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FILE

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 2013 through 2015	)	Case No. 12-2190-EL-POR Case No. 12-2191-EL-POR Case No. 12-2192-EL-POR

INITIAL BRIEF BY NUCOR STEEL MARION, INC.

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Nucor Steel Marion, Inc. hereby submits its initial brief in the above-captioned proceedings addressing the proposed energy efficiency and peak demand reduction portfolio plans of Ohio Edison Company ("Ohio Edison"), the Cleveland Electric Illuminating Company ("CEI"), and the Toledo Edison Company ("Toledo Edison") (collectively "FirstEnergy" or the "Companies").

I. INTRODUCTION AND SUMMARY

Nucor is a large industrial customer of Ohio Edison that consumes hundreds of millions of kilowatt hours of electricity a year. Nucor recycles scrap steel using electric arc furnaces to melt scrap and produce new steel. Nucor is committed to helping create a clean environment and pursues efficiency and peak demand reduction in its own operations. Nucor Corporation (of which Nucor Steel Marion, Inc. is a subsidiary) is the largest recycler in North America, recycling millions of tons of scrap steel nationwide each year and conserving considerable amounts of energy, iron, limestone, and coal that would otherwise be needed to produce steel. Nucor is also a longstanding interruptible customer of Ohio Edison, and currently provides

substantial reliability, peak demand reduction, and energy savings through its participation on Ohio Edison's economic load response rider ("Rider ELR").

As a steelmaker, Nucor participates in highly competitive national and international markets for its products. Since Nucor's operations are extremely energy intensive, our long-term success depends in part on having access to reliable and reasonably low-cost and stable electric supply. The energy efficiency and peak demand reduction program costs at issue in this proceeding represent a significant cost to Nucor and other industrial customers, and these costs may very well increase as the statutory benchmarks increase. For this reason, Nucor has actively participated in this proceeding.

On July 31, 2012, FirstEnergy submitted an application ("Application") pursuant to Section 4928.66 of the Revised Code seeking approval of the Companies' respective energy efficiency and peak demand reduction ("EE/PDR") program portfolio plans for the years 2013-2015. This is FirstEnergy's second three-year EE/PDR portfolio plan intended to comply with the energy efficiency and peak demand reduction requirements of S.B. 221.

The parties to this proceeding have the benefit of experience from FirstEnergy's existing EE/PDR portfolio, which was implemented in 2011 following Commission approval of FirstEnergy's initial EE/PDR portfolio plan.[1] Unlike in FirstEnergy's initial EE/PDR proceeding, parties have had the opportunity to evaluate the actual effects and impacts of various elements of the EE/PDR portfolio plans, from the effectiveness of the programs themselves to the cost allocation and recovery mechanism approved in that case. This proceeding in turn provides the

[1] *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 No. 1947-EL-POR et al.

Commission with an opportunity to address the shortcomings that have become evident since FirstEnergy's initial portfolio plan was implemented. The real-life experiences with FirstEnergy's current portfolio plan, in other words, should inform the Commission's deliberations in this case as much or more than the proposals and supporting analyses contained in FirstEnergy's Application.

Nucor understands that FirstEnergy must comply with the EE/PDR requirements under Ohio law, and we have no objection to most of FirstEnergy's proposed EE/PDR portfolio plan. Based on our experience over the past two years, however, we do believe that certain improvements can and should be made to FirstEnergy's proposed plan. Most importantly, experience has shown that FirstEnergy's cost allocation and recovery mechanism for EE/PDR program costs produces volatile and inordinately high charges for large industrial customers. In this case, Nucor and the Ohio Energy Group ("OEG") sponsored the expert testimony of Dr. Dennis W. Goins,[2] which explained the impact of FirstEnergy's DSE rider on large industrial customers, and proposed several simple and practical modifications to the cost recovery mechanism that would ease the cost impact on large customers. No other party in this proceeding filed testimony on the Rider DSE rate design (despite the fact that both OEG and Nucor raised these rate design concerns in their objections which were filed well before testimony was due), and no rebuttal testimony was filed in response to Dr. Goins' recommendations on these issues. Dr. Goins' cost allocation and rate design recommendations are supported by the evidence in the record in this case and we strongly urge the Commission to adopt them.

[2] Direct Testimony of Dr. Dennis W. Goins on Behalf of the Ohio Energy Group and Nucor Steel Marion, OEG/Nucor Exhibit 1.

The other positions Nucor has taken in this case are also supported by the experience under FirstEnergy's current portfolio plan. FirstEnergy proposes a shared savings mechanism that could significantly increase EE/PDR costs borne by customers, but the success of Toledo Edison and CEI in exceeding their statutory benchmarks by healthy margins without shared savings demonstrates that no such shared savings mechanism is necessary. Experience also shows that the PDR benefit that FirstEnergy is claiming from Rider ELR interruptible load is likely understated, and that using the Curtailable Load measurement as defined in Rider ELR would be a more accurate measure that would result in a more robust level of PDR to count against FirstEnergy's annual benchmarks. Finally, the results of PJM's most recent base residual auction highlight the need for FirstEnergy to take a more active role in bidding both energy efficiency and peak demand reduction into all PJM capacity auctions.

Nucor recommends that the Commission modify FirstEnergy's EE/PDR portfolio filing to address the concerns discussed in this brief. Following is a summary of Nucor's positions and recommendations.

