

**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)	Case No. 23-301-EL-SSO
Authority to Establish a Standard Service Offer)	
Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan)	

INITIAL BRIEF BY NUCOR STEEL MARION, INC.

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Nucor Steel Marion, Inc. (“Nucor”) hereby submits its post-hearing brief in the above-captioned proceeding, which is considering the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) for approval of FirstEnergy’s fifth electric security plan (“ESP V”).

I. INTRODUCTION

Nucor is a large, industrial, interruptible customer of Ohio Edison. Nucor’s steel manufacturing facility in Marion, Ohio is a division of Nucor Corporation, the nation’s largest producer of steel and North America’s largest recycler. At the Marion plant, Nucor melts recycled scrap steel in a massive electric arc furnace and uses the molten steel to create new steel products. This recycling process is much more efficient than traditional integrated steel production since it re-uses the latent energy already contained in the scrap, but the process is still extremely energy intensive. As a result, Nucor purchases

millions of dollars worth of electric energy from Ohio Edison each year, making electricity one of Nucor's largest production costs. Given the importance of electric energy to Nucor's production process, Nucor has been an active participant in the current ESP V case, as we have been in all of FirstEnergy's prior ESP cases.

In this case, FirstEnergy proposes a new eight-year ESP for its standard service offer upon the expiration of the current ESP IV rate plan in May, 2024. Many of the basic features of the ESP V proposal have been in place through the ESP IV plan and previous ESP plans. In general, Nucor believes that FirstEnergy's current and prior ESP plans have worked well and supports the continuation of the ESP framework going forward.

That said, in its ESP V application, FirstEnergy proposes certain significant changes to elements of the current ESP. This brief will focus on two areas of the ESP V proposal that are of critical importance to Nucor and other large industrial customers of the FirstEnergy Ohio utilities – specifically, FirstEnergy's proposed modifications to the Economic Load Response Program Rider ("Rider ELR") and the Non-Market-Based Services Rider ("Rider NMB").

II. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Following is a summary of Nucor's primary conclusions and recommendations in this case:

Rider ELR

- Rider ELR is FirstEnergy's interruptible program. Currently, Rider ELR customers may be called to interrupt by PJM, ATSI, and/or a FirstEnergy utility when there is a system emergency. Rider ELR customers must curtail down to their firm load within a half hour for PJM-initiated interruptions and within two hours for interruptions initiated by a FirstEnergy utility. To participate on Rider ELR, customers must agree to commit their demand response capabilities to

FirstEnergy, who then bids the ELR demand response into the PJM capacity markets. Eighty percent (80%) of any PJM revenues received by FirstEnergy for the ELR load's participation in the capacity market is flowed back to other FirstEnergy customers as an offset to the ELR credits.

- In return for being interruptible, Rider ELR customers receive a credit equal to \$5 per kW applied to the customer's Curtailable Demand each month through Rider ELR, and an identical \$5 credit through the Economic Development Rider ("Rider EDR") for a total credit of \$10 per kW of Curtailable Demand. This credit has been in place since 2009 when Rider ELR was first approved in FirstEnergy's first ESP case and has been approved by the Commission and continued in every subsequent FirstEnergy ESP case.
- In approving Rider ELR in previous ESP cases, the Commission recognized that Rider ELR provides important system reliability and economic development benefits. In this case, numerous witnesses for various parties have similarly testified that Rider ELR provides reliability and economic development benefits, and that the program should be retained in ESP V.
- FirstEnergy proposes to continue Rider ELR in ESP V, but with several significant changes, including: (i) stepping down the total ELR credits by \$1 each year starting in the second year of the ESP term, so that by the end of the eight-year ESP, the total Rider ELR credits would be reduced to \$3 (a reduction of 70% from the current credit level), and (ii) eliminating FirstEnergy's role as the curtailment service provider ("CSP") for purposes of ELR participation in the PJM capacity markets, and requiring that ELR customers participate in PJM through their own CSPs.
- The Commission should reject FirstEnergy's proposed modifications to Rider ELR and continue the program as it is today.
 - The total \$10 per kW credit should be continued through the term of ESP V. This credit has been found to be just and reasonable by the Commission in all of FirstEnergy's ESP cases. FirstEnergy claims it proposes to reduce the credit to more closely reflect PJM market capacity prices. But market capacity prices are volatile and do not reflect all the benefits Rider ELR interruptible customers provide, including the ability of the FirstEnergy utilities to call on these resources separate and apart from PJM to address local reliability emergencies, as well as economic development and job retention benefits.
 - If the Commission decides that the Rider ELR credit must be reduced, the Commission should adopt a slower and more reasonable reduction in the credit. Specifically, the Commission should gradually reduce the credit to no less than \$8 over the term of the ESP. Although dropping the credit to

\$8 would be a significant 20% reduction, gradually reducing the credit to this level over the term of the ESP would mitigate rate shock for Rider ELR customers and would increase the likelihood of continued robust participation in the program.

- FirstEnergy should continue to serve as the CSP for the Rider ELR load for purposes of participation in the PJM capacity markets. Having FirstEnergy serve as the single point of contact for ELR interruptions – whether initiated by PJM or by a FirstEnergy utility to address a local reliability concern – is the simplest and most straightforward approach to managing the Rider ELR interruptible load. Further, revenues FirstEnergy receives as a result of bidding the ELR load into the capacity market should continue to be passed back to FirstEnergy’s customers to offset the cost of the ELR credits.

Rider NMB

- Rider NMB recovers non-market-based transmission and transmission-related costs that PJM assesses on FirstEnergy, including PJM network integration transmission charges, regional transmission expansion plan costs, and the costs of various transmission-related ancillary services. The Rider NMB rate design applicable to commercial and industrial customers is based on each customer’s monthly billing demand (maximum non-coincident demand).
- In FirstEnergy’s ESP IV, the Commission approved the Rider NMB Pilot Program. Under this program, participating customers could opt out of Rider NMB and instead be subject to PJM transmission charges passed through by a competitive retail electric provider. Unlike the Rider NMB rate design, each pilot program participant is billed for PJM transmission costs based on its individual Network Service Peak Load (“NSPL”). NSPL is determined based on the average of the customer’s demands in the five highest hourly transmission peaks.
- FirstEnergy proposes to continue Rider NMB, but to establish two different NMB charges. The Rider NMB 2 charge would apply to commercial and industrial customers who have interval or advanced meters, and the customers on this rate would be charged based on their NSPLs. The Rider NMB 1 charge will keep the same design as the current NMB rate and would apply to all customers not on the Rider NMB 2 rate. FirstEnergy also proposes to terminate the NMB Pilot Program.
- The Commission should approve a mechanism to recover PJM transmission costs that incorporates NSPL pricing.
 - NSPL pricing is a more cost-based approach to assessing transmission costs than pricing based on monthly billing demand. NSPL pricing provides a

cost signal, which in turn gives customers an incentive to minimize their demands at peak times and reduce billed transmission costs.

- FirstEnergy's NMB 2 proposal is reasonable because it incorporates NSPL pricing for customers that have advanced or interval metering. However, if the Commission is concerned about the impact of the NMB 2 proposal on certain customers with advanced or interval metering who either cannot or do not want to respond to price signals, then the Commission should approve a continuation of the NMB Pilot Program, and the program should be opened to all customers that would like to participate and that have the appropriate metering.

