

**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)	

REPLY BRIEF OF NUCOR STEEL MARION, INC.

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Nucor Steel Marion, Inc. (“Nucor”) hereby submits its reply 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 supports the electric service plan framework for FirstEnergy’s standard service offer. Nucor has focused on two important issues in this case – Rider ELR and FirstEnergy’s proposed modifications to Rider NMB. At a high level, Nucor’s positions can be summarized as follows: (i) Rider ELR should be extended in its current form through the term of ESP V; and (ii) transmission rates for industrial and commercial customers should include at least an option for Network Service Peak Load (“NSPL”) pricing, either through FirstEnergy’s proposed NMB2 rate, or through the extension and expansion of the current NMB Pilot Program. These positions, as

well as the evidence on the record supporting them, are explained and discussed in detail in Nucor's initial brief.

In this reply brief, we respond to certain arguments made by other parties on Rider ELR and Rider NMB. Our failure to respond to a particular argument or position should not be construed as agreement with that argument or position.

II. ARGUMENT

A. Rider ELR

1. Nucor's proposal best preserves the benefits of Rider ELR

As the initial briefs demonstrate, there is strong evidence in the record and agreement among many parties that Rider ELR is an important program that should be preserved in ESP V.¹ Rider ELR is a major issue in this case, and there are numerous proposals for extending and redesigning the program for the Commission to consider. Nucor's proposal is the simplest and most straightforward – maintain the program as it is today for the term of ESP V. The Commission should reject FirstEnergy's proposed changes, including the tariff changes reflected in Witness McMillen's testimony, require that FirstEnergy continue in its role as CSP for ELR load in the PJM capacity market, and keep the total Rider ELR credit at \$10/kW-month. If, however, the Commission determines that the credit must be reduced, it should be reduced to no less than

¹ See, e.g., Post Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy Brief") at 48 ("The Companies' Rider ELR program has a demonstrated record of providing substantial benefits to customers and the reliability of the Companies' distribution system."); Initial Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio ("Staff Brief") at 20 (noting that Staff "broadly agrees" that the ELR program provides reliability and economic development benefits); Post-Hearing Brief of the Ohio Energy Group ("OEG Brief") at 3 ("FirstEnergy's long-standing interruptible rate program is a valuable system resource that should continue through the term of the Companies proposed ESP."); Initial Post-Hearing Brief of Ohio Energy Leadership Council ("OELC Brief") at 29 ("FirstEnergy's Rider ELR program . . . has proven critical to managing load during times when demand threatens to exceed the supply of power.").

\$8/kW-month, subject to a requirement that the aggregate credit for each delivery year should remain at least equal to 80% of the capacity auction clearing price for the relevant delivery year.

For the following reasons, Nucor's proposal best preserves the features that have made the ELR program successful and effective:

- By ensuring the continued participation of Rider ELR load in the PJM capacity market, Rider ELR customers will continue to be an important resource for helping to address emergencies and protect regional reliability.
- FirstEnergy would continue in its current role as the curtailment service provider ("CSP") for the Rider ELR program, bidding the ELR load into the PJM capacity market and receiving payments in return that are then passed back to other non-ELR customers to mitigate the cost of the ELR credits. Additional cost savings for customers may be achieved to the extent ELR load displaces higher cost resources in the PJM capacity market, thereby lowering capacity prices.
- Since FirstEnergy utilities will continue to have broad discretion to curtail Rider ELR customers themselves, Rider ELR will continue to be an important resource for addressing local reliability emergencies that PJM does not address.
- Maintaining the total Rider ELR credits at their current level (or, alternatively, lowering the credits to no less than \$8/kW-month) would ensure that the program continues to support economic development/job retention, benefiting the customers in the program, the communities where these large manufacturers are located, and the state of Ohio overall by helping to "facilitate the state's effectiveness in the global economy."² Keeping the credits at this level also makes it more likely that customers will remain in the program for the full term of ESP V and would avoid the rate shock associated with proposals for more drastic cuts in the credits.

In summary, the current Rider ELR program can be viewed as a three-legged stool, providing: (i) regional PJM reliability and capacity market benefits, (ii) local reliability benefits, and (iii) economic development and job retention benefits. Nucor's proposal would preserve all

² 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).

these facets of the ELR program and ensure that the program remains stable and effective for the term of ESP V.

2. The evidence in this case supports the extension of Rider ELR

As noted above, several parties in this case acknowledge the benefits Rider ELR provides and recommend that it be extended in ESP V. Out of more than twenty parties that filed initial briefs in this case, only two parties – the Office of the Ohio Consumers’ Counsel (“OCC”) and the Northwest Ohio Aggregation Coalition (“NOAC”) – unequivocally recommend that Rider ELR should be eliminated.³ The Ohio Manufacturers’ Association Energy Group (“OMAEG”) argues that if Rider ELR is to continue, it should be revamped and expanded, otherwise it should be eliminated.⁴ The various arguments against Rider ELR made by these and other parties in their initial briefs are addressed below.

a. Rider ELR is not a subsidy

Some parties characterize Rider ELR as a “subsidy” because the current credits are higher than the current PJM market capacity price. For example, Staff states that the current total \$10/kW-month credit “if continued, would result in undue subsidies paid by nonparticipating customers.”⁵ Staff comes to this conclusion by comparing the current credit to the approximate average of annual PJM market capacity prices over the past decade, \$3.40/kW-month.⁶

³ Initial Brief for Consumer Protection by Office of the Ohio Consumers’ Counsel (“OCC Brief”) at 37; Initial Brief of Northwest Ohio Aggregation Coalition (“NOAC Brief”) at 7-8.

