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

REPLY BRIEF OF NUCOR STEEL MARION, INC.

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Nucor Steel Marion, Inc. ("Nucor") hereby submits the following reply brief in the above-captioned proceeding. Nucor's overall interest in this proceeding and our positions on the issues are explained in our more extensive initial brief. In short, Nucor strongly supports Commission approval of the ESP IV Stipulation.[1]

In this reply brief, we have elected to respond only to certain arguments made by other parties in their initial briefs on selected issues in this case, in an effort to assist the Commission in its deliberation on the issues, without overly duplicating the efforts of all of the other parties supporting the Stipulation. As a result, our failure to respond to a particular argument should not be construed as agreement with that argument.

[1] The "ESP IV Stipulation" or "Stipulation" refers to the August 4, 2014 application by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or the "Companies") for approval of FirstEnergy's fourth electric security plan ("ESP IV") 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.

I. ARGUMENT

A. Rider ELR

In a case running well over a year and a half with an enormous amount of testimony filed, there was very little substance in the limited testimony from opponents to the proposal under the ESP IV Stipulation to improve and extend Rider ELR for the term of the ESP. In contrast to this limited opposition testimony, comprehensive testimony was provided by Nucor's witness Dr. Dennis Goins, as well as Ohio Energy Group's ("OEG") witness Stephen Baron and FirstEnergy witness Eileen Mikkelsen, supporting the Rider ELR provisions of the ESP IV Stipulation.[2] With this testimony, and additional record evidence elicited at the hearing, the weight of the evidence in this case is clearly and solidly in favor of Rider ELR.

Similar to the testimony opposing Rider ELR, arguments opposing Rider ELR were fairly limited in the initial briefs, compared to the broad and deep support for Rider ELR in the initial briefs of Nucor, OEG (representing seventeen large industrial customers in FirstEnergy's territory), Material Sciences Corporation, and FirstEnergy.[3] Nevertheless, given the importance of Rider ELR to Nucor and many other large industrial customers, we will address the handful of arguments made in the initial briefs against Rider ELR below. The Commission should reject the arguments used to attack Rider ELR (some of which have been made by opponents of Rider ELR

[2] Direct Testimony of Dennis W. Goins, Nucor Ex. 1 ("Goins Testimony"), at 4-14; Supplemental Testimony of Stephen J. Baron ("Baron Testimony"), OEG Ex. 1, at 9-16; Supplemental Testimony of Eileen M. Mikkelsen, Company Ex. 8, at 3, 11; Rebuttal Testimony of Eileen M. Mikkelsen, Company Ex. 146 ("Mikkelsen Rebuttal Testimony"), at 17-22.

[3] Initial Brief in Support of ESP IV Stipulation by Nucor Steel Marion, Inc. ("Nucor Brief") at 4, 9-21; Post-Hearing Brief of the Ohio Energy Group ("OEG Brief") at 23-28; Initial Post Hearing Brief by Material Sciences Corporation at 47; Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company at 19-20, 36, 104, 108-09, 148.

in earlier ESP cases and have been rejected by the Commission) and approve the extension and improvement of the rider as detailed in the ESP IV Stipulation.

1. Rider ELR is Not a Subsidy

Opponents of Rider ELR assert that Rider ELR is a "subsidy" or that the credit is "above market."[4] There is no evidence in the record to support these claims. The "subsidy" and "above market" claims seem to be based on a comparison of the combined $10 ELR credit with historical short-run capacity market prices in PJM. However, this is not a valid comparison for several reasons. First, as discussed in Dr. Goins' testimony, and in Nucor's initial brief, it is not proper to base a long-term interruptible credit (which has been in place for almost eight years and is now intended to last for the next eight years) on short-run market prices.[5] Dr. Goins explained in detail the problems associated with basing an interruptible credit on short-term capacity prices:

> Short-run market prices reflect current market conditions for existing generating capacity, while long-run avoided costs reflect the cost of adding new capacity to meet demand growth. Long-run—not short-run—capacity costs more accurately reflect avoided cost savings attributable to interruptible service. Short-run prices do not give a clear signal regarding the cost of capacity to serve future peak demands. In addition, basing an interruptible credit or price on short-run market prices is similar to relying solely on spot market purchases to meet future energy needs—both approaches increase consumer risks via unstable and unpredictable prices. Moreover, interruptible rates that reflect short-term price fluctuations may impede the development of robust and effective retail interruptible programs. In my opinion, customers are less likely to make a long-term commitment to be interruptible (including accepting the costs and risks associated with such a commitment) if an interruptible credit they receive varies dramatically from year to year. A stable credit reflecting long-run avoided costs is the best way to secure a long-term commitment from industrial customers willing to be interruptible.

[4] Initial Brief of Office of the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition (collectively, "OCC") ("OCC Brief") at 98; Post-Hearing Brief of the Ohio Hospital Association ("OHA") ("OHA Brief") at 7.

[5] Goins Testimony at 9-11; Nucor Brief at 16-17.

> Firm customers can also be negatively affected if interruptible credits reflect short-run market prices—particularly during shortage periods when short-run market prices can far exceed the long-run avoided cost of generation capacity. Relying on spot prices is wonderful as long as excess supply exists and prices are low. However, when generation supply becomes scarce, short-run market prices can far exceed the cost of new capacity that cannot be added immediately. A stable and effective interruptible program requires prices that reflect the long-run avoided cost of adding generation capacity—not a short-term value that reflects capacity shortages.[6]

As Dr. Goins demonstrates, basing an interruptible credit on current or historical short-run market prices would bring with it a host of problems that would make the interruptible rate unstable and unattractive for interruptible customers, and would undermine FirstEnergy's ability to retain interruptible load over the long term. Instead, the credit should be based on long-run avoided capacity costs. Dr. Goins used the PJM CONE prices as the proxy for long-run avoided cost of capacity (no witness contested that this was a reasonable measure for long-run avoided cost) and, by this measure, the combined $10 credit is, in fact, well below avoided cost.[7] Interruptible load also provides additional avoided cost benefits – such as avoided reserves and transmission losses – that would increase the value of the interruptible program (and a corresponding interruptible credit) even further. Dr. Goins estimates that if the 2017/2018 CONE value were increased to reflect the value of avoided reserves and transmission losses, the result would be a value of $13.74/kW, well above the combined Rider ELR credit.[8] All of this goes to show that if the value of the interruptible credit is correctly evaluated based on long-run avoided

[6] Goins Testimony at 10-11.

[7] *Id*. at 9-10.

[8] *Id*. at 11.

cost, Rider ELR cannot be considered a "subsidy" or "above market," but rather is a bargain in exchange for the system benefits provided.

Even if short-run capacity prices are used as the measure of the credit, the ELR credit still compares favorably. Ms. Mikkelsen testified that capacity prices that have cleared in previous capacity auctions have been very close to the $5/kW Rider ELR credit on average (which converts to $164.28/MW-Day).[9] However, this analysis does not even include the 15% to 20% increase cited by Dr. Goins to reflect the value of avoided reserves and losses. Moreover, there are many reasons that market capacity prices are likely to increase substantially over the extended term of ESP IV.[10] The fixed ELR credit, by contrast, has not increased for many years and will not increase for many more. Further, by way of illustration, the current capacity price in the ATSI zone is $357/MW-Day, which converts to $10.85/kW-Month, a price more than double the $5/kW ELR credit and well above even the combined $10 ELR credit.[11]

Another reason why the "subsidy" and "above market" narrative is misleading is that it assumes that Rider ELR's sole purpose is to provide capacity for bidding into PJM markets. But this is not the case. While providing capacity in the PJM markets is one function of Rider ELR, it is by no means the only function – or necessarily even the most important function – of the rider. For example, Rider ELR provides enhanced reliability benefits compared to interruptible load in PJM demand response programs because, in addition to PJM, interruptions under Rider ELR may

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[9] Tr. Vol. III at 497.

[10] Direct Testimony of Judah L. Rose, Company Ex. 17 ("Judah Rose Testimony"), at 38-43 (discussing reasons for projected capacity price increases, including environmental regulations, the economic recovery both in PJM and the United States more broadly, rising financing and new unit capital costs, and general inflation).

[11] Tr. Vol. XXX at 6319.

be called by the relevant utility or ATSI. This means that a FirstEnergy utility or ATSI could use Rider ELR load to address local reliability issues that PJM cannot or will not address.[12] In fact, this has happened on several occasions over the last several years, most notably during the Polar Vortex in 2014, and during a local emergency in Ohio Edison in 2011.[13] As Ms. Mikkelsen testified, these curtailments "highlight the importance of retaining interruptible load that is under the control of the Companies, not just PJM."[14]

Parties opposing Rider ELR conveniently ignore the additional, non-PJM capacity benefits Rider ELR provides, including the local reliability benefits discussed above and economic development/job retention benefits, in trying to convince the Commission that Rider ELR is a subsidy. The Commission has heard these arguments before – parties in earlier ESP cases have made the same claim. The Commission nevertheless has approved Rider ELR in each of FirstEnergy's three earlier ESP cases, with the same overall $10/kW credit, citing the broader benefits of Rider ELR, and thereby implicitly rejecting opponents' arguments that Rider ELR is nothing more than a thinly disguised PJM demand response program.[15] The Commission should do so again here.

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[12] Mikkelsen Rebuttal Testimony at 19-20.

[13] Direct Testimony of Steven E. Strah, Company Ex. 13 ("Strah Testimony"), at 9-10 (explaining that Rider ELR curtailments during the Polar Vortex in January, 2014 helped FirstEnergy avoid load shedding for 142,000 customers); Mikkelsen Rebuttal Testimony at 19-20 (explaining that a subset of Ohio Edison Rider ELR customers were curtailed in order to address a local emergency).

[14] Mikkelsen Rebuttal Testimony at 20.

[15] *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) (stating the 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."); *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

Finally, some parties try to place an overall price tag on Rider ELR.[16] This is inappropriate, since the program's value outweighs the cost as shown above. In addition, there is no way to know now the actual amount of ELR credit that will be recovered from non-ELR customers under riders DSE1 and EDR(e) over the course of ESP IV, because that will depend upon a number of factors, including how many customers actually are taking service under Rider ELR at any given time, and each ELR customer's billing characteristics over the course of the ESP.[17] The figures cited by OMAEG and OCC in their briefs also do not reflect any offset from FirstEnergy bidding Rider ELR interruptible load into the PJM capacity markets.[18] As OEG explains in support of Rider ELR in its brief, the "DSE Rider offset will increase as capacity market clearing prices increase, reflecting the rising value of interruptible load," and "if PJM capacity prices continue to increase, the offset to the interruptible credit will correspondingly increase over the course of FirstEnergy's ESP."[19] Further, the estimates of the cost of Rider ELR cited by ELR opponents also do not account for another benefit of ELR, the reduction of the market generation capacity price (for PJM generation capacity paid for by all customers) as a result of Rider ELR load being bid into the market. As both Dr. Goins and Mr. Baron testified, by displacing higher-cost resources, Rider ELR

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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).

[16] Initial Brief of the Ohio Manufacturers' Association Energy Group ("OMAEG") ("OMAEG Brief") at 80 (stating that "the ELR program will include up to $280 million in curtailable load interruptible credits, which will be charged to customers at an undetermined amount."); OCC Brief at 98 (stating that the "Rider ELR proposal has a potential cost, in terms of credits or discounts, of up to $27 million above and beyond current levels.").

[17] Tr. Vol. XXXVII at 7785-86.

[18] Mikkelsen Rebuttal Testimony at 18; Tr. Vol. XXXVII at 7786.

[19] OEG Brief at 26.

interruptible load can help lower capacity prices produced in the PJM auctions.[20] Finally, it is important to keep in mind that whatever the total amount of credit Rider ELR ultimately produces, those credits will be shared by a large pool of industrial customers over the course of eight years.[21]

2. Rider ELR Benefits are Not Limited to Those Customers on the Rider

OMAEG makes the unsupported assertion that while Rider ELR benefits customers on the rider and FirstEnergy, "it does not benefit the large number of customers who do not take service under Rider ELR."[22] First and foremost, this statement runs directly counter to the numerous decisions in which the Commission has recognized that Rider ELR and other interruptible rates provide important reliability, cost avoidance and economic development benefits, and the Commission's clear statement in FirstEnergy's most recent ESP case that "*all customers . . . benefit from these programs*."[23] The evidence in this case (including the avoided cost benefits to the system discussed in detail above), and common sense, also demonstrate that OMAEG's assertion is false. FirstEnergy witness Mr. Strah testified that Rider ELR customers were called to

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[20] Goins Testimony at 8; Baron Testimony at 9.

[21] Ms. Mikkelsen testified that there are currently twenty-seven customers taking service under Rider ELR, and that five additional customers that were historically eligible to take service under Rider ELR, but that are not currently taking service under the rider, have notified FirstEnergy that they would be interested in participating on Rider ELR for the ESP IV period, pursuant to a term in the Supplemental Stipulation allowing for up to 136,250 kW of additional Curtailable Load under Rider ELR for customers that have historically been eligible for the rider. Tr. Vol. II at 263-65.

[22] OMAEG Brief at 67.

[23] Case No. 12-1230-EL-SSO, Second Entry on Rehearing at 14 (emphasis provided); *see also 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) (recognizing that AEP's interruptible rate "offers numerous benefits, including the promotion of economic development and the retention of manufacturing jobs, and furthers state policy."); *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).

curtail during the Polar Vortex in order to avoid load shedding for 142,000 customers.[24] By curtailing their operations, Rider ELR customers ensured the lights stayed on for other customers. Put another way, if Rider ELR customers hadn't curtailed their load, other customers, including residential and commercial customers, may very well have had their power cut off instead. In light of the evidence in this case on the number of times Rider ELR customers have been curtailed to address a system emergency, and the Commission's findings in previous ESP cases regarding the broad benefits of Rider ELR, how can anyone reasonably argue that Rider ELR provides a benefit to only those customers on the rider?

OHA attempts a similar attack against the economic development credit Rider ELR customers receive through Rider EDR (although OHA does not appear to object to the interruptible credit under Rider ELR).[25] OHA argues that the EDR credit should be eliminated in its entirety since it is a subsidized credit provided to ELR customers "without any demonstrated new job growth, or retention of existing jobs."[26] First off, we reiterate that it is not necessary to analyze the combined $10 credit for Rider ELR customers as separate $5 interruptible and economic development credits.[27] As discussed above, the evidence in this case shows that the combined $10 credit is more than justified based on avoided cost alone, without even factoring in a separate economic development component.

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[24] Strah Testimony at 9-10.

[25] OHA Brief at 3.

[26] *Id*. at 7. OHA cites Staff witness Scheck in leveling this criticism. It should be noted, however, that Mr. Scheck submitted his testimony and appeared at the hearing before Staff joined the ESP IV Stipulation. With the changes to the ESP proposal in the Third Supplemental Stipulation and Recommendation, including those to Rider ELR, Staff now supports the extension of Rider ELR, with the improvements outlined in the Stipulation, for the eight year term of the ESP.

[27] Nucor Brief at 19.

As for the complaint about the lack of demonstrated new job growth or retention of existing jobs, Ms. Mikkelsen testified that the "Rider ELR and EDR provision (b) credits have been important to customers and their continued operations in the state of Ohio. The continued operations of these customers, some very large, helps economic development and job retention in the state."[28] Ms. Mikkelsen also testified that all eligible ELR customers have previously proven that they needed economic development support, as required for participation under the predecessor tariffs and special contracts in the past.[29] Moreover, there is evidence on the record of the competitive pressures faced by large industrial customers both nationally and internationally, sometimes even within their own corporate structures.[30] Clearly Rider ELR helps these customers weather these pressures and remain competitive, thereby helping to ensure that these customers keep their operations, and the jobs associated with those operations, in Ohio. It is also important to note that, in explicitly acknowledging the economic development benefits Rider ELR provides, the Commission has never required a precise quantification of jobs grown or retained as a result of the rider.[31]

OHA also claims that gradualism was the main consideration justifying the EDR credit, and that the credit was intended to be phased out.[32] While gradualism is certainly an important consideration in designing rates, there is no indication in the last several ESP orders that gradualism was a main factor in the Commission's decision to approve the Rider ELR and EDR

[28] Mikkelsen Rebuttal Testimony at 18.

[29] *Id*. at 19; Tr. Vol. XXX at 6172-75.

[30] Goins Testimony at 6, 12; Baron Testimony at 9-10; Tr. Vol. XXII at 4329.

[31] Case No. 12-1230-EL-SSO, Second Entry on Rehearing at 14 (recognizing the economic development benefits provided by Rider ELR).

[32] OHA Brief at 6.

credits. Instead, the Commission specifically has cited the broad reliability, cost avoidance, and economic development benefits of Rider ELR.

3. The Limitations on Participation on Rider ELR and Cost Allocation of the Rider EDR Credit are Reasonable

Opponents of Rider ELR argue that it is unfair that Rider ELR is available only to a limited number of customers.[33] Rider ELR customers comprise a class of large, industrial customers who have demonstrated the ability and willingness to take what amounts to non-firm electric service over many years and who have relied on the reduced cost of such service to remain competitive. Rider ELR provides a benefit to these customers in the form of a rate credit, but that benefit comes in return for shouldering significant responsibilities. Eligibility to participate on the rider is tied to FirstEnergy's legacy interruptible rates, which means these customers have a long and proven track record as interruptible resources.[34] Further, as Mr. Baron explained, the large industrial customers on Rider ELR compete in national and international markets and face the possibility of shutting down and moving operations elsewhere, so they are differently positioned compared to smaller commercial customers who are often competing with other local businesses with similar cost structures.[35] The reasonableness of Rider ELR's eligibility requirements is also demonstrated by the Commission's approval of Rider ELR in all previous FirstEnergy ESP cases.

Also, from an economic development perspective, it is reasonable to advance economic development objectives through a rate like Rider ELR, when it applies to a class of customers with

[33] OCC Brief at 98; OMAEG Brief at 93.

[34] Mikkelsen Rebuttal Testimony at 19; Tr. Vol. XXX at 6135-36 (current Rider ELR customers have been on the rider over seven years); *id*. at 6136-37 (customers' participation on Rider ELR and predecessor interruptible rates demonstrates a willingness on the part of Rider ELR customers to remain interruptible long term).

[35] Tr. Vol. XXII at 4329-31.

similar needs and capabilities, rather than considering special arrangements for each individual customer (since there could be over thirty Rider ELR customers, approving Rider ELR is certainly more administratively efficient than killing Rider ELR and addressing each customer individually). As Dr. Goins testified, it is reasonable for the policymaker, in this case the Commission, to be selective in how an economic development tool is applied and to whom it is applied.[36] Given these factors, and the availability of other economic development mechanisms the customers not eligible for Rider ELR might avail themselves to (such as reasonable arrangements), limiting participation on Rider ELR to a pool of longstanding interruptible customers is reasonable.

OMAEG and OHA also argue that the Rider EDR(e) charge should not be assigned only to GS and GP customers.[37] The Commission has twice approved the current EDR(e) charge, demonstrating that it is reasonable. Also, it should be noted under the initial Rider ELR program approved in ESP I, $8.05 of the total $10 credit was recovered from GS and GP customers.[38] In ESP II, the Commission moderated the impact on GS and GP customers by changing the allocation to recover half of the combined total credit through Rider DSE1 and half through Rider EDR(e),[39] and this moderated approach is continued in the Stipulation. Finally, allocating a portion of the cost of Rider ELR to these customer classes, which include commercial customers, is a reasonable

[36] Tr. Vol. XXII at 4032.

[37] OHA Brief at 7; OMAEG Brief at 93.

[38] Case No. 08-935-EL-SSO, Second Opinion and Order (approving stipulation and recommendation that allocated the cost of the $8.05 economic development credit for Rider ELR customers to the GP and GS classes under Rider EDR).

[39] Case No. 10-388-EL-SSO, Opinion and Order.

approach given that these customers benefit as a result of the retention of large industrial customers in their current communities.[40]

4. The EE/PDR Opt Out for Rider ELR Customers is Reasonable and Consistent with S.B. 310

The Environmental Law and Policy Center ("ELPC") takes issue with the clarification in the Stipulation that Rider ELR customers may opt out of FirstEnergy's energy efficiency/peak demand reduction ("EE/PDR") portfolio rider, incorrectly claiming that Rider ELR is part of FirstEnergy's portfolio plan.[41] ELPC maintains that allowing ELR customers to opt out would violate S.B. 310, which provides that a customer that opts out of a utility's portfolio plan shall not be "eligible to participate in, or directly benefit from, programs arising from electric distribution utility portfolio plans approved by the public utilities commission."[42]

Although the cost of the ELR credit is recovered under Rider DSE1, Rider ELR is not a program "arising from" FirstEnergy's portfolio plan. As Ms. Mikkelsen explained at the hearing, Rider ELR is not, and never has been, part of FirstEnergy's amended portfolio plan, but instead has always been approved as part of FirstEnergy's ESPs.[43] It is a rate that has been addressed and approved in FirstEnergy's ESP cases under the Commission's standards for approving rates. In fact, the original Rider ELR was instituted before FirstEnergy filed its first portfolio plan.

There is no question that the peak demand reduction associated with Rider ELR is, and should be, counted toward meeting FirstEnergy's statutory peak demand reduction benchmarks

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[40] Tr. Vol. XXXIV at 7109.

[41] Initial Brief of the Environmental Law and Policy Center, Environmental Defense Fund, and Ohio Environmental Council at 58-59.

[42] Section 4928.6613, Revised Code.

[43] Tr. Vol. III at 498.

(another benefit of Rider ELR). Ms. Mikkelsen testified that "the tariff language in the rider has been very clear that we can count the peak demand reduction for purposes of meeting our statutory peak demand reduction requirements."[44] However, not everything that FirstEnergy can count toward meeting its benchmarks is automatically part of FirstEnergy's portfolio plan. For example, as Ms. Mikkelsen explained, the Commission currently allows FirstEnergy to score for statutory compliance purposes all demand resources and energy efficiency resources that participate in the PJM markets for capacity, even though these individual customer efforts are not part of FirstEnergy's portfolio.[45]

The statute specifically prohibits customers who opt out from participating in *programs arising from electric distribution utility portfolio plans approved by the public utilities commission*. The limitation does not apply to a rate that also provides peak demand reduction benefits, or even to a demand reduction program, to the extent such a program does not "arise from" a utility's portfolio plan. Rider ELR is a rate that originated and has been consistently approved as part of FirstEnergy's ESP rate plan, not a program "arising from" FirstEnergy's EE/PDR portfolio. If an ELR customer exercises its right to opt out, that customer will not be eligible to participate in, or directly benefit from, the energy efficiency or peak demand reduction programs arising from FirstEnergy's portfolio plan, the costs of which are recovered through Rider DSE2. This is entirely consistent with the language and the intent of S.B. 310. The Commission should reject ELPC's argument that Rider ELR customers should be ineligible to opt out of the EE/PDR rider.

