
BRICKFIELD BURCHETTE
RITTS & STONE, PC

June 26, 2008

VIA U.S. MAIL

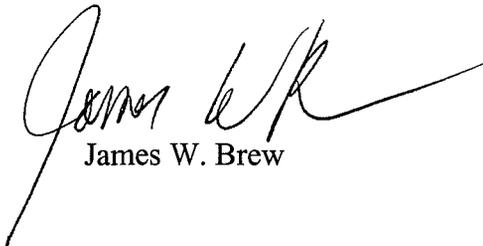
Jaclyn A. Brillig, Secretary
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case No. 07-M-0906
Joint Petition of Iberdrola, S.A., Energy East
Corporation, RGS Energy Group, Inc., Green
Acquisition Capital, Inc., New York State Electric
& Gas Corporation and Rochester Gas and Electric
Corporation for Approval of the Acquisition of
Energy East Corporation by Iberdrola, S.A.

Dear Secretary Brillig:

Enclosed are an original and five (5) copies of the *Brief on Exceptions of Nucor Steel Auburn, Inc.* in the above-captioned proceeding.

Very truly yours,



James W. Brew

Enclosures: a/s

Cc: Honorable Judge Rafael Epstein (via electronic mail)
All Parties of Record (via electronic mail or U.S. mail as designated)

**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

Case No. 07-M-0906

**Joint Petition of IBERDROLA, S.A., Energy East Corporation,
RGS Energy Group, Inc., Green Acquisition Capital, Inc., New
York State Electric & Gas Corporation and Rochester Gas and
Electric Corporation for Approval of the Acquisition of Energy
East Corporation by IBERDROLA, S.A.**

BRIEF ON EXCEPTIONS OF NUCOR STEEL AUBURN, INC.

James W. Brew
BRICKFIELD, BURCHETTE, RITTS & STONE, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
(202) 342-0800

Attorneys for Nucor Steel Auburn, Inc.

Dated: June 26, 2008

TABLE OF CONTENTS

I.	BRIEF STATEMENT OF THE CASE	1
II.	SUMMARY OF NUCOR’S BASIC POSITION	2
III.	ECONOMIC DEVELOPMENT.....	3
	CONCLUSION.....	4

**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

Case No. 07-M-0906

Joint Petition of IBERDROLA, S.A., Energy East Corporation,
RGS Energy Group, Inc., Green Acquisition Capital, Inc., New
York State Electric & Gas Corporation and Rochester Gas and
Electric Corporation for Approval of the Acquisition of Energy East
Corporation by IBERDROLA, S.A

BRIEF ON EXCEPTIONS OF NUCOR STEEL AUBURN, INC.

I. BRIEF STATEMENT OF THE CASE

On June 16, 2008, the Commission released the Recommended Decision (“RD”) of Administrative Law Judge Rafael Epstein with respect to the petition of IBERDROLA, S.A. (Iberdrola) to acquire Energy East Corporation, and its subsidiaries, which include New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”). The primary recommendation of the RD is that the Commission disapprove the proposed acquisition. In the alternative, the RD recommends approval of the transaction subject to the following preconditions: (1) neither Iberdrola nor its affiliates may own electric generation interconnected with the NYSEG or RG&E electric networks; (2) corporate relations among Iberdrola and its New York affiliates should be subject to the safeguards advocated by the Department Staff; (3) NYSEG and RG&E customers should be credited with \$646.4 million in “positive benefit adjustments” (PBAs”), including \$201.6 million that would be reflected immediately in retail delivery rates; and (4) at the conclusion of the merger proceeding, general rate proceedings should be initiated for NYSEG and RG&E to incorporate the remaining PBA benefits into retail rates, address revenue decoupling mechanisms and other matters. RD at pp. 1-2.

