BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan	))))))	Case No. 23-301-EL-SSO

MEMORANDUM CONTRA OF NUCOR STEEL MARION, INC. TO APPLICATIONS FOR REHEARING OF MAY 15, 2024 OPINION AND ORDER

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Pursuant to Ohio Administrative Code 4901-1-35(b), Nucor Steel Marion, Inc. ("Nucor") hereby files this Memorandum Contra Applications for Rehearing by the Northwest Ohio Aggregation Coalition ("NOAC") and Office of the Ohio Consumer's Counsel ("OCC," collectively "OCC/NOAC"), the Ohio Manufacturers' Association Energy Group ("OMAEG"), and Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company ("Companies" or "FirstEnergy") regarding the Opinion and Order ("Order") issued in this case on FirstEnergy's application for its fifth Electric Security Plan ("ESP V").

I. INTRODUCTION

On May 15, 2024, the Public Utilities Commission of Ohio ("Commission") issued its Order in the above captioned proceeding, approving with modifications the Companies' ESP V. Several parties filed applications for rehearing, alleging that the Order contained unlawful or unreasonable errors. Nucor declines to respond to every assignment of error, but files this Memorandum Contra to respond to assignments of error related to the Economic Load Response rider ("Rider ELR") and the Non-Market Based Services Rider ("Rider NMB"), as well as seeking clarification on FirstEnergy's three-year ESP proposal.

II. DISCUSSION

A. Rider ELR

1. The Order provides detailed explanation and citation to evidence supporting the Commission's determinations on Rider ELR

In the Order, the Commission approved Rider ELR with modifications for the term of ESP V, recognizing that the program is "vital" and finding that Rider ELR helps promote grid reliability and economic development.[1] Rider ELR was a major issue in this case, with FirstEnergy, Staff, the Ohio Energy Group, the Ohio Energy Leadership Counsel, and Nucor supporting the extension of Rider ELR but making different recommendations about various aspects of the program. None of these parties requested rehearing of the Commission's determinations on Rider ELR in the May 15 Order, indicating that the Commission struck a reasonable balance among the varying and sometimes competing positions put forth by the parties supporting the extension of Rider ELR.

Certain parties have stridently opposed the extension of Rider ELR throughout the case, and those parties continue to oppose the program even in light of the changes approved by the Commission that will result in maintaining the benefits of the program at much lower cost, due to the significant decrease in credits to Rider ELR customers. In

[1] Opinion and Order at 102-103.

particular, OCC/NOAC argue that the Commission approved Rider ELR without basing its finding on facts in the record.[2] In support of their claims, OCC/NOAC argue that the Order violates R.C. 4903.09 because it did not address why Rider ELR is needed when there are market demand response programs and that the Order does not cite evidence regarding the cost for Rider ELR.[3] However, R.C. 4903.09 does not require the Commission to address every possible argument in its opinion and order. Rather, the Ohio Supreme Court has held that R.C. 4903.09 does not require strict compliance, but instead the Commission must provide sufficient detail for the Supreme Court to determine the basis of the Commission's reasoning.[4] Further, the Commission is only required "to set forth 'some factual basis and reasoning based thereon in reaching its conclusion.'"[5]

In this case, the Commission has provided ample justification, with detailed explanation and citation, for its decision to approve Rider ELR. First, the Commission described in detail the positions and evidence put forth by the parties—including evidence put forth by OCC/NOAC—on the topic of Rider ELR.[6] Next, the Commission devotes significant attention to analyzing the evidence presented by the parties.[7] The Commission thoroughly and thoughtfully weighed the evidence on Rider ELR, and the

[2] OCC/NOAC Application for Rehearing at 14.

[3] *Id.*

[4] *See Payphone Ass'n v. Pub. Util. Comm'n.*, 109 Ohio St. 3d 453, 461 (2006) (citing *Tongren v. Pub. Util. Comm'n.*, 85 Ohio St. 3d 87, 89 (1999); *Allnet Commc'ns Serv., Inc. v. Pub. Util. Comm'n.*, 70 Ohio St. 3d 202, 209 (1994)).

[5] *Id.* (quoting *Allnet Commc'ns Serv., Inc.*, 70 Ohio St. 3d at 209).

[6] Opinion and Order at 87-102.

[7] *Id.* at 102-110.

Order provided sufficient findings of fact and opinions to satisfy the requirements of R.C. 4903.09.

