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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

REPLY BRIEF OF NUCOR STEEL MARION, INC.

Michael K. Lavanga
PHV #1014-2012
E-Mail: mkl@bbrslaw.com
Counsel of Record
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
(202) 342-0800 (Main Number)
(202) 342-0807 (Facsimile)

Attorney for Nucor Steel Marion, Inc.

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REPLY BRIEF OF NUCOR STEEL MARION, INC.

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

I. INTRODUCTION

In this proceeding, Nucor joined with the Ohio Energy Group ("OEG"), which is comprised of numerous large industrial customers in FirstEnergy's service territory, to propose and support modifications to the Companies' proposed energy efficiency and peak demand reduction ("EE/PDR") program portfolio plans for the years 2013-2015. Specifically, OEG and Nucor proposed: (i) modifying the cost allocation and rate design of the DSE2 charge to limit the volatility and cost exposure to large industrial customers of EE/PDR program costs; (ii) rejecting or at least modifying FirstEnergy's shared savings proposal to mitigate the cost impacts on customers; (iii) requiring FirstEnergy to bid Rider ELR interruptible load into the PJM base residual auctions; and (iv) using the Curtailable Load measurement contained in Rider ELR as the basis for calculating the peak demand reduction benefit from Rider ELR interruptible load that FirstEnergy may count toward meeting its annual PDR benchmarks. These positions and recommendations are strongly supported by the evidence (mostly uncontroverted) on the record in this proceeding, including the direct testimony of OEG/Nucor's expert witness, Dr. Dennis Goins.[1]

As discussed further below, a review of the initial briefs filed in this proceeding shows that parties raised no objections in their briefs to certain of OEG/Nucor's recommendations (in particular, our cost allocation and DSE2 cap proposals, and our recommendation on calculating the PDR value of Rider ELR interruptible load), and that many parties share OEG/Nucor's concerns about FirstEnergy's shared savings proposal, and FirstEnergy's limited and overly-cautious approach to bidding EE and PDR into the PJM capacity markets. Clearly, many parties have concerns over the lack of reasonable cost controls in FirstEnergy's Application. To address these concerns, Nucor urges the Commission to adopt the Nucor and OEG recommendations as set forth in our initial briefs.

II. ARGUMENT

A. No Party Objected to, Controverted with Persuasive Evidence, or Even Commented in Their Initial Briefs on the Cost Allocation and Rate Design Modifications Proposed by OEG and Nucor

Nucor's main concern in this proceeding has been the cost impacts of FirstEnergy's EE/PDR portfolio plan on large industrial customers. As Dr. Goins demonstrated in his testimony, individual large industrial customers have paid hundreds of thousands of dollars

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

annually for FirstEnergy's EE/PDR programs through the DSE2 charge.[2] In fact, on an annualized basis, the largest industrial customers could pay in the range of *$1 million a year* under the DSE2 charge currently in place for Ohio Edison.[3] These severe cost impacts are supported by the uncontroverted evidence, were not rebutted by FirstEnergy (or any other party), and were not challenged by any parties in their initial briefs.

While these cost impacts are staggering today, they are likely just the tip of the iceberg. After all, FirstEnergy is still operating under its initial three-year portfolio plan, when the statutory EE/PDR benchmarks have been relatively low. FirstEnergy also is currently operating its EE/PDR programs without a shared savings mechanism in place. As the statutory benchmarks continue to increase, and if FirstEnergy is given an incentive to spend more on EE/PDR programs with a shared savings incentive (if such a mechanism is approved in this or a future case), the DSE2 costs for all customers – but particularly for large industrial customers who consume very large amounts of electric energy – will likely substantially increase over time.

In order to mitigate the cost impacts of FirstEnergy's EE/PDR portfolio on large industrial customers, OEG/Nucor witness Dr. Goins recommended that the mercantile sector program costs be allocated among rate schedules GP, GSU, and GT either based on distribution revenue or on a reasonable forecast of program use by rate schedule (we prefer a distribution allocation as less volatile and more transparent), instead of based on energy.[4] Second, and most importantly, Dr. Goins recommended that DSE2 charges for class GT customers be capped at

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[2] OEG/Nucor Ex. 1 at 8-9.

