

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company, and The Toledo Edison ) Case No. 16-743-EL-POR  
Company for Approval of Their Energy Efficiency )  
and Peak Demand Reduction Program Portfolio )  
Plans for 2017 through 2019 )

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**REPLY COMMENTS OF NUCOR STEEL MARION, INC. ON RIDER ELR**

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Pursuant to the Fifth Entry on Rehearing in the above-captioned proceeding, Nucor Steel Marion, Inc. (“Nucor”) hereby submits these reply comments on issues related to Rider ELR.

**I. REPLY COMMENTS**

**A. Introduction**

In the Fifth Entry on Rehearing in this case, the Commission granted the rehearing request of the Office of the Ohio Consumers’ Counsel (“OCC”) and invited parties to provide comments on “whether, in consideration of the history, purpose and nature of Rider ELR, Rider ELR is an energy efficiency program established pursuant to the mandates contained in R.C. 4928.66 which should be terminated pursuant to R.C. 4928.66(G).”<sup>1</sup> In response to the Commission’s invitation, on March 26, 2021, Nucor submitted comments<sup>2</sup> explaining that Rider ELR is an interruptible rate approved as part of FirstEnergy’s standard service offer rate plans and is not an energy efficiency program established pursuant to the statutory energy efficiency

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<sup>1</sup> Case No. 16-743-EL-POR, Fifth Entry on Rehearing at P 14 (February 24, 2021).

<sup>2</sup> Case No. 16-743-EL-POR, Comments of Nucor Steel Marion, Inc. on Rider ELR (March 26, 2021) (“Nucor Comments”).

mandates, and therefore Rider ELR should not be terminated pursuant to R.C. § 4928.66(G).

Several other parties that filed comments agreed that the primary purposes of Rider ELR are to provide economic development and system reliability benefits, that Rider ELR was not created by or funded through FirstEnergy's portfolio plan, and that Rider ELR should not be terminated pursuant to Section 4928.66(G).<sup>3</sup>

Unlike the other commenting parties, OCC submitted comments calling for the termination of the DSE1 cost recovery mechanism for Rider ELR pursuant to R.C. § 4928.66(G).<sup>4</sup> As discussed in detail in Nucor's initial comments, OCC's position is not supported by the statute or the history and purpose of Rider ELR.<sup>5</sup> OCC's position is also at odds with the Commission's prior decisions addressing the relationship between Rider ELR and FirstEnergy's portfolio plan.<sup>6</sup> In these reply comments we briefly address certain arguments OCC raised in its initial comments. We refer the Commission back to Nucor's initial comments for a more detailed discussion of these issues.

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<sup>3</sup> Case No. 16-743-EL-POR, Comments of the Ohio Energy Group at 2-3 (March 26, 2021) ("OEG Comments"); Comments of Industrial Energy Users-Ohio at 1-5 (March 26, 2021); Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company Regarding Rider ELR at 1-3 (March 26, 2021).

<sup>4</sup> See Case No. 16-743-EL-POR, Comments (Including Recommendation to Clarify FirstEnergy's Tariffs to Ensure Refundability of Charges) by Office of the Ohio Consumers' Counsel (March 26, 2021) ("OCC Comments").

<sup>5</sup> Nucor Comments at 6-11, 15-17.

<sup>6</sup> See *id.* at 11-15 (discussing electric security plan ("ESP") cases where the Commission considered and rejected arguments that Rider ELR should be treated as a portfolio plan program).

**B. R.C. § 4928.66(G) is Not Applicable to Rider ELR**

OCC argues that since Rider ELR was used for compliance with peak demand reduction mandates, R.C. § 4928.66(G) applies, prohibiting FirstEnergy from continuing to charge customers for the rider.<sup>7</sup> OCC's argument misconstrues R.C. § 4928.66(G).

R.C. § 4928.66(G)(3) provides that upon the date full statutory compliance with the mandates is deemed achieved, "any electric distribution utility cost recovery mechanisms authorized by the commission for compliance with this section shall terminate." This section terminates only the cost recovery mechanism, not any programs. The programs themselves are terminated pursuant to Section 4928.66(F), which requires the termination of a utility's "portfolio plan." OCC has not argued that Rider ELR itself should be terminated pursuant to Section 4928.66(F), nor has any other party.

As discussed in detail in Nucor's initial comments, Rider ELR was never approved as part of or funded through the portfolio plan.<sup>8</sup> Instead, Rider ELR is an interruptible rate that was approved as part of each FirstEnergy ESP under the statute and rules applicable to ESPs.<sup>9</sup> Further, Rider ELR is funded through the DSE1 charge and Rider EDR. This is an entirely separate funding mechanism from the DSE2 charge, the mechanism that recovered the cost of the portfolio programs. The DSE2 charge, not the Rider ELR funding mechanisms, is the only cost recovery mechanism "authorized by the commission for compliance with this section" that must be terminated pursuant to Section 4928.66(G)(3).