Additionally, while the Order broadly meets the requirements of R.C. 4903.09 on Rider ELR, OCC/NOAC's points of error are specifically addressed in the Order. First, OCC/NOAC argue that the Order did not address why Rider ELR is needed when there are market demand response programs.[8] Contrary to this assertion, the Order *does* address the existence of alternative demand response programs. The Commission explains that, for example, programs offered by PJM may dissuade large energy users from participating and that the ELR program allows FirstEnergy to call curtailment events for local reliability issues that might not be addressed by other demand response programs.[9]

Second, OCC/NOAC argue that that the Order does not cite evidence regarding the total cost for Rider ELR.[10] However, the Commission both discusses the evidence put forth on cost and addresses cost in its analysis.[11] Additionally, in its conclusions on Rider ELR, the Commission explained that its decision balances the interests of those involved while minimizing costs paid by nonparticipants.[12] The Commission explained that it balanced both the benefits of Rider ELR and the potential cost impacts for both participating and non-participating customers when setting the Rider ELR credits.[13]

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[8] OCC/NOAC Application for Rehearing at 14.

[9] Opinion and Order at 103.

[10] OCC/NOAC Application for Rehearing at 14.

[11] Opinion and Order at 95 (citing Tr. Vol. III at 543).

[12] *Id.* at 104.

[13] *Id.* at 106-108.

Lastly, the Commission concluded its discussion of Rider ELR by finding that the modifications to the "ELR program credits over time would lessen the cost of the program while ensuring the important reliability and economic development benefits provided by the program are maintained in the future for the benefit of all of FirstEnergy's customers."[14] Therefore, the Order both analyzes the cost of Rider ELR and relies on evidence in the record to support its analysis.

2. OCC/NOAC incorrectly assert that FirstEnergy does not have the authority to interrupt ELR customers when emergency events occur

Under the terms of Rider ELR, FirstEnergy has the authority to interrupt service when emergency events occur, and OCC/NOAC incorrectly claim that FirstEnergy does not have such authority. OCC/NOAC argue that FirstEnergy has no authority to interrupt service to Rider ELR customers because such authority lies with PJM.[15] However, the Order cites to evidence in the record showing that "the ELR program allows FirstEnergy to call curtailment events on its own to respond to localized threats to the grid, in addition to those called by PJM."[16] Further, as explained in Nucor's reply brief, FirstEnergy called curtailment events to address local reliability issues in 2011 and 2014.[17] Therefore,

[14] *Id.* at 110.

[15] OCC/NOAC Application for Rehearing at 16.

[16] Opinion and Order at 103 (citing OELC Ex. 32 at 40; Tr. Vol. XIV at 2526).

[17] *See* Nucor Reply Brief at 10 (explaining that FirstEnergy curtailed a subset of Rider ELR customers to address a local reliability emergency in 2011 and curtailed customers to help maintain the reliability of the distribution system during the 2014 Polar Vortex (citing Nucor Ex. 1 at 9; Case No. 14-1297-EL-SSO, Rebuttal Testimony of Eileen M. Mikkelsen, Company Ex. 146 at 19-20)).

FirstEnergy may curtail Rider ELR customers as needed in response to PJM emergency events and local reliability events, which in turn benefits all FirstEnergy customers.

3. Rider ELR is not discriminatory nor anticompetitive

In the Order, the Commission declined to open up Rider ELR to all customers but explained that potential participants may apply for participation through a reasonable arrangement. OMAEG argues that unless the Commission opens up Rider ELR to new customers, Rider ELR should be eliminated because it is "duplicative, anti-competitive, and inherently discriminatory."[18]

While Nucor does not oppose opening up Rider ELR to new load, the Commission examined the issue in the Order and found that additional participation could be allowed by filing an application for reasonable arrangement, and this approach balances affordability and additional participation.[19] The Commission cites to the evidence it considered on this matter and made its conclusion by balancing the competing interests. Therefore, the Commission adequately addressed the arguments of the parties and issued an order based on the record evidence.

4. Rider ELR provides benefits to all customers and is not duplicative of market options

OMAEG's proposal to remove the PJM demand response component from Rider ELR would eliminate important benefits provided by PJM enrollment. OMAEG argues that Rider ELR is duplicative of market service and is anticompetitive, and therefore

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[18] OMAEG Application for Rehearing at 17.

[19] Opinion and Order at 109.

recommends that Rider ELR be modified to "remove the PJM demand response component, and instead become a program that responds to curtailable events based on transmission facility overloading."[20] However, as explained in the Order, PJM provides payments for Rider ELR load enrolled in PJM demand responses programs, and 80 percent of such revenues are credited towards customers; [21] if Rider ELR load was not enrolled in PJM, such revenues would not be credited toward customers. Additionally, Rider ELR is not duplicative of PJM demand response programs because PJM factors, such as lower capacity prices, may dissuade large energy users from participating in beneficial demand response programs.[22]

Lastly, regarding OMAEG's suggestion that Rider ELR be modified to respond to transmission facility overloading, under the terms of Rider ELR, customers may be curtailed to address local reliability issues caused by distribution and transmission emergency events.[23] Therefore, there is no need to modify Rider ELR to address transmission issues as OMAEG suggests.

B. Rider NMB

1. OCC/NOAC inaccurately recount the evidence presented on Rider NMB and the Rider NMB Pilot Program and ignore the benefits of NSPL pricing

The Commission achieved a balanced result on Rider NMB by continuing the existing pilot program and opening it up to 100 MW of new load. Despite the reasoned

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[20] OMAEG Application for Rehearing at 16-17.

