor does the report explain the process FirstEnergy uses to acquire RECs and SRECs, and what portion of the renewable energy cost, if any, that FirstEnergy recovers through Rider AER is attributable to process costs rather than REC or SREC costs.

As discussed below, the renewable energy costs that FirstEnergy is recovering through Rider AER are already substantial, even though we are in the early stages of S.B. 221's renewable energy regime, when the annual renewable energy benchmarks are much lower than they will be in future years. While we understand that FirstEnergy must make a reasonable effort to comply with its statutory renewable energy requirements, it is important

¹ Status Report at 5.

² *Id.*

³ *Id.* at 2.

⁴ *Id.* at 3-4.

to recognize that, in the end, customers are the ones that bear the costs of FirstEnergy's compliance with these statutory mandates. Therefore, customers need to have access to information to fully evaluate FirstEnergy's costs of compliance, and how those costs are recovered through rates. In order to ensure the necessary level of transparency, FirstEnergy should be required to provide much more detailed information on its renewable energy costs, including: the quantity and the costs of the RECs and SRECs FirstEnergy acquired to meet its 2010 benchmarks; the total cost of FirstEnergy's renewable energy compliance for 2010; a description of the process FirstEnergy used to acquire the RECs and SRECs; and an explanation of how these costs are converted into Rider AER rates, including detailed information (such as spreadsheets) showing how the rates are derived.⁵ Finally, FirstEnergy should show that the costs that it has incurred are reasonable and prudent.

II. FirstEnergy Appears to Have Exceeded, and Continues to Exceed, the 3% Cost Cap Set Forth in Section 4928.64(C)(3) of the Revised Code

FirstEnergy recovers its renewable energy costs through Rider AER, a straight per-kwh charge applied to all of a customer's usage. Even today, with a Rider AER charge intended to recover costs to meet only the 1% renewable energy benchmark for 2011, the cost impacts for customers are severe. The following chart shows the cost impact of the current Rider AER charge for Ohio Edison class GT (0.2654 cents/kWh) for large customers at several different usage levels:

⁵ If FirstEnergy is concerned that any of this information is privileged or confidential, parties who are interested in seeing this information could sign a confidentiality agreement.

Monthly kwh Usage	Monthly AER Cost	Annual AER Cost
1,000,000	\$2,654	\$31,848
2,000,000	\$5,308	\$63,696
6,000,000	\$15,924	\$191,088
10,000,000	\$26,540	\$318,480
12,000,000	\$31,848	\$382,176
15,000,000	\$39,810	\$477,720

Depending on several other factors, such as FirstEnergy's cost of generation and the level of standard service offer load being served by FirstEnergy, it is possible that these cost impacts will get much more severe as the renewable energy benchmarks get higher. For example, in 2016, FirstEnergy's renewable energy benchmark is more than four times the level in 2011, and the benchmark increases to more than twelve times the 2011 level by 2024.⁶

While Section 4928.64(B)(2)'s renewable energy benchmarks are aggressive, the General Assembly did not intend for utilities to meet the benchmarks without regard to cost. Instead, the General Assembly sought to limit the cost impact on utility customers by establishing a 3% cost cap under Section 4928.64(C)(3):

An electric distribution utility or an electric services company need not comply with a benchmark under division (B)(1) or (2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonable expected cost of otherwise producing or acquiring the requisite electricity by three percent or more.

The process for calculations related to the 3% cap is spelled out in the Commission's rules at Section 4901:1-40-07 of the Ohio Administrative Code. In particular, Section 4901:1-40-07(C) provides:

Calculations involving a three percent cost cap shall consist of comparing the total expected cost of generation to customers of an electric utility or electric

⁶ See Revised Code Section 4928.64(B)(2).

services company, while satisfying an alternative energy portfolio standard requirement, to the total expected cost of generation to customers of the electric utility or electric services company without satisfying that alternative energy portfolio standard requirement.