III. ARGUMENT

A. The Commission Should Maintain the Rider ELR Program in its Current Form

1. Current Rider ELR

a. Overview

Rider ELR¹ is an interruptible rate that was first approved in Case No. 08-935-EL-SSO to replace various legacy interruptible rates offered by the Companies.² Rider ELR requires each participating customer to curtail load above the customer's designated Firm Load during an Emergency Curtailment Event that endangers service reliability to firm customers.³ An Emergency Curtailment Event may be called when (i) the particular FirstEnergy operating company, (ii) a regional transmission organization such as PJM, and/or (iii) a transmission provider (for example, ATSI) determines that an emergency condition exists that may jeopardize the integrity of the distribution or transmission

¹ See Direct Testimony of Brandon S. McMillen on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Companies Ex. 3 ("McMillen Testimony") at Attachment BSM-1 (Rider ELR for each of the FirstEnergy Ohio utilities showing FirstEnergy's proposed changes in redline).

² Direct Testimony of Dennis W. Goins, PH.D. on behalf of Nucor Steel Marion, Inc., Nucor Ex. 1 ("Goins Testimony") at 6.

³ McMillen Testimony at Attachment BSM-1; Goins Testimony at 6.

system.⁴ There is no limit on the number and duration of interruptions that may be called under Rider ELR,⁵ and FirstEnergy has broad discretion in determining when an emergency condition exists that would trigger an interruption under Rider ELR.⁶

When PJM calls an Emergency Curtailment Event, Rider ELR customers must curtail down to their Firm Load within 30 minutes, unless PJM has granted an exception to allow a customer more time to curtail.⁷ When the Emergency Curtailment Event is called by a FirstEnergy utility or ATSI, Rider ELR customers must curtail down to their Firm Load within two hours.⁸

Rider ELR customers currently receive a monthly \$5 per kW credit for each kW of Curtailable Load under Rider ELR.⁹ They also receive a \$5 per kW monthly economic development credit under Rider EDR, resulting in a total monthly credit of \$10 per kW.¹⁰ Further, Rider ELR customers are subject to significant penalties if they fail to curtail down to their designated Firm Loads within the required time when an Emergency Curtailment Event is called.¹¹ These penalties include forfeiture of all Rider ELR credits received in the prior year (including Rider EDR credits), an ECE Charge equal to 300% times the real-time Locational Marginal Price for energy used in excess of the customer's Firm Load during the Emergency Curtailment Event, and possible removal from Rider ELR.¹²

⁴ McMillen Testimony at Attachment BSM-1; Goins Testimony at 6.

⁵ Tr. Vol. III at 541.

⁶ Tr. Vol. II at 346; Tr. Vol. IX at 1761.

⁷ McMillen Testimony at Attachment BSM-1; Goins Testimony at 6-7.

⁸ McMillen Testimony at Attachment BSM-1; Goins Testimony at 7.

⁹ McMillen Testimony at Attachment BSM-1; Goins Testimony at 7.

¹⁰ McMillen Testimony at Attachment BSM-1; Goins Testimony at 7.

¹¹ McMillen Testimony at Attachment BSM-1; Goins Testimony at 7.

¹² McMillen Testimony at Attachment BSM-1; Goins Testimony at 7.

As Nucor Witness Dr. Goins testifies, “[a]lthough Rider ELR has undergone modifications in earlier ESP cases, the credit and the rate’s other core elements have been in place since FirstEnergy’s first ESP was approved, resulting in a stable, long-term, and reliable source of interruptible capacity for the FirstEnergy utilities for well over a decade.”¹³

b. Rider ELR provides significant benefits

In approving Rider ELR in previous ESP cases, the Commission has recognized that Rider ELR provides significant benefits. For example, in the ESP IV case, the Commission recognized that Rider ELR provides reliability and economic development benefits to customers.¹⁴ The Commission counted Rider ELR as among a number of provisions in the ESP IV stipulation “intended to promote the state’s effectiveness in the global economy” and recognized that the rider was approved as part of FirstEnergy’s first ESP and has continued in place since then.¹⁵ Several parties in the current case agree that Rider ELR has and continues to provide these benefits. According to Ohio Energy Group (“OEG”) Witness Kevin Murray, for example, “FirstEnergy’s long-standing interruptible rate

¹³ Goins Testimony at 7.

¹⁴ Case No. 14-1297-EL-SSO, *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*, Opinion and Order at 94 (March 31, 2016).

¹⁵ *Id.*; see also, Case No. 12-1230-EL-SSO, *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*, Second Entry on Rehearing at 14 (January 30, 2013) (finding in the ESP III case that Rider ELR “tend[s] to lower SSO generation prices” as well as promoting economic development); Case No. 10-388-EL-SSO, *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 R.C. § 4928.143 in the Form of an Electric Security Plan*, Opinion and Order at 30, 45-46 (August 25, 2010) (rejecting arguments in the ESP II case that Rider ELR should be terminated since other demand response opportunities are available through RTO programs and recognizing that termination of the rate would harm large industrial customers in the state).

programs have demonstrated their value on multiple occasions, providing important reliability benefits to the grid in times of crisis” as well as “promot[ing] economic development within Ohio by facilitating the state’s competitiveness with other states that offer such rates.”¹⁶

i. Rider ELR helps preserve system reliability

Interruptible load such as that provided by Rider ELR customers is an important reliability resource because it can be curtailed quickly during a system emergency and kept off-line to help preserve system reliability and possibly avoid the need for rolling blackouts affecting firm customers.¹⁷ For example, at the evidentiary hearing in this case, FirstEnergy Witness Edward B. Stein discussed his experiences at WCI Steel in Warren, Ohio.¹⁸ WCI Steel was on an interruptible rate, and its load was curtailed after a tornado damaged the utility’s transmission and distribution system.¹⁹ The plant was curtailed for over thirty hours spanning two days, and the curtailment helped avoid rolling blackouts that would have impacted the utility’s other customers.²⁰

Similarly, Rider ELR customers have been called on during severe weather emergencies in order to help preserve system reliability. Rider ELR was deployed during Winter Storm Elliott. On December 24, 2022, a Rider ELR Emergency Curtailment Event

¹⁶ Direct Testimony of Kevin M. Murray on Behalf of the Ohio Energy Group, OEG Ex. 3 (“Murray Testimony”) at 3; *see also*, Tr. Vol. XIV at 2569, 2571-72 (Staff Witness Healey agreeing that Rider ELR provides both economic development and reliability benefits); McMillen Testimony at 11 (characterizing Rider ELR as a “tariff-based interruptible program to support demand response and economic development”); Direct Testimony of Matthew Brakey on Behalf of Ohio Energy Leadership Council, OELC Ex. 32 (“Brakey Testimony”) at 41, 51-52 (discussing reliability and economic development benefits of Rider ELR).

¹⁷ Goins Testimony at 7.

¹⁸ Tr. Vol. VII at 1519-21.

¹⁹ *Id.* at 1519.

²⁰ *Id.* at 1520-21.

lasting almost 10 hours was called by PJM because a significant portion of generation capacity within PJM was unavailable to meet peak demand due to extreme cold weather conditions.²¹ During this event, all ELR customers successfully curtailed down to or below their firm service level.²² Ohio Energy Leadership Council (“OELC”) Witness Brakey testified that “[w]ithout FirstEnergy’s Rider ELR program and others like it, it is very possible that energy consumption and demand in the PJM grid as a whole may have exceeded supply on December 23 and 24, 2022,” and further explains that the “nimble, flexible, and sizeable loads of demand response resources across the PJM footprint, including FirstEnergy’s Rider ELR customers, curtailed their capacity and helped prevent what may have been a catastrophic failure of the PJM electric grid.”²³

Rider ELR customers were also called for one mandatory curtailment and several voluntary ones during the Polar Vortex event in 2014.²⁴ Rider ELR customers currently are also subject to annual testing by PJM to confirm their curtailment capability, ensuring that these customers are typically curtailed at least once a year.²⁵

In addition to curtailments by PJM, Rider ELR customers may also be curtailed by a FirstEnergy utility to address local reliability issues.²⁶ For example, in 2011, Ohio Edison curtailed a subset of Rider ELR customers to help address a local reliability emergency.²⁷ And as noted above, during the 2014 Polar Vortex, in addition to a mandatory

²¹ Goins Testimony at 7-8; Brakey Testimony at 43-44.

²² Goins Testimony at 8.

²³ Brakey Testimony at 45-46.

²⁴ Goins Testimony at 8.

²⁵ *Id.*; Tr. Vol. VII at 1526 (FirstEnergy Witness Stein confirmed PJM annual testing requirement and noted that a PJM test had recently been performed).

²⁶ Goins Testimony at 9.

²⁷ *Id.*; OMAEG Ex. 12, Response to PUCO DR-006(h).

curtailment, Rider ELR customers were also asked to voluntarily curtail in order to help maintain the reliability of the distribution system.²⁸

ii. Rider ELR provides economic development benefits

The customers on Rider ELR are large, energy intensive customers, many of whom began taking interruptible service long before the adoption of the ESP framework in Ohio.²⁹ Electric energy comprises a major operating cost for these customers, and low, stable electricity prices are vital for their continued operation in Ohio.³⁰ OELC Witness Brakey testified that the list of Rider ELR customers “includes some of the biggest names in manufacturing that have brought an unquantifiable economic impact to the state of Ohio and specifically FirstEnergy’s service territory” and that the economic development benefits created by the twenty-four Rider ELR customers is “profound and far-reaching.”³¹

The credits provided through Riders ELR and EDR allow ELR customers to lower their electricity costs, and therefore can help these customers remain competitive. However, in exchange for the Rider ELR credits, ELR customers are voluntarily accepting a curtailable power supply which is of a lower-quality than firm service, since Rider ELR customers can be called to curtail at any time.³² Due to the curtailable nature of power supply under Rider ELR, customers must incur costs and adjust their processes to be able

²⁸ Goins Testimony at 9.

²⁹ *Id.*

³⁰ *Id.*

³¹ Brakey Testimony at 51-52.

³² Goins Testimony at 9.

to respond quickly to curtailment notices.³³ Further, interruptions may result in lost production for the customers on Rider ELR.³⁴

As Nucor Witness Dr. Goins testifies, “[d]espite these costs and risks, a stable Rider ELR program can be attractive to energy-intensive customers with curtailable production processes, enhance their competitiveness in domestic and global markets, and promote job retention and potential growth.”³⁵ Accordingly, Rider ELR provides important economic development and job retention benefits and helps advance Ohio’s goal of “facilitat[ing] the state’s effectiveness in the global economy.”³⁶

2. FirstEnergy’s proposed modifications to Rider ELR and positions of parties

FirstEnergy recognizes the benefits of Rider ELR and proposes to continue the program through the term of the proposed ESP V. Nevertheless, FirstEnergy proposes two significant changes which would undermine the stability and effectiveness of the program.

First, FirstEnergy proposes to reduce the aggregate monthly Rider ELR and EDR(b) curtailable credits from \$10 per kW of Curtailable Demand to \$3 per kW.³⁷ The credit reductions would begin in the 2025/2026 delivery year when the monthly Rider ELR and Rider EDR(b) credits are each reduced by \$0.50 per kW to \$4.50 per kW, and the same

³³ *Id.* at 10; Tr. Vol. VII at 1520-21.

³⁴ Goins Testimony at 9; Tr. Vol. VII at 1520.

³⁵ Goins Testimony at 10.

³⁶ Ohio Revised Code, Section 4928.02(N).

³⁷ McMillen Testimony at 12-13.

\$0.50 per kW reductions in the credits would occur each year through the 2031/2032 delivery year.³⁸

Second, FirstEnergy would no longer serve as the CSP for Rider ELR customers. The requirement that Rider ELR customers commit their demand response capabilities to FirstEnergy would be eliminated, and instead, Rider ELR customers would be required to participate in PJM through their own CSPs.³⁹ FirstEnergy would no longer serve as the intermediary between PJM and the Rider ELR customers and would receive no PJM revenue to pass back to non-Rider ELR customers.⁴⁰ Instead, Rider ELR customers would be able to retain any revenue received from PJM resulting from their participation in PJM.

Witnesses for several parties responded to FirstEnergy's Rider ELR proposal with their own proposals and recommendations. The main Rider ELR recommendations of the parties (specifically on the credits and on FirstEnergy's role as the CSP) are summarized below.⁴¹

- Nucor Witness Dr. Dennis W. Goins – Nucor Witness Goins recommends that Rider ELR be continued in its current form – *i.e.*, there should be no reduction in the Rider ELR credits and FirstEnergy should remain as the CSP for Rider ELR customers.⁴² If the Commission determines that the credits must be reduced, however, Dr. Goins recommends that they be reduced to no less than \$8 per kW.⁴³
- Commission Staff Witness Christopher Healey – Staff Witness Healey recommends that Rider ELR be retained, but that the aggregate credits be reduced to \$5 per kW

³⁸ *Id.*

³⁹ *Id.* at 14-15.

⁴⁰ Direct Testimony of Edward M. Stein on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Companies Ex. 10 ("Stein Testimony") at 4-5.

⁴¹ Parties made other recommendations concerning Rider ELR that are not addressed in this brief. Failure to address a particular recommendation should not be interpreted as Nucor's support for such recommendation. Nucor reserves the right to address additional recommendations, issues, and arguments related to Rider ELR in its reply brief.

⁴² Goins Testimony at 15, 17-18.

