

**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)
Authority to Provide For a Standard Service Offer)
Pursuant to R.C. § 4928.143 in the Form of an)
Electric Security Plan)

Case No. 14-1297-EL-SSO

INITIAL BRIEF IN SUPPORT OF ESP IV STIPULATION BY NUCOR STEEL MARION, INC.

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Nucor Steel Marion, Inc. (“Nucor”) hereby submits its post-hearing brief in the application by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) for approval of FirstEnergy’s fourth electric security plan (“ESP IV”). The ESP IV proposal is comprised of FirstEnergy’s August 4, 2014 application (“Application”) as modified by the December 22, 2014 Stipulation and Recommendation, the January 21, 2015 Errata to the Stipulation and Recommendation, the May 28, 2015 Supplemental Stipulation and Recommendation, the June 4, 2015 Second Supplemental Stipulation and Recommendation, and the December 1, 2015 Third Supplemental Stipulation and Recommendation. The Application and the stipulations are collectively referred to herein as the “ESP IV Stipulation” or the “Stipulation.” Nucor strongly supports Commission approval of the ESP IV Stipulation.

I. INTRODUCTION

Nucor is a large, industrial, interruptible customer of Ohio Edison. Nucor, a division of the nation's largest producer of steel and North America's largest recycler, melts recycled scrap steel in a massive electric arc furnace and uses the molten steel to create new steel products. While this recycling process is much more efficient than traditional integrated steel production since it re-uses the latent energy already contained in the scrap, the process is still extremely energy intensive. As a result, Nucor purchases millions of dollars worth of electric energy from Ohio Edison each year. This energy constitutes one of Nucor's largest production costs. Nucor is a signatory to the ESP IV Stipulation and has actively participated in the current ESP IV case, as we have in all of FirstEnergy's previous ESP cases. We strongly urge the Commission to adopt the Stipulation.

FirstEnergy's currently-effective ESP III was approved in 2012. The electric industry has been buffeted by numerous challenges and changes in the three years since then, including the rapid increase in market reliance on natural gas-fired generation driven by continued low gas prices, the ongoing actual or potential retirement of coal-fired plants and other baseload plants that have served as the main source of reliable and economic baseload generation for decades, severe capacity shortages and price spikes during the Polar Vortex in 2014, the passage of S.B. 310 in Ohio freezing the state's energy efficiency and renewable mandates, the revamping of PJM's capacity markets through the introduction of the Capacity Performance Product, and the issuance of the Clean Power Plan by the EPA earlier this year.

Taken alone, each of these developments is significant and would impact how electric energy is produced and delivered, as well as the cost of electric service to customers. Taken together, however, these developments portend years of uncertainty and potential volatility for customers ahead as the electric industry struggles to remake itself in response to market forces and (often competing) demands by customers, state and federal regulators, political leaders, environmental interests, wholesale market participants, advocates for enhanced retail competition, and others.

Given this state of affairs, we submit that the Commission should look favorably on the ESP proposal outlined in the ESP IV Stipulation. While no ESP plan can eliminate all risk and electric price volatility for customers, the proposed ESP IV establishes a solid, long-term framework for providing more stable and reliable electric service for FirstEnergy's customers over the course of what is sure to be a tumultuous next several years for electric supply in general and specifically in Ohio. At its essence, the ESP IV plan is largely an extension of FirstEnergy's current ESP structure that has been in place over the course of three ESP plans and that is generally considered to have been successful. The core elements of the current ESP plan – including the staggered and blended auction process for acquiring standard service offer generation supply, the ability of customers to shop for generation supply, Rider ELR, and a distribution rate freeze – will remain in place for the term of ESP IV.

Importantly, ESP IV would be the first ESP plan in Ohio to run longer than three years. ESP IV will set in place a rate plan for eight years, providing longer-term certainty as to rate structure for FirstEnergy's customers and helping to produce more stable rates.

For industry, the value of this certainty and rate stability cannot be overstated. The eight-year term also will be beneficial from an administrative efficiency standpoint since the parties will not be back before the Commission in two years arguing over a successor ESP (after the time and resources the parties and Staff have devoted to litigating the ESP IV proposal for well over a year and a half, this benefit should be obvious). That said, the Commission and stakeholders will still have the ability to perform an interim review of the ESP and to ensure that it continues to be more favorable in the aggregate than a market rate offer, as required under Ohio Revised Code, Section 4928.143(E).

As anyone familiar with FirstEnergy's ESP cases is aware, Nucor is a strong advocate of robust and effective interruptible rates. The availability of a strong interruptible rate is vital to the ability of Nucor and other large, energy-intensive manufacturers to remain competitive. For this reason, FirstEnergy's proposed interruptible rate, Rider ELR, is a very important issue for Nucor in this case. Rider ELR has been in effect continuously since the approval of FirstEnergy's first ESP in 2009 (as a successor to interruptible rates in effect for many years prior to the ESP) and has been approved by the Commission over opposition from various stakeholders in prior ESP cases. The evidence on the record in this case clearly demonstrates that Rider ELR should be continued in ESP IV. Rider ELR provides significant reliability and cost avoidance benefits that are enjoyed by all customers along with important economic development/job retention benefits.