Explaining the purpose of the cap in the rulemaking proceeding establishing the rules implementing the alternative and renewable energy provisions of S.B. 221, the Commission observed that the "function of the cost cap is to protect consumers from significant increases in their electric bills."⁷ Elaborating further on the calculation of the cap, the Commission explained that it:

[s]hould be calculated based on a comparison of generation costs to meet the total consumer electricity requirements. Given that different types of generation will be dispatched differently and have different impacts on electricity prices, any attempt to base the cap on a comparison of the 'difference in costs' of specific types of generation would be inherently arbitrary.⁸

Based on a straightforward and reasonable interpretation of the statute and the Commission's rules pertaining to the cost cap, it appears that FirstEnergy's costs of compliance with the renewable energy requirements exceeded the 3% cost cap in 2010. It also appears that these costs most likely will continue to exceed the cap in 2011.

The following example illustrates why it appears that FirstEnergy exceeded the cap in 2010, using Ohio Edison as an example. According to FirstEnergy's Ten Year Alternative Energy Resource Plan filed in Case No. 11-2491-EL-ACP, Ohio Edison had SSO sales of 9,928,845,000 kwh in 2010.⁹ In 2010, the Blended Competitive Bid price that formed the basis for the

⁷ Case No. 08-888-EL-ORD, Opinion and Order at 37 (2009).

⁸ *Id.*

⁹ Case No. 11-2491-EL-ACP, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company Alternative Energy Resource Plan 2011 Through 2021 ("Ten Year Alternative Energy Resource Plan") at Appendix A.

generation charges recovered through Rider GEN was 5.8410 cents/kwh.¹⁰ In this example, therefore, the "total . . . cost of generation to customers of the electric utility or electric services company without satisfying that alternative energy portfolio standard requirement"¹¹ was \$579,943,836 ($9,928,845,000 \times \0.058410).

Rider AER is a per kwh charge that varies slightly by customer class and is adjusted quarterly. For class GT, the Ohio Edison Rider AER averaged 0.2999 cents/kwh in 2010. For the sake of simplicity, we can assume that all SSO customers were charged at the GT Rider AER rate. In this case, the total cost of Rider AER in 2010 was \$29,776,606 ($9,928,845,000 \times \0.002999).

Adding together the cost recovered under Rider GEN and the cost recovered under Rider AER produces the "total . . . cost of generation to customers of an electric utility or electric services company, while satisfying an alternative energy portfolio standard requirement."¹² In our example, performing this calculation results in a total Rider GEN and Rider AER cost for 2010 of \$609,720,443 ($\$579,943,836 + \$29,776,606$).

As required by Section 4901:1-40-07(C), the final step is to compare the total cost of generation to customers while satisfying an alternative energy portfolio standard requirement (\$609,720,443) to the total cost of generation to customers without satisfying that alternative energy portfolio standard requirement (\$579,943,836). Performing this calculation

¹⁰ The Blended Competitive Bid Price established in Case No. 08-935-EL-SSO for the period June 1, 2009 through May 31, 2011 was \$61.50 per MWh. In FirstEnergy's 2009 market rate offer application, FirstEnergy explained that approximately \$3.09 of this total is attributable to transmission costs, and that removing these transmission costs results in a generation cost of \$58.41 per MWh. See Case No. 09-906-EL-SSO, Direct Testimony of Santino L. Fanelli at 12-13 (2009).

¹¹ Section 4901:1-40-07(C), Ohio Administrative Code.

¹² *Id.*

(\$579,943,836 / \$609,720,443) demonstrates that the total cost of generation while satisfying the alternative energy portfolio standard exceeds the total cost of generation without satisfying the requirement by 4.88%, well in excess of the 3% cap.