Allocation and Recovery of Energy Efficiency and Peak Demand Reduction Program Costs

- FirstEnergy's DSE2 charge under Rider DSE recovers all EE/PDR program costs except those associated with FirstEnergy's interruptible rates, Riders ELR and OLR. Since the DSE2 charge went into effect in 2011, rate GT customers have been subject to highly volatile and very high DSE2 charges. The DSE2 charge, which is adjusted on a semi-annual basis, has increased by as much as 625% from one rate adjustment period to the next. For large industrial customers under Rate GT, DSE2 charges can amount to tens of thousands of dollars a month.

- Because the DSE2 charge is a per kWh charge, the very largest industrial customers pay a disproportionate share of FirstEnergy's EE/PDR program costs. Energy charges are intended to recover variable costs, but the program costs recovered under DSE2 are not caused by and do not vary based on customers' energy usage (or any customer usage characteristic for that matter). As a result, large industrial customers who use much more energy on a per customer basis than any other customers end up paying DSE2

charges far in excess of any benefit those customers receive from FirstEnergy's EE/PDR portfolio.

- Modifications to FirstEnergy's DSE2 cost allocation and recovery mechanism are necessary to ensure a more equitable distribution of cost responsibility for FirstEnergy's EE/PDR portfolio.

    - FirstEnergy should be required to allocate Mercantile Sector program costs among rate schedules GP, GSU, and GT based on distribution revenue, or based on a reasonable forecast of program usage by those rate schedules. FirstEnergy should not allocate these costs based on energy.

    - Even more important than the allocation, FirstEnergy should apply a reasonable cap on the level of DSE2 charge a GT customer has to pay in a given month. Nucor recommends a $10,000 per month cap, consistent with the recommendations of Dr. Goins. Any unrecovered amounts above the $10,000 cap should be deferred until the next time the DSE2 charge is reset, then allocated among rate schedules GP, GSU, and GT so as to limit the impact of the deferral on customers.

    - There are also other reasonable alternatives that could achieve the same result, such as a declining block rate, a customer charge, or even possibly a higher cap.

Shared Savings

- FirstEnergy's shared savings proposal is not adequately supported and should be rejected.

    - Two of FirstEnergy's operating companies far exceeded their benchmarks in 2011, demonstrating that a shared savings incentive is not necessary in order for FirstEnergy to exceed the benchmarks.

    - A shared savings mechanism is not necessary to mitigate any risk that FirstEnergy will under recover its costs. All EE/PDR program costs are recovered from customers, and FirstEnergy also receives lost distribution revenues. The FirstEnergy operating companies do not own generation, so there are no lost generation revenues that need to be recovered. The Commission cited these reasons when it declined to approve FirstEnergy's shared savings proposal in its initial three-year portfolio filing, and FirstEnergy has not addressed these concerns in requesting a shared savings incentive in this proceeding.

- A shared savings incentive will increase EE/PDR costs for FirstEnergy's customers, even if all incremental EE/PDR that FirstEnergy achieves above the relevant benchmark passes a cost-effectiveness test.

- FirstEnergy has provided no explanation of how it will operate its programs or manage its portfolio differently if it has a shared savings incentive. The fact that two operating companies exceeded the benchmarks without a shared savings incentive being in place indicates that FirstEnergy might not have to make any additional effort in order to receive an incentive payment if the proposed shared savings mechanism is approved.

- Even if a shared savings incentive for FirstEnergy were justified in principle, at a minimum, substantial modifications to the mechanism proposed by FirstEnergy are necessary to protect customers.

  - A reasonable cap on the amount of shared savings a Company can receive in a year should be adopted. We recommend the annual incentive payment should be capped at no more than 8% of prudent program spending per Company.

  - Incentives should be applied only to the portion of EE/PDR savings that exceed the statutory benchmarks.

  - FirstEnergy's proposed incentive levels should be reduced.

  - The effects of mercantile self direct projects, transmission and distribution projects, and behavioral programs should not be included in the shared savings calculation.

Bidding Rider ELR Interruptible Load Into the PJM Capacity Auctions

- Rider ELR interruptible load is a valuable capacity resource. If bid into the PJM capacity auctions, Rider ELR load could: (i) lower capacity prices resulting from the auctions by displacing higher cost capacity resources; and (ii) provide revenue that FirstEnergy may then pass back to customers through Rider DSE to lower EE/PDR costs.

- FirstEnergy's position is that it does not want to bid Rider ELR load into the 2013 PJM base residual auction ("BRA") because it will not have that load under contract for the capacity delivery year (2016/2017) since Rider ELR is scheduled to end when FirstEnergy's ESP III terminates in May of 2016.

- FirstEnergy should be directed to bid Rider ELR load into the 2013 BRA based on a reasonable commitment and expectation that it will continue to offer Rider ELR or a similar interruptible rate after the end of ESP III, and based on a reasonable projection

of Rider ELR load that FirstEnergy expects to continue to participate on the interruptible rate under that circumstance. The Commission could make an explicit finding that FirstEnergy was prudent to bid in this load, and hold FirstEnergy harmless against penalties or additional capacity costs FirstEnergy might incur if some of the interruptible load bid into the BRA does not materialize in the capacity delivery year.

- In the alternative, even greater certainty could be achieved if FirstEnergy works with its participating customers to develop an improved longer-term (or permanent) interruptible rate that could be brought to the Commission for approval and extension outside of an ESP prior to the next PJM BRA.

Peak Demand Reductions Attributable to Interruptible Rates

- The amount of PDR from Rider ELR interruptible load that FirstEnergy counts toward its PDR benchmark appears to be understated.