Under the ESP IV proposal, Rider ELR not only would be continued, but would be extended and improved. Rider ELR would be available for the full eight-year term of the

ESP, consistent with the long-term nature of the rate. ELR customers would be permitted to shop for generation supply like other customers, consistent with state policy. As discussed in more detail below, the continuation and improvement of Rider ELR is another key reason why the ESP IV Stipulation should be approved.

The most controversial issue in this case has been the proposed Economic Stability Program, including the Retail Rate Stability Rider (“Rider RRS”). Nucor fully understands the motivations and arguments of the parties that oppose the Economic Stability Program and why some stakeholders would prefer to see certain baseload plants shut down. Nevertheless, from the perspective of an Ohio industrial customer that purchases an extraordinary amount of electricity, the record in this case demonstrates that, as part of the comprehensive settlement embodied in the ESP IV Stipulation, Rider RRS is a reasonable mechanism to hedge power supply obtained in the market and help improve retail rate stability and secure the continued operation of two important Ohio baseload generation plants, providing reliability and economic benefits and helping to maintain the jobs and the contribution the plants make to the local and state economies. Moreover, the modifications made to the Economic Stability Program in the Third Supplemental Stipulation provide additional protections and benefits for ratepayers. In light of the uncertainty for the electric industry in the years ahead, the Economic Stability Program is a reasonable risk-mitigation mechanism that the Commission should approve as part of the overall ESP IV Stipulation.

In addition to the features of the ESP IV proposal discussed above, the Stipulation includes important commitments by FirstEnergy related to a number of different areas,

including: the re-start of FirstEnergy's energy efficiency programs; a commitment to reduce carbon output from FirstEnergy's generation portfolio over the next several decades; a commitment to advocate for changes to PJM capacity markets, including the development of a longer-term capacity product; stepped-up efforts on grid modernization such as advanced metering infrastructure; and a transition to decoupled rates. The broad scope of these commitments demonstrates that the Stipulation strives to strike a balance between providing economic, stable rates for customers and recognizing that significant changes in how FirstEnergy produces and delivers energy might be necessary in light of the changes occurring in the electric industry. Said another way, the ESP IV Stipulation is very much reflective of an electric industry in transition.

Although we have chosen to focus our arguments in this brief primarily on the issues that have the most direct impact on Nucor and/or have been contested by other parties, Nucor fully supports the ESP IV Stipulation as a whole as a fair and comprehensive resolution of the issues in this case. As discussed below, the evidence in this case demonstrates that the ESP IV Stipulation meets all of the criteria for Commission approval of settlement agreements. The Stipulation is just and reasonable, and should be approved.

II. ARGUMENT

Commission precedent establishes a three-part test to be applied in considering settlement agreements. Under the test, the Commission will approve a settlement if the following criteria are met: (i) the settlement must be a product of serious bargaining among capable, knowledgeable parties; (ii) the settlement as a package must benefit

ratepayers and be in the public interest; and (iii) the settlement as a package must not violate any important regulatory principle or practice.¹ As the massive record in this case demonstrates, the ESP IV Stipulation clearly meets all three criteria, and accordingly should be approved by the Commission.

A. The Stipulation is the Product of Serious Bargaining Among Capable and Knowledgeable Parties

The parties to the ESP IV Stipulation represent a broad cross-section of stakeholders with varied and diverse interests. The signatories include the Companies, Staff, industrial customers, commercial customers, advocates for low and moderate income residential customers, municipalities, colleges and universities, organized labor, and competitive suppliers.² As FirstEnergy witness Eileen Mikkelsen testified, each of the signatory parties has a history of participation and experience in Commission proceedings and is represented by experienced and competent counsel.³

Several months of hard and good-faith negotiations occurred between the time the ESP IV proposal was filed in August, 2014 and when the initial Stipulation and Recommendation was filed in late December of that year.⁴ The fact that the ESP IV Stipulation is a product of serious bargaining among capable and knowledgeable parties, moreover, is demonstrated not just by the number of diverse parties who have agreed to the Stipulation, but also by the persistent effort put forth by FirstEnergy and the other

¹ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123 at 125 (1992).

² Fifth Supplemental Testimony of Eileen M. Mikkelsen, Company Ex. 155 ("Mikkelsen Fifth Supplemental Testimony"), at 2-3.

³ Supplemental Testimony of Eileen M. Mikkelsen, Company Ex. 8, at 7.

⁴ *Id.* at 5.

parties to the Stipulation to get more parties to join long after the initial Stipulation was filed. Five new signatories, including Staff, joined the Stipulation (and one party, IEU-Ohio, became a non-opposing party) between when the initial version was filed on December 22, 2014 and the conclusion of the hearing in the case on January 22, 2016. In most cases, a new signatory meant modifications to the Stipulation itself, touching off additional opportunities for discovery, testimony, and hearings.

The ESP IV process can be summed up as an eighteen month-long negotiation entwined with a litigated case. To be sure, agreement could not be reached with all parties. Nevertheless, there can be no question that there was extensive bargaining and give and take among the parties to the Stipulation, and that, in the end, negotiations among capable and experienced parties produced an expanded and evolved Stipulation compared to the initial Stipulation filed in December 2014, and an ESP plan much different – and much improved – from that proposed in FirstEnergy’s August 4, 2014 Application.