[3] *Id.* at 9.

[4] *Id.* at 10-11.

$10,000 a month, and that any unrecovered amounts resulting from the cap be spread among the GP, GSU, and GT rate schedules.[5]

No party filed testimony responding to OEG's and Nucor's cost allocation and rate design recommendations, no party has offered evidence that would rebut or undercut these recommendations, and no party addressed these recommendations in its initial brief. As a result, Dr. Goins' recommendations in this regard are reasonable (indeed compelling based on the record), are supported by un-rebutted evidence in this case, and should be adopted. Moreover, Dr. Goins' recommendations are flexible, so the Commission can modify them (by, for example, using a different rate design mechanism such as a declining block rate or a customer charge, or even increasing the monthly cap) if the Commission determines that the cap proposed by Dr. Goins does not strike the right balance between capping the cost exposure of the largest GT industrial customers at a reasonable level and limiting the cost impact from the cap mechanism on other mercantile sector customers.

Finally, it is worth noting that some parties in this proceeding propose modifications to the portfolio plan that could further increase the costs to individual very large industrial customers, without producing a corresponding benefit. For example, the OMA Energy Group ("OMAEG") and the Ohio Hospital Association ("OHA") advocate for changes to the portfolio plan that could increase costs for customers under the three rate schedules comprising the mercantile sector.[6] Large industrial customers under rate GT could end up having to pay additional program costs, administrative costs, and common costs associated with these

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[5] *Id.* at 13.

[6] *See* Post Hearing Brief of the OMA Energy Group ("OMAEG Brief") at 2-4; Initial Brief of the Ohio Hospital Association at 4-7.

proposals, even if those customers do not want to take advantage of the modified programs. Nucor does not oppose the recommendations of the OMAEG and OHA, and in fact supports changes to the portfolio plan aimed at better meeting the needs of manufacturers and hospitals. However, we believe that further increasing costs to the mercantile sector by incorporating new programs drives home the need for a more equitable sharing of EE/PDR portfolio costs among individual customers, which is precisely the goal Dr. Goins' cap mechanism seeks to achieve.

B. No Party Objected to, Controverted with Persuasive Evidence, or Even Commented in Their Initial Briefs on the Method Proposed by OEG and Nucor for Measuring the PDR Benefit of Rider ELR Interruptible Load

Dr. Goins testified that the PDR benefit of interruptible load under Rider ELR is understated by FirstEnergy. Dr. Goins recommended that FirstEnergy be required to use the definition of Curtailable Load in Rider ELR as the basis for calculating the amount of PDR for purposes of meeting statutory benchmarks, instead of using the amount of interruptible load FirstEnergy chooses to register with PJM.[7] No party opposed this recommendation, offered persuasive contrary evidence, or even addressed the issue in their initial brief.

The recommendation on this issue by OEG/Nucor witness Dr. Goins is consistent with the theme of making reasonable adjustments to FirstEnergy's portfolio plan to contain costs. In addition to more accurately reflecting the peak demand reduction benefit Rider ELR customers provide, and being consistent with how interruptible load is measured under the Commission-approved tariff, calculating the PDR amount to be counted against the benchmarks using Curtailable Load will produce a larger amount of PDR benefit from Rider ELR than is currently

[7] OEG/Nucor Ex. 1 at 19-20.

produced using FirstEnergy's approach.[8] Obtaining a greater amount of required PDR from Rider ELR would reduce the need for FirstEnergy to obtain additional PDR in order to meet the benchmarks, and likely would reduce the overall portfolio costs for all of FirstEnergy's customers.