[44] *Id*.

[45] *Id*. at 498-500.

B. Time of Day Rate

Nucor currently takes service under (and has since the inception of the rate) and supports the continuation of the time of day ("TOD") rate option under the standard service offer generation rate as proposed in the ESP IV Stipulation. We urge the Commission to reject the arguments of the Retail Energy Supply Association ("RESA") on this issue. RESA was one of the few parties to address the TOD proposal in its initial brief.

RESA argues that TOD rates should be "left to the market to provide."[46] This argument runs directly counter to the Commission's conclusion that including TOD rates in a utility standard service offer is appropriate and provides significant benefits.[47] In fact, in FirstEnergy's initial standard service offer proposal in 2008, the Commission rejected the plan in part due to the failure to include a TOD rate, finding that this did not advance the state's policy objective of promoting time-differentiated pricing.[48] There is no reason why a TOD rate option should not be provided through a utility's standard service offer, particularly when it is an ESP. RESA offered no evidence that FirstEnergy's TOD rate is preventing the development of TOD rates in the market. As Dr. Goins testified, SSO rates should provide a TOD option even if TOD rates are offered in the market.[49] CRES providers are free to offer these options if they want, and

[46] Initial Brief of the Retail Energy Supply Association ("RESA Brief") at 4.

[47] *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).

[48] *Id.*

[49] Goins Testimony at 15.

customers should have the ability to choose a market TOD option, or a TOD offering under FirstEnergy's SSO plan.

Later in its brief, RESA states that it does not oppose continuation of the current FirstEnergy TOD rates "for the few existing customers who take that service for the term of the ESP IV."[50] As a current TOD customer, we appreciate this concession. Nonetheless, we submit that the Commission should reject this limitation, which would only serve to limit customer choice and discourage participation on TOD rate options. The TOD option should be open to all customers who choose to take generation service under the FirstEnergy SSO, as has been the case since the rates were approved shortly after FirstEnergy's first ESP case, including shopping customers who choose to return to the SSO.

C. Rider NMB Trial

RESA argues that the Rider NMB Pilot Program provided for in the ESP IV Stipulation is "discriminatory" because it is offered to a limited group of participants.[51] A pilot program is by nature experimental, and there is no reason why the Commission cannot approve pilot programs or experimental rates with limited participation. The Rider NMB Pilot Program will benefit all customers, whether they participate or not, by reducing the level of non-bypassable PJM transmission services that FirstEnergy must acquire to serve its customers.[52] Finally, depending on the results of the pilot, it may also lead to the opportunity for more customers to participate in the future.

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[50] RESA Brief at 20.

[51] RESA Brief at 4, 49-50.

[52] Tr. Vol. III at 633.

D. Economic Stability Program

Nucor supports the proposed Economic Stability Program as a reasonable mechanism to hedge against market price volatility that also will provide important reliability and economic development and job retention benefits for Ohio. Opponents of the Economic Stability Program marshal various arguments against this proposal in their initial briefs. Although we expect that these arguments will be addressed in detail by FirstEnergy and other parties, we offer the following general observations in response to the opponents of FirstEnergy's proposal.

Keep Market Price Projections in Perspective – Gallons of ink were spilled in the initial briefs dissecting various market price projections in an attempt to divine whether Rider RRS will be a cost or credit to customers over the term of the ESP. But projections are projections – we know that they will all be wrong. The only thing we can know for certain is what has happened in the past. And, looking back over the past several years, we know that both energy and capacity market prices have experienced periods of unexpected price increases and volatility.[53] It takes a leap of faith to believe that such volatility will not revisit the markets at some point over the next eight years. If and when that volatility returns, Rider RRS will benefit customers by mitigating high market prices for a portion of FirstEnergy's load. This is the point of a hedge – to provide some price stability. If market prices are low, customers benefit from the market prices and pay a price for the hedge; if market prices are high, customers receive some protection in the form of a credit from the hedge.