B. The Stipulation as a Package Benefits Ratepayers and is in the Public Interest

The ESP IV Stipulation proposes to continue the basic structure of FirstEnergy’s current ESP III plan, which itself was a continuation of the plan approved in FirstEnergy’s ESP I and ESP II cases. As discussed below, the ESP IV plan proposes to continue and improve certain key components of the existing ESP, including FirstEnergy’s interruptible rate, Rider ELR. In addition, the Stipulation proposes new elements, including the Economic Stability Program, and commitments by FirstEnergy to advance several broad policy goals. Taken as a whole, the record demonstrates that the Stipulation as a package benefits ratepayers and is in the public interest.

1. The Stipulation Extends and Improves Rider ELR

Rider ELR has been in effect, with the same level of combined interruptible credit, since FirstEnergy's first ESP plan was approved. As the record reflects, the benefits of Rider ELR are substantial and the Commission has consistently recognized these benefits in approving previous ESPs. Extending and improving the rider contributes significantly to the benefits of ESP IV and is a key reason why the Stipulation is in the public interest.

Under Rider ELR, each participating customer must curtail load above the customer's designated Firm Load during an Emergency Curtailment Event that endangers service reliability to firm customers. Customers on the rider currently receive a monthly per kW credit for each kW of Curtailable Load under Rider ELR. They also receive a \$5 per kW month economic development credit under Rider EDR, resulting in a combined monthly credit of \$10 per kW. Rider ELR customers are subject to onerous penalties if they fail to curtail down to their designated Firm Loads during an Emergency Curtailment Event.

Under the ESP IV Stipulation, Rider ELR would be extended for the eight-year term of the ESP IV plan.⁵ Although the rider will continue in its current form for the most part (including maintenance of the \$10 per kW combined credit), several key improvements are proposed under the Stipulation. Specifically: (i) the prohibition on shopping will be removed so that both shopping and non-shopping customers can participate on the rider; (ii) Economic Buy Through Option Events will be eliminated;⁶ and (iii) in addition to current

⁵ Third Supplemental Stipulation and Recommendation, Company Ex. 154, at 14.

⁶ Stipulation and Recommendation, Company Ex. 2, at 8.

ELR load, up to 136,250 kW of additional Curtailable Load for customers who have historically been eligible for Rider ELR will be permitted.⁷ As discussed below, the evidence in this case, including the testimony of Nucor’s witness Dr. Dennis Goins,⁸ and extensive Commission precedent support the extension and improvement of Rider ELR as recommended in the Stipulation and underscore the benefits of this service.

a. The Commission has strongly supported Rider ELR and interruptible rates in general

Interruptible rates have played a key role in Ohio over decades to support economic development and job retention, enhance system reliability and avoid capacity and other costs.⁹ Retail-level interruptible rates provided under utility SSOs, including Rider ELR, advance the state’s policy objectives as codified under Section 4929.02, Revised Code, and are strongly rooted in Commission precedent. As far back as the earliest SSO cases after the passage of S.B. 221, the Commission recognized the need to include interruptible rates in utility SSO plans. In FirstEnergy’s initial SSO proposal (a market rate offer plan), the Commission rejected FirstEnergy’s rate design, in part, because it did not include interruptible rates, agreeing with Nucor’s witness Dr. Goins that “interruptible rates can be used to reduce generation and transmission capacity needs.”¹⁰

⁷ Supplemental Stipulation and Recommendation, Company Ex. 3, at 2.

⁸ Direct Testimony of Dennis W. Goins, Nucor Ex. 1 (“Goins Testimony”).

⁹ Rebuttal Testimony of Eileen M. Mikkelsen, Company Ex. 146 (“Mikkelsen Rebuttal Testimony”), at 18-19; Tr. Vol. XXX at 6172-75.

¹⁰ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service*, Case No. 08-936-EL-SSO, Opinion and Order at 24 (November 25, 2008).

Since then, Rider ELR has been included in every Commission-approved FirstEnergy ESP dating back to ESP I in 2009. In approving Rider ELR, the Commission has recognized the benefits under the rider, and has consistently rejected arguments supporting the elimination or weakening of Rider ELR. For example, the Commission has stated that Rider ELR tends to “lower SSO generation prices as well as promote both economic development and compliance with the peak demand reduction provisions of Section 4928.66, Revised Code.”¹¹ The Commission has used similar language in approving interruptible rates for other utilities. For example, the Commission recognized that AEP’s interruptible rate “offers numerous benefits, including the promotion of economic development and the retention of manufacturing jobs, and furthers state policy.”¹²

¹¹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Second Entry on Rehearing at 14 (January 30, 2013); see also *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (August 25, 2010) (rejecting arguments by a group of curtailment service providers calling for the termination of Rider ELR); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, Second Opinion and Order (March 25, 2009) (approving Rider ELR as part of FirstEnergy’s initial ESP).

¹² *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Opinion and Order at 40 (February 25, 2015) (“AEP ESP 3”); see also *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO, Opinion and Order at 26 (August 8, 2012).

b. Rider ELR provides significant benefits

It is clear from the precedent cited above that the Commission has recognized the significant benefits Rider ELR, and interruptible load more generally, provides. As discussed below, there is also extensive evidence in the record in this case demonstrating the benefits of Rider ELR.