⁴ Initial Post-Hearing Brief of The Ohio Manufacturers’ Association Energy Group (“OMAEG Brief”) at 45-46.

⁵ Staff Brief at 18.

⁶ *Id.*

Apparently, Staff's view is that the difference between \$10/kW-month and \$3.40/kW-month constitutes an "undue subsidy."

The problem with the subsidy claim is that it is based on just one element of Rider ELR, namely the participation of the ELR load in the PJM capacity market. The participation of the ELR load in PJM certainly provides significant capacity market and regional reliability benefits. However, in addition to PJM demand response, Rider ELR provides enhanced reliability benefits because a FirstEnergy utility can call on the Rider ELR load to address local reliability issues that PJM will not address.⁷ Rider ELR also provides economic development and job retention benefits that the Commission has consistently recognized are a key feature of the program.⁸ The PJM capacity market price does not capture these local reliability and economic development benefits. Nor, for that matter, does it capture the economic value in avoiding rolling blackouts or other system disruptions when Rider ELR customers are actually called to curtail in response to a PJM emergency event.⁹ Therefore, there is no support in the record for the claim that a credit for Rider ELR customers above the short-run cost of capacity in PJM constitutes an "undue subsidy."

Another problem with benchmarking the ELR credit against PJM market capacity prices is that annual capacity prices are highly volatile and unpredictable. While recent base residual auction prices have been very low – \$34.13/MW-day for the 2023/24 BRA and \$28.92/MW-day

⁷ Direct Testimony of Dennis W. Goins, PH.D. on behalf of Nucor Steel Marion, Inc., Nucor Ex. 1 ("Goins Testimony") at 9; Direct Testimony of Matthew Brakey on Behalf of Ohio Energy Leadership Council, OELC Ex. 32 ("Brakey Testimony") at 48.

⁸ Goins Testimony at 9-10; Brakey Testimony at 51-53; Case No. 14-1297-EL-SSO, Opinion and Order at 94.

⁹ Tr. Vol. XIV at 2576 (Witness Healey testified that in developing its recommendation for the Rider ELR credit, Staff did not attempt to quantify the impact on the economy at large of avoiding rolling blackouts).

for the 2024/25 BRA – capacity prices were \$171.33/MW-day as recently as 2021/22.¹⁰ Excluding the last two delivery years of ESP IV, the average capacity price was around \$124/MW-day.¹¹ Further, Nucor Witness Dr. Goins testified that recent PJM capacity prices have “significantly diverged from the level indicated by the net cost of new entry (Net CONE) required to sustain a robust and reliable capacity resource base.”¹² Following are the ATSI Net CONE values for the last four base residual auctions:¹³

BRA Auction	Net CONE Values	
	Dollars Per MW-day	Dollars per kW-month
2021-22	\$306.87	\$9.33 ¹⁴
2022-23	\$230.50	\$7.01 ¹⁵
2023-24	\$263.07	\$8.00 ¹⁶
2024-25	\$279.35	\$8.50 ¹⁷

Capacity prices could go as high as these Net CONE values, which are close to the total current Rider ELR credit without even taking into account the local reliability and economic development benefits. In fact, several witnesses in this case testified that they expect capacity prices to rise significantly higher due to a number of factors, including the rapid retirement of dispatchable carbon-based energy resources, the replacement of these resources with non-dispatchable intermittent non-thermal resources, increased demands due to electrification, and the impacts of severe weather.¹⁸

¹⁰ Goins Testimony at 13.

¹¹ *Id.*

¹² *Id.* at 14.

¹³ *Id.*

¹⁴ $\$306.87 \times (365 \div 12) \div 1,000$.

¹⁵ $\$230.50 \times (365 \div 12) \div 1,000$.

¹⁶ $\$263.07 \times (365 \div 12) \div 1,000$.

¹⁷ $\$279.35 \times (365 \div 12) \div 1,000$.

¹⁸ Direct Testimony of James F. Wilson on Behalf of the Office of the Ohio Consumers’ Counsel, OCC Ex. 2 at 9; Goins Testimony at 8, 14; Brakey Testimony at 50-51.

OCC and NOAC also describe Rider ELR as a subsidy.¹⁹ This characterization is not surprising, given that these parties refuse to acknowledge that Rider ELR provides *any* benefits at all. OCC tries to bolster its subsidy claim by noting that total annual credits under the ELR program were between \$55.1 million and \$67.5 million each year.²⁰ However, looking at the overall credits each year does not tell the full story, including the rate impact on customers from the program. As demonstrated at the hearing, the cost of the Rider ELR program (as recovered through the Demand Side Management and Energy Efficiency Rider (“Rider DSE”) and the Economic Development Rider (“Rider EDR”)) for an average Ohio Edison residential customer using 750 kWhs of electricity a month was around 25 cents per month.²¹ As a result, while the total annual credit amounts look large, when spread across the entire FirstEnergy system, the program accounts for only a very small percentage of the average residential customer’s bill. For any residential customer that has experienced the hassle and misery of an extended electricity outage, paying such a small portion of one’s monthly power bill for a reliability resource that is available 24/7 and under the direct control of the local utility that can help avoid blackouts and other system disruptions likely would be considered a good value.

¹⁹ OCC Brief at 39; NOAC Brief at 8.

²⁰ OCC Brief at 39.

²¹ Tr. Vol. III at 542-43. By comparison, 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. 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.

b. The value of Rider ELR is not dependent on how often ELR customers are interrupted

In opposing Rider ELR, OCC and NOAC assert that Rider ELR customers are never or rarely interrupted.²² However, Rider ELR provides an important reliability benefit even if customers are never interrupted. As Nucor Witness Dr. Goins testified:

Even if interruptible load is never called, or is called infrequently, it still provides a necessary and important reliability benefit. Interruptible load is similar to insurance. People who buy homeowner's insurance hope to never have to use it. But homeowners are willing to pay for this product because they do not want to be without insurance if it is needed. Interruptible load provides a similar insurance benefit to help deal with unplanned local or region-wide emergency events.²³

In other words, the value of Rider ELR is having the interruptible load available when and if it is needed. Even if Rider ELR customers are never called to interrupt for one year or even several years, there may be a time in the future when interruptions are needed more frequently to address reliability issues, particularly over the term of an ESP lasting four, six, or eight years.²⁴ The energy transition occurring in the PJM region, in fact, may make reliability issues more likely in the near future than they have been in the past, making the need for stable and dependable interruptible resources all the more important.²⁵

Aside from the reliability benefits of having interruptible load available when needed, there are additional benefits associated with Rider ELR load participating in PJM. If FirstEnergy remains the CSP for Rider ELR customers as is the case today, capacity payments would be passed

²² OCC Brief at 39, 45; NOAC Brief at 8.

²³ Goins Testimony at 9.

²⁴ See Brakey Testimony at 47 (noting that the Winter Storm Elliott events "are a clear indication that interruptible capacity resources have proven their ability to respond within 30-120 minutes' notice are becoming increasingly more important to preventing imbalances between supply and demand on the electric grid").

²⁵ See Direct Testimony of Kevin M. Murray on Behalf of the Ohio Energy Group, OEG Ex. 3 at 7-16.

back to non-ELR customers to offset the cost of the credits.²⁶ And, bidding Rider ELR load into the capacity market could displace higher-cost capacity resources, resulting in lower capacity costs for all customers.²⁷ Rider ELR can produce these benefits even if customers are never interrupted.

Further, even though ELR customers do not have to be interrupted to provide benefits, the claims that Rider ELR customers are “never” or “rarely” called to interrupt are overstated and misleading. OCC states that “Rider ELR might be worthwhile if FirstEnergy ever needed to actually interrupt service to these 24 large industrial customers in the event of an emergency,” but “FirstEnergy never actually interrupted service during the entire term of ESP IV except once per year to comply with PJM’s testing requirement.”²⁸ It is not true that FirstEnergy never interrupted service during ESP IV except for PJM testing events. FirstEnergy required all ELR customers to curtail on December 24, 2022 to help address a regional reliability emergency in PJM resulting from Winter Storm Elliott.²⁹ Other interruptions of Rider ELR customers occurred during the Polar Vortex events in 2014 and 2011.³⁰ Prior to the establishment of Rider ELR, FirstEnergy called interruptions in several years, including multiple interruptions in 1998, 2003, and 2006.³¹ This evidence demonstrates that circumstances do arise when FirstEnergy needs to call on interruptible load, even if there are stretches of time when there are no interruptions.

Finally, it is important to recognize that there is no limit on the number and length of interruptions that may be called under Rider ELR, so when interruptions are called, they can be

²⁶ Goins Testimony at 18.

²⁷ Tr. Vol. VII at 1525.

²⁸ OCC Brief at 39-40.

²⁹ Goins Testimony at 7-8; Brakey Testimony at 44-46.

³⁰ Goins Testimony at 7-9.

³¹ *Id.* Exhibit DWG-2, Response to PUCO DR-006(h)(ii).

prolonged and challenging. The Winter Storm Elliott interruption, for example, lasted almost 10 hours.³² Similarly, the interruption at WCI Steel described by FirstEnergy Witness Stein at the hearing lasted approximately 36 to 38 hours, and, not surprisingly, resulted in lost production costs for the steel mill.³³ As a result, even if interruptions are called infrequently, the interruptions that are called could end up being lengthy, disruptive, and costly to the Rider ELR customers that are interrupting their operations in order to help preserve system reliability and avoid rolling blackouts or other service disruptions for FirstEnergy's customers.

c. Rider ELR is not limited to, and is not duplicative of, PJM demand response

OCC states that “[i]t is the responsibility of PJM, not FirstEnergy, to curtail service in the event of electric emergencies.”³⁴ OCC also observes that FirstEnergy, as a PJM member, must follow PJM's Reliability Assurance Agreement, which includes certain provisions on how to respond to system emergencies.³⁵ OCC seems to suggest that since PJM has the responsibility to address emergency situations at a regional level, that FirstEnergy cannot (or may not) address emergency situations that arise at a local level, such as on a FirstEnergy utility's distribution system. But OCC cites no evidence to show that PJM and FirstEnergy may not *both* address emergency situations with tools such as curtailable load.

The evidence demonstrates that FirstEnergy has, in fact, called on Rider ELR customers to interrupt in response to local reliability emergencies that were not addressed by PJM. In 2011,

³² *Id.* at 7.

³³ Tr. Vol. VII at 1519-20.

³⁴ OCC Brief at 37.

³⁵ *Id.* at 40-41.

Ohio Edison curtailed a subset of Rider ELR customers to address a local reliability emergency.³⁶ During the 2014 Polar Vortex, in addition to a curtailment called by PJM, FirstEnergy also separately asked Rider ELR customers to curtail to help maintain the reliability of the distribution system.³⁷ The ability of FirstEnergy utilities to interrupt is complementary to PJM operations and ensures that the Rider ELR interruptible program – which provides both regional PJM and local reliability benefits – is more comprehensive and valuable than simply a PJM program or a local reliability program alone.

OMAEG recognizes the value of interruptible programs but argues that Rider ELR should be rejected because it is duplicative of programs already available in the competitive market.³⁸ OMAEG further argues that there is no reason for FirstEnergy to be involved in PJM's demand response programs since customers can participate in those programs on their own.³⁹ As discussed above, the ELR program is not duplicative of PJM demand response. Participants on Rider ELR provide both regional reliability benefits through participation in PJM, and local reliability benefits as a result of FirstEnergy's ability to curtail these customers separate and apart from PJM. Therefore, Rider ELR provides a more comprehensive reliability benefit than PJM demand response alone.

OMAEG's view that there is no reason for FirstEnergy to be involved in PJM's demand response programs since customers can participate in these programs on their own also does not recognize that, if not for the ELR program, some customers currently on Rider ELR might choose

³⁶ Goins Testimony at 9; *see also*, Case No. 14-1297-EL-SSO, Rebuttal Testimony of Eileen M. Mikkelsen, Company Ex. 146 at 19-20.

³⁷ Goins Testimony at 9.

³⁸ OMAEG Brief at 45.

³⁹ *Id.* at 46.

not to participate in PJM at all. In other words, it should not be assumed that customers currently participating in Rider ELR would elect to participate in PJM programs if the ELR program were eliminated. Rider ELR, if properly designed, is in an inducement for customers to provide both regional reliability benefits by requiring participation in PJM and local reliability benefits, and helps ensure that the supply of interruptible load available for both of these purposes will be stable through the term of the ESP.

Finally, OMAEG also suggests that Rider ELR should be revamped to become a program that responds to curtailable events based on transmission facility overloading.⁴⁰ As noted above, FirstEnergy already has broad discretion to use Rider ELR to address reliability issues.⁴¹ Therefore, to the extent that a transmission facility overloading issue leads to an emergency that threatens the reliability of the system, FirstEnergy can already use Rider ELR to address the problem.

d. Rider ELR's participation limits are not discriminatory, and the Commission has various ways to allow more participation in the program and to promote economic development more generally

OCC and OMAEG argue that Rider ELR is discriminatory because, as proposed, the program is limited to 24 large industrial customers.⁴² This limitation on participation in the Rider ELR program is not new; it has been a feature of the program since Rider ELR was approved as part of FirstEnergy's first ESP, and the Commission has consistently found the restriction to be reasonable. The evidence in this case demonstrates that Rider ELR customers are large industrial

⁴⁰ *Id.*

⁴¹ Tr. Vol. II at 346; Tr. Vol. IX at 1761.

⁴² OCC Brief at 42; OMAEG Brief at 47.

customers that face stiff competition for their products, and that the economic development and job retention benefits of the program are of critical importance.⁴³

It is also important to recognize that Rider ELR is not the only mechanism for providing economic development and job retention opportunities. FirstEnergy currently has a reasonable arrangement rider that allows for the negotiation of special rates.⁴⁴ A customer in need of an economic development rate could avail itself of this rider to negotiate a reasonable arrangement. Similarly, a customer could possibly use the reasonable arrangement mechanism to develop an interruptible rate. At the hearing, FirstEnergy Witness McMillen agreed that if the Commission ordered, it could allow a customer to participate in Rider ELR through a reasonable arrangement.⁴⁵

While limiting the Rider ELR program to the current 24 customers is reasonable, Nucor believes it would also be reasonable to open the program to additional participation. After all, participation in Rider ELR has not been static throughout the history of the program. In ESP IV, Rider ELR was open to 75 MW of new load.⁴⁶ And over the course of ESP IV, two customers have left the program.⁴⁷ OMAEG states that it is “not proposing that there be *no* participation caps, only that all C&I customers should be *eligible* to participate.”⁴⁸ If the Commission agrees that the program should be made available to more customers, the Commission should consider increasing the cap on participation in Rider ELR by a reasonable amount (such as between 50 MW

⁴³ See OELC Brief at 35-38 (discussing comments filed in the ESP V docket from current Rider ELR participants attesting to the economic development benefits provided by the program).

⁴⁴ Tr. Vol. III at 544.

⁴⁵ Tr. Vol. III at 545.

⁴⁶ Case No. 14-1297-EL-SSO, Opinion and Order at 14.

⁴⁷ Tr. Vol. II at 439-40.

⁴⁸ OMAEG Brief at 47.

and 75 MW) and making that amount available first to customers currently not participating in the program.

e. That Duke and AES do not offer a program similar to Rider ELR is irrelevant

OCC and NOAC assert that Rider ELR should not be extended because Duke and AES do not offer a similar program, and those utilities provide safe and reliable service to their customers.⁴⁹ All utilities are not alike – Duke, AES, and FirstEnergy are all different utilities with different service territories, rate structures, operating procedures, and customer mixes. The mere fact that Duke and AES do not have a program similar to Rider ELR does not prove anything about the value of the ELR program in the FirstEnergy service territory.

OCC states that all three utilities are members of PJM, and that “PJM is the reliability coordinator for its member utilities, meaning that PJM is the entity responsible for balancing supply and load and managing emergency electric events.”⁵⁰ Again, this statement proves nothing about the value of Rider ELR, or refutes the evidence on the record that demonstrates that Rider ELR has been deployed to help address both local and regional emergencies. In fact, OCC ignores the possibility that, since all three utilities are in PJM, the customers of Duke and AES may have benefited from PJM’s deployment of interruptible resources – including ELR load – during system emergencies that arose from extreme weather events such as Winter Storm Elliott.

⁴⁹ OCC Brief at 42-44; NOAC Brief at 8.

⁵⁰ OCC Brief at 42.

OCC further argues that since Duke and AES have storm cost recovery riders and vegetation management riders, if FirstEnergy's proposed Rider SCR and Rider VCM are approved in this case, FirstEnergy will be "similarly situated as to their ability to provide reliable service" and Rider ELR therefore should be rejected.⁵¹ To support this argument, OCC cites an exchange between OCC counsel and Staff Witness Healey at the hearing, where Witness Healey agreed that a vegetation management rider and storm cost recovery rider are resources that may help a utility maintain reliable service.⁵² But Witness Healey never agreed that if a vegetation management rider and a storm cost recovery rider are approved, the Rider ELR program should not be approved. In fact, while Witness Healey testified that "vegetation management at the very least does contribute to reliability,"⁵³ he confirmed that he was not testifying that if a vegetation management rider gets approved, an interruptible tariff would be unnecessary.⁵⁴ Witness Healey also agreed that there are certain benefits of the ELR program that would not be covered by vegetation management.⁵⁵

3. The Rider ELR credit should not be cut to the levels proposed by FirstEnergy and Staff

FirstEnergy proposes to reduce the total Rider ELR credits by one dollar each year of the ESP V, until the credit is \$3/kW-month in the final year of FirstEnergy's proposed eight-year ESP. Staff's credits would end up in the same place – a drastically-reduced \$3 credit – but Staff proposes more aggressive cuts over a shorter proposed six-year ESP. Specifically, Staff proposes

⁵¹ *Id.* at 42-44.

⁵² *Id.* at 42-43.

⁵³ Tr. Vol. XIV at 2548.

⁵⁴ *Id.* at 2571.

⁵⁵ *Id.*

that the credits be \$5/kW-month for the first year of the ESP, \$4/kW-month in years two through four, and \$3/kW-month in years five and six.⁵⁶

Both FirstEnergy and Staff tie their credit recommendations primarily to PJM market capacity prices.⁵⁷ Staff, for example, explains that the current \$10 credit is nearly three times the average market price and around ten times the current market price.⁵⁸ But, as discussed above and in Nucor's initial brief, market capacity prices are a poor benchmark for the Rider ELR credit because market prices change from year to year and are highly volatile.⁵⁹ Moreover, there is a reasonable likelihood that market capacity prices will climb much higher over the term of ESP V, due in large part to factors related to the energy transition.

In developing its recommendation for the Rider ELR credit, Staff did not perform a cost/benefit analysis.⁶⁰ Staff did not evaluate the costs to Rider ELR customers of complying with the program's requirements, such as costs associated with necessary equipment, processes, or training.⁶¹ These challenges and risks of being interruptible are real; at the hearing, FirstEnergy Witness Stein provided some flavor as to the costs and complexities of adapting an industrial facility to be interruptible:

Q. Okay. And to be on the interruptible program, not only do you have to deal with lost production times but you also incur costs; isn't that right? You have to train your staff?

A. I mean, there's a lot – I mean, you don't want to kill somebody, right, shutting things down? To your point you have to train staff. The campus I worked at was 2, almost 3 square miles. Most of it I walked from place to place, so you had install communication that hit the lines so they knew to shut down and – and

⁵⁶ Staff Brief at 17.

⁵⁷ FirstEnergy Brief at 48; Staff Brief at 18.

⁵⁸ Staff Brief at 18.

⁵⁹ See, *supra*, Section II.A.2.a; Initial Brief by Nucor Steel Marion, Inc. at 14-17.

⁶⁰ Tr. Vol. XIV at 2575.

⁶¹ *Id.*

the lines had to have procedures to shut down quickly if they needed to. Like one – one particular instance was a gals line – I shouldn't shorthand, a galvanized line, a galvanized coating line, you have got to put stringers in to make – you know, make sure you can restart the line when you come back. There is just a lot of considerations.⁶²

Staff also did not evaluate the lost production costs Rider ELR customers may experience from participating in the program, and did not consider the impacts of the economy at large of avoiding rolling blackouts.⁶³ Finally, Staff did not analyze whether its proposal to immediately reduce the ELR credits to \$5/kW-month would lead to sudden rate changes or rate shock to any ELR customers.⁶⁴

In its brief, Staff concedes that its credit proposal is not derived from a strict quantitative analysis, but also notes that none of the other parties provide quantitative justification for their proposed credits.⁶⁵ Staff concludes that “[u]ltimately, when deciding the appropriate level of credits, the Commission will need to rely on parties’ expert judgment and determine which party – Staff, the Companies, or intervenors – best balanced all the competing factors.”⁶⁶ Nucor agrees with Staff that no party filed a detailed quantitative analysis supporting their credit recommendations, and that determining the appropriate level of credit will require the exercise of judgment. But we would note that our primary credit recommendation is to maintain the status quo; *i.e.*, approve the same level of credit that the Commission has approved in four prior ESPs. The parties that wish to drastically lower the credit should bear a heavier burden to justify their proposals, particularly when there has been no demonstration that ELR is any less useful or

⁶² Tr. Vol. VII at 1520-21.

⁶³ Tr. Vol. XIV at 2575-76.

⁶⁴ *Id.* at 2584-85.

⁶⁵ Staff Brief at 20.

⁶⁶ *Id.* at 20-21.

beneficial than in prior cases. In fact, the evidence in this case suggests that maintaining a strong interruptible program may be even more important in the future than it has been in the past.

Further, Staff downplays the risk of a significant decrease in the Rider ELR credits leading to customers leaving the program, noting that credits for AEP Ohio's IRP-E program have been less than a dollar in recent years, yet the program remains highly subscribed.⁶⁷ AEP's program, however, is a different program from Rider ELR, with different requirements, penalty provisions, and program objectives.⁶⁸ It cannot be assumed that the same level of sustained and robust participation in the Rider ELR program will continue if the credits are cut significantly, regardless of the recent experience with the AEP IRP-E program.

Staff states that Nucor's position on the credit is "rigid,"⁶⁹ but this is not a fair characterization. Nucor recommends retention of the \$10 credit and believes there is evidence to support this level of credit. However, if the Commission decides that the credit should be reduced, Nucor alternatively recommends that the credit be reduced over the course of ESP V to no less than \$8, a significant 20% decrease in the current credit.⁷⁰ Nucor's recommendation, therefore, preserves all the current benefits of the ELR program while providing flexibility on the credit, while also protecting against a cut in the credit that is too drastic, could cause rate shock for the major industrial customers that are currently on Rider ELR, and does not accurately reflect the costs for ELR customers to be interruptible or the benefits Rider ELR provides.

⁶⁷ *Id.* at 19.

⁶⁸ Tr. Vol. XIV at 2588.

⁶⁹ Staff Brief at 20.

⁷⁰ Goins Testimony at 16.

Finally, it is important to note a key underlying difference in the credit recommendations of Staff and Nucor. Staff explains that while its proposed reduction “from \$10/kW-month to \$5/kW-month might seem large, this is not an apples-to-apples comparison.”⁷¹ Staff’s perspective is based on their support for FirstEnergy’s proposal to no longer serve as the CSP for Rider ELR customers, under which ELR customers would participate in PJM themselves and retain any revenue they receive from their participation.⁷² Staff speculates that this new PJM revenue stream would make up some or even all of the difference between the current \$10 credit and Staff’s recommended credits.⁷³

Nucor’s recommendation, however, is for FirstEnergy to remain the CSP, and to pass PJM revenues back to non-ELR customers to mitigate the cost of the credit. Under this approach, the credit the ELR customer receives would be stable and known for the full term of the ESP, while non-ELR customers would receive PJM revenues to mitigate the cost of the credit (and to the extent capacity market prices increase significantly, the credits back to non-ELR customers will increase significantly as well).⁷⁴ Under Staff’s preferred approach, a key piece of the compensation for participating in the Rider ELR program (the PJM revenues) would be variable and unknown from year to year, making it difficult for these customers to plan and budget.

Nucor’s view is that FirstEnergy serving as the CSP, which entails bidding the ELR load into PJM and flowing PJM revenue back to customers, is a separate and distinct benefit of Rider ELR that justifies a higher credit. At the hearing, Witness Healey agreed that he could see an

⁷¹ Staff Brief at 18.

⁷² *Id.* at 18-19.

⁷³ *Id.* at 19.

⁷⁴ Tr. Vol. XIV at 2572-73.

argument for increasing the ELR credits if FirstEnergy remained the CSP.⁷⁵ This difference of opinion as to whether FirstEnergy should continue to serve as the CSP, therefore, explains at least some of the difference between Nucor's and Staff's respective credit recommendations.