⁴³ *Id.* at 16.

in the first year of ESP V, and that they be further reduced to \$4 per kW in years two through four, and reduced to \$3 per kW in years five and six.⁴⁴ Witness Healey supports FirstEnergy's recommendation to no longer serve as the CSP, and he testifies that OELC Witness Brakey's proposal to postpone the transition to third-party CSPs until the 2025/2026 delivery year (see below) is reasonable.⁴⁵

- Ohio Energy Group Witness Kevin M. Murray – OEG Witness Murray recommends that the Commission adopt a four-year phase down of the Rider ELR credits, continuing the \$10 per kW credit for the first year of the ESP then reducing the credit by \$1 for each of the following years.⁴⁶ Witness Murray recommends a four-year ESP,⁴⁷ so the credit in the last year of the ESP would be \$7 per kW. Witness Murray agrees with FirstEnergy's proposal that FirstEnergy no longer serve as the ESP, however, he opposes the requirement that Rider ELR customers must participate in the PJM capacity markets, and instead proposes that Rider ELR customers should decide for themselves whether they wish to participate in PJM.⁴⁸ To the extent such customers decide to participate in the PJM capacity markets, they would retain any revenue associated with that participation.⁴⁹
- Ohio Energy Leadership Council Witness Matthew Brakey – OELC Witness Brakey recommends that there be no reduction in the Rider ELR credits.⁵⁰ Witness Brakey also recommends that if the Commission approves FirstEnergy's proposal for ELR customers to participate in PJM through their own CSPs, the implementation of this change should be delayed until the June 1, 2025 through May 31, 2026 delivery year.⁵¹
- Ohio Manufacturers' Association Energy Group ("OMAEG") Witness John A. Seryak – OMAEG Witness Seryak recommends that the Commission reject FirstEnergy's proposal to continue Rider ELR but, if a Rider ELR program is allowed, the program should be modified to create reliability benefits targeted to the distribution and transmission systems.⁵² Witness Seryak's testimony does not address the appropriate level of ELR credits or whether FirstEnergy should serve as the CSP.

⁴⁴ Direct Testimony of Christopher Healey, Rates and Analysis Department, Accounting and Finance Division, Staff Ex. 10 ("Healey Testimony") at 24. Witness Healey also testifies in support of a six-year ESP instead of the eight-year ESP proposed by FirstEnergy. *Id.* at 3.

⁴⁵ *Id.* at 21-22.

⁴⁶ Murray Testimony at 3.

⁴⁷ *Id.* at 20.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.*

⁵⁰ Brakey Testimony at 53-54.

⁵¹ *Id.* at 54-55.

⁵² Direct Testimony of John A. Seryak on Behalf of The Ohio Manufacturers' Association Energy Group, OMAEG Ex. 1 at 12.

3. The Rider ELR credits should not be reduced

a. Tying the credits to short-run PJM market capacity prices is a flawed approach

FirstEnergy attempts to justify its proposed reduction in the ELR credits by explaining that the reduced credits better align the cost of the program with market capacity prices.⁵³ Staff Witness Healey similarly bases his credit reduction recommendation largely on current market capacity prices.⁵⁴ However, tying the credits to short-run market capacity prices is problematic for a number of reasons.

To begin with, “a one-year snapshot of PJM capacity prices masks the volatility of those prices over time and provides minimal information regarding where those capacity prices will go during the eight-year term of ESP V.”⁵⁵ Market capacity prices for the ATSI transmission zone have vacillated from \$34.13 per MW-day to \$171.33 per MW-day for the delivery years in FirstEnergy’s ESP IV.⁵⁶ Excluding the last two delivery years of ESP IV, the average capacity price was around \$124 per MW-day, which demonstrates the price suppression effect of extremely low capacity prices in recent PJM capacity auctions.⁵⁷

The low capacity price trend continued in the 2024/2025 base residual auction when ATSI zone transmission prices fell to \$28.92 per MW-day.⁵⁸ Nevertheless, witnesses for several parties agree it is possible, and perhaps even likely, that capacity prices could significantly increase over the course of ESP V. For example, Ohio Consumers’ Council

⁵³ McMillen Testimony at 13.

⁵⁴ Healey Testimony at 24 (agreeing with FirstEnergy Witness Stein that the ELR program should better align the cost of the program with market pricing).

⁵⁵ Goins Testimony at 12.

⁵⁶ *Id.* at 13.

⁵⁷ *Id.*

⁵⁸ *Id.*

(“OCC”) Witness James F. Wilson testified that “[r]ecent PJM capacity prices have been very low by historical standards, and future PJM capacity prices will likely be higher due to changes underway at PJM.”⁵⁹ These changes include “[a]n anticipated increase in retirements, with much of the replacement capacity being renewable wind and solar,” “[c]hanges to resource adequacy analysis to more fully capture winter risks,” and “[c]hanges to accreditation approaches to more accurately reflect capacity value, including changes to more fully capture winter fuel supply challenges for gas-fired resources.”⁶⁰

Nucor Witness Dr. Goins also explained why the recent trend toward low market capacity prices might reverse itself soon. Along with capacity prices, capacity being offered into the auctions has decreased.⁶¹ Recent capacity prices have diverged significantly from the level indicated by the net cost of new entry (“Net CONE”) required to sustain a robust and reliable capacity resource base.⁶² Specifically, the ATSI Net CONE values used in the last four base residual auctions were \$306.87 per MW-day, \$230.50 per MW-day, \$263.07 per MW-day, and \$279.35 per MW-day, respectively.⁶³ The divergence of capacity prices from Net CONE, along with factors such as generation retirements, load growth tied to electrification, and increasing penetration of

⁵⁹ Direct Testimony of James F. Wilson on Behalf of the Office of the Ohio Consumers’ Counsel, OCC Ex. 2 at 9.

⁶⁰ *Id.*

⁶¹ Goins Testimony at 13.

⁶² *Id.* at 14.

⁶³ *Id.*

intermittent resources could raise reliability concerns which in turn could lead to an increase in capacity prices.⁶⁴

Similarly, OELC Witness Brakey testified that it is possible that capacity prices “could rise from current levels approaching or exceeding previous historical highs.”⁶⁵ As Witness Brakey explains:

ATSI Zone capacity prices spiked in the 2015/2016 delivery year largely because of coal plant closures in response to Mercury Air Toxics Standards as issued by the United States Environmental Protection Agency. This capacity price was particularly high relative to prior depressed capacity prices from auctions that were held during the Great Recession. Today we find ourselves in eerily similar circumstances. We once again are pivoting from rather calamitous economic conditions; this time, a situation largely created from the aftermath of a global pandemic during which time business operations were interrupted, thereby disrupting the consumption of normalized amounts of power. However, unlike in the Great Recession, we are seeing stagflation forces that are putting upward price pressure on just about everything. Also similar to 2015/16, we are seeing a dramatic shift away from legacy generation sources. Although perhaps even worse now than then, we are moving to generation sources that are non-dispatchable and notoriously unreliable to serve as capacity resources.⁶⁶

For all these reasons, using today’s historically low capacity prices as the benchmark for setting the Rider ELR credit is flawed and shortsighted.

Another problem with looking only at recent capacity prices is that such prices relate to only one facet of Rider ELR – specifically, the use of Rider ELR load as a capacity/reliability resource in PJM. As noted above, Rider ELR provides an additional reliability benefit since the FirstEnergy utilities can curtail Rider ELR load separate and

⁶⁴ *Id.*

⁶⁵ Brakey Testimony at 50.