1. Reliability benefits

Rider ELR is an important, Ohio-focused, tool for maintaining reliability because it gives FirstEnergy the ability to call an Emergency Curtailment Event when either PJM, an operating company, or ATSI determines that “an emergency situation exists that may jeopardize the integrity of either the distribution or transmission system in the area.”¹³ ELR load can provide emergency response when problems arise related to generation, transmission, or distribution. Rider ELR provides reliability benefits by substituting for ancillary services such as spinning or operating reserve, and provides additional resources to help address system contingencies.¹⁴ As FirstEnergy witness Ms. Mikkelsen testified, FirstEnergy’s ability to curtail Rider ELR customers “is a significant tool in the reliability toolbox and assures the Rider ELR customers will be interrupted in advance of firm service customers.”¹⁵

Since interruptible service is “a form of insurance or safety net, protecting against emergency situations if and when they occur,” Rider ELR provides a reliability benefit

¹³ Rider ELR at 4.

¹⁴ Goins Testimony at 6.

¹⁵ Mikkelsen Rebuttal Testimony at 18.

regardless of whether Emergency Curtailment Events are called.¹⁶ As the evidence demonstrates, Rider ELR customers have been called to curtail in response to Emergency Curtailment Events on numerous occasions since Rider ELR has been in place. For example, Rider ELR resources were among the interruptible resources used to address the Polar Vortex in January, 2014. According to FirstEnergy witness Steven Strah, Rider ELR customers received a mandatory curtailment and multiple requests for voluntary curtailments during the Polar Vortex.¹⁷ Mr. Strah testified that these curtailments helped avoid “what we anticipated could be load shedding on a circuit-by-circuit basis in 30-minute increments for 142,000 customers.”¹⁸

Ohio Energy Group witness Stephen Baron also testified that PJM experienced several reliability events in 2013. As a result, during the 2013/14 PJM Planning Year, ELR customers were physically interrupted a total of seven times, providing important system reliability benefits.¹⁹ And Ms. Mikkelsen testified that in 2011, Ohio Edison curtailed a subset of Rider ELR customers to address a local reliability emergency.²⁰ This curtailment, along with the curtailments of Rider ELR customers during the Polar Vortex, “demonstrate that Rider ELR provides an enhanced reliability benefit, since it allows for curtailments that PJM could not or would not necessarily call in order to address local emergencies.

¹⁶ Goins Testimony at 6.

¹⁷ Direct Testimony of Steven E. Strah, Company Ex. 13 (“Strah Testimony”), at 9-10.

¹⁸ *Id.* at 9.

¹⁹ Supplemental Testimony of Stephen J. Baron, OEG Ex. 1 (“Baron Testimony”), at 10.

²⁰ Mikkelsen Rebuttal Testimony at 19-20.

They highlight the importance of retaining interruptible load that is under the control of the Companies, not just PJM.”²¹

Rider ELR is not simply a repackaged PJM demand response program. It is a true Ohio-centered resource – under the control of Ohio utilities, overseen by the Ohio Commission, and in place for the benefit of Ohio customers.

2. Economic benefits

By providing the reliability benefits discussed above, Rider ELR provides a direct economic benefit to the state by helping to avoid the potentially devastating economic impacts of system disruptions such as blackouts. Interruptible load also has long been recognized as a means to avoid or defer the cost of adding generation and transmission capacity, and avoids the need for generation reserves and transmission losses offset by interruptible load.²² Also, in the case of Rider ELR, FirstEnergy has bid ELR load into the PJM capacity auctions. The economic benefits of this approach are two-fold. First, ELR resources that are successfully bid into the capacity auctions displace higher-cost capacity resources, thereby helping to lower capacity prices produced in the auction and reducing costs for all customers, shopping and non-shopping alike.²³ Second, these ELR resources also produce capacity revenue payments from PJM that FirstEnergy then passes back to customers through Rider DSE1.²⁴

²¹ *Id.* at 19-20 (emphasis added).

²² Goins Testimony at 6, 11; Baron Testimony at 9.

²³ Goins Testimony at 8; Tr. Vol. XXX at 6133-34, 6170.

²⁴ Goins Testimony at 8; Mikkelsen Rebuttal Testimony at 18.

3. Economic development/job retention benefits

There is extensive and undisputed evidence in this case that Rider ELR helps retain and grow large, energy intensive industrial customers that provide jobs and tax revenue in Ohio's communities.²⁵ This is also evidenced by the strong support for Rider ELR from many industrial customers in this case and buttressed by past Commission findings to this effect. Moreover, Ms. Mikkelsen confirmed that the Rider ELR and EDR(b) credits have been important to customers and their continued operation in Ohio.²⁶ In fact, the economic development/job retention benefits of Rider ELR are not limited to those customers on the rider. The benefits accrue to all customers in the Companies' service territory and the community as a whole.²⁷

Nucor knows well the economic impacts of Rider ELR, since the availability of interruptible power is fundamental to our competitiveness. Rider ELR is critical to large, energy intensive customers like steel mills because it helps to ensure the continuation of reliable and cost-effective electric service. Customers on Rider ELR, including Nucor, face competition on a national and international basis, and even within their own corporate structure, from facilities located in other states or countries.²⁸

In short, the customers on Rider ELR have relied heavily on the continuation and stability of Rider ELR to make investments, retain jobs, and remain competitive.

²⁵ Goins Testimony at 12; Baron Testimony at 10.

²⁶ Mikkelsen Rebuttal Testimony at 18.

