
BRICKFIELD BURCHETTE
RITTS & STONE, PC

January 25, 2007

Honorable Eleanor Stein
Honorable Rudy Stegemoeller
Administrative Law Judges
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

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

Dear Judges Stein and Stegemoeller:

By Ruling Establishing Comment Schedule, dated January 15, 2008, Your Honors invited parties to comment on the procedure and substance of an “EPS Administration Consensus Recommendation” filed by the NRDC, Pace, NYC, AEA, Consolidated Edison, KEDNY and KEDLI, NFG, National Grid, NYSEG, Orange and Rockland, RG&E and NYPA (the “NRDC/Utility Proposal”). The basic purpose of this proposal is to re-establish utility directed programs as the basic vehicle for promoting more efficient energy end use; it relegates NYSERDA’s function principally to state-wide market transformation initiatives; and it creates self-appointed regional (downstate / upstate) energy efficiency partnerships as the basic entity responsible for strategic energy efficiency planning. In a general sense, this proposal offers an EPS governance alternative that seems to merge the Joint Utilities and New York City EPS governance models that were discussed by EPS Working Group I. The reactions of Nucor Auburn, Inc., an active participant in the Working Group I deliberations, are provided below.

In addition to the NRDC/Utility Proposal, we note that Central Hudson subsequently filed its own White Paper advocating for an EPS initiative that relies primarily on utility administered programs as a supplement to the Staff Fast Track programs that mostly are administered today by NYSERDA. Nucor also recognizes that on January 24, 2008, Your Honors issued a “Ruling on the Status of the Record and on Schedule” that addresses these filings as well as the pending December 3, 2007 request of the Joint Utilities¹ for an opportunity to respond to material program and cost changes

¹ Multiple Intervenors and Nucor submitted separate letters supporting the Joint Utilities’ request.

advocated by the Department Staff in its November 26, 2007 revised Fast Track proposal. In this Ruling, Your Honors correctly seek to curtail the filing of unauthorized pleadings and proposals that undermine the collaborative process, but also to address the parties' valid interest in settling basic EPS governance and administration questions. Nucor supports and applauds the initiative taken in that Ruling to restore order and structure to this process.

Preliminarily, with respect to the NRDC/Utility proposal labeled a "Consensus Recommendation," it is often possible to assemble a faction of like-minded entities to create a proposal that satisfies the singular interests of those parties. That is not a consensus, which engenders to engage all contrasting viewpoints in the hopes of finding common areas of agreement. None of the signatories to this proposal contacted Nucor or solicited Nucor's views on any aspect of their recommendation. In fact, the signