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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	)	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	)

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**APPLICATION FOR REHEARING AND CLARIFICATION OF NUCOR STEEL MARION, INC.**

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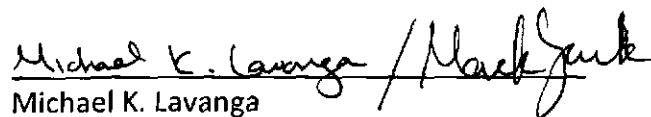
Pursuant to R.C. § 4903.10 and Rule 4901-1-35 O.A.C., Nucor Steel Marion, Inc., ("Nucor") hereby requests rehearing and clarification of the Public Utilities Commission of Ohio's ("Commission") August 3, 2011 Finding and Order ("August 3 Order") in the above-captioned proceeding. In the August 3 Order, the Commission stated that issues related to FirstEnergy's alternative energy compliance costs and FirstEnergy's status with respect to the three percent cost cap set forth in Section 4928.64(C)(3) of the Revised Code should be addressed in the Rider AER proceedings. As discussed in more detail in the attached Memorandum in Support, Nucor requests that the Commission grant rehearing of the August 3 Order for purposes of clarifying that the cost cap issue should be addressed in the proceeding in which FirstEnergy files its quarterly Rider AER update (*i.e.*, Case Nos. 08-0935-EL-SSO, 09-0021-EL-ATA, 09-022-EL-AEM, 09-0023-EL-AAM). Nucor also requests that the Commission clarify the process that will be used to evaluate these issues, including addressing Staff's recommendation

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for an external auditor to evaluate FirstEnergy's alternative energy compliance costs and FirstEnergy's status with respect to the three percent cost cap.

Respectfully submitted,



Michael K. Lavanga

PHV #1014-2011

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

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**MEMORANDUM IN SUPPORT**

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Nucor requests rehearing in this proceeding to address issues related to FirstEnergy's alternative energy costs, which are recovered through Rider AER, and the application of the statutory 3% cost cap under Section 4928.64(C)(3) of the Revised Code. As Nucor explained in its May 16, 2011 comments in this proceeding,<sup>1</sup> Rider AER has caused very large rate increases for FirstEnergy customers, particularly large commercial and industrial customers who consume vast amounts of energy. FirstEnergy's fourth quarter Rider AER update, filed yesterday, proposes to extend very high Rider AER charges through the end of this year.<sup>2</sup> It is vital that a forum and process be established to evaluate in a timely manner FirstEnergy's alternative energy costs and the application of the 3% cost cap, the statutory mechanism specifically designed to prevent the severe alternative energy cost impacts that customers are currently experiencing.

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<sup>1</sup> Case No. 11-2479-EL-ACP, Comments of Nucor Steel Marion, Inc. on FirstEnergy Annual Alternative Energy Status Report (May 16, 2011) ("May 16 Comments").

<sup>2</sup> See FirstEnergy September 1, 2011 tariff filings in Case Nos. 08-0935-EL-SSO, 09-0021-EL-ATA, 09-0022-EL-AEM, 09-0023-EL-AAM, and 89-6006-EL-TRF.

## I. BACKGROUND

On April 15, 2011, FirstEnergy filed its annual status report on its compliance with the statutory alternative energy requirements for the year 2010. This report addressed FirstEnergy's 2010 alternative energy benchmarks and baselines, and it requested a *force majeure* determination related to FirstEnergy's Ohio solar energy benchmark. In our May 16 Comments, Nucor explained that the report contained no detail on the costs FirstEnergy incurred in meeting the alternative energy benchmarks, how those costs were translated into rates and recovered through Rider AER, and whether and how FirstEnergy was applying the 3% alternative energy cost cap under Section 4928.64(C)(3) of the Revised Code.<sup>3</sup> Nucor requested that the Commission direct FirstEnergy to provide more information supporting its alternative energy costs and how these costs are passed through rates, to explain how FirstEnergy is applying the 3% cost cap and, to the extent FirstEnergy is not applying the cap, that the Commission grant any necessary waivers and direct FirstEnergy to apply the cap.<sup>4</sup>

On June 27, 2011, Staff filed initial comments noting that the issues raised by the parties concerning the 3% cap "are important questions that warrant further investigation."<sup>5</sup> Staff recommended 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," and that further examination of these issues should take place in FirstEnergy's Rider AER proceedings rather

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<sup>3</sup> May 16 Comments at 2-3.