²⁷ Tr. Vol. XXI at 4040; Tr. Vol. XXXIV at 7109.

²⁸ Tr. Vol. XXII at 4329.

Accordingly, Rider ELR is vitally important to FirstEnergy's industrial customers, and helps advance the state policy of facilitating Ohio's effectiveness in the global economy.²⁹

c. The valuation of the combined ELR credit is reasonable

The total Rider ELR credit is proposed to be continued at the combined \$10/kW-month of Curtailable Load for the term of ESP IV, the same level of credit that has been in effect since Rider ELR was first approved in ESP I. In the current case, Nucor's witness, Dr. Goins, was the only witness to provide an analysis of how to develop an interruptible credit for FirstEnergy in testimony. Dr. Goins' testimony demonstrates that the combined \$10/kW credit is more than reasonable compared to the value interruptible load provides.

Dr. Goins testified that the starting point for determining an interruptible credit should be the long-run avoided cost of generation capacity.³⁰ The use of long-run avoided costs (as opposed to short-run avoided costs) is even more appropriate in the context of ESP IV since the rider will be in effect for eight more years. In PJM's market construct, the long-run avoided cost of generating capacity is represented by the cost of new entry ("CONE"), an administratively determined value based on the estimated annual cost of a new peaking generator that is updated annually based on a methodology proposed by PJM and approved by FERC.³¹ As demonstrated in the table below,³² the PJM CONE value has steadily increased over the past several PJM capacity years:

²⁹ Section 4928.02(N), Revised Code.

³⁰ Goins Testimony at 9.

³¹ *Id.* at 9-10.

³² *Id.* at 10.

<u>Capacity Delivery Year</u>	<u>CONE (\$/MW-Yr)</u>	<u>CONE (\$/KW-Mo)</u>
2013/14	\$122,236	\$10.19
2014/15	\$128,226	\$10.69
2015/16	\$131,303	\$10.94
2016/17	\$139,392	\$11.62
2017/18	\$143,434	\$11.95

The table demonstrates that the combined \$10/kW interruptible credit is well below the avoided cost of generating capacity represented by the CONE value for the current capacity delivery year through the 2017/18 delivery year; this alone should be sufficient to support the continuation of the current combined credit. Moreover, this CONE value alone does not reflect the additional economic benefits interruptible load provides, such as the avoided cost of generation reserves and transmission losses.³³ Reflecting these benefits in the interruptible credit would increase the estimated long-run avoided cost of generation capacity by 15 to 20%.³⁴ A 15% increase in PJM's 2017/18 CONE would result in a value of \$13.74/kW.³⁵ It should also be noted that this value does not reflect the avoided cost of transmission. In sum, the combined Rider ELR credit is reasonable since it is set well below avoided cost.

Dr. Goins' analysis fully supports the use of CONE as a proxy for avoided long-run generation capacity cost in order to determine a reasonable Rider ELR interruptible credit, and also warns of the problems associated with basing the credit on short-term market

³³ *Id.* at 11.

³⁴ *Id.*

³⁵ *Id.*

prices.³⁶ Capacity market prices also have not been used in the past to set the interruptible credit for Rider ELR. Consequently, it is unnecessary to consider short-run market prices in the PJM capacity markets when evaluating the Rider ELR credit, particularly when it is recognized that Rider ELR load provides benefits well beyond PJM capacity.

Nevertheless, even if market capacity prices are considered, the proposed credit would still be justified and reasonable. Ms. Mikkelsen testified that the \$5/kW ELR credit, which converts to \$164.28/MW-Day, is very close to the price of capacity that cleared in the 2014/15 through 2018/19 capacity auctions.³⁷ In fact, the current price for capacity in the ATSI zone is \$357/MW-Day, which converts to \$10.85/kW-month, a price that is more than double the \$5/kW Rider ELR credit and is even in excess of the combined \$10/kW credit for ELR customers.³⁸ Moreover, particularly in light of PJM's new capacity performance rules, capacity prices are projected to increase over the long term.³⁹ It should also be noted that even if capacity market prices were used as the starting point in developing the interruptible credit, they would still have to be substantially adjusted upward to reflect avoided losses, reserves, and transmission costs. Even based on short-run capacity prices, therefore, the proposed credit is reasonable.

³⁶ *Id.* at 10 (noting that short-run prices do not give a clear signal regarding the cost of capacity to serve future peak demands, and that basing an interruptible credit on unstable and unpredictable short-run prices would impede the development of robust and effective interruptible programs).

³⁷ Tr. Vol. III at 497.

³⁸ Tr. Vol. XXX at 6319.

³⁹ Direct Testimony of Judah L. Rose, Company Ex. 17 ("Judah Rose Testimony"), at 40-43.

The analysis above focuses on determining the reasonableness of the combined \$10/kW credit. Another way to evaluate the reasonableness of the total credit is to look at the \$5/kW interruptible credit under Rider ELR and the \$5/kW Rider EDR economic development credit separately (although it certainly is not necessary to assume that the interruptible and economic development benefits are each worth exactly \$5). Using this approach, the \$5/kW interruptible credit under Rider ELR is easily justified on an avoided cost basis, as demonstrated above.