II. SUMMARY OF NUCOR'S BASIC POSITION

Overall, as indicated in its Reply Brief,¹ Nucor supports Commission approval of the Iberdrola acquisition based on the approach proposed in the Petitioners' Partial Acceptance document (i.e., immediate delivery rate adjustments reflecting specified PBAs upon closing of the acquisition without requiring expedited general electric and gas rate filings)² and a utility commitment to enhance its economic development efforts. Thus, we disagree with the RD's primary recommendation that the Commission disapprove the petition. With respect to recommended pre-conditions for approval in the RD's alternative recommendation, Nucor endorses Judge Epstein's assessment that implementation of a revenue decoupling mechanism should be addressed in the utilities' next general gas and electric rate cases. Nucor supports as well the immediate implementation of \$201 million in PBAs (which Iberdrola proposed in the Partial Acceptance). Nucor remains leery of, and advises against, a merger pre-condition that mandates the filing of general electric and gas rate cases for both utilities immediately after closing (the RD differs from Staff only in requiring that these be performed on a statutory 11 month basis (RD) rather than in an expedited fashion (Staff)). Nucor would prefer that the utilities postpone the filing of such rate cases for as long as is economically feasible.³ Notwithstanding decisions on additional PBAs that may be announced in this docket, the ultimate outcomes for consumers in a general electric rate case as to rate levels, cost allocation and rate design would be uncertain.

¹ Nucor Reply Brief at p.5.

² See Exhibit 50.

³ Multiple Intervenors similarly sought "stay out" commitments from the utilities as a merger condition. See MI Initial Brief at pp. 26-27.

Finally, Nucor's principal concern in this docket has centered on the commitment of NYSEG and RG&E to economic development initiatives post-merger. SM 711-14. Iberdrola has acknowledged this concern and the importance of the utilities' role in supporting job attraction and retention that are critical to the State's Upstate economic revitalization efforts. Iberdrola committed to continued use of economic development initiatives, including flex rate contracts, and to enhancing those programs, if permitted, in subsequent rate proceedings, in its Reply Brief.⁴ While not a complete response to Nucor's suggestions in its testimony, Iberdrola's commitment was responsive and constructive. The RD inappropriately discounts that commitment.

III. ECONOMIC DEVELOPMENT

Nucor has discussed the need for an enhanced utility commitment to economic development. Nucor's testimony discussed expanded use of existing economic development mechanisms (e.g., exempting all flex rate and qualified at-risk manufacturing loads from various surcharges (SBC, RPS, EPS, etc.) and streaming low cost sources of supply or hedged positions to qualifying loads) as approaches that should be pursued. SM 714. As a condition of approving the Iberdrola acquisition, Nucor recommended that the Commission direct NYSEG and RG&E to consult with interested stakeholders, and, based on those discussions, propose enhancements to their existing Economic Development Plans. (Nucor Initial Brief at 10).

In its Reply Brief, Iberdrola responded to Nucor by committing to continue its current utility economic development programs, including negotiating flex rate contracts. Iberdrola Reply Brief at 83. The RD notes the economic development concerns raised in Nucor's

⁴ Iberdrola Reply Brief at p. 83.

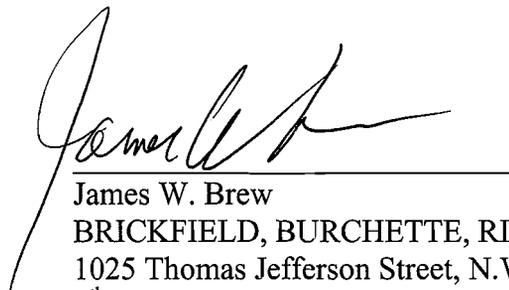
testimony with respect to at-risk manufacturing, and glosses over utility job retention and other “hold harmless” commitments that the Petitioners offered as illusory benefits of the transaction. RD at 52-53.

To be fair, Iberdrola also committed to enhancing the economic development initiatives, “if possible,” in subsequent rate proceedings. Iberdrola Reply at 83. This is responsive to Nucor’s request for a merger condition directing the utilities to meet with interested stakeholders to address enhancements to the economic development programs. Rather than dismissing the Petitioner’s response, as the RD appears to have done, the Commission instead should fashion a merger condition that gives effect to the Petitioners’ commitment by establishing a specific process for addressing expanded utility economic development initiatives.

CONCLUSION

For the foregoing reasons, Nucor supports Commission approval of the application, subject to prompt implementation of all conditions specified in the Partial Acceptance and a commitment to enhance economic development as discussed above.

Respectfully submitted,



James W. Brew
BRICKFIELD, BURCHETTE, RITTS & STONE, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
(202) 342-0800

Attorneys for Nucor Steel Auburn, Inc.

Dated: June 26, 2008