C. Almost All Parties Support FirstEnergy Employing a More Active Strategy for Bidding Energy Efficiency and PDR into the PJM Capacity Markets

If there is one area where the initial briefs reflect a near-consensus among the parties in this case, it is the need for FirstEnergy to employ a more active strategy in bidding EE and PDR into the PJM capacity markets, in particular the PJM annual base residual auctions ("BRAs"). Parties recognize the dual benefit to customers that comes from bidding EE and PDR into the BRAs – (i) the potential lowering of capacity costs through the displacement by EE and PDR resources of higher-priced capacity resources, and (ii) the receipt of auction revenues that can be credited to Rider DSE to reduce the DSE1 and DSE2 charges,[9] and observed that in Case No. 12-814-EL-UNC and in its order approving FirstEnergy's ESP III proposal, the Commission expressed support for FirstEnergy bidding EE and PDR into the capacity markets.[10] Almost every party to this proceeding supports FirstEnergy bidding more EE and PDR into the auctions than FirstEnergy indicates it is willing to do in its Application.[11]

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[8] *Id.* at 19.

[9] *See, e.g.,* Initial Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio ("Staff Brief") at 9; Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel ("OCC Brief") at 20.

[10] *See, e.g.,* OCC Brief at 18-19; Initial Brief of Environmental Law and Policy Center and Ohio Environmental Council ("ELPC Brief") at 8.

[11] *See* Staff Brief at 8-11; OCC Brief at 17-25; Initial Brief by the Natural Resources Defense Council, the Sierra Club and Citizen Power ("NRDC Brief") at 57-58; Ohio Partners for Affordable Energy's Post Hearing Brief ("OPAE Brief") at 20-23; ELPC Brief at 4-19; Post-Hearing Brief of the Ohio Energy Group ("OEG Brief") at 12; OMAEG Brief at 4; Initial Post-Hearing Brief by the Advanced Energy Economy Ohio at 3-4; Initial Brief by Nucor Steel Marion, Inc. ("Nucor Brief") at 23-24.

For its part, FirstEnergy explains that it is only willing to bid into the auctions EE and PDR it has ownership rights to at the time of the auction.[12] FirstEnergy maintains that there is too much uncertainty involved in trying to project that amount of EE or PDR that FirstEnergy will have ownership of in the capacity delivery year.[13] Representatives of FirstEnergy's customers and other parties in this proceeding, however, recognize that the benefits of bidding these resources into the BRAs far outweigh the risks. Several of these parties have made reasonable proposals that would significantly limit FirstEnergy's risks associated with bidding more EE and PDR into the BRAs as planned resources.[14] By employing one or a combination of these proposed risk management strategies, FirstEnergy should be able to bid a much more significant level of projected EE and PDR savings into the capacity auctions than if FirstEnergy relies only on resources it owns at the time of the auction, without assuming unreasonable levels of risk.

OEG and Nucor also recommended that FirstEnergy bid Rider ELR interruptible load into the BRAs, even if the capacity delivery year falls outside the term of FirstEnergy's current ESP, based on an understanding that FirstEnergy will continue to offer an interruptible rate similar to

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[12] Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company in Support of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 Through 2015 ("FirstEnergy Brief") at 28.

[13] *Id.* at 29-30.

[14] OCC Brief at 22 (recommending that "customers should assume FirstEnergy's risk of PJM penalties for any EE & LM capacity obligations cleared in the PJM BRA, where FirstEnergy has been prudent managing the Utilities' Portfolio and used its best effort to deliver the capacity savings"); Staff Brief at 10-11 (recommending that FirstEnergy bid EE and PDR resources into the BRAs at the price of zero, or the EM&V and bidding costs, to ensure that the prices bid clear the auctions, and that FirstEnergy mitigate potential performance or quantity risks by bidding in 75% of the projected capacity reduction into the BRA); OPAE Brief at 23 (recommending that FirstEnergy bid in EE and PDR savings from its portfolio using discounted projections of savings); ELPC Brief at 16-17 (summarizing risk mitigation proposals for various witnesses); OMAEG Brief at 4 (recommending that FirstEnergy bid a hedged amount of EE resources into the capacity auctions); OEG Brief at 12 (recommending that FirstEnergy be held harmless from penalties and supplemental capacity costs assuming FirstEnergy acted prudently in bidding a forecasted amount of Rider ELR interruptible load into the BRA); Nucor Brief at 23-24 (same).