4. If the Commission decides FirstEnergy should no longer serve as the CSP, then the OEG/OELC alternative proposal is a reasonable approach

Nucor's position is that the Rider ELR program should be retained in its current form, with FirstEnergy continuing to serve as the CSP and the credit staying at \$10/kW-month, or to be reduced gradually to no less than \$8/kW-month if the Commission determines that the credit must be reduced. Nucor acknowledges, however, that several parties support FirstEnergy's proposal to step away from the CSP role. If the Commission ultimately agrees that FirstEnergy should no longer serve as the CSP, then Nucor would support the OEG/OELC alternative Rider ELR proposal.⁷⁶

The OEG/OELC alternative proposal includes several features that make the proposal a reasonable compromise among the various positions on Rider ELR in this case. The ELR credit would be reduced by \$1 in the first year of the ESP, providing immediate program cost savings. Each year thereafter, the credit would be reduced by \$1, until the credit reaches \$7/kW-month in year four of the ESP. From that point on, the credit would remain at \$7/kW-month.⁷⁷ This credit proposal would significantly mitigate rate shock and program attrition concerns associated with more drastic cuts in the credit.

⁷⁵ *Id.* at 2578.

⁷⁶ See OEG Brief at 20-22; OELC Brief at 42-45.

⁷⁷ OEG Brief at 21; OELC Brief at 44.

FirstEnergy would remain the CSP for the first year of ESP V, with 100% of any PJM revenue being credited back to customers. After that, FirstEnergy would no longer serve as the CSP, and customers would have the option to participate in PJM. This approach is reasonable because it would avoid complications associated with FirstEnergy immediately relinquishing the CSP role at the start of ESP V.⁷⁸ And the opportunity for ELR customers to participate directly in PJM and retain any associated PJM revenues could help mitigate the impact of the reduction in the ELR credits.

The OEG/OELC alternative recommendation provides for new customer expansion in each of the first five years of the ESP, opening the program to more participants and expanding the reliability and economic development/job retention benefits of the program. ELR customers would remain subject to unlimited interruptions for transmission and distribution emergencies, ensuring that FirstEnergy has maximum flexibility to use Rider ELR load as necessary to address reliability issues.

Aside from the ECE energy penalty, the current non-compliance penalties would remain in place, and ELR customers would be subject to annual performance testing. These features would help to ensure that ELR customers receive timely notice of the need for an interruption, and that they will respond when they are called upon to interrupt in order to help address a system emergency.

Finally, the OEG/OELC proposal would adopt Staff's proposed modification to the ELR credit cost recovery mechanism, consolidating cost recovery in Rider EDR and allowing for the

⁷⁸ For example, OELC Witness Brakey testified that it would be difficult for ELR customers to sign up with a CSP in time to participate directly in PJM at the start of ESP V. See Brakey Testimony at 54-55.

elimination of Rider DSE, thereby simplifying FirstEnergy's rate structure. At the hearing, Witness Healey confirmed that the proposal to recover costs of the Rider ELR credits through Rider EDR was not intended to imply that Rider ELR provided only an economic development benefit and agreed that Rider ELR provides reliability benefits as well.⁷⁹

In summary, the OEG/OELC proposal is a reasonable proposal that resolves all of the key issues concerning Rider ELR in this case and represents a fair compromise among the various positions in this case. Assuming the Commission decides FirstEnergy should no longer serve as the CSP for the ELR program, Nucor would support the adoption of the OEG/OELC alternative proposal.

B. Rider NMB

1. There is broad support for NSPL pricing for transmission cost recovery

In defending its NMB 2 proposal, FirstEnergy highlights the benefits of NSPL pricing, which include the alignment of non-market-based services costs with cost causers, which promotes cost causation; consistency with how PJM assigns most non-market-based services costs; allowing customers the opportunity to manage their transmission costs by controlling their NSPLs, which could reduce overall transmission costs; incentivizing customers to reduce usage during peak periods; and providing greater flexibility by allowing customers to switch between generation supply shopping and returning to the SSO.⁸⁰

Although the parties have different positions on FirstEnergy's NMB 2 proposal, there appears to be broad agreement among the parties about the benefits of NSPL pricing. The NRG

⁷⁹ Tr. Vol. XIV at 2571-72.

⁸⁰ FirstEnergy Brief at 43-44.

Retail Companies,⁸¹ for example, observe that NSPL pricing gives customers better control over their usage and promotes cost causation principles.⁸² OEG agrees that FirstEnergy's Rider NMB proposal is "reasonable in concept" because Rider NMB rates would be set at the cost FirstEnergy pays for transmission service for commercial and industrial customers with advanced or interval meters, who will be billed transmission service based on their individual NSPLs.⁸³ Billing based on NSPL sends appropriate price signals to participating customers, giving those customers the ability to adjust their usage to respond to price signals.⁸⁴

Despite its objection to FirstEnergy's NMB 2 proposal, OELC also supports NSPL pricing, arguing that such pricing has the "potential to incentivize customers to reschedule, curtail, or otherwise minimize their load during the times when FirstEnergy's ATSI transmission zone load is anticipated or forecasted to be one of the five highest hourly annual levels."⁸⁵ In turn, these customer actions can help offset imbalances between load supply and demand, which helps increase the resilience and reliability of the grid.⁸⁶ RESA finds similar merit in NSPL pricing under Rider NMB, citing the alignment of cost with cost causation and the promotion of cost causation principles.⁸⁷

⁸¹ Direct Energy Business LLC, Direct Energy Services LLC, Reliant Energy Northeast LLC dba NRG Home and NRG Business, Stream Ohio Gas & Electric LLC, and XOOM Energy Ohio LLC.

⁸² Initial Post Brief of Direct Energy Business LLC, Direct Energy Services LLC, Reliant Energy Northeast LLC dba NRG Home and NRG Business, Stream Ohio Gas & Electric LLC, and XOOM Energy Ohio LLC at 17.

⁸³ OEG Brief at 24.

⁸⁴ *Id.*

⁸⁵ OELC Brief at 10.

⁸⁶ *Id.*

⁸⁷ Initial Brief of Retail Energy Supply Association at 28-29.

2. As an alternative to FirstEnergy's Rider NMB2 proposal, the Commission should extend the current Rider NMB Pilot Program

Like the parties referenced above, Nucor supports NSPL pricing for transmission cost recovery because it sends appropriate price signals, reflects cost causation, and provides customers the opportunity to respond to price signals and reduce their transmission costs. Since FirstEnergy's NMB 2 proposal incorporates the NSPL pricing approach currently employed in the Rider NMB Pilot Program, Nucor agrees with OEG that the NMB 2 proposal is "reasonable in concept." Nevertheless, Nucor recognizes that certain parties have concerns in this case about the NMB 2 proposal and possible customer rate impacts.

Staff, for example, argues that the Companies' allocations under Rider NMB should follow PJM's allocation, and any costs that cannot be directly billed should be allocated to each distribution utility, and each utility should allocate costs to customer classes using PJM's allocation methods.⁸⁸ Staff argues that following PJM's allocation will mitigate cost shifts among the distribution utilities and customer classes.⁸⁹ However, Staff caveats its recommendations, noting that Staff is uncertain how the revised allocation approach will impact customer bills.⁹⁰ Therefore, Staff recommends that the Companies calculate the bill impacts of Staff's approach when the Companies make their compliance filing, and if the bill impacts are unreasonable, then the changes could be phased in over time.⁹¹

Staff would also support eliminating the Rider NMB Pilot, but only if certain modifications are made to FirstEnergy's proposed NMB 2 rate. Specifically, Staff proposes the following

⁸⁸ Staff Brief at 38.

⁸⁹ *Id.* at 39.

⁹⁰ *Id.*

⁹¹ *Id.*

modifications to NMB 2: (1) the Commission should not adopt a unified NMB 2 rate for all commercial and industrial customers and instead should calculate separate NMB 2 rates for each Company and each customer class⁹²; (2) for the GS class, customers should have the ability to opt into the program⁹³; (3) after a customer installs a new interval or smart meter, the switch to NMB 2 should not occur immediately, rather the switch should be made once a year in April to coincide with the annual rider review⁹⁴; (4) the Companies should provide bill impacts that include actual NSPL data and Staff's proposed allocation changes compared to current NMB rates⁹⁵; and (5) the revised NMB 2 rates should begin in April 2025 after Staff has had an opportunity to work with the Companies to structure the mechanics of the rider before the annual filing is made.⁹⁶ If the Commission does not accept its proposed modifications, Staff recommends that the Rider NMB Pilot be continued.⁹⁷

OELC also raises concerns about the rate impacts of FirstEnergy's NMB proposal, arguing that the NMB 2 rate is "discriminatory, unreasonable, and would result in dramatic rate shock for many customers."⁹⁸ Unlike Staff, however, OELC does not propose modifications to the NMB 2 rate, but instead recommends rejecting the NMB 2 rate altogether, arguing that such rejection "is necessary to avoid significant rate shocks, disparate billing treatment, and considerable uncertainty that would surround a transition to NSPL-based billing at this juncture."⁹⁹

⁹² *Id.*

⁹³ *Id.* at 40.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 40.

⁹⁸ OELC Brief at 11.

⁹⁹ *Id.* at 25.

While Nucor supports FirstEnergy's NMB 2 proposal in concept, Nucor agrees that the modifications proposed by Staff to the overall NMB rate are worthy of consideration. However, given the concerns raised about the lack of adequate bill impact information, it would be difficult to assess the impacts of Staff's recommendations based on the record in this case. Further, OELC has raised legitimate concerns about implementing NMB 2 prior to when there has been a broad-based conversion of all nonresidential customers to advanced or interval metering. As a result, if the Commission agrees with the concerns about NMB 2, the most prudent approach in this case would be to adopt Staff's alternative recommendation to continue the current Rider NMB Pilot Program.¹⁰⁰ This recommendation is consistent with OELC's recommendation that the Rider NMB Pilot Program "should be maintained and expanded until such time as the deployment of interval or advanced meters in FirstEnergy service territory has reached the stage that could potentially allow a reasonable and non-arbitrary transition to NSPL-based billing for transmission charges in FirstEnergy's service territory."¹⁰¹ This is the most straightforward approach to ensuring that NSPL billing is available to those customers who can and want to take advantage of it, while avoiding the possible disruptive effects of imposing NSPL billing more broadly before the impacts of such a transition are fully understood.

¹⁰⁰ Staff Brief at 40.

¹⁰¹ OELC Brief at 26-27. OEG also supports Staff's alternative Rider NMB proposal. See OEG Brief at 24-25.

III. CONCLUSION

Nucor respectfully requests that the Commission adopt the recommendations set forth above and in Nucor's initial brief in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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