FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code.	)	Case No. 13-651-EL-ORD
In the Matter of the Commission's Review of its Rules for the Alternative Energy Portfolio Standard Contained in Chapter 4901:1-40 of the Ohio Administrative Code.	)	Case No. 13-652-EL-ORD
In the Matter of the Amendment of Ohio Administrative Code Chapter 4901:1-40, regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub. S.B. 315.	)	Case No. 12-2156-EL-ORD

COMMENTS OF NUCOR STEEL MARION, INC.

Pursuant to the January 29, 2014 Entry ("January 29 Entry") in the above-captioned proceedings, Nucor Steel Marion, Inc. submits these comments in response to Staff's proposed changes to the rules for energy efficiency programs and the alternative energy portfolio standard.

I. INTRODUCTION

Nucor is a large industrial customer of Ohio Edison that consumes very large amounts of electricity at a cost of millions of dollars a year. Nucor's competitiveness in the highly-competitive national and international steel markets, and our long-term

viability, depend on the continued supply of stable, reliable, and low-cost electric power.

These proceedings address the procedural rules applying to the energy efficiency portfolio and alternative energy requirements of S.B. 221. Nucor generally supports cost-effective energy efficiency and demand response programs, and pursues efficiency and peak demand reduction in its own operations. For example, Nucor currently provides significant reliability, peak demand reduction, and energy savings through its participation in Ohio Edison's economic load response rider. However, utility-provided energy efficiency and alternative energy compliance programs come at a significant cost to Nucor and other large industrial customers. These costs will only continue to increase as the S.B. 221's energy efficiency and alternative energy benchmarks continue to rise in the coming years.

Given the significant impact of these compliance costs on customers' rates, it is important to ensure that the Commission's rules allow for adequate oversight of utility compliance plans, and that the rules properly effectuate the statutory provisions intended to shield customers from excessive compliance costs. Accordingly, we welcome the opportunity to comment on the Staff's proposals to modify the existing energy efficiency portfolio and alternative energy rules and look forward to further discussion in these dockets. The following is a summary of our comments:

- To ensure adequate Commission oversight of utility energy efficiency and peak demand reduction portfolio plans and cost recovery, and in order to ensure that parties have the opportunity to raise issues and concerns, the rules should: (i) allow for 60 days for parties to review and comment on a utility's portfolio plan, as provided in the current rules, rather than shortening the comment period to 30 days, and (ii) should give the

Commission the discretion to set the portfolio plan for hearing to address issues raised by parties.

- Proposed Rule 4901:1-39-06 requires that a utility file a rate adjustment mechanism for recovery of portfolio costs concurrent with the filing of its portfolio plan. The Commission should clarify that a utility also has the option to propose a cost recovery mechanism as part of a standard service offer rate filing.

- The Commission should approve the proposed mandatory alternative energy cost cap under revised Section 4901:1-40-07 in order to protect customers against excessive alternative energy compliance costs, consistent with Section 4928.64(B)(2) of the Ohio Revised Code.

II. COMMENTS

A. The Commission Should Modify the Proposed Changes to the Program Portfolio Plan and Filing Requirements Under Rule 49:1-39-04

Staff proposes to fundamentally change the procedures of the utility program portfolio plan filing. The changes to Chapter 4901:1-39-04 require electric utilities to file an updated program portfolio plan by September 15th of each year to be implemented in the following calendar year. The proposed changes allow for interested persons to submit written comments within 30 days of the program portfolio plan filing. The electric utility will then determine whether to accept any recommendations for inclusion in its portfolio plan. This process differs from the current procedures, which provide for written objections to a portfolio plan to be filed within sixty days of the filing and which require the Commission to set the matter for hearing. At the hearing, the electric utility has the burden to prove that the proposed program portfolio is consistent with the policy of the state of Ohio. The January 29 Entry in this proceeding describes this change by stating, "Staff proposes to move from a pre-approval process for

portfolio plans to a post-approval scenario that would allow utilities the flexibility to make changes in accordance with technologies and market conditions."[1]

We agree that utilities should have some flexibility to adjust their energy efficiency program portfolios without the need for a full-blown proceeding. However, our concern is that the proposed changes to the portfolio plan filing procedures may not provide sufficient Commission oversight or time for review. The costs associated with the program portfolio plans are significant, particularly for large industrial customers such as Nucor, and allowing these costs to go into effect after a truncated review by stakeholders and without any Commission oversight may expose customers to significant risk. Therefore, parties should have ample opportunity to comment on changes to a utility's program portfolio, including the costs associated with the programs in the portfolio, as well as to request Commission review of proposed changes prior to the changes going into effect.

First, we recommend that the rules allow for a 60 day period for parties to comment on a utility's portfolio plan filing, as provided under the current rules, rather than the proposed 30 days. This will benefit both customers, as they will be able to review the proposed portfolio plan in more detail, and the utility, as the comments that they receive on their filing will be better informed.