- FirstEnergy should use the Curtailable Load value as defined in Rider ELR to calculate the PDR value of Rider ELR. Under Rider ELR, each customer's Curtailable Load is the difference between the customer's maximum demand and firm contract demand in the peak measurement period of 11 a.m.-5 p.m. EST (12 p.m.-6 p.m. EDST) on non-holiday weekends. The PDR value for Rider ELR interruptible load in a given year should be determined through the following steps: (i) sum the Curtailable Load for each Rider ELR customer to produce a total monthly Rider ELR Curtailable Load; (ii) average the monthly Curtailable Load for the summer months (June, July and August); and (iii) set the PDR value equal to the average monthly summer Curtailable Load.

- Using the Curtailable Load value as defined in Rider ELR to determine the amount of PDR attributable to the interruptible customers under this rider is a more accurate measure of the demand reduction benefit such interruptible load provides and directly corresponds to measured values under the rate schedule. It would also most likely result in a larger PDR value being assigned to Rider ELR, which should reduce the need for FirstEnergy to acquire additional PDR to meet the benchmarks.

II. ARGUMENT

A. Allocation and Recovery of Energy Efficiency and Peak Demand Reduction Program Costs

FirstEnergy recovers the costs of its EE/PDR portfolio through Rider DSE. The DSE2 charge recovers EE/PDR costs other than costs associated with Riders ELR and OLR. Nucor's positions and recommendations in this case are limited to the DSE2 charge.

FirstEnergy develops the DSE2 charge by first assigning EE and PDR sector costs by company to rate schedules.[3] Residential sector program costs are assigned to Rate RS and the Small Enterprise sector programs are assigned to Rate GS.[4] The cost of Mercantile-Utility (Large Enterprise) and Mercantile Self-Direct programs are assigned to Rates GP, GSU, and GT based on forecasted kWh sales by rate schedule.[5] After allocating EE/PDR program costs by rate schedule, FirstEnergy then develops a per kWh DSE2 charge for each rate schedule that is updated semiannually.[6] FirstEnergy proposes no changes to the cost allocation and rate design for EE/PDR program costs in its Application.

1. Large industrial customers are subject to volatile and high Rider DSE2 charges

Since the DSE2 charge was put in place in 2011, DSE2 charges for class GT customers have been extremely volatile. The following table from Dr. Goins' testimony shows the DSE2 charges for each of the FirstEnergy operating companies from the inception of the charge in 2011 until today:[7]

Table 1. FirstEnergy DSE2 Charges - Rate GT (cents per kwh)

	Ohio Edison		CEI		Toledo Edison	
Effective	Charge	Incr (Decr)	Charge	Incr (Decr)	Charge	Incr (Decr)
05/18/11	0.0460		0.0671		0.035	
07/01/11	0.2544	453%	0.0805	20%	0.1165	233%
01/01/12	0.0410	-84%	0.1205	50%	0.0874	-25%
07/01/12	0.2972	625%	0.4244	252%	0.3323	280%

[3] OEG/Nucor Ex. 1 at 7.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at 8.

The volatility in the charge is evident from the massive percentage increases that topped out at over 600% when the current Ohio Edison DSE2 charge went into effect earlier this year. What is worse is that the DSE2 charges are not only volatile, but they are very high as well. Since July of this year, an Ohio Edison GT customer using 10,000 MWh a month would have paid $27,720 in DSE2 costs. A CEI or Toledo Edison GT customer with the same level of energy usage would have paid even more - $42,440 and $33,230 a month respectively. Obviously, for the very largest GT customers that consume far in excess of 10,000 MWh a month, the monthly DSE2 charge could wind up being significantly higher.

Dr. Goins testified regarding the problems such large and volatile EE/PDR program costs can cause for large industrial customers. As Dr. Goins explained:

> [V]olatility impedes annual budget planning and cash flow management. Large commercial and industrial customers need some reasonable level of rate stability – particularly in a non-bypassable rate component that can unexpectedly increase by more than 600 percent.
>
> The cost burden imposed by the DSE2 charge is even more important. The current magnitude of DSE2 charges eats into already stressed operating margins. The annualized DSE2 cost burden can potentially exceed $1 million annually for FirstEnergy's largest GT customers. Moreover, DSE2 costs will likely get even higher as the statutory EE/PDR benchmarks increase each year. Many large industrial customers operate in highly-competitive and low margin industries. Large annual DSE2 costs can have negative impacts on a company's competitiveness and profitability by directly competing with other investment projects for limited capital funds, reducing capital available for business expansion and hiring new workers, and directly reducing a company's profit.[8]

If allowed to continue unchecked, therefore, the high EE/PDR program costs that large industrial customers have to bear not only will harm individual businesses, but might also be an

[8] *Id.* at 9.

impediment to Ohio's statewide economic development goal as set forth in Section 4928.02(N) of the Ohio Revised Code.[9]

2. FirstEnergy's cost recovery mechanism for EE/PDR costs does not reflect cost causation

FirstEnergy's per kWh rate design is a primary reason why EE/PDR costs for large industrial customers are so high. Since large industrial customers consume the greatest amount of energy on a per customer basis, it stands to reason that these customers will bear a much larger share of the EE/PDR costs compared to other customers, regardless of whether such large customers receive a commensurate benefit. As Dr. Goins explains in his testimony, while volumetric charges such as energy charges "are generally used to recover costs that vary with energy use . . . FirstEnergy's EE/PDR program costs do not vary with changes in energy use. In fact, these program costs do not vary with changes in any indicator of customer consumption or load." [10] Instead, the EE/PDR programs are put in place to meet benchmarks prescribed by statute and are intended to provide broad public and societal benefits.[11] There is no basis to conclude that a very large customer receives a greater share of these broad public and societal benefits than a smaller customer simply by virtue of the larger customer's greater consumption of kWhs. As a result, a kWh-based recovery of EE/PDR program costs imposes a disproportionate share of the costs on FirstEnergy's largest customers, and does not reflect program costs directly attributable to customers classified by load characteristics.

