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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Review of the )  
Alternative Energy Rider Contained in the )  
Tariffs of Ohio Edison Company, The ) Case No. 11-5201-EL-RDR  
Cleveland Electric Illuminating Company, )  
and The Toledo Edison Company. )

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MEMORANDUM CONTRA OF NUCOR STEEL MARION, INC.  
TO APPLICATION FOR REHEARING OF INTERSTATE GAS SUPPLY, INC.

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Pursuant to Ohio Administrative Code 4901-1-35(B), Nucor Steel Marion, Inc. submits this Memorandum Contra the application for rehearing by Interstate Gas Supply, Inc. ("IGS") in this case.

I. INTRODUCTION

In its August 7, 2013 Opinion and Order<sup>1</sup> in this case, the Commission disallowed recovery by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy") of \$43,362,796 for 2011 vintage renewable energy credits ("RECs") purchased in August, 2010.<sup>2</sup> The cost of these RECs had been passed through to FirstEnergy's standard service offer customers under the Alternative Energy Rider ("Rider AER"). The Commission directed FirstEnergy to "file tariff schedules within 60 days of

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<sup>1</sup> In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company, Case No. 11-5201-EL-RDR, Opinion and Order (August 7, 2013) ("August 7 Order").

<sup>2</sup> *Id.* at 25.

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the issuance of a final appealable order in this proceeding, adjusting Rider AER to reflect the refund and associated carrying costs.”<sup>3</sup>

IGS requests rehearing of the August 7 Order, arguing for the first time in this case that any disallowance should not be passed back through Rider AER, but instead that FirstEnergy: (i) should pass the refund back to all FirstEnergy customers or, in the alternative (ii) identify which customers paid Rider AER at the time of FirstEnergy’s error and order refunds to be given to those customers, regardless of whether those customers currently shop for generation supply (and therefore are no longer subject to Rider AER).<sup>4</sup> If the Commission does not adopt either of these approaches, then IGS requests that the refund not be passed through Rider AER, but instead should be made via a check or through another rider that is outside of the generation charges.<sup>5</sup>

There is no evidence in the record in this case to support IGS’ proposals. Moreover, the alternatives IGS proposes would be unfair to FirstEnergy’s non-shopping customers, and/or administratively burdensome. Accordingly, as discussed below, the Commission should deny IGS’ application for rehearing.

## **II. DISCUSSION**

### **A. Unlike the Approach for Passing Disallowed Costs Back to Customers Adopted in the August 7 Order, the Approaches Proposed by IGS are Unsupported by Evidence in the Record**

Although Nucor did not take a position on whether costs associated with FirstEnergy’s REC purchases should be disallowed, Ohio Energy Group and Nucor witness Dr. Dennis Goins

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<sup>3</sup> *Id.* at 28.

<sup>4</sup> Application for Rehearing of Interstate Gas Supply, Inc. (“IGS Application for Rehearing”) at 2.

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

testified that if the Commission determined that any costs should be disallowed, such disallowance should be refunded to current SSO customers through Rider AER using the rider's current rate design – that is, loss-adjusted kWh charges by rate class.<sup>6</sup> Dr. Goins explained that this would ensure that the refunds would be passed back to customers in the same manner in which the disallowed REC costs were originally recovered from customers.<sup>7</sup> Office of Consumers' Counsel witness Wilson Gonzalez also testified that disallowed costs that are returned to customers should be passed through Rider AER.<sup>8</sup>

IGS is a party to this case, having intervened on October 9, 2012. IGS could have, but did not, submit testimony supporting a particular approach to treating disallowed costs. IGS also should have been aware of Dr. Goins' and Mr. Wilson's testimony on how to pass the disallowance back to customers. But IGS never cross-examined Dr. Goins or Mr. Gonzalez on their recommendations, nor did IGS elicit any evidence to show that passing the disallowance back through Rider AER would be improper, or that some other method would be more reasonable. IGS also did not address this issue in its initial or reply briefs.<sup>9</sup>