Second, we recommend that the Commission provide for a mechanism to allow Commission review and approval of the portfolio program filing prior to its taking effect, if parties raise material issues or concerns with the utility's proposal. We appreciate

[1] January 29 Entry at P 10.

Staff's efforts to try to streamline the portfolio plan approval process and reduce litigation associated with the plans, and we agree that a hearing requirement for all portfolio plan filings (as provided under the current rule) is not necessary. However, we think that Staff's proposal to leave it up to the utility alone to decide whether to modify its portfolio proposal in response to issues raised by parties in their comments goes a step too far, and reduces the pre-compliance year review to a mere formality. Accordingly, the proposed rule should be modified to allow parties to include a request for hearing in its comments on a utility's portfolio plan, and to give the Commission the discretion to set the portfolio plan for hearing, or to address issues in an opinion and order, if the Commission deems appropriate.

B. The Commission Should Clarify that a Utility May Seek Approval of the Portfolio Plan Cost Recovery Mechanism in a Standard Service Offer Rate Proceeding

Proposed rule 4901:1-39-06 provides that "[c]oncurrent with the filing of its program portfolio plan, the electric utility shall propose a rate adjustment mechanism for recovery of costs incurred" in implementing its portfolio plan. We recommend that the Commission clarify that a utility may also seek approval of its portfolio plan cost recovery mechanism as part of a standard service offer filing. Since all of the utility's rates, and the utility's overall rate structure, often are at issue in SSO cases, it makes sense to allow the portfolio plan cost recovery mechanism to be addressed in an SSO proceeding as well. Allowing the cost recovery mechanism to be addressed in an SSO would also avoid the need to re-litigate the mechanism in each portfolio plan proceeding.

C. The Commission Should Approve the Proposed Alternative Energy Cost Recovery Cap Under Rule 4901:1-40-07(B)

Staff proposes to require each utility to calculate a maximum recoverable compliance fund ("MRCF") for alternative energy compliance costs each year. Once a utility reaches its MRCF in a year, the utility shall not seek additional recovery of additional compliance costs. In proposed rule 4901:1-40-07(B), Staff proposes to calculate the MRCF using the following procedure:

- Determine a compliance baseline for the compliance year consistent with the applicable section of paragraph (B) of rule 4901:1-40-03 of the Administrative Code;
- Calculate a reasonably expected dollars per MWh figure for the compliance year;[2]
- Calculate a total cost by multiplying the dollars per MWh figure in the second step by the compliance baseline determined in the first step; and
- Multiply the total cost by 3% to determine the MRCF.

The calculation of the MRCF is to occur by April 15th of the compliance year, coinciding with the filing of the utility's annual alternative energy portfolio status report.

We support the Staff's proposed cost recovery cap. Staff's proposed cap methodology appears to be consistent with the methodology approved by the

[2] Staff proposes three different methodologies for determining the expected dollars per MWh figure, depending on whether the electric provider is an electric utility seeking to serve 100% of its load during the compliance year through a competitive bid, an electric utility transitioning to 100% competitive bid rates, or an electric service company.

Commission last year in Case No. 11-5201-EL-RDR.[3] A mandatory cap such as that proposed by Staff is necessary to effectuate the statutory intent under Section 4928.64(B)(2) of the Ohio Revised Code to protect consumers from significant increases in their electric bills,[4] and to balance the policy goal of encouraging the development of alternative energy with the need to keep electric costs for consumers at reasonable levels. The proposed cap also replaces vague and unclear cap language in the current rule, and should benefit all stakeholders – utilities and customers alike – by codifying a uniform and easy to apply cap methodology.

We note that proposed rule 4901:1-40-07(B)(1) states that the compliance baseline will be determined "in dollars per megawatt-hour for the compliance year." This appears to be an error, as the compliance baseline in rule 4901:1-40-03(B) is expressed in kilowatt-hours (for example, the compliance baseline for an electric utility is the average of the three preceding calendar years of the total annual number of kWhs sold under its standard service offer). Therefore, rule 4901:1-40-07(B)(1) should provide that the compliance baseline will be determined in megawatt-hours, not in dollars per megawatt-hour.

III. CONCLUSION

Nucor respectfully requests that the Commission consider the positions discussed in these comments as it evaluates Staff's proposed changes in these dockets.

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[3] Case No. 11-5201-EL-RDR, Opinion and Order at 34 (2013).

[4] Case No. 08-888-EL-ORD, Opinion and Order at 37 (2009).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Comments* was served via electronic transmission this 3rd day of March, 2014 upon the parties in Case Nos. 13-651-EL-ORD, 13-652-EL-ORD, and 12-2156-EL-ORD.

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