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[9] Revised Code Section 4928.02(N) provides that it is the policy of the state of Ohio to "[f]acilitate the state's effectiveness in the global economy."

[10] OEG/Nucor Ex. 1 at 12.

[11] *Id.* at 12, fn.5.

FirstEnergy has not demonstrated that its EE/PDR cost recovery mechanism is consistent with cost causation because FirstEnergy "has not shown any direct linkage between a customer's energy use and benefits from EE/PDR programs."[12] With respect to mercantile sector programs, this lack of linkage is particularly evident due to the fact that the very largest industrial customers are less likely to take advantage of many of the mercantile sector programs, such as lighting or HVAC programs, than smaller industrial or commercial customers.[13] Moreover, as even FirstEnergy's witness George Fitzpatrick recognizes, when a customer is participating in a FirstEnergy EE/PDR program, it is possible that the customer will pay more through Rider DSE than it saves through participation in the program (and, customers not participating in the programs clearly will have higher costs with no offsetting savings).[14]

It is clear that there is no one-to-one relationship between a large customer's energy usage and the benefits that customer receives from FirstEnergy's EE/PDR portfolio. As a result, the very largest industrial customers are bearing a disproportionate share of EE/PDR portfolio costs, and this cost burden likely will continue to increase as the statutory benchmarks increase (not to mention the possibility of additional costs to customers if FirstEnergy's shared savings request is approved).

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[12] *Id.* at 12.

[13] *Id.*; *see also* Tr. Vol. II at 283-84.

[14] Direct Testimony of George L. Fitzpatrick, Company Exhibit 3, at 13-14.

3. FirstEnergy should make modifications to the allocation and DSE2 rate design to mitigate the cost impacts on large industrial customers

The disproportionate impact of DSE2 costs on large industrial customers could be mitigated a least in part by making certain modifications to the current class allocation and cost recovery mechanism for EE/PDR program costs.

To begin with, Mercantile Sector program costs should not be allocated among rate schedules GP, GSU, and GT based on energy, since energy use by rate schedule is unrelated to the actual or potential use of Mercantile Sector program costs by rate schedule.[15] Instead, FirstEnergy should allocate costs among these rate schedules based on each class' share of distribution revenue.[16] This allocation approach would be simple to apply and would help reduce the volatility evident in the DSE2 charge over the past two years. In the alternative, FirstEnergy should allocate Mercantile Sector program costs based on projected program expenditures by rate schedule, which should also result in more stable DSE2 charges.[17]

Even more important than the cost allocation among the rate schedules, however, is the need to establish a reasonable per-customer cap on DSE2 charges that would apply at least to rate GT (although Nucor would not oppose applying the cap to other rate schedules as well). Dr. Goins proposes a $10,000 per month ($120,000 per year) DSE2 cap. Under his proposal, FirstEnergy would continue to recover DSE2 costs through a per kWh charge as it does today, but the amount of DSE2 charge a customer pays in a given month would be capped at

[15] OEG/Nucor Ex. 1 at 10.

[16] *Id.* at 11, fn.4.

[17] *Id.* at 10-11. Dr. Goins also recommended limiting actual program costs to no more than 10% above projected expenditures, as added protection against severe volatility in the DSE2 charge. *Id.* at 10.

$10,000.[18] The excess above the cap (*i.e.*, the customer's calculated DSE2 charge less $10,000) would be deferred until the next DSE2 reset and added to the projected EE/PDR program costs for the Mercantile Sector.[19] The deferred excess DSE2 costs would be spread among rates GP, GSU, and GT, which should minimize potential bill impacts on individual customers.[20] Dr. Goins also recommends that as a complement to the DSE2 cap, the Commission could consider limiting the annual EE/PDR program spending for a single customer to $120,000.[21]

FirstEnergy did not file rebuttal testimony rebutting Dr. Goins' cap recommendation, and no other party submitted testimony opposing the cap concept. Although Dr. Goins received questions from some parties on the cap recommendation at the hearing, the concerns raised in these questions are easily addressed. For example, at the hearing FirstEnergy asked Dr. Goins several questions about whether he did any analysis of the rate impact of the cap recommendation on GT customers and other customer classes.[22] Although Dr. Goins did not perform any specific analysis on the impact of the cap on other customers, FirstEnergy did not provide any rebuttal testimony demonstrating that the cap proposal would have significant negative rate impacts on other customers. Moreover, as discussed below, Dr. Goins' cap recommendation is flexible, so the cap could be increased if, in the Commission's view, this is necessary to limit the rate impact on other customers.

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[18] *Id.* at 13.

[19] *Id.*

[20] *Id.*

[21] *Id.* This would be an annual spending cap per customer, not a cap on total spending for a particular project.

[22] Tr. Vol. II at 245-46.

Industrial Energy Users of Ohio also questioned Dr. Goins about whether an opt-out for mercantile customers would provide similar or better benefits as compared to a cap.[23] The mercantile opt-out option and a cap, however, are not mutually exclusive. In fact, the availability of an opt-out only strengthens the justification for the cap. Since opt-out customers do not pay the DSE2 charge, other customers who are unable to opt-out end up carrying an even greater cost burden since they have to pay the costs that otherwise would have been borne by the opt-out customers. A reasonable cap such as that proposed by Dr. Goins would ensure a more equitable sharing of cost responsibility for the EE/PDR program costs, including those costs that are not recovered from the opt-out customers.