With regard to the economic development credit under Rider EDR(b), Ms. Mikkelsen testified that \$5/kW is a reasonable approximation of the economic development value provided by Rider ELR customers, noting that this is the same level of credit approved in ESP II and ESP III.⁴⁰ The Commission's previous approval of the \$5/kW EDR credit, in addition to the Commission's explicit recognition of the economic development benefits provided by Rider ELR, support continuing this credit at its current level.⁴¹

d. The proposed modifications to Rider ELR should be approved

As noted above, in addition to proposing to expand the amount of interruptible load that can participate under Rider ELR and extending the rider for the eight-year term of the ESP, the ESP IV Stipulation proposes two other important changes to the rider: (i) the condition that Rider ELR customers must take generation service under FirstEnergy's

⁴⁰ Tr. Vol. III at 497.

⁴¹ See, *supra*, fn.11 and accompanying text.

SSO has been removed, and (ii) Economic Buy Through Events (“EBTs”) have been eliminated. These modifications are reasonable, will improve the rider, and should be approved.

Eliminating the requirement that Rider ELR customers take generation service under FirstEnergy’s SSO is a very important improvement, as it will permit the large industrial customers on the rider to shop for generation supply, thereby advancing Ohio’s policy of encouraging competitive markets as reflected in Section 4928.02(H), Revised Code. Rider ELR customers may also benefit from potential savings in the generation markets. It is reasonable to conclude that if Rider ELR customers can reduce their electric costs by shopping, all things being equal, it will increase their competitiveness and make it more likely that their businesses will remain or expand in Ohio.⁴² Also, by making Rider ELR more attractive, customers will be less likely to migrate away from FirstEnergy’s interruptible rate in order to shop, thereby avoiding an outcome that could potentially result in the loss of reliability benefits produced by Rider ELR.⁴³ Finally, in a recent case, the Commission already recognized the benefits of not tying interruptible customers to the utility’s SSO generation offering. In AEP’s ESP case, the Commission ruled that AEP’s interruptible rate option would be available to both shopping and non-shopping customers, the same modification that is being proposed in the ESP IV Stipulation for Rider ELR customers.⁴⁴

⁴² Mikkelsen Rebuttal Testimony at 20.

⁴³ Goins Testimony at 13.

⁴⁴ Case No. 13-2385-EL-SSO, Opinion and Order at 40.

The elimination of EBTs is also an important improvement. This modification will focus Rider ELR on its primary mission – supporting system reliability. Moreover, continuing EBTs would justify an additional interruptible credit, since the current credit is already less than the long-run avoided cost of generation capacity, without even taking into account the avoided energy costs associated with EBTs.⁴⁵ In other words, EBTs serve to further reduce the effective credit for interruptible service by offsetting a portion of the credit value with the increased cost of additional non-emergency interruptions.⁴⁶ In fact, the negative impact of EBTs could result in the loss of interruptible load from Rider ELR if customers conclude that the cost of being subject to both reliability and economic interruptions is too great. Eliminating EBTs is a reasonable step considering that, despite significant increases in avoided cost, the existing interruptible credit has remained at the same level (\$10/kW) since 2009, and will be fixed at that same level for another eight years.

2. The Stipulation Extends FirstEnergy's Time-of-Day SSO Generation Rate

Under FirstEnergy's SSO generation rate, Rider GEN, the rate is differentiated based on season (summer and winter). There is also a time-of-day ("TOD") rate option, whereby rates are further differentiated into three daily periods (Midday Peak, Shoulder Peak, and Off-Peak). The ESP IV Stipulation proposes to extend the TOD rate option for SSO customers through the term of ESP IV.⁴⁷

⁴⁵ Goins Testimony at 13-14.

⁴⁶ *Id.*

⁴⁷ Stipulation and Recommendation at 10.

Dr. Goins testified that it is reasonable to extend the TOD rate option because TOD rates reflect cost variations, and therefore provide better price signals to customers.⁴⁸ Even though the cost to supply electricity varies by the hour, without TOD pricing, customers see uniform prices throughout the day, meaning customers are given no price signal to modify their usage based on the cost of power at different times of the day.⁴⁹ By contrast, by providing better price signals, TOD rates encourage customers to use electricity more efficiently, and allow customers to save if they can shift usage from the highest cost periods (the Midday Peak period in the summer months and the Shoulder Peak period in the non-summer months) to lower-cost time periods.⁵⁰

Dr. Goins further testified that a TOD option should be provided under FirstEnergy's SSO plan, even if TOD rates are offered in the market. By providing a price signal for customers to shift usage away from on-peak periods, TOD rates should help lower prices bid by SSO suppliers as well as lower real-time market prices in PJM.⁵¹ TOD rates also provide a reliability benefit by encouraging customers to shift usage from peak periods when the grid is most likely to be under stress and most susceptible to reliability issues, particularly during the peak hours in the summer months.⁵²

⁴⁸ Goins Testimony at 14.

⁴⁹ *Id.*

⁵⁰ *Id.* at 14-15.

⁵¹ *Id.* at 15.

⁵² *Id.*

The TOD option has been part of FirstEnergy's SSO rates since FirstEnergy's first ESP, and is consistent with Ohio policy⁵³ and with the Commission's long-standing support for time-differentiated rates.⁵⁴ FirstEnergy's proposed TOD rate should be approved.