Rider ELR in subsequent ESPs. This recommendation starts from the same premise and has the same basic framework as the recommendation, supported by almost all parties in this proceeding, to bid more planned EE resources into the BRAs. Specifically, FirstEnergy would bid in a portion of the ELR load, based on a commitment that FirstEnergy would continue to offer an interruptible rate similar to, or even more attractive than, the current Rider ELR after the expiration of ESP III, and based on a reasonable estimation of the amount of interruptible load that FirstEnergy expects will be on its system in the capacity delivery year.[15] Based on this reasonable forecast, the Commission could find the bidding of these anticipated interruptible resources to be prudent, and could agree to hold FirstEnergy harmless for capacity shortfalls or penalties if some of that interruptible load is not available in the capacity delivery year.[16]

In its initial brief, FirstEnergy explains that it cannot bid Rider ELR load into the BRA as a planned resource because it does not know if it will have this load under contract in the capacity delivery year, since Rider ELR does not extend beyond May 31, 2016.[17] FirstEnergy notes that it has solicited extensions through May 31, 2016 from all their Rider ELR customers, but only 14 have agreed to extend as of the hearing date, and that some ELR customers might have already contracted with curtailment service providers to bid their interruptible load into the May 2013 BRA and future BRAs.[18] Regardless of any uncertainty today about how many current ELR customers will extend their participation, FirstEnergy will know for certain how many ELR customers plan to stay on the rider through May of 2016 well before the May 2013

[15] Nucor Brief at 21-24; OEG Brief at 11-12.

[16] Nucor Brief at 23-24; OEG Brief at 12.

[17] FirstEnergy Brief at 31.

[18] *Id.* at 31-32.

BRA, and FirstEnergy could inquire whether those returning ELR customers would be willing and able to stay on an interruptible rate that is similar to Rider ELR (or improved) in FirstEnergy's next ESP. FirstEnergy also states that any commitment to extend Rider ELR beyond May 31, 2016 would have to be made in a separate proceeding.[19] However, FirstEnergy could make the commitment to offer such a rate without necessarily having to extend Rider ELR in this proceeding or get customers under contract today. Rider ELR has been part of all three of FirstEnergy's ESPs, and customers on Rider ELR have been interruptible customers of the Companies stretching back years before FirstEnergy's initial ESP, so FirstEnergy should be able to make a reasonable estimate of the amount of interruptible load that will be available if FirstEnergy were to extend Rider ELR into the next ESP.

The bottom line is that while FirstEnergy maintains that bidding Rider ELR load into the BRAs is too risky, OEG's and Nucor's recommendation is a common sense solution that would maximize the economic potential of Rider ELR as a capacity resource without exposing FirstEnergy or its customers to inordinate risk. As Nucor noted in its initial brief, Rider ELR interruptible load is too valuable a capacity resource to leave sitting on the sidelines, and FirstEnergy should make every reasonable effort to retain this resource and bid it into the BRAs.

D. Shared Savings Still Has Not Been Justified for FirstEnergy, Nor Has FirstEnergy Shown that, if Shared Savings is Permitted, the Modifications Proposed by the Parties Are Unreasonable

Nucor has opposed allowing FirstEnergy a shared savings incentive because FirstEnergy has not demonstrated that such an incentive was necessary for FirstEnergy to exceed its statutory benchmarks. Several parties proposed modifications to FirstEnergy's shared savings

[19] *Id.* at 33.

proposal, but the parties that support shared savings conceptually do not address the threshold issue of whether a shared savings incentive is necessary in order for First Energy to exceed the benchmarks. As has been demonstrated, such an incentive is not necessary because two of the three FirstEnergy utilities far exceeded their benchmarks in 2011 without a shared savings mechanism being in place.[20] In the case of Ohio Edison, it hit its annual benchmark in 2011, and only narrowly missed its cumulative benchmark.[21]