On rehearing IGS now argues, for the first time, that passing the disallowance back to current FirstEnergy customers who are subject to Rider AER is inappropriate. IGS bases its arguments in part on unsupported claims – for example, IGS states that refunds to customers through Rider AER “will have an unreasonable and unlawful chilling effect on the competitive

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<sup>6</sup> Direct Testimony of Dennis W. Goins, Ph.D. on Behalf of the Ohio Energy Group and Nucor Steel Marion, OEG/Nucor Ex. 1 at 15-16.

<sup>7</sup> *Id.* at 16.

<sup>8</sup> Direct Testimony of Wilson Gonzalez on Behalf of the Ohio Consumers' Counsel (Public Version), OCC Ex. 16 at 36.

<sup>9</sup> IGS' initial and reply briefs addressed only the question of whether renewable energy compliance payments can be used to achieve compliance in lieu of actually acquiring energy derived from renewable resources.

retail electric service market.”<sup>10</sup> There is no evidence on the record in this case to support this claim. Moreover, the claim is dubious on its face – alternative energy costs are just one part of the total price of electricity a customer pays through its rates. There is no evidence that even a relatively large disallowance spread over a relatively small number of non-shopping customers will in any way influence whether those non-shopping customers elect to shop, or influence whether a current shopping customer chooses to return to the SSO.

Other assertions are clearly one-sided and likely do not tell the whole story. IGS states that since the number of FirstEnergy non-shopping customers has decreased over the last several years, the refund will be concentrated in a proportionately small group of people, and have the ability to distort the price to compare, which in turn can affect CRES suppliers’ ability to compete with FirstEnergy’s SSO rates.<sup>11</sup> What IGS does not mention is that in 2010 and 2011 the Rider AER rates were so high in part because the non-shopping load from the previous three years (which determines the amount of RECs FirstEnergy had to buy to meet the annual benchmark in the compliance year) was so much larger than the amount of load over which FirstEnergy was recovering the costs of those RECs, due to a high level of migration from SSO service to shopping starting at the time the renewable requirements took effect.<sup>12</sup> This would also have had a “distorting” affect on the price to compare, but this time in a manner favorable to CRES suppliers like IGS. In other words, if a significant Rider AER *credit* might influence customers who might otherwise shop to stay on the SSO as IGS claims, the very high Rider AER *charges* in 2010 and 2011 might have caused some customers to leave FirstEnergy’s SSO

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<sup>10</sup> IGS Application for Rehearing at 5-6.

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

<sup>12</sup> Direct Testimony of Eileen M. Mikkelsen, Company Ex. 4 at 10.

service, to the benefit of CRES suppliers. Of course, since IGS did not submit testimony on these issues, parties to this case never had the opportunity to test through cross-examination the summary assertions contained in IGS' application for rehearing.

By contrast, there is un rebutted evidence in the case, through the testimony of Dr. Goins and Mr. Gonzalez, supporting the approach the Commission adopted in the August 7 Order. Passing the disallowance back through Rider AER, the same way as the excessive REC costs were paid by customers, is the fairest and simplest way to make the customers who paid the excessive REC costs whole.

**B. IGS' Proposed Alternatives Are Unfair or Unworkable**

In addition to being unsupported by evidence in the record, IGS' proposed approaches for returning the disallowance to customers are unfair to non-shopping customers that paid very high Rider AER charges, or are administratively burdensome and very likely unworkable.

IGS' first recommendation is that the disallowance be given to all distribution customers of FirstEnergy, regardless of whether they shop for generation or take SSO service. This would be patently unfair to non-shopping customers who bore the brunt of the high Rider AER charges in 2010 and 2011. As the shopping statistics IGS cites in its application for rehearing reflect, shopping sales for all three FirstEnergy operating companies at the end of 2010 were over 67%, and as of March 31, 2013, non-shopping sales are over 75% for all three companies.<sup>13</sup> Since Rider AER is bypassable, shopping customers representing over 67% of FirstEnergy's distribution sales never had to pay for the excessive REC costs the Commission has decided should be disallowed.