The Commission has a Role in Ensuring Reliability – In attacking the reliability rationale for ensuring that Sammis and Davis Besse continue to operate, opponents of the Economic

[53] Judah Rose Testimony at 22-32.

Stability Program argue that PJM has the exclusive role in maintaining system reliability.[54] By implication, this argument denies any Commission role in ensuring reliability for Ohio consumers. In fact, it is clear under both Ohio law and federal law that the Commission retains an important role in ensuring reliability.[55] The Commission should reject the opponents' invitation for the Commission to disavow responsibility for ensuring reliability and to leave reliability exclusively to PJM.

The Economic Stability Program is Not Without Risk to FirstEnergy – Opponents of the Economic Stability Program label Rider RRS a subsidy. It is likely the case that Rider RRS will be a charge during the first several years of the ESP that will help to support the continued operation of the plants to the benefit of FirstEnergy as well as the state. However, the arrangement is not without risk to FirstEnergy. The return on equity under the PPA is fixed, so in the event market prices rise in the future, the revenues to FirstEnergy will essentially remain capped. In other words, FirstEnergy is giving up the chance to earn larger returns in the market should market prices rise as compared to what it will earn under the PPA. In the same way, customers have some protection from high market prices for the portion of the load covered by the PPA. In addition, FirstEnergy has put additional dollars at risk by committing up to $100 million in additional funds to support potential credits if necessary.[56] The opponents claim that Rider RRS is a subsidy, therefore, is overstated and inaccurate.

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[54] Initial Brief of Constellation NewEnergy, Inc. and Exelon Generation Company LLC at 29; Initial Post-Hearing Brief of the Sierra Club at 11, fn.4; OCC Brief at 65.

[55] Under Section 4928.02(A), Revised Code, it is the policy of the state of Ohio to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced retail electric service"; *see also* 16 U.S.C. 824o(i)(3) ("Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State").

[56] Third Supplemental Stipulation and Recommendation at 7-8.

Arrangements Similar to the Economic Stability Program Already Exist in PJM – The PJM Market Monitor concedes that there are already many states in PJM with a "quasi-market" type structure, where retail rates to customers are based on a form of cost of service, but the generators nevertheless participate in the PJM markets.[57] It is clear that these arrangements are allowed – the PJM market monitor just does not want more of them.[58] The effects the Economic Stability Program may or may not have on the PJM markets, therefore, should not be determinative in the Commission's decision whether to approve the program. The fact is, by adopting the Economic Stability Program, the Commission would be going down a path similar to the one taken by many other states within PJM, including Virginia, West Virginia, Kentucky, Indiana, North Carolina, Tennessee, and Michigan.[59] As the Commission has already recognized, Ohio law gives the Commission the ability to go down this path if it so chooses.[60]

II. CONCLUSION

For the reasons discussed in this reply brief and Nucor's initial brief, Nucor respectfully requests that the Commission approve the ESP IV Stipulation.

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[57] First Supplemental Testimony of Joseph E. Bowring, IMM Ex. 2, at 5.

[58] Post-Hearing Brief of the Independent Market Monitor for PJM at 7 ("While it is true that there are other exceptions to the market paradigm within PJM, that is not a reason to remove units from the market and further extend the non-market paradigm.").

[59] Tr. Vol. XXIV at 4994-5004, 5019-27.

[60] *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 22 (February 25, 2015) (recognizing that a PPA rider similar to FirstEnergy's proposed Rider RRS can be a financial limitation on shopping for retail electric generation service that would help stabilize rates, and is authorized to be included as part of an ESP under Section 4928.143(B)(2)(d) of the Revised Code).

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 26, 2016.

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