⁶⁶ *Id.* at 50-51 (citations omitted).

apart from PJM to address local emergencies. And Rider ELR also provides an important economic development benefit. These additional Rider ELR benefits are not reflected in PJM capacity prices,⁶⁷ and, although FirstEnergy recognizes that Rider ELR provides these benefits, FirstEnergy did not quantify them in developing its credit proposal.

b. A stable and robust Rider ELR credit is critical to retaining Rider ELR customers over the term of the ESP

Under FirstEnergy's proposal, the total Rider ELR credits would decrease each year through the term of the ESP, until the credits are only \$3 per kW, 70% lower than the credits today. The risk is that, as the credits decrease, customers may choose not to participate in the program. As Nucor Witness Dr. Goins testified:

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 is the best way to secure a long-term commitment from energy-intensive industrial customers willing to be interruptible. In addition, FirstEnergy's proposal to "phase down Rider ELR" will likely cause existing ELR customers to consider leaving Rider ELR altogether – especially in the later years of ESP V when curtailable credits fall to their lowest levels.⁶⁸

In other words, in order to ensure sustained, long-term participation in the Rider ELR program, the Rider ELR credits need to be high enough to incentivize customers to absorb the risk and stay in the program through the term of the ESP. FirstEnergy, however, did no analysis or evaluation to determine what level of credit reduction may cause Rider ELR customers to leave the program.⁶⁹ While Rider ELR membership has held

⁶⁷ Goins Testimony at 15.

⁶⁸ *Id.* at 14.

⁶⁹ Tr. Vol. III at 548.

fairly constant at the current level of credits, there is no evidence to demonstrate that customers will continue to participate in the program if the credits are significantly reduced.

FirstEnergy Witness McMillen suggests that, although the Rider ELR credits are being cut, ELR customers may be able to gain additional revenue streams from participating in the capacity market and other markets in PJM through their own CSPs, which could incentivize customers to continue participating in the ELR program.⁷⁰ However, Witness McMillen also stated that he did not quantify the amount of potential PJM revenues and acknowledged that the level of these revenues is unknown.⁷¹ PJM payments will change from year to year and, as demonstrated above, capacity prices are volatile and can vary significantly from year to year and over more extended periods of time. As a result, relying on unknown and variable PJM market payments is a poor substitute for a stable credit (assuming it is high enough) that the ELR customer knows will be in effect for the term of the ESP, and that the customer will be able to count on for planning and budgeting purposes. Maintaining the current \$10 per kW aggregate credit is the best way to ensure rate certainty and predictability for Rider ELR customers, and the continued participation by these customers in the program for the full term of the next ESP.

⁷⁰ Tr. Vol. III at 546.

⁷¹ Tr. Vol. II at 351.

c. A significant reduction in the credit risks customers leaving the ELR program at a time when retaining interruptible load is more important than ever

Like much of the country, the PJM region is in the midst of an energy transition. Traditional base load generation units are being retired, and at the same time, more intermittent non-thermal generating sources are being built.⁷² In addition to the changes occurring on the supply side in the energy markets, there is also an expectation of load growth due to the expansion of data centers in PJM⁷³ and increasing demand related to electrification.⁷⁴ PJM has expressed concerns about the impacts on system reliability from this transition, including the impacts on the region's reserve margin if load growth and generation retirements outpace the entry of new resources into PJM markets.⁷⁵ Similarly, PJM's market monitor has raised concerns about whether new gas-fired and renewable generation resources will be able to replace retiring thermal capacity in PJM between now and 2030.⁷⁶ According to OEG Witness Murray, PJM recently explained that "the accelerated retirement of thermal generation is outpacing the growth of new dispatchable generation and when combined with increased load, there is a substantial risk that PJM will not have adequate resources to maintain reliability in the future."⁷⁷ Witness Murray's testimony further detailed the serious concerns about the reliability impacts of the energy transition expressed by the United States Environmental Protection

⁷² Brakey Testimony at 47.

⁷³ *Id.*

⁷⁴ Goins Direct at 8.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Murray Testimony at 7.

Agency (“EPA”) and the Department of Energy,⁷⁸ the Federal Energy Regulatory Commission,⁷⁹ PUCO commissioners,⁸⁰ and the North American Electric Reliability Council.⁸¹ Witness Murray also testified that the EPA’s new rules under Section 111 of the Clean Air Act could exacerbate the reliability concerns associated with the energy transition.⁸²

Given the seismic changes occurring in the electric industry, retaining interruptible load on utility systems likely is even more important today than in the past. As OELC Witness Brakey testified:

At a time when PJM has grown increasingly reliant on non-dispatchable generation such as solar and wind, and trends suggest this will only continue, it is hard to imagine a worse time to reduce credits to the customers that are ensuring life-saving grid stability. This is especially true given where both energy prices and overall inflation have been trending significantly higher, effectively lessening the overall bill and competitiveness impacts of the credits, even if left unchanged.⁸³

In light of these widely-anticipated reliability challenges, now is not the time to risk cutting the legs out from under the Rider ELR program. As discussed above, interruptible load is an important resource for addressing system reliability emergencies. The customers on Rider ELR are very large loads that can provide hundreds of MWs of demand response on very short notice, relieving strain on the grid and assisting PJM

⁷⁸ *Id.* at 8 (discussing a recently published joint Memorandum of Understanding “emphasizing the need to maintain the reliability of the power grid during the current energy transition”).

⁷⁹ *Id.* at 10 (“In a May 4, 2023 hearing before the U.S. Senate Energy and Natural Resources Committee, multiple FERC Commissioners emphasized the reliability issues stemming from the accelerated retirement of thermal generation without commensurate new generation to offset the loss of supply.”).

⁸⁰ *Id.* at 11-12.

⁸¹ *Id.* at 12-13.

⁸² *Id.* at 14.

⁸³ Brakey Testimony at 46.

and/or the FirstEnergy utilities in addressing reliability issues and keeping the lights on for other customers. In short, growing reliability concerns are a key reason for retaining the Rider ELR credits at their current level to incentivize these long-standing interruptible resources to stay in the program.

d. The cost impact of the Rider ELR credits on non-ELR customers is reasonable when considering the benefits provided by Rider ELR

The cost of the Rider ELR credits are recovered from other FirstEnergy customers through Riders DSE and EDR.⁸⁴ The Ohio Edison DSE1 charge at the time of the evidentiary hearing in this case was 0.0066 cents per kWh, and the Ohio Edison EDR(e) charge was 0.269 cents per kWh.⁸⁵ For a hypothetical Ohio Edison residential customer using 750 kWhs of electricity a month, therefore, the total cost of the ELR program was around 25 cents a month.⁸⁶ To put that cost in perspective, FirstEnergy estimates that the average total bill for the first year of ESP V for an Ohio Edison residential customer using 750 kWh of electricity a month would be \$143.99 a month.⁸⁷

The cost of the current Rider ELR credits is reasonable, particularly when considered in light of the regional capacity and reliability, local reliability, and economic development and job retention benefits provided by Rider ELR. In addition, the negative cost impact to Rider ELR customers likely outweighs the cost savings non-ELR customers

⁸⁴ Tr. Vol. III at 542.

⁸⁵ *Id.* at 543.