[21] Opinion and Order at 105.

[22] *Id.*at 103.

[23] *Id.* at 110.

decision, OCC/NOAC argue that the Rider NMB Pilot Program should be eliminated. In support of their argument, OCC/NOAC argue that FirstEnergy, Staff, NRG, Nucor, and RESA all agreed that the Rider NMB Pilot Program should be eliminated.[24] However, contrary to OCC/NOAC's framing, these parties do not support a blanket cancellation of the Rider NMB Pilot Program and a return to the pre-ESP IV status quo on Rider NMB. Rather, several of these parties supported ending the pilot program only if the Network Service Peak Load ("NSPL") pricing reflected in the pilot program is preserved and extended to more customers.[25] It appears that OCC/NOAC's approach would eliminate the use of NSPL pricing to recover transmission costs, which is contrary to the intent of many parties. As explained in the evidence in this case, NSPL pricing helps achieve more transparent price signals and allows customers to better control transmission costs.[26] Eliminating the Rider NMB Pilot Program without a replacement pricing structure based on NSPL would remove these benefits.

2. OCC/NOAC misinterpret the conclusions of the Exeter audit report on the Rider NMB Pilot Program

A recently conducted audit by Exeter Associates ("Exeter") of Rider NMB in Case No. 22-391-EL-RDR found that while the Rider NMB Pilot Program could be improved, the pilot resulted in significant savings for all customers. OCC/NOAC argue that the Rider

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[24] OCC/NOAC Application for Rehearing at 9, 12.

[25] *See* Opinion and Order at 138 ("NRG, Nucor, and RESA support the modifications to Rider NMB and the replacement of the NMB Pilot with a new NMB 2 charge using NSPL as the billing determinant." (citing Co. Ex. 7 at 12; RESA Ex. 15 at 5-7, Attach. EBS-1; OEG Ex. 1 at 5)); *id.* at 140 ("Staff supports the Companies' proposal to eliminate the NMB Pilot, provided that certain modifications are made to the Companies' proposed NMB 2 rate.").

[26] *Id.* at 138-139.

NMB Pilot Program shifts costs to non-participating customers, and therefore the pilot program should be eliminated.[27] Contrary to these assertions, however, the Exeter audit report found that the Rider NMB Pilot Program actually saves customers money. Over the seven-year period audited, the Exeter audit report found that the Rider NMB revenue requirement for all customers would have been $231.1 million higher had the pilot program not existed.[28]

In the Order, the Commission thoroughly considered the weight of the evidence regarding Rider NMB and the associated cost, finding that the "Exeter Report demonstrates that the Rider NMB Pilot Program better aligns costs with cost causation, consistent with sound ratemaking principles."[29] Therefore, the Commission's decision to extend and expand the Rider NMB Pilot Program is reasonable, is supported by evidence in the record, and should continue to benefit FirstEnergy customers and align transmission cost recovery with cost causation.

C. FirstEnergy's Three-Year ESP Proposal

In its application for rehearing, FirstEnergy proposes that the Commission should set the term of ESP V at three years, instead of the five years approved in the Order.[30] Nucor takes no position on the proposal to truncate ESP V from five years to three. However, if the Commission approves FirstEnergy's proposal, the Commission should not further modify the ELR credit framework approved in the Order.

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[27] OCC/NOAC Application for Rehearing at 13-14.

[28] Opinion and Order at 153 (citing OELC Ex. 27 at 17).

[29] *Id.* (citing OELC Ex. 27 at 3, 18, 41, 43).

[30] FirstEnergy Application for Rehearing at 8-10.

For a five-year ESP, the Commission approved ELR credits of $8/kW-month in year one, $7/kW-month in years two and three, and $6/kW-month in years four and five.[31] If the Commission approves a three-year ESP, as recommended by FirstEnergy, then the Commission should clarify that the ELR credits will be set at $8/kW-month in year one and $7/kW-month in years two and three. Maintaining this credit step-down would significantly decrease the credits to ELR customers, thereby reducing the cost of the program to other FirstEnergy customers, while mitigating the rate shock to customers participating in the program that would occur with a more rapid reduction in the credits. As a result, the balance the Commission sought to achieve with the credit approach adopted in the Order would be preserved.

III. CONCLUSION

The Commission balanced the competing positions of the parties, considered the weight of the evidence in this case, and issued an order that based its findings on evidence contained in the record. As detailed above, the Order should be affirmed with regard to its findings on Rider ELR and Rider NMB, and if the Commission approves FirstEnergy's proposal for a three-year ESP, the Commission should clarify the level of the ELR credits for that reduced term as recommended above.

[31] Opinion and Order at 107. These credits would be reduced by $2/kW-month for customers obtaining their own CSP. *Id*.

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 June 24, 2024.

/s/ Michael K. Lavanga

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