3. The Economic Stability Program is a Reasonable Mechanism to Hedge Volatile Market Prices and Provides Several Other Benefits

Relying entirely on wholesale markets to procure retail generation supply provides benefits to customers when wholesale market prices are low, but exposes customers to larger price swings and the risk of high prices. While customers value low prices, they also value rate stability and the avoidance of significant price increases. The same markets that have produced today's relatively low market energy prices have also produced unexpected and severe volatility at points over the past several years,⁵⁵ and could certainly produce high prices again under the right conditions. The Polar Vortex is one example of an event that produced unexpected and dramatic price increases. Another example is the spike that produced the very high capacity price in the ATSI zone in the current PJM delivery year. While FirstEnergy's current practice of staggering and laddering the SSO auctions has the effect of smoothing out prices for customers

⁵³ Section 4928.02(D), Revised Code (it is state policy to encourage "innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.").

⁵⁴ See Case No. 08-936-EL-SSO, Opinion and Order, at 24 (rejecting FirstEnergy's proposed MRO rates, in part, because they did not include TOD rates).

⁵⁵ Judah Rose Testimony at 22-32.

somewhat, customers are still largely exposed to the long-term volatility and risk inherent in the wholesale markets.⁵⁶

By essentially creating a financial hedge based on the negotiated price for the output of the Sammis, Davis-Besse, and OVEC plants, the Economic Stability Program and Rider RRS will dampen long-term price volatility and reduce the risk of higher generation prices while allowing customers to continue to shop for their generation supply if they so choose. The hedge will move counter to market prices – when market prices are low, Rider RRS will constitute a charge to customers, but when market prices are high, Rider RRS will be a credit.⁵⁷ Another way to view this concept is that the rider diversifies the electric generation supply cost for customers – instead of relying entirely on a market price (tied largely to the volatile price of natural gas), the customer’s electric price will reflect, and be tempered by, the hedge.

The Third Supplemental Stipulation made significant improvements to the Economic Stability Program as initially proposed. First, the Economic Stability Program was reduced from fifteen years to eight years, while the remainder of the ESP plan was extended to eight years, resulting in a more balanced ESP.⁵⁸ FirstEnergy also guarantees that customers will receive a minimum level of credit through Rider RRS for the last four years of the ESP IV term, totaling \$100 million in the aggregate over that time period (this risk sharing mechanism would require FirstEnergy in each of the last four years of the ESP

⁵⁶ Strah Testimony at 11-12.

⁵⁷ *Id.* at 12.

⁵⁸ Third Supplemental Stipulation at 7.

to supplement the credit under Rider RRS if Rider RRS does not produce a minimum level of credit through its natural operation or, conversely, would require FirstEnergy to provide a credit to reduce the Rider RRS charge if Rider RRS produces a charge).⁵⁹ The Third Supplemental Stipulation clarifies the Rider RRS review process first outlined in the ESP IV Application, particularly FirstEnergy's commitment that the "Companies, not their customers, would be responsible for the adjustments made to Rider RRS based on actions deemed unreasonable by the Commission, including any costs . . . associated with performance requirements in PJM's markets."⁶⁰ The Staff will also have access to cost information related to FirstEnergy Solutions' ("FES") full generation fleet in the course of the Rider RRS review, not just cost information related to the FES units that are the subject of Rider RRS.⁶¹ Finally, the return on equity under the power purchase agreement between the Companies and FES has been lowered from 11.15% to 10.38%, which will lower the cost of the generation resources under Rider RRS and increase its potential benefits to customers.⁶²

The Economic Stability Program provides other important benefits in addition to the cost hedging benefit discussed above. By preserving key baseload coal and nuclear generation assets in Ohio for at least the next eight years, the Economic Stability Program

⁵⁹ *Id.* at 7-8. FirstEnergy provides the following example of the operation of the risk sharing mechanism: In year five of the ESP, customers will receive a credit from Rider RRS of \$10 million in the aggregate. This means that if Rider RRS produces an aggregate credit of \$6 million, FirstEnergy agrees to contribute an additional \$4 million to consumers. If Rider RRS produces a credit of \$15 million, FirstEnergy does not have an obligation to provide an additional credit to consumers. In the event Rider RRS produces a charge of \$12 million, FirstEnergy agrees to credit consumers to reduce the charge to \$2 million.

⁶⁰ *Id.* at 8.

⁶¹ *Id.*

⁶² Mikkelsen Fifth Supplemental Testimony at 7.

provides generation resource and fuel diversification benefits that would not otherwise have been available.⁶³ These diversification benefits are similar in concept to the benefits derived from an integrated utility with a diversified resource mix, and will provide reliability as well as economic benefits. The Economic Stability Program also helps ensure the Sammis and Davis-Besse plants will continue operating for the term of ESP IV, thereby preserving the jobs at the plants and continuing to support the economies of the Ohio communities where the plants are located.⁶⁴ Finally, the Economic Stability Program helps avoid significant costs associated with new transmission that would have to be built if the plants underlying Rider RRS were to close.⁶⁵

The Economic Stability Program is supported by the record in this case. In the context of the overall ESP IV Stipulation, and particularly in light of the uncertainty and instability in electric markets today, the Economic Stability Program is reasonable and should be approved.

