

FILE

6  
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 )

RECEIVED-DOCKETING DIV  
2011 JUL 11 PM 3:13  
PUCO

---

REPLY COMMENTS OF NUCOR STEEL MARION, INC.

---

Michael K. Lavanga  
PHV #1014-2011  
E-Mail: [mkl@bbrslaw.com](mailto:mkl@bbrslaw.com)  
Counsel of Record  
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)

Attorney for Nucor Steel Marion, Inc.

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician le Date Processed 7/11/2011

**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	)	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	)

---

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

---

Pursuant to the Attorney Examiner's May 26, 2011 Entry in this proceeding, Nucor Steel Marion, Inc. ("Nucor") hereby submits these reply comments. In these comments, Nucor responds to and supports the recommendations of the Staff<sup>1</sup> on issues related to alternative energy resource costs recovered by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively "FirstEnergy") through Rider AER, and the application of the 3% cost cap set forth in Section 4928.64(C)(3) of the Revised Code.

On April 15, 2011, FirstEnergy filed its Annual Alternative Energy Status Report ("Status Report") for 2010. In comments submitted on May 16, 2011,<sup>2</sup> Nucor observed that the Status Report provides no detail on the renewable energy credit ("REC") and solar renewable energy

---

<sup>1</sup> Case No. 11-2479-EL-ACP, Initial Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (June 27, 2011) ("Staff Comments").

<sup>2</sup> Case No. 11-2479-EL-ACP, Comments on Nucor Steel Marion, Inc. on FirstEnergy Annual Alternative Energy Status Report (May 16, 2011) ("Nucor Comments").

credit ("SREC") costs that FirstEnergy recovered in 2010, or explanation for how the REC and SREC costs are converted into rates under Rider AER. Nucor also observed that 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. The Ohio Energy Group and the OMA Energy Group also filed comments expressing similar concerns about the Rider AER costs and the application of the 3% cap.<sup>3</sup>

On June 27, 2011, Staff filed its initial comments. Staff notes that the issues raised by the parties concerning the 3% cap "are important questions that warrant further investigation."<sup>4</sup> Staff recommends that an external auditor be retained "in order to complete a review of the Companies' status relative to R.C. 4928.64(C)(3), as well as the reasonableness of all cost components contributing to the Companies' aggregate compliance costs."<sup>5</sup> Staff also recommends that further examination of these issues should take place in FirstEnergy's Rider AER proceedings rather than in the instant proceeding, since these issues are distinct from the question of the appropriateness of the *force majeure* determination that was the subject of FirstEnergy's Application.<sup>6</sup>

Nucor supports Staff's recommendation for a detailed review of FirstEnergy's compliance costs and FirstEnergy's status relative to the 3% cap. We also do not oppose Staff's recommendation for an external auditor, if Staff believes that this would be the most effective

---

<sup>3</sup> Case No. 11-2479-EL-ACP, Comments of the Ohio Energy Group (May 16, 2011); Case No. 11-2479-EL-ACP, Initial Comments of the OMA Energy Group (June 3, 2011).

<sup>4</sup> Staff Comments at 10.

<sup>5</sup> *Id.* at 11.

<sup>6</sup> *Id.* at 10.

approach. An investigation by an external auditor could be valuable for understanding FirstEnergy's alternative energy compliance costs and FirstEnergy's interpretation of the cost cap if such an investigation is conducted in a transparent and time-efficient manner. However, even if an independent auditor is retained, parties still must have the opportunity to perform their own reviews and evaluations of FirstEnergy's compliance costs and the application of the cap. Therefore, notwithstanding the investigation of the auditor (assuming the Commission chooses to retain one as Staff recommends), we request clarification that parties would still be able to conduct their own discovery and obtain information from FirstEnergy on the alternative energy compliance costs and cost cap issues.

With regard to Staff's recommendation that further investigation of FirstEnergy's compliance costs and the application of the 3% cap should occur in FirstEnergy's Rider AER proceeding, we note that we did not raise these issues in the context of FirstEnergy's *force majeure* request, but rather in the context of FirstEnergy's overall 2010 alternative energy compliance report. Since the compliance report summarized and reviewed a year's worth of FirstEnergy's alternative energy compliance efforts and costs, we thought this compliance proceeding was an appropriate forum to raise the 3% cost cap issue.

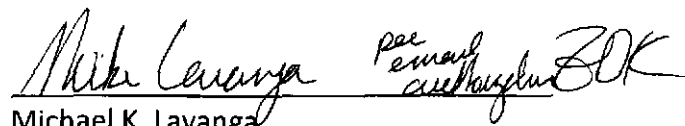
Nevertheless, Nucor does not oppose Staff's recommendation to investigate the compliance cost and cost cap issues in the Rider AER proceedings,<sup>7</sup> or some other proceeding outside of this case. We just wish to reiterate that the cost cap issue is a matter of pressing concern to Nucor and other industrial customers – as demonstrated in our initial comments,

---

<sup>7</sup> By referring to the Rider AER proceedings, we assume Staff means the quarterly Rider AER update filings that FirstEnergy has been making in Case Nos. 08-0935-EL-SSO, 09-0021-EL-ATA, 09-0022-EL-AEM, 09-0023-EL-AAM, and 89-6006-EL-TRF. If the quarterly update filings are not what Staff intended, we request clarification of the proceedings in which Staff recommends the investigation take place.

each month Ohio Edison's Rider AER is imposing significant costs on customers, especially customers with high kwh usage.<sup>8</sup> If it is determined that FirstEnergy's alternative energy compliance costs are, in fact, in excess of the 3% cost cap, it is imperative that the cap be applied and the Rider AER charge be reduced as soon as possible. Therefore, regardless of whether the investigation takes place in this proceeding or is moved to another proceeding as Staff recommends, the investigation should begin immediately (*i.e.*, discovery should be allowed to begin immediately and the independent auditor should be selected as soon as possible, assuming the Commission adopts Staff's recommendation for an auditor).

Respectfully submitted,



Michael K. Lavanga

PHV #1014-2011

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

Counsel of Record

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)

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

---

<sup>8</sup> See Nucor Comments at 3-4.

### 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 July 11, 2011.

Kathy J. Kolich  
Carrie M. Dunn  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
Email: [kjkolich@firstenergycorp.com](mailto:kjkolich@firstenergycorp.com)  
Email: [cdumm@firstenergycorp.com](mailto:cdumm@firstenergycorp.com)

Christopher J. Allwein  
Jeffrey L. Small  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Email: [allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)  
Email: [small@occ.state.oh.us](mailto:small@occ.state.oh.us)

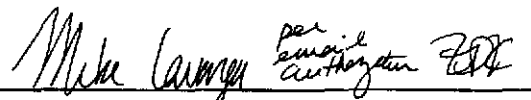
David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz, & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
Email: [dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
Email: [mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

Terrence O'Donnell  
Christopher Montgomery  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
Email: [todonnell@bricker.com](mailto:todonnell@bricker.com)  
Email: [cmontgomery@bricker.com](mailto:cmontgomery@bricker.com)

Tara C. Santarelli  
Environmental Law & Policy Center  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212  
Email: [tsantarelli@elpc.org](mailto:tsantarelli@elpc.org)

Theodore S. Robinson  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217  
Email: [robinson@citizenpower.com](mailto:robinson@citizenpower.com)

Lisa G. McAlister  
Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
Email: [lmcalister@bricker.com](mailto:lmcalister@bricker.com)  
Email: [mwarnock@bricker.com](mailto:mwarnock@bricker.com)

  
Michael K. Lavanga