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<sup>13</sup> IGS Application for Rehearing at 7.

Ironically, IGS complains of the unfairness of the Commission's approach to the between 8% and 16% of FirstEnergy's load that left FirstEnergy's SSO to shop between the end of 2010 and March of this year,<sup>14</sup> while ignoring the fact that, under IGS' approach, shopping customers representing 67% of FirstEnergy's distribution sales who did not pay the REC costs disallowed by the Commission would share in the disallowance. This would provide a windfall for shopping customers, while significantly diluting the refund to non-shopping customers who paid for the disallowed costs, and assuring that such non-shopping customers would not be made whole. IGS' recommendation that the disallowance be passed back to all FirstEnergy distribution customers is a classic case of the cure being worse than the disease, and it should be rejected.

IGS' second recommendation is that FirstEnergy should be required to identify those customers that paid for the RECs and directly refund those dollars to those customers regardless of whether they shop or take SSO service at the time of the refund. While this might be fair in concept, in practice it likely would be an administrative nightmare and unworkable. FirstEnergy would have to identify every one of the customers who was taking SSO service when the disallowed RECs were recovered through rates (probably numbering in the thousands of customers), but then subsequently left the SSO to shop. FirstEnergy would also have to review billing records to determine the usage of each and every customer who paid Rider AER at that time to determine the amount of refund the customer should get.

In addition to being unworkable, IGS' solution ignores basic realities of utility ratemaking and cost recovery. Customers often have to pay for costs they did not cause themselves – for example, if a utility is recovering deferred fuel costs over a number of years, a new customer

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<sup>14</sup> *Id.*

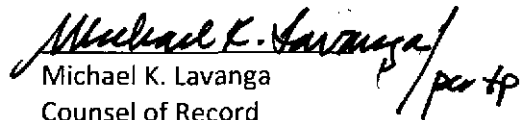
will have to pay those costs, even though the new customer did not cause them. In most cases, it is impossible to precisely match up costs with specific customers where customers routinely enter and leave the system. The same is true of the disallowance in this case.

If the Commission does not adopt either of IGS' first two approaches, then IGS requests that the refund not be passed through Rider AER, but instead should be made via a check or through another rider that is outside of the generation charges. This proposal, while lacking in detail, appears to be similar to IGS' second alternative, except that presumably the refund would be given only to current non-shopping customers. As discussed above, cutting a check to each individual customer currently taking SSO service as opposed to passing the refund through Rider AER might be reasonable in concept, but determining the amount of refund due to each customer would be administratively burdensome. Nevertheless, if the Commission is inclined to adopt an approach for refunding the disallowance to customers other than through Rider AER, IGS' third option is preferable, subject to certain clarifications. Specifically: (i) the refund should be provided only to current FirstEnergy SSO customers; and (ii) the method used to calculate the refund should produce a refund for each customer that is roughly proportional to the amount of disallowed costs that customer paid or would have paid through Rider AER (in other words, since the disallowed costs were paid through a kWh charge, the disallowance payment must also reflect kWh usage for each customer, instead of all customers receiving the same disallowance payment).

### **III. CONCLUSION**

For the reasons discussed above, Nucor respectfully requests that the Commission deny IGS' application for rehearing of the August 7 Order in this case.

Respectfully submitted,

Handwritten signature of Michael K. Lavanga in black ink, with a stylized flourish at the end.

Michael K. Lavanga

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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 9<sup>th</sup>, 2013.

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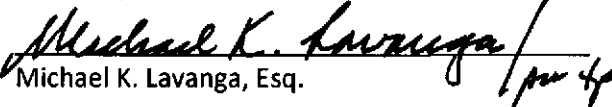
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