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<sup>7</sup> OCC Comments at 5.

<sup>8</sup> Nucor Comments at 11-12.

<sup>9</sup> See *id.* at 8-11; OEG Comments at 2 ("Rider ELR was established to serve reliability and economic development functions through the [ESP] process pursuant to R.C. 4928.143.").

OCC is correct that savings from Rider ELR were counted toward meeting FirstEnergy's peak demand reduction benchmarks.<sup>10</sup> But this fact alone does not mean that Sections 4928.66(F) and 4928.66(G) apply to Rider ELR. As the Commission has recognized, the primary purposes of Rider ELR are to support system reliability and economic development.<sup>11</sup> The peak demand reduction benefit that Rider ELR provided (and continues to provide, regardless of the elimination of the mandates) is an additional benefit that was appropriately recognized. In fact, it would have been detrimental to ratepayers if the peak demand reduction attributable to Rider ELR had not been counted to meet the peak demand reduction benchmarks because FirstEnergy would have had to find other ways (likely at additional cost) to meet the benchmarks.

Counting peak demand reduction from Rider ELR toward meeting the benchmarks was the prudent course, but the fact remains that Rider ELR was never approved under the FirstEnergy portfolio program and was not funded through the portfolio. Accordingly, Section 4928.66(G) does not require the termination of the Rider ELR funding mechanism.

**C. The Elimination of the Peak Demand Reduction Mandates Does Not Affect Customer Qualification for Rider ELR**

OCC notes that condition (vi) to participation on Rider ELR is that “the customer commits its demand response capability to Company for integration into Company’s R.C. § 4928.66 compliance programs,” and that condition (vii) is that “the Commission finds that the demand response capabilities of customers electing to take service under this rider shall count

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<sup>10</sup> OCC Comments at 4-5.

<sup>11</sup> In its comments, OCC makes the claim that Rider ELR is a “subsidy” for large nonresidential customers. This claim ignores that the Rider ELR cost recovery charges continue to pay for the reliability and economic development benefits that the rider provides as intended when the Commission consistently approved the rider in every ESP.

towards the Company's compliance with the peak demand reduction benchmarks set forth in R.C. § 4928.66." OCC argues that these conditions mean that the charges associated with Rider ELR must terminate under R.C. § 4928.66(G)(3), and that based on the tariff language, it would be impossible for any customers to continue to qualify for the rider because there are no longer any mandates.<sup>12</sup>

OCC's suggestion that customers can no longer qualify for Rider ELR in light of the elimination of the statutory mandates has no merit. Rider ELR customers have not revoked their commitment under (vi) and peak demand reduction associated with Rider ELR was counted toward meeting the Section 4928.66 benchmarks as required by condition (vii) when those benchmarks existed. All that has changed is that there are no longer any statutory benchmarks to meet.

Rider ELR continues to operate as it always has regardless of the end of the mandates. For example, Rider ELR continues to serve as a tool to preserve system reliability whereby Rider ELR customers are subject to curtailments whenever the distribution utility, ATSI, or PJM "determines, in its respective sole discretion, that an emergency situation exists that may jeopardize the integrity of either the distribution or transmission system in the area."<sup>13</sup> The rider still contains penalties as an enforcement mechanism to ensure that customers provide curtailments when called to do so. And the rider continues to promote economic development. In short, the elimination of the mandates has no impact whatsoever on the primary purpose and operation of Rider ELR.

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<sup>12</sup> OCC Comments at 4.

<sup>13</sup> Rider ELR, Sheet 101 at 4.

At the time Rider ELR was approved, the R.C. § 4928.66 mandates were in effect and it was expected that the mandates would continue in place through the term of the ESP, and therefore inclusion of conditions (vi) and (vii) was entirely reasonable. The revocation of the mandates may render those provisions unnecessary but does not affect customer qualification for the rider. As explained in these reply comments, Nucor's initial comments, and the comments of several other parties, meeting the peak demand reduction benchmarks was only one of several benefits of Rider ELR, and was a secondary benefit at that – the primary purposes of Rider ELR were, and remain, system reliability and economic development. Eliminating the Rider ELR interruptible rate and its important benefits simply because the statutory peak demand reduction mandates no longer exist would be a case of the tail wagging the dog.

## **II. CONCLUSION**

For the reasons discussed in these reply comments and Nucor's initial comments, neither Rider ELR nor the cost recovery mechanisms for the rider should be terminated pursuant to R.C. § 4928.66(G).

Respectfully submitted,

*/s/ Michael K. Lavanga*

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