⁸⁶ *Id.*

⁸⁷ Direct Testimony of Dhara Patel on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company, Companies Ex. 4 at 5.

would experience if the Rider ELR credits are significantly reduced or eliminated. These cost impacts support the continuation of the current Rider ELR credits.

e. If the Commission must reduce the Rider ELR credits, it should adopt Nucor Witness Dr. Goins' alternative recommendation

Nucor believes that the evidence in this case supports the extension of the current Rider ELR credits through the term of FirstEnergy's ESP V. If, however, the Commission determines that the credits must be reduced, Nucor recommends a more measured approach. Dr. Goins recommends the following guidelines in the event the Commission decides to reduce the credits:

- The monthly aggregate credits should be stepped down from \$10 per kW to no less than \$8 per kW over the term of the ESP V.
- The aggregate credit for each delivery year should remain at least equal to eighty percent (80%) of the capacity auction clearing price for the relevant delivery year.⁸⁸

Gradually reducing the aggregate Rider ELR credits to no less than \$8 per kW, then maintaining the credits at a level of at least \$8 through the term of the ESP (subject to the 80% of the capacity auction clearing price floor) will reduce the cost of the program. At the same time, it would better reflect the benefits the Rider ELR program provides and increase the likelihood of maintaining the viability of the program through the term of ESP V as compared to the proposals by FirstEnergy and Staff for more dramatic cuts to the credit.

⁸⁸ Goins Testimony at 16.

4. FirstEnergy should remain the CSP for Rider ELR customers

FirstEnergy proposes to no longer serve as CSP for Rider ELR customers. As explained by FirstEnergy Witness McMillen, the Companies “will no longer require Rider ELR customers to commit their demand response capabilities to the Companies, and instead will require Rider ELR customers to participate in PJM demand response programs through a curtailment service provider.”⁸⁹ FirstEnergy Witness Stein further clarifies that the Companies will no longer serve as CSP, and that customers must provide proof of registration in a PJM load management program through a PJM CSP.⁹⁰ While FirstEnergy would not be involved in administering or notifying customers about PJM emergency events, FirstEnergy would still retain CSP functions in the case of local distribution system emergencies.⁹¹

FirstEnergy offers limited support for these proposed changes. FirstEnergy Witness Stein testified that FirstEnergy is proposing to relinquish its role as CSP for Rider ELR customers in PJM because it “will improve the efficiency of the administration of Rider ELR by eliminating the need for the Companies to operate as a CSP for a small number of customers” and “will enable [Rider ELR] customers to participate directly in multiple PJM demand response programs more efficiently.”⁹² This proposal, however, does not account for the benefits provided by FirstEnergy retaining the CSP role for both PJM curtailments and local, utility-level curtailments. The Commission should deny the

⁸⁹ McMillen Testimony at 12.

⁹⁰ Stein Testimony at 4-5.

⁹¹ *Id.* at 5-6.

⁹² *Id.* at 5.

proposal because the benefits of FirstEnergy continuing to serve as the CSP as it does today outweigh the possible benefits of FirstEnergy giving up this role.

- a. **If FirstEnergy no longer serves as the CSP for Rider ELR customers, FirstEnergy's other customers will no longer receive PJM revenue to mitigate the cost of the ELR credits**

FirstEnergy's proposal to no longer remain the CSP for Rider ELR customers would result in the Companies forfeiting millions of dollars of payments from PJM that benefit non-ELR customers. Over the course of the ESP, FirstEnergy credited to customers approximately \$17.4 million for capacity payments resulting from Rider ELR load enrollment in PJM.⁹³ FirstEnergy Witness McMillen acknowledges that non-ELR customers would no longer receive these payments under FirstEnergy's proposal but dismisses the impact, noting that the historic levels of PJM revenues are less than the estimated rate reduction to other customers from annually decreasing the credits as FirstEnergy proposes.⁹⁴

No one knows for sure what PJM capacity costs will be over the course of ESP V. Nevertheless, as discussed in detail above, capacity prices are currently at historical lows, and capacity prices are more likely to increase rather than decrease further, due to factors such as the energy transition and changes in PJM's market.⁹⁵ If capacity prices increase, and if FirstEnergy were to continue serving as the CSP and bidding ELR load into the

⁹³ See OMAEG Ex. 12, Response to PUCO DR-006(i); see also McMillen Testimony at 14 ("Over the term of ESP IV, average annual PJM revenue offsets for Rider ELR resources credited to customers were approximately \$2 million.").

⁹⁴ McMillen Testimony at 14.

⁹⁵ See *supra* Section III.A.3.a.

capacity market, customers will receive higher credits to reduce the cost impact of the Rider ELR credits.⁹⁶

In addition to the payments FirstEnergy receives from PJM for bidding Rider ELR load into the capacity markets, FirstEnergy also can receive payments when the ELR customers perform during an emergency event. In the case of the Winter Storm Elliott event, FirstEnergy received performance payments in the amount of \$11.4 million for the performance of the Rider ELR customers.⁹⁷ Non-ELR customers will receive 80% of this \$11.4 million payment.⁹⁸ Finally, in addition to direct payments for the ELR load's participation in the PJM capacity markets, bidding this curtailable load into the capacity market may also reduce the overall cost of capacity in PJM by displacing higher-cost capacity resources.⁹⁹

Under FirstEnergy's proposal, while ELR customers would be required to participate in PJM, non-ELR customers would receive no PJM payments to offset the cost of the Rider ELR credits as they do today. The better approach is to have FirstEnergy continue in its role as CSP, bid the Rider ELR load into the capacity market, and pass back the revenues received from PJM to non-ELR customers as a reduction to the cost of the ELR credits.

⁹⁶ Tr. Vol. III at 548-49; Tr. Vol. XIV at 2572-73 (Staff Witness Healey acknowledged that if PJM capacity prices increase, assuming FirstEnergy prudently bids the ELR load into the capacity markets as it does today, credits back to non-ELR customers would increase).

⁹⁷ See OELC Ex. 2, Response to OELC Set 01-INT-014(g).

⁹⁸ Tr. Vol. III at 550.

⁹⁹ Tr. Vol. VII at 1525.

b. Retaining FirstEnergy as the CSP is the most straightforward and efficient approach to managing the ELR load

Currently, a Rider ELR curtailment can be triggered by a PJM event, or a local reliability emergency. While interruptions can be called by PJM, ATSI, or a utility, since FirstEnergy is the CSP, the relevant FirstEnergy utility is the single point of contact for all interruptions under Rider ELR. Under FirstEnergy's proposal, FirstEnergy will be "out of the loop" with regard to curtailments called by PJM,¹⁰⁰ and a third-party CSP would be the point of contact for PJM interruptions while the FirstEnergy utility will serve as the point of contact for local interruptions.

The Commission should reject FirstEnergy's proposal because it is simpler and more efficient for FirstEnergy to remain the sole CSP for Rider ELR load, and the single point of contact for all interruptions under the program, rather than requiring each customer to participate in PJM through its own CSP. FirstEnergy's proposal would result in a divided notification system where customers would need to monitor for curtailment notices from their utilities for local emergencies and monitor for curtailment notices from their CSP for PJM emergencies.¹⁰¹ This bifurcated communications system could cause customer confusion regarding notice priority and increase the likelihood that a customer will miss or misunderstand a curtailment notice.¹⁰²

¹⁰⁰ Tr. Vol. III at 523.

¹⁰¹ FirstEnergy indicated that even if the Companies did not serve as CSP for Rider ELR customers, FirstEnergy will still need to maintain a communicates system with Rider ELR customers. Tr. Vol. VII at 1526.

¹⁰² Goins Testimony at 17.