Since: (i) there is no statutory or regulatory requirement that a utility is entitled to shared savings; (ii) the evidence in this case shows that FirstEnergy can meet and exceed its benchmarks without a shared savings mechanism; and (iii) there is also a lack of evidence demonstrating that a shared savings mechanism is necessary for FirstEnergy to meet or exceed it benchmarks over the course of the proposed three-year portfolio plan, FirstEnergy's request for a shared savings mechanism should be denied it its entirety. If, however, the Commission determines that a shared savings mechanism is appropriate, it should adopt the recommendations made by several parties intended to improve the mechanism and limit the cost impact on FirstEnergy's customers. In particular, the Commission should adopt a shared savings cap of no more than 8% of prudent program spending.[22] The incentive percentages should be reduced,[23] and incentives should only be applied to the portion of savings achieved

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[20] *See* Nucor Brief at 16.

[21] Tr. Vol. I at 97; Docket No. 12-1533-EL-EEC at al., 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 at 5, Table 2-1.

[22] OCC Brief at 11; OPAE Brief at 20; Nucor Brief at 18-19; OEG Brief at 10. NRDC recommends at cap of $10 million a year, split among the Companies. NRDC Brief at 62-63.

[23] OCC Brief at 10; Staff Brief at 12; Nucor Brief at 19; OEG Brief at 10.

over and above what FirstEnergy was required to achieve in order to meet its benchmarks.[24] Finally, the savings associated with mercantile self-direct programs, T&D projects, and behavioral programs should be excluded for purposes of the shared savings calculation.[25]

III. CONCLUSION

Nucor respectfully requests that the Commission adopt Nucor's recommendations and direct FirstEnergy to modify its EE/PDR portfolio proposal consistent with those recommendations, as set forth in this brief and in Nucor's initial brief.

Respectfully submitted,

Michael K. Lavanga /mug

Michael K. Lavanga
PHV #1014-2012
E-Mail: mkl@bbrslaw.com
Counsel of Record
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
(202) 342-0800 (Main Number)
(202) 342-0807 (Facsimile)

Attorney for Nucor Steel Marion, Inc.

[24] Nucor Brief at 19; OEG Brief at 10.

[25] OCC Brief at 6-7; Nucor Brief at 20; OEG Brief at 11.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served via electronic transmission on this 30th day of November, 2012 upon the following:

Kathy J. Kolich
Carrie M. Dunn
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Email: kjkolich@firstenergycorp.com
Email: cdunn@firstenergycorp.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839
Email: cmooney2@columbus.rr.com

Justin Vickers
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, Illinois 60601
Email: jvickers@elpc.org

J. Thomas Siwo
Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Email: tsiwo@bricker.com
Email: tobrien@bricker.com

Samuel C. Randazzo
Frank P. Darr
Joseph E. Oliker
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
Email: sam@mwncmh.com
Email: fdarr@mwncmh.com
Email: joliker@mwncmh.com
Email: mpritchard@mwncmh.com

Cathryn N. Loucas
Trent Dougherty
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
Email: cathy@theOEC.org
Email: Trent@theOEC.org

Christopher J. Allwein
Williams Allwein and Moser, LLC
Two Maritime Plaza, Third Floor
Toledo, Ohio 43604
Email: callwein@wamenergylaw.com

Kyle L. Kern
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
Email: kern@occ.state.oh.us

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215
Email: ricks@ohanet.org

Gregory J. Poulos
EnerNOC, Inc.
471 East Broad Street, Suite 1520
Columbus, Ohio 43215
Email: gpoulos@enernoc.com

Todd M. Williams
Williams Allwein and Moser LLC
Two Maritime Plaza, Third Floor
Toledo, Ohio 43604
Email: toddm@wamenergylaw.com

Nicholas McDaniel
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, Illinois 60601
Email: nmcdaniel@elpc.org

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
Email: robinson@citizenpower.com

Gregory Price
Mandy Willey
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Email: gregory.price@puc.state.oh.us
Email: mandy.willey@puc.state.oh.us

Devin Parram
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Email: devin.parram@puc.state.oh.us

Glenn S. Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue East, Suite 1350
Cleveland, Ohio 44114
Email: gkrassen@bricker.com

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Email: mwarnock@bricker.com

Michael K. Lavanga / Jung
Michael K. Lavanga

31278107.1