The cap recommendation is supported by the weight of the evidence in this case. While Nucor supports the cap as proposed by Dr. Goins, however, we would also be open to adjustments to the cap proposal if the Commission concludes such adjustments are necessary or appropriate. For example, the Commission could choose to set the cap at a higher level than as proposed by Dr. Goins if it determines that a higher cap is more reasonable based on the expected program costs over the course of the three-year portfolio. Also, the Commission could consider other rate design modifications aimed at mitigating DSE2 impacts on large customers, such as a declining block DSE2 charge (comparable to the declining block rate in the Universal Service Fund rider that Ohio utilities currently use to collect the cost of low-income customer assistance programs) or a customer charge.[24] While Nucor is of the view that a cap would be the easiest and most straightforward mechanism to implement, the goal is simply to

[23] *Id.* at 275.

[24] *Id.*

balance the responsibility for EE/PDR program costs among all customers in a fair and reasonable manner that does not unduly burden large industrial customers just because of their very large energy consumption.

B. Shared Savings Proposal

FirstEnergy proposes a shared savings incentive that would trigger if a Company exceeds both its annual and cumulative energy savings as set forth in Section 4928.66(a)(1)(a) of the Revised Code. Under the proposal, a Company could earn a large incentive of up to 13% of the adjusted net lifetime benefits of the programs for exceeding the benchmarks, and the incentive costs would be recovered from customers under the DSE2 charge.[25] FirstEnergy has provided no justification or evidence demonstrating that a shared savings incentive is necessary for the Companies to exceed their statutory benchmarks and therefore the shared savings proposal should be rejected. If, however, the Commission approves a shared savings mechanism for FirstEnergy, then at a minimum certain modifications should be made to FirstEnergy's proposal to ensure that customers do not have to bear excessive shared savings costs.

1. FirstEnergy has not demonstrated the need for a shared savings mechanism

FirstEnergy has offered no empirical analysis or justification to support its proposed shared savings incentive mechanism. FirstEnergy's main (and only) justifications for the proposed shared savings mechanism appear to be that other Ohio utilities have requested such an incentive and that the Commission recently approved a shared savings incentive mechanism

[25] Direct Testimony of Eren G. DeMiray, Company Exhibit 5, at 10-12.

for AEP Ohio.[26] These justifications, however, fall short when stacked up against the numerous reasons why a shared savings mechanism should not be approved for FirstEnergy.

To begin with, FirstEnergy does not need a shared incentive mechanism to exceed the statutory benchmarks. In 2011, both Toledo Edison and CEI far exceeded the benchmarks, even though no shared savings mechanism was in place.[27] According to the Companies' Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio for the Period January 1, 2011 to December 31, 2011 ("2011 Portfolio Status Report"), CEI's savings from approved programs and pending projects for 2011 amounted to 481,994 MWh, as compared to a 2011 compliance benchmark of 280,663 MWh.[28] Toledo Edison's savings from approved programs and pending projects totaled 218,935 MWh, as compared to a 2011 compliance benchmark of 150,634 MWh.[29]

Second, a shared savings mechanism is unnecessary for FirstEnergy because the Companies have no risk of under-recovering their EE/PDR costs. FirstEnergy recovers all the program costs from its customers under Rider DSE2, and FirstEnergy also receives lost distribution revenues. And, the Companies own no generation, so there is no need for an added incentive to make up for lost generation revenues resulting from EE/PDR programs. In fact, the Commission cited these same concerns when it declined FirstEnergy's initial request for shared savings in Case No. 09-1947-EL-POR, noting that while FirstEnergy contended that

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[26] *Id.* at 6-7.

[27] OEG/Nucor Ex. 1 at 15.

[28] 2011 Portfolio Status Report at 5, Table 2-1. The 2011 Portfolio Status Report was filed by the Companies on May 15, 2012 in Docket No. 12-1533-EL-EEC et al. FirstEnergy refers to the status report in the Application in this proceeding in the Ohio Edison Company Energy Efficiency and Peak Demand Reduction Program Portfolio (Attachment A to the Application) at 17.

[29] 2011 Portfolio Status Report a 5, Table 2-1.

their shared savings mechanism was similar to those proposed by other Ohio utilities, "key distinctions" had to be explored further, "including but not limited to ownership of generation and the combination of an incentive with other program cost recovery mechanisms."[30] Nowhere in FirstEnergy's Application or supporting testimony does FirstEnergy explain why a shared savings mechanism is justified now is spite of these concerns.

Third, the testimony of FirstEnergy's witness George Fitzpatrick demonstrates that shared savings could result in additional costs to customers to which there might be no corresponding benefit. While Mr. Fitzpatrick does not specifically address shared savings, his warnings about the dangers of unlimited spending on EE/PDR programs as long as the portfolio meets the relevant cost effectiveness test are relevant to shared savings as well. As Mr. Fitzpatrick explains, even if FirstEnergy's programs are cost effective overall, customers who do not participate in programs will have no savings but additional costs, and even customers who participate in programs might end up paying more through Rider SDE2 than they save through participation in a program.[31] Consequently, assurances that FirstEnergy's programs are "cost effective" on a portfolio-wide basis are no protection against excessive costs for customers if FirstEnergy has a positive financial incentive through a shared savings mechanism to spend as much on EE/PDR programs as possible.[32]

Finally, FirstEnergy is silent on how it would operate its programs or manage its EE/PDR portfolio differently if it had a shared savings mechanism in place as compared to under its

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[30] *In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison 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 Mechanism*, Case No. 09-1947-EL-POR at al, Opinion and Order at 15 (March 23, 2011).

