
BRICKFIELD BURCHETTE
RITTS & STONE, PC

April 18, 2008

Honorable Jaclyn A. Brillling
Secretary
New York State Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Re: Case 07-M-0548 - Proceeding on Motion of the Commission Regarding
an Energy Efficiency Portfolio Standard

Dear Secretary Brillling:

Pursuant to the March 20, 2008, *Ruling on Staff Motion for Reconsideration and Revising Schedule*, Nucor Steel Auburn, Inc. ("Nucor") submits an original and five copies of this letter as its reply brief in this proceeding.

Overall, the immediate purpose of this docket is to establish the framework for implementing a sustainable state policy to promote improved energy end use efficiency. The proceeding to date, and the parties' briefs, have focused extensively on what entities will control the money budgeted for this effort (NYSERDA, utilities, other agencies, DPS staff¹) and how program implementation responsibility will be allocated. On the other hand, the proceeding has failed, notwithstanding the urgings by Multiple Intervenors, to focus on the application of basic rate-making cost allocation concepts to the EPS funding (i.e., aligning cost recovery with cost causation, and program costs with program beneficiaries). It also has failed to take into account other State and Commission policy priorities (e.g., Upstate economic development and advanced metering).

The EPS program is going to be expensive. To be sustainable and effective over a long term as intended, the Commission must take into account the ratemaking details

¹ Staff's initial brief recommends that \$6 million in incremental funding be allocated to the Department for increased program marketing and increased funding for market and workforce development. Staff IB at 8; item 13. Nucor was not aware that the Department has the authority under the Public Service Law to supplement its own budget by creating rate surcharges.

(i.e., perform cost allocation and recovery properly), and it must address the interplay between EPS implementation issues and other State concerns. Nucor's reply addresses our concerns in these areas as applied to the topics outlined in the March Ruling.

Staff's Revised Fast Track Proposal

Nucor generally supports adoption of the Staff Fast Track Proposal as long as the Commission requires program costs to be allocated to, and recovered from, the customer classes that are program targets. The Staff Fast Track proposal, which is premised upon expanded development of programs that are implemented by NYSERDA through 2009, makes far more sense than the arbitrary 50/50 allocation of objectives between NYSERDA and utilities that was described in the ALJ's February 2008 Straw Proposal. Nucor agrees with the CPB,² among others, that program overlap, duplication of effort (and expense), and customer confusion can be avoided by phasing in utility involvement.

Cost Allocation, Cost Recovery and Bill Impacts

Staff has indicated its general agreement with Multiple Intervenors that how program costs are to be recovered is important,³ but Staff has been unwilling to confront those issues. (See MI IB at 15-18). This is a crucial failure that must be addressed because cost recovery must be aligned with program benefits for this program to be sustainable.

Staff asserts that "funds collected from a particular [customer] class be used to fund programs for that class," but actually recommends a straight energy usage (kwh) surcharge. Borrowing from the Straw Proposal, Staff presumes that inter-class equity in EPS program cost recovery can be achieved by program distribution and design. (Staff IB at 39). The per kwh surcharge advocated by Staff, however, mis-allocates program costs and benefits from the outset. For example, the Staff Rate Impact assessment for NYSEG shows electric delivery rate impacts for non-residential loads will be 66% and 50% higher than residential loads, in 2008 and 2009, respectively even though the lion's share of the programs and program spending target residential energy use.⁴ Further, the Staff Impact assessment simplistically distinguishes only between residential and non-residential customers (i.e., effectively treating a CVS drugstore and a 50 MW steel-making facility that consumes the energy equivalent of thousands of such drug stores as comparable loads). In sum, energy intensive loads will pay a disproportionate share of EPS costs for programs for which they largely are not eligible to participate.

A basic Commission task in any rate-related matter is to allocate costs and design rates to align cost recovery and cost causation. Staff has offered no reason for ignoring

² See CPB IB at 4.

³ Staff March 25, 2008 report at 15; Staff initial brief at 39.

⁴ See Staff April 10, 2008 supplement to Attachment 3 of Staff's March 25, 2008 report.

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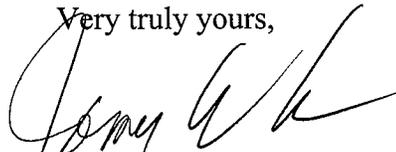
this fundamental problem with EPS cost recovery other than that it has not been expedient to focus on those questions.⁵ Given the expanding magnitude of state energy efficiency spending, this is an essential issue that cannot wait until later.

Further, as MI has aptly pointed out, neither the EPS docket nor the drive for greater energy efficiency occurs in a vacuum. Economic development, re-vitalizing the Upstate economy, and addressing those challenges in a weakening U.S. economy are top state priorities.⁶ EPS program implementation should support, rather than undermine, the State's efforts to retain and attract at-risk manufacturing loads that take service under NYPA and utility flex rate contracts. Staff has indicated its support for continuing existing exemptions from SBC payments (Staff Report at 15; see MI IB at 16), but this is an insufficient response given the magnitude of proposed EPS spending in addition to existing SBC surcharges. MI recommends exempting all flex rate and NYPA contract customers because all such loads are, by definition, at-risk for closure or relocation (and EPS energy reduction targets most assuredly should not be achieved by destroying jobs).⁷ Nucor supports MI's recommendation as the most consistent way to accommodate the State's EPS and economic development objectives.

In addition, the Commission should allow large manufacturing loads to be exempt from EPS surcharges if they commit to invest in energy efficiency improvements in their own facilities that cost at least as much as they would have been charged under the EPS. This approach would mitigate the inherent cross-class subsidization of Staff's proposed surcharge and provide an incentive for industrial loads to focus on creating potentially significant energy efficiency savings. Rather than viewing the EPS as yet another state mandated millstone making energy costs even more uncompetitive, this suggested approach would encourage initiative and innovation among energy intensive loads.

Nucor urges the Commission to adopt the recommendations described above in its final order in this matter.

Very truly yours,



James W. Brew

Attorneys for Nucor Steel Auburn, Inc.

Cc: All Active Parties (via electronic mail)

⁵ Staff I.B. at 39.

⁶ See e.g., Staff 's testimony in the Iberdrola- Energy East merger; Case No. 07-M-0906; transcript reference SM1600.

⁷ MI IB at 15-21.