4. The Rider NMB Pilot Program Offers an Alternate Method of Acquiring Transmission and Transmission-Related Services from PJM that Will Provide Improved Price Signals and Promote Economic Development and Job Retention

FirstEnergy's Non-Market-Based Services Rider ("Rider NMB") is a non-bypassable rider that recovers PJM transmission and ancillary services costs. In the ESP IV

⁶³ Strah Testimony at 8-9.

⁶⁴ *Id.* at 17; Direct Testimony of Sarah Murley, Company Ex. 35, at 5-11 (noting that the total economic impact associated with the Sammis and David-Besse plants is \$1.06 billion each year, that the plants directly and indirectly support 2,921 jobs, and discussing other impacts of the plants on the regional and state economies).

⁶⁵ Supplemental Testimony of Rodney L. Phillips, Company Ex. 39, at 8 (estimating that the costs of transmission upgrades that might be necessary if the Sammis and Davis-Besse plants retire at between \$436.5 million and \$1.1 billion).

Application, FirstEnergy proposed to continue Rider NMB largely in its current form. The ESP IV Stipulation establishes a small-scale pilot program that would allow pilot participants the option to opt-out of Rider NMB, and to make arrangements to obtain PJM transmission and ancillary services directly from PJM, or indirectly through a CRES provider.⁶⁶

Testifying in support of the Rider NMB pilot, Ms. Mikkelsen explained that the purpose of the pilot is to test whether pilot participants can manage their transmission peaks in a way that will reduce not only their own costs, but the overall costs of the transmission system.⁶⁷ Since transmission costs are allocated in PJM based on a customer's demand coincident with the single peak hour in the relevant zone, a customer that elects to participate in the pilot will be able to test its ability to lower its transmission and ancillary services costs, or avoid them entirely, by reducing its demand in the peak hour.⁶⁸ At the same time, if the pilot participants can reduce their demand at these peak times, this should have a positive reliability impact by reducing demand in PJM at times when the system is most likely to be under stress.⁶⁹

The Rider NMB pilot program has the potential to provide benefits to the customers participating in the pilot by lowering their electric costs (thereby providing an economic development/job retention benefit), as well as to non-participating customers

⁶⁶ Supplemental Stipulation, Section V.A.2, at 3.

⁶⁷ Tr. Vol XXXIV at 7021-22.

⁶⁸ Tr. Vol. XXVI at 5325.

⁶⁹ *Id.* at 5325-26.

by helping to lower the overall cost of the system and maintain reliability. The pilot program is reasonable and should be approved as part of the ESP IV Stipulation package.

C. The Stipulation Does Not Violate Any Important Regulatory Principle or Practice

In approving FirstEnergy's current SSO rate structure in the ESP III case, the Commission held that the stipulation in that case did not violate any important regulatory principle or practice.⁷⁰ Since the ESP IV Stipulation basically extends that same SSO rate structure, the same holds true in this case. The SSO rate plan outlined in the ESP IV Stipulation advances numerous policy objectives enumerated in Section 4928.02 of the Revised Code, including: ensuring the continued availability to customers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric service (Section 4928.02(A)); ensuring the availability of unbundled and comparable retail electric service that provides consumers with supplier, price, terms, conditions, and quality options (Section 4928.02(B)); and facilitating Ohio's effectiveness in the global economy (Section 4928.02(N)).

The Economic Stability Program, of course, is the largest bone of contention for opponents of the ESP IV Stipulation. But even here, the Commission has held that a retail rate stability rider similar to what FirstEnergy is proposing is permitted under the law and is consistent with Ohio's policy objectives. In the AEP ESP 3 case, the Commission held that a PPA rider can be a financial limitation on customer shopping for retail electric generation service that would help stabilize rates, and is authorized to be included as part

⁷⁰ Case No. 12-1230-EL-SSO, Opinion and Order at 44-48 (July 18, 2012).

of an ESP under Section 4928.143(B)(2)(d) of the Revised Code.⁷¹ Although the Commission did not approve the PPA rider at issue in that case, the Commission recognized that “a PPA rider proposal, if properly conceived, has the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions, and to protect customers from price volatility in the wholesale market,” and stated further that “rate stability is an essential component of the ESP.”⁷² The Commission also found that a PPA rider would be consistent with state policy under Section 4928.02, Revised Code, and particularly the Commission’s obligation under Section 4928.02(A) to ensure the availability to consumers of reasonably priced electric service.⁷³ In approving the legality of a PPA arrangement and allowing AEP to implement a placeholder PPA rider, the Commission also listed a number of factors that it would consider in approving AEP’s recovery of any costs through the rider.⁷⁴ Ms. Mikkelsen’s testimony details how the Economic Stability Program meets each of these “AEP Ohio Order Factors.”⁷⁵

Although parties may disagree with certain provisions of the ESP IV proposal and may not support the Stipulation, based on Commission precedent and on FirstEnergy’s prior ESP cases, the Stipulation does not violate any important regulatory principle or practice.

⁷¹ Case No. 13-2385-EL-SSO, Opinion and Order at 22.

⁷² *Id.* at 25.

⁷³ *Id.* at 26.

⁷⁴ *Id.* at 25.

⁷⁵ Second Supplemental Testimony of Eileen Mikkelsen, Company Ex. 9, at 2-14.

III. CONCLUSION

Nucor respectfully requests that the Commission approve FirstEnergy's ESP IV Stipulation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record or as a courtesy, via electronic mail on February 16, 2016.

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