[31] Company Ex. 3 at 13-14.

[32] OEG/Nucor Ex. 1 at 15-16.

current portfolio where shared savings is not available.[33] In fact, given that Toledo Edison and CEI exceeded their benchmarks in 2011 without a shared savings mechanism, it is possible that FirstEnergy could wind up receiving shared savings payments even if it did nothing different from what it is doing today. It would be more accurate to describe shared savings payments in such a case as a windfall rather than an incentive.

2. If the Commission approves a shared savings mechanism for FirstEnergy, it should require modifications to the mechanism to provide protections for customers against excessive shared savings costs

If the Commission is inclined to approve a shared savings mechanism for FirstEnergy, several modifications should be made to the mechanism as proposed. Most importantly, the mechanism should incorporate a reasonable cap on the amount of shared savings that a Company would be entitled to in a given year. As noted above, FirstEnergy justifies its proposed shared savings mechanism in large part by pointing out that a similar mechanism was recently approved for AEP Ohio.[34] FirstEnergy, however, retains the parts of the AEP mechanism it likes while rejecting the parts that it doesn't – namely, a shared savings cap. FirstEnergy characterizes such a cap as artificial and arbitrary,[35] but a reasonable shared savings cap is no more arbitrary than the tiers and incentive percentages that FirstEnergy proposes. Nucor supports a shared savings cap for each Company of no more than 8% of prudent program

[33] Tr. Vol. II at 298-99.

[34] Company Ex. 5 at 6-7.

[35] *Id.* at 12.

spending, as recommended by Dr. Goins and the Office of Consumers Council's witness Mr. Gonzalez.[36]

Second, if a shared savings incentive is allowed, the shared savings incentive should apply only to the portion of EE/PDR savings that exceed the statutory benchmarks.[37] In other words, there should be no incentive applied with respect to the savings the Companies had to achieve in order to meet their respective benchmarks. As FirstEnergy has recognized that a shared savings incentive is irrelevant for purposes of meeting the benchmarks,[38] there is certainly no reason to give FirstEnergy a shared savings incentive on the savings FirstEnergy had to achieve to meet the benchmarks prescribed by statute.

Next, the proposed compliance tiers and incentive percentages should be modified to reduce the likelihood of excessive shared savings. Dr. Goins proposed the following modifications to the tiers and percentage levels in his testimony:[39]

Table 2. Alternative Incentive Mechanisms

Tier	Compliance (%)	Incentive (%)	
		FirstEnergy	Modified
1	<100	0	0
2	100 - 105	5	0
3	106 - 110	7.5	2
4	111 - 115	10	4
5	>115	13	6

[36] OEG/Nucor Ex. 1 at 17; Direct Testimony of Wilson Gonzalez, OCC Exhibit 1, at 16.

[37] OEG/Nucor Ex. 1 at 17.

[38] Tr. Vol. I at 100.

[39] OEG/Nucor Ex. 1 at 18.

Finally, in calculating shared savings, the effects of mercantile self-direct, transmission and distribution projects, and behavioral programs should be removed.[40] As Mr. Gonzalez explains, savings from mercantile self-direct programs are generated by projects initiated and directed by mercantile customers themselves as opposed to FirstEnergy, and therefore should not be included as savings for purposes of the shared savings mechanism.[41] Savings from transmission and distribution projects also should be excluded for purposes of shared savings, since these types of projects are generally capitalized and receive a return on the utility's investment in distribution rates cases.[42] Savings from behavioral programs are not easily measurable and it is not clear that such savings will persist over time, so these savings also should be excluded for purposes of a shared savings incentive.[43]

C. Bidding of Rider ELR Interruptible Load Into PJM Capacity Auctions

FirstEnergy intends to bid eligible installed energy efficiency for which it has ownership rights into the PJM capacity auctions.[44] Nucor supports the concept of bidding energy efficiency into the PJM auctions, but believes that FirstEnergy's proposal does not go far enough. We support the position of several other parties in this proceeding that FirstEnergy should bid more energy efficiency into PJM capacity auctions than it currently plans. We also support bidding current ELR interruptible load into the capacity markets, even for the capacity delivery years beyond the term of FirstEnergy's ESP III.

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[40] OEG/Nucor Ex. 1 at 17; OCC Ex. 1 at 9.

[41] OCC Ex. 1 at 14.

[42] *Id.*

[43] *Id.* at 15.

[44] Direct Testimony of John Dargie, Company Ex. 1, at 15.

Bidding Rider ELR interruptible load into the PJM base residual auctions provides a benefit to customers by displacing higher-cost capacity resources, thereby potentially reducing the cost of capacity.[45] Bidding this load into the auctions provides an additional benefit because FirstEnergy is paid for the capacity that clears in the auction, and these payments are flowed back through the DSE rider to lower costs for customers.[46] FirstEnergy has bid ELR load into previous PJM BRAs.[47] In this proceeding, FirstEnergy has taken the position that it will not bid Rider ELR interruptible load into the 2013 BRA or future BRAs because the delivery years for those auctions extend beyond the term of FirstEnergy's ESP III, which ends in May of 2016. According to FirstEnergy, since it will not know whether Rider ELR interruptible load will be available after the termination of ESP III, there is too much risk to FirstEnergy from bidding ELR load into the BRA.[48]

The Commission should require FirstEnergy to bid ELR interruptible load into the BRAs notwithstanding the timing issues related to the termination of a particular ESP. As Dr. Goins testified, the customers under Rider ELR have been a long-standing source of steady and reliable interruptible load for many years, and FirstEnergy can be reasonably assured that many or most ELR customers will continue to take interruptible service under Rider ELR or a similar rate offered by FirstEnergy.[49] Dr. Goins recommends that the Commission direct FirstEnergy to bid its Rider ELR load into the next BRA, and that at the same time the Commission make a finding that FirstEnergy acted prudently in bidding the ELR load into the auctions based on a

[45] Tr. Vol. II at 319; Tr. Vol. VI at 1175.