Under FirstEnergy's proposal, Rider ELR customers would effectively be participating in two separate interruptible programs – a PJM program and a local program operated by the relevant FirstEnergy utility. The better approach is to maintain ELR as a single cohesive interruptible program by retaining FirstEnergy in the CSP role it has today.

c. FirstEnergy can continue to serve as the CSP for Rider ELR customers if the Commission directs it to do so

FirstEnergy has been serving as CSP for Rider ELR load in PJM since Rider ELR was created.¹⁰³ In this case, FirstEnergy has not indicated that there are changed circumstances or other reasons why it cannot continue in this role. Additionally, FirstEnergy has indicated that there is no reason why the Companies cannot continue to serve as CSP if the Commission directed the Companies to do so.¹⁰⁴ In fact, FirstEnergy intends to perform CSP functions for selected energy efficiency programs. Specifically, FirstEnergy proposes that if their proposed energy efficiency programs are approved in this case, they will offer the load from those programs into PJM.¹⁰⁵ If FirstEnergy intends to serve as the CSP for the proposed energy efficiency programs, FirstEnergy certainly can continue to play that role for the ELR program as well.

¹⁰³ See OELC Ex. 1, Response to Nucor Set 1-INT-004(b); Tr. Vol. II at 298.

¹⁰⁴ OELC Ex. 1, Response to Nucor Set 1-INT-004(f).

¹⁰⁵ See Direct Testimony of Edward C. Miller on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company, Companies Ex. 5 at 30 (explaining that the Companies will offer qualifying energy efficiency resources into PJM's capacity market).

- d. If the Commission approves FirstEnergy's proposal to require Rider ELR customers to participate in PJM through their own CSPs, the Commission should delay implementation of that change**

FirstEnergy proposes that it will no longer be the CSP for Rider ELR customers as of the start of ESP V on June 1, 2024, and that Rider ELR customers will be required to provide proof of registration to participate in PJM load management programs from an active PJM CSP at that time.¹⁰⁶ OELC Witness Brakey testified that this is not a realistic timeline, given that it is likely there will not be a decision in this case by the time ELR customers will have to confirm their registration in PJM for the 2024/25 delivery year.¹⁰⁷ Witness Brakey recommends that “if FirstEnergy no longer desires to serve as the CSP for Rider ELR customers and that proposal is approved, FirstEnergy should look to transition away from serving as a CSP, no earlier than the June 1, 2025 through May 31, 2026 [delivery year].”¹⁰⁸

Although Nucor supports retaining FirstEnergy as the CSP, if the Commission approves FirstEnergy's proposal to give up this role, then the Commission should adopt Witness Brakey's recommendation to delay the transition for at least a year after the start of ESP V. Without this delay, “Rider ELR customers with hundreds of MW of capacity may find themselves unable to partner with a CSP that has not already fully subscribed the capacity they bid into the incremental auction for the 2024/25 [delivery year].”¹⁰⁹ Staff Witness Healey agrees that Witness Brakey's proposal is reasonable in light of concerns

¹⁰⁶ Stein Testimony at 4-5.

¹⁰⁷ Brakey Testimony at 54-55.

¹⁰⁸ *Id.* at 55.

¹⁰⁹ *Id.*

about Rider ELR customers' ability to transition to their own CSPs in time for 2024.¹¹⁰ Witness Brakey's recommendation should be adopted if the Commission approves FirstEnergy's proposal to require Rider ELR customers to participate in PJM through their own CSPs.

B. The Commission Should Approve a Rate Mechanism for Transmission and Transmission-Related Costs that Incorporates NSPL Pricing

Under FirstEnergy's current ESP, Rider NMB recovers transmission charges imposed by FERC or PJM on the Companies.¹¹¹ Such charges include Network Integration Transmission Service and Regional Transmission Expansion Plan costs.¹¹² While Rider NMB is generally non-bypassable, in the Companies' ESP IV (Case No. 14-1297-EL-SSO), the Commission approved the Rider NMB Pilot, which allows participating customers to opt-out of Rider NMB and be billed through a Competitive Retail Electric Service ("CRES") provider for their transmission charges.¹¹³ Unlike charges under Rider NMB, Pilot Program participants are charged for transmission costs based on the customer's individual contributions to NSPL.¹¹⁴ NSPL is a customer-specific attribute that represents each customer's contribution to the transmission system peak.¹¹⁵ NSPL based pricing provides cost-based pricing signals to participating customers.¹¹⁶ Because the Rider NMB Pilot pricing is based on individual customer NSPLs, participants are incentivized to

¹¹⁰ Healey Testimony at 21-22.

¹¹¹ Direct Testimony of Juliette Lawless on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Companies Ex. 7 ("Lawless Testimony") at 7-8.

¹¹² *Id.* at 8.

¹¹³ *Id.*

¹¹⁴ Goins Testimony at 19.

¹¹⁵ Stein Testimony at 10. Each customer's NSPL is set by taking the average of the customer's hourly load coincident with the Companies' five highest hourly peaks during a year; NSPL values are set each year for the period January 1 to December 31 based on the system peak from the prior year. *Id.*

¹¹⁶ Goins Testimony at 19.

minimize their NSPL, which reduces transmission costs.¹¹⁷ As a result, the Rider NMB Pilot provides participating customers an opportunity to manage their transmission-related costs by controlling their NSPL.

In this case, FirstEnergy proposes to redesign the Rider NMB rate structure and eliminate the Rider NMB Pilot. FirstEnergy explains that the Pilot would be unnecessary because the proposed redesign of Rider NMB is designed to replace the Rider NMB Pilot and expand the existing Pilot pricing structure to additional customers.¹¹⁸ Specifically, FirstEnergy proposes NMB 1 and NMB 2 charges.¹¹⁹ NMB 1 will apply to all residential and lighting customers and commercial and industrial customers that do not have interval or advanced meters; NMB 2 will apply to all commercial and industrial customers that do have interval or advanced meters.¹²⁰ NMB 2 charges will be calculated by aggregating the total commercial and industrial NSPL revenue requirement and dividing that number by the aggregated customer NSPLs divided by twelve, and this rate will apply to each customer's NSPL.¹²¹ FirstEnergy explains that the purpose of this change is to better align the Rider NMB rate design with how PJM assigns costs.¹²²

1. NSPL pricing reflects cost causation and provides strong price signals

FirstEnergy's transmission rates should incorporate NSPL pricing because such pricing benefits customers charged NSPL-based rates and all other customers. FirstEnergy

¹¹⁷ *Id.*

¹¹⁸ Lawless Testimony at 10.

¹¹⁹ *Id.* at 11.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 10.

Witness Lawless explains that the proposed Rider NMB rate design, based on NSPL pricing, can help “better align non-market-based services costs with the cost causers, consistent with how PJM assigns costs, and the changes support customers’ ability to manage and maintain better control over their charges.”¹²³ The change also can increase administrative efficiency by eliminating the need for coordination with CRES providers for Rider NMB Pilot billing, and it can also allow customer switching between generation shopping and SSO supply without impacting Rider NMB.¹²⁴ Additionally, FirstEnergy Witness Stein explains that NSPL pricing allows customers to have better control of their charges and bills by monitoring and responding to peak load times.¹²⁵

The benefits of NSPL pricing were also recently recognized by an independent third-party auditor in the Rider NMB Pilot Program audit proceeding. In approving the Rider NMB Pilot Program, the Commission directed the Companies and Commission Staff to review the operations of the Pilot Program to examine, among other things, cost savings, cost shifts, and benefits.¹²⁶ In compliance with this Commission directive, on July 17, 2023, Exeter Associates, Inc. (“Exeter”) filed their *Review of the Non-Market-Based Services Riders Established by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and Associated Pilot Program* (“Rider NMB Audit Report”) in Case No. 22-0391-EL-RDR. Exeter’s Rider NMB Audit Report concluded that the Rider NMB Pilot Program and NSPL pricing resulted in aggregate savings for

¹²³ *Id.* at 12.