The following chart illustrates and summarizes the example described above:

Alternative Energy Cost Cap Calculation for Ohio Edison - 2010	
SSO Consumption	9,928,845,000 kwh
2010 Blended Competitive Bid Price	\$0.058410/kwh
2010 Rider AER Charge (Average GT)	\$0.002999/kwh
Cost of Generation w/out Satisfying Alternative Energy Requirement	\$579,943,836
Cost of Rider AER	\$29,776,606
Cost of Generation While Satisfying Alternative Energy Requirement (Rider GEN + Rider AER)	\$609,720,443
Ratio of Cost of Generation w/out Satisfying Alternative Energy Requirement to Cost While Satisfying Alternative Energy Requirement	95.12%
Level That Cost of Generation Including Alternative Energy Costs Exceeds Cost of Generation Without Satisfying Alternative Energy Requirement	4.88%

Another way to look at applying the cap would be to simply compare the Rider GEN cost/kWh (5.841 cents/kwh) with the Rider AER cost/kWh (0.2999 cents/kWh). Under this scenario, Rider AER should have been capped at 3% of Rider GEN or 0.175 cents/kWh. We believe that there would be similar results from calculations based on 2011 charges and consumption.

Failure to apply the cap will result in a significant impact on all customers and could have an absolutely devastating effect on large commercial and industrial customers in the coming years. The economy continues to be poor for many of these customers and it will get more difficult for these businesses to shoulder ever-increasing renewable energy costs. The table on page 4 of these comments shows that Rider AER is unquestionably causing the

"significant increases in [customers'] electric bills" that the 3% cost cap was designed to protect against.¹³ FirstEnergy has given no indication in this proceeding, or in any other proceeding to our knowledge, that it intends to apply the cap and, if necessary, obtain exemption from complying with the 2011 benchmark.¹⁴ We particularly want to ensure that the cap is properly applied going forward.

In summary, FirstEnergy should explain its interpretation of the cap and how it intends to apply the cap. If FirstEnergy's costs of RECs and SRECs to meet its renewable energy benchmarks are expected to exceed the reasonable expected cost of generation by more than 3%, then FirstEnergy should set its Rider AER at 3% of the cost of generation, acquire those RECs it can at that cost recovery level, and be granted an exemption from further meeting the benchmarks as provided under Section 4928.64(C)(3) of the Revised Code.

III. Conclusion

For the reasons set forth above, Nucor respectfully requests that the Commission: (i) direct FirstEnergy to provide more information supporting its REC purchases and how these costs are passed through rates; and (ii) direct FirstEnergy to explain how it is applying the 3%

¹³ Case No. 08-888-EL-ORD, Opinion and Order at 37 (2009).

¹⁴ The recovery of renewable energy resource requirements through Rider AER is addressed in the stipulations establishing FirstEnergy's ESP for the period January 1, 2009 through May 31, 2011, and FirstEnergy's new ESP for the time period June 1, 2011 through May 31, 2014. The stipulation in Case No. 08-935-EL-SSO ("2008 ESP Stipulation") provides for the establishment of a quarterly generation rider to recover the cost of RECs. 2008 ESP Stipulation at 10-11. The stipulation also provides that FirstEnergy agrees that any request for waiver of the alternative energy resource requirements shall be limited to those waivers identified in Section 4928.64 of the Revised Code. *Id.* at 11. Since the 3% cost cap is specifically provided for in Section 4928.64(C)(3) of the Revised Code, this provision of the 2008 ESP Stipulation in no way limits FirstEnergy's ability to request a waiver of the benchmark as necessary due to the application of the statutory cost cap. The stipulation in Case No. 10-388-EL-SSO ("2010 ESP Stipulation") also provides that renewable energy resource requirements for the period June 1, 2011 through May 31, 2014 shall be met through an RFP process to purchase RECs, and that the costs related to the procurement of RECs will be included in Rider AER. 2010 ESP Stipulation at 9. Like the 2008 ESP Stipulation, the 2010 ESP Stipulation in no way restricts FirstEnergy's ability to apply the 3% cost cap.

cost cap on renewable energy and if it is not applying the cap, grant FirstEnergy any necessary waivers and direct it to do so.

Respectfully submitted,



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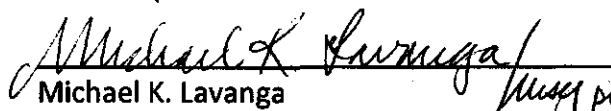
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via U.S. Mail postage prepaid and electronic mail on this 16th day of May, 2011 upon the following:

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