[46] Tr. Vol. VI at 1175.

[47] *Id.*

[48] Rebuttal Testimony of Eileen M. Mikkelsen, Company Ex. 23, at 6-9.

[49] OEG/Nucor Ex. 1 at 22-23.

reasonable forecast of interruptible load that will be available on its system assuming Rider ELR or a similar interruptible rate is extended.[50] The Commission should also consider explicitly finding that FirstEnergy may recover reasonable costs associated with PJM penalties or shortfalls incurred if interruptible load is not available in a particular capacity delivery year.[51]

Rider ELR interruptible load is a valuable capacity resource and frankly it is a waste to leave this load on the sidelines instead of bidding it into the BRAs. Dr. Goins' recommendation would allow FirstEnergy to bid in the Rider ELR load with little or no risk to FirstEnergy. Nevertheless, in its rebuttal testimony, FirstEnergy provided several reasons why it opposes this proposal. None of the reasons FirstEnergy provides, however, presents a serious obstacle to bidding this valuable interruptible load into the BRAs.

In her rebuttal testimony, FirstEnergy witness Ms. Mikkelsen testified that it is unreasonable to consider Rider ELR resources as "planned" demand resources in PJM beyond May 31, 2016 since that is when the Rider ELR terminates.[52] Nevertheless, Ms. Mikkelsen agreed that Rider ELR load may be bid into the PJM auctions even if FirstEnergy did not have that load under contract at the time of the auction.[53]

Ms. Mikkelsen also observes that it would be imprudent for the Companies to simply assume that demand resources will be available to the Companies after May 31, 2016, even if Rider ELR is extended, since some existing Rider ELR customers may have already entered into contractual arrangements with curtailment service providers for the period beyond the current

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[50] *Id.* at 23.

[51] *Id.*

[52] Company Ex. 23 at 8-9.

[53] Tr. Vol. VI at 1176-77.

ESP or ESP III.[54] It seems that FirstEnergy could address this concern simply by asking its Rider ELR customers whether they would be willing to stay on FirstEnergy's interruptible rate should it be extended (ideally with reasonable improvements) beyond May of 2016. As noted above, Rider ELR customers are long-time interruptible customers of FirstEnergy, so it is likely that many ELR customers will elect to continue to take service under a reasonable interruptible rate if one is offered in the future. FirstEnergy could also adjust its bid downward to take into account the possibility that some current ELR interruptible load might be unavailable in the capacity delivery year, if for example a customer elects to go with a CSP after the term of ESP III or a customer closes its plant.

Finally, Ms. Mikkelsen explains that Rider ELR has a "hard stop" of May 31, 2016, and it is unknown at this point whether FirstEnergy would seek an extension of Rider ELR or whether the Commission would approve such an extension.[55] Dr. Goins' recommendation, however, takes all these uncertainties into account. While FirstEnergy would not necessarily have to extend Rider ELR now, it would make a representation that it intends to offer an interruptible rate the same as or similar to the Rider ELR in its next ESP, and make a reasonable estimate based on current and past participation on Rider ELR (and the predecessor interruptible rates to ELR) of the amount of load likely to participate on an extended ELR. The Commission could then make a finding that a continuation of interruptible rates is reasonable and that FirstEnergy would be prudent by bidding this load into the May 2013 BRA and future BRAs, notwithstanding the fact that there might be some uncertainty about the exact amount of interruptible load

[54] Company Ex. 23 at 9.

[55] *Id.*

FirstEnergy will have under contract in the capacity delivery year. Along with this prudency determination, the Commission could also make clear that FirstEnergy will be held harmless from any PJM penalties or supplemental capacity costs if the amount of interruptible load in the capacity delivery year falls short of the amount FirstEnergy bid in.

As noted above, we believe the framework outlined in Dr. Goins' testimony would allow FirstEnergy to bid Rider ELR interruptible load into future BRAs – thereby providing potentially significant cost savings to customers – while at the same time exposing FirstEnergy to a minimal amount of financial risk. If, however, FirstEnergy or the Commission needs even greater certainty, FirstEnergy could work with its participating customers to develop an improved long-term (or permanent) interruptible rate that would extend into and beyond the 2016/2017 capacity delivery year, and that could be brought to the Commission for approval and extension outside of an ESP prior to the May 2013 PJM BRA. Assuming the rate is approved, FirstEnergy could then sign up interested customers in time to be able to bid their load into the BRA. This would eliminate FirstEnergy's concerns about not having interruptible load under contract in the capacity delivery year.[56]

On a final note, FirstEnergy has made clear that it intends to bid Rider ELR load that it has under contract into the PJM supplemental capacity auctions for the 2013/14, 2014/15 and 2015/16 capacity delivery years, and that it has already bid 10 MWs of ELR load into the first incremental auction for the 2014/15 delivery year.[57] While Nucor supports FirstEnergy's plan to bid Rider ELR load into the supplemental auctions, the results of the recent incremental auction

[56] Tr. Vol. VI at 1179-81.