¹²⁴ *Id.*

¹²⁵ Stein Testimony at 11.

¹²⁶ Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing at 139 (October 12, 2016).

FirstEnergy customers and that the benefits of the Pilot Program outweigh the costs.¹²⁷ Such benefits attributable to the Rider NMB Pilot Program and NSPL pricing include a reduction in the Rider NMB revenue requirement in the amount of \$231 million¹²⁸; NSPL reductions by Pilot Program customers reduce the revenue requirements for Network Integration Transmission Service, Transmission Enhancement Charge, and related ancillary services¹²⁹; savings through reductions in wholesale electricity prices¹³⁰; encouragement of economic development and job retention¹³¹; and potential reliability benefits by sending price signals to curtail during times of high demand.¹³² Based on these benefits, the Rider NMB Audit Report recommends that the Commission allow for NSPL pricing for all customers.¹³³

2. Most parties recognize the benefits of NSPL pricing even though proposals for transmission pricing differ

In addition to the Companies and Exeter, there is also a common ground of support for NSPL pricing among witnesses for a broad array of parties in this case. OEG Witness Stephen J. Baron explains that the NSPL pricing under the NMB 2 rate creates economic efficiency by sending price signals to commercial and industrial customers,

¹²⁷ Rider NMB Audit Report at 1.

¹²⁸ *Id.* at 17. The Rider NMB Audit Report found that if the Pilot Program had not existed during the review period (March 2017 to February 2023), the Rider NMB revenue requirement would have been \$231,092,997 higher. *Id.*

¹²⁹ *Id.* at 27. Exeter's analysis found that NSPL reductions by Pilot Program customers reduced the transmission cost revenue requirement during the review period (March 2017 to February 2023) by \$8,949,908. *Id.*

¹³⁰ *Id.* at 33.

¹³¹ *See id.* at 37-38.

¹³² *Id.* at 39 (noting that while Pilot Program customers may alleviate grid stress in certain circumstances, the Pilot Program may not provide direct reliability benefits).

¹³³ The Rider NMB Audit Report Recommendations 1 and 2A support assigning PJM transmission charges to customers. *See id.* at 50-52.

allowing such customers to adjust their energy usage in response to such price signals.¹³⁴

The Retail Energy Supply Association's Witness Jesse Rodriguez explains that NSPL billing improves the alignment of costs with cost causation.¹³⁵ Interstate Gas Supply, LLC's Witness Jim Poprocki acknowledges that allowing customers to have control over their transmission costs is important because it could help avoid costly transmission investments.¹³⁶ Similarly, Nucor Witness Dr. Goins testified that "NSPL pricing provides a more cost-related price signal to which customers can respond. Since pricing in the NMB Pilot Program is based on each customer's individual NSPL, a pilot program customer has an incentive to minimize NSPL and thereby reduce billed transmission costs."¹³⁷

OMAEG Witness Ryan Schuessler explains that Rider NMB transmission charges are one of the single largest charges paid for by industrial customers, and allowing Pilot Program participants to control their transmission costs through NSPL management can help to lower such transmission costs, which will make the customer more competitive and cost-effective.¹³⁸ Witness Schuessler also highlights how NSPL-based billing can provide grid benefits by encouraging customer curtailment during periods of high energy prices.¹³⁹ OELC Witness Brakey echoes Witness Schuessler's conclusions and details how

¹³⁴ See Direct Testimony and Exhibit of Stephen J. Baron on Behalf of the Ohio Energy Group, OEG Ex. 1 at 5.

¹³⁵ See Direct Testimony of Jesse Rodriguez on Behalf of the Retail Energy Supply Association, RESA/IGS Ex. 15 at 6. Witness Rodriguez further explains that expanding NSPL billing "would ensure that costs and benefits are properly allocated to the customer based on cost-causation principles" and would "encourage customers to utilize electricity more efficiently and consume less electricity during peak periods." *Id.* at 6-7.

¹³⁶ See Direct Testimony of Jim Poprocki on Behalf of Interstate Gas Supply, LLC, IGS Ex. 1 at 15.

¹³⁷ Goins Testimony at 19.

¹³⁸ See Direct Testimony of Ryan S. Schuessler on Behalf of the Ohio Manufacturers' Association Energy Group, OMAEG Ex. 2 at 5, 7.

¹³⁹ *Id.* at 8.

NSPL billing incentivizes customers to curtail their load during peak load periods, which provides stability and electricity availability to the PJM grid and the ATSI zone.¹⁴⁰

These witnesses do not all agree on the merits of FirstEnergy's proposed NMB 2 rate, or on whether the recovery of PJM transmission costs should be the responsibility of FirstEnergy or a competitive supplier. But they all acknowledge the benefits of NSPL pricing. As a result, any approved rate design for Rider NMB should include at least an option for NSPL pricing for commercial and industrial customers.

3. The Commission should approve FirstEnergy's Rider NMB proposal or, in the alternative, continue the Rider NMB Pilot Program

The benefits of NSPL-based billing for transmission costs are clear, and the Commission should adopt a Rider NMB rate design that allows for such billing for commercial and industrial customers. To that end, the Companies' NMB 2 proposal appropriately applies NSPL billing to commercial and industrial customers. The proposed NMB 2 is reasonable, reflects cost causation, and provides appropriate price signals.¹⁴¹ However, Nucor acknowledges that the NMB 2 proposal as presented may disproportionately affect commercial and industrial customers that have difficulty responding to NSPL price signals.¹⁴² Therefore, Nucor is not opposed to making NSPL billing optional, as long as customers may opt for NSPL billing if they so desire. In that case, Nucor would support extending the current Rider NMB Pilot Program but opening

¹⁴⁰ Brakey Testimony at 10.

¹⁴¹ Goins Testimony at 20.

¹⁴² See, e.g., Brakey Testimony at 13 (explaining that customers that are weather sensitive, operate mainly during on-peak hours, or do not have the ability to curtail or shift their load could pay more for transmission charges under NSPL billing compared to the current Rider NMB rate design).

up the program to any customers that would like to enroll. Such an outcome would strike a reasonable balance on rate impacts between customers who can manage their NSPL and those who cannot. In short, Nucor supports the Companies NMB 2 proposal, but would alternatively support an extension of the Rider NMB Pilot Program, or similar program, for those customers who would like to enroll.

IV. CONCLUSION

Nucor respectfully requests that in considering FirstEnergy's ESP V application, the Commission adopt the recommendations set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties who have electronically subscribed to this case. In addition, I hereby certify that a copy of the foregoing was served upon the following parties of record or as a courtesy, via electronic transmission on January 19, 2024.

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Joseph R Briscar on behalf of Nucor Steel Marion, Inc..