<sup>4</sup> *Id.* at 8-9. The Ohio Energy Group and the OMA Energy Group also filed comments expressing concerns about the Rider AER costs and the application of the 3% cap. See 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>5</sup> Staff Initial Comments at 10.

than in the Alternative Energy Status Report Proceeding.<sup>6</sup> In reply comments, Nucor supported Staff's recommendation for a detailed review of FirstEnergy's alternative energy compliance costs and FirstEnergy's status relative to the 3% cap, and requested that even if an independent auditor is retained, the Commission clarify that parties will still be given the opportunity to conduct their own discovery and analyses of FirstEnergy's compliance costs.<sup>7</sup>

## **II. REQUEST FOR REHEARING AND CLARIFICATION**

In the August 3 Order, the Commission agreed with Staff that FirstEnergy's application in the Alternative Energy Status Report Proceeding was limited to FirstEnergy's request for a *force majeure* determination, and further agreed that issues concerning the 3% cost cap would be more appropriately addressed in the Rider AER proceedings.<sup>8</sup> However, the Commission did not specify what it meant by the "Rider AER proceedings," and the Commission did not address Staff's recommendation that an independent auditor be retained to evaluate issues related to FirstEnergy's alternative energy compliance costs and the application of the 3% cap.

Nucor requests rehearing and clarification of the August 3 Order in order to clarify where and how the Commission will address the alternative energy compliance cost and cost cap issues. First, Nucor requests clarification that the "Rider AER proceedings" refer to the proceedings in which FirstEnergy files its quarterly Rider AER updates. As noted above, FirstEnergy filed its quarterly Rider AER update yesterday in Case Nos. 08-0935-EL-SSO, et al. Nucor intends to make a filing in that proceeding raising the alternative energy compliance cost and cost cap issues. Out of an abundance of caution, and to ensure that time and resources are

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<sup>6</sup> *Id.* at 10-11.

<sup>7</sup> Case No. 11-2479-EL-ACP, Reply Comments of Nucor Steel Marion, Inc. (July 11, 2011).

<sup>8</sup> August 3 Order at ¶ 27.

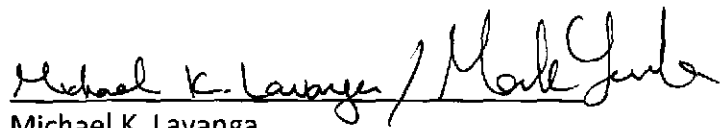
not spent unnecessarily trying to determine the correct proceeding in which to raise these issues, Nucor requests that the Commission clarify in the instant proceeding that the quarterly Rider AER update proceeding is the proper proceeding in which to address the compliance cost and cost cap issues. In the alternative, Nucor requests that the Commission establish a new proceeding to address these issues.

Second, Nucor requests that the Commission rule on Staff's recommendation to retain an independent auditor to evaluate issues related to FirstEnergy's alternative energy compliance costs and the application of the three percent cap. Nucor agrees with Staff that a complete review of FirstEnergy's status relative to the cost cap, as well as the reasonableness of the cost components contributing to FirstEnergy's aggregate compliance costs over some period of time (such as over the last year), is necessary, and Nucor does not oppose the retention of an independent auditor as a vehicle for performing this review. Whether or not an independent auditor is retained, however, Nucor also requests that the Commission make clear that parties will have a full opportunity to participate (including discovery rights) in the evaluation of FirstEnergy's alternative energy compliance costs and the applicability of the cost cap once the proper proceeding to address these issues is established.

### III. CONCLUSION

For the reasons discussed above, Nucor respectfully requests that the Commission grant rehearing of the August 3 Order in order to clarify where and how issues pertaining to FirstEnergy's alternative energy compliance costs and the application of the R.C. 4928.64(C)(3) cost cap will be addressed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael K. Lavanga / Mark G. Jenkins", is written over a horizontal line.

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**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 September 2, 2011.

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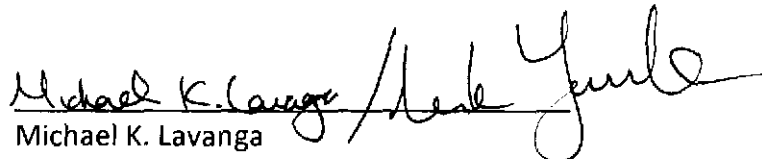
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