[57] Company Ex. 23 at 7.

for the 2014/15 delivery year highlight the importance of getting this load bid into the BRAs as well. The incremental auction for the 2014/15 delivery year cleared at $5.54/MW-day, compared to the May 2012 BRA for the 2015/16 delivery year, which cleared at $354/MW-day.[58] Clearly customers would receive a much greater benefit if FirstEnergy bid ELR load into the BRAs and not just the supplemental auctions.

D. Peak Demand Reduction Attributable to Rider ELR Interruptible Load

Rider ELR interruptible load accounts for a significant portion of the PDR savings that FirstEnergy counts toward meeting its benchmarks. Nevertheless, it appears that FirstEnergy is understating the level of PDR benefit that Rider ELR load provides by counting only the amount of ELR load that FirstEnergy registers in PJM.[59]

Dr. Goins recommends that FirstEnergy calculate the PDR benefit of Rider ELR based on the definition of Curtailable Load in the rider.[60] Under Rider ELR, each customer's Curtailable Load is the difference between the customer's maximum demand and firm contract demand in the peak measurement period of 11 a.m.-5 p.m. EST (12 p.m.-6 p.m. EDST) on non-holiday weekends.[61] As Dr. Goins explains, the PDR value for Rider ELR interruptible load in a given year should be determined through the following steps: (i) sum the Curtailable Load for each Rider ELR customer to produce a total monthly Rider ELR Curtailable Load; (ii) average the

[58] Tr. Vol. VI at 1174.

[59] FirstEnergy estimates 31,778 kW of PDR savings for CEI, 42,139 kW of savings for Ohio Edison, and 125,671 kW of savings for Toledo Edison from their respective Rider ELR customers. Application, Attachment A, Ohio Edison Company Energy Efficiency & Peak Demand Reduction Portfolio Plan, Appendix C-1: EE&C/DR Program Measure Assumptions.

[60] OEG/Nucor Ex. 1 at 19.

[61] *Id.*

monthly Curtailable Load for the summer months (June, July and August); and (iii) set the PDR value equal to the average monthly summer Curtailable Load.[62]

Using the Curtailable Load value contained in Rider ELR to determine the level of PDR benefit that can be counted toward the benchmarks directly corresponds with the measured value of a customer's interruptible load under the tariff and more accurately reflects the peak demand reduction benefit a Rider ELR customer actually provides. The Curtailable Load measurement recognizes that during an emergency curtailment, the ELR customer must reduce demand down to or below its contract firm demand, and may not increase load above that contract demand at any time during the curtailment event.[63] For example, assume an ELR customer has a firm demand of 5 MW and a maximum demand in the hours prescribed for calculating Curtailable Load in Rider ELR of 20 MW. This customer's Curtailable Load would be 15 MW. Now assume that an emergency curtailment is called when the customer has 10 MWs on the system. The customer must curtail 5 MWs to get down to its firm demand. However, this does not mean that the customer is providing only 5 MWs of demand reduction. The customer is still effectively providing 15 MWs of demand reduction, since, in addition to curtailing 5 MWs, the customer is precluded from putting its full 15 MWs of demand on the system for the duration of the curtailment, which the customer otherwise would have a right to do if not for the emergency interruption. Keeping this load off the system provides just as much of a demand reduction benefit during a system emergency as curtailing load that is on the system when the curtailment is initiated.

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[62] *Id.* at 20.

[63] *Id.* at 19.

When asked why FirstEnergy does not use the Curtailable Load measurement in Rider ELR to calculate the PDR value attributable to ELR customers, FirstEnergy responded by citing a March 10, 2010 order in Case No. 09-535-EL-EEC et al, where the Commission stated that "FirstEnergy's ELR and OLR tariffs meet the requirements for a peak demand response program, under Rule 4901:I-39-05(E), O.A.C., because the ELR and OLR tariffs provide FirstEnergy with the capability to reduce peak demand and the ELR and OLR tariffs are recognized as a capacity resource by its regional transmission organization."[64] But this Commission determination only addresses whether Rider ELR can be used for purposes of meeting the PDR benchmarks. It does not require, nor does any statute or Commission regulation, that the PDR value attributed to an interruptible rate such as Rider ELR be equal to the amount of interruptible load registered in PJM. Moreover, the use of Rider ELR interruptible load is not limited to PJM – a Company or ATSI may curtail ELR load as well, which essentially gives Rider ELR an additional demand reduction value separate and apart from the use of Rider ELR as a demand resource in PJM.

An additional benefit from using Curtailable Load to measure the PDR value of Rider ELR interruptible load is that it likely would increase the amount of PDR from this resource that FirstEnergy can count toward meeting the benchmarks, which could reduce FirstEnergy's need to acquire additional demand response resources.[65] This in turn could reduce EE/PDR costs for FirstEnergy's customers.

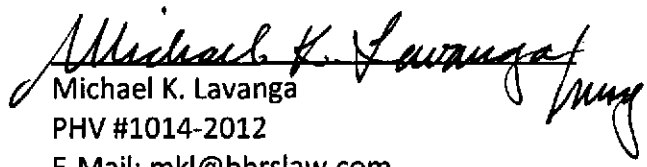
[64] OEG/Nucor Ex. 1, FirstEnergy response to Nucor 1-20(b) in Exhibit DWG-1.

[65] OEG/Nucor Ex. 1 at 20.

III. CONCLUSION

Nucor respectfully requests that the Commission direct FirstEnergy to modify its EE/PDR portfolio proposal consistent with the positions and recommendations in this brief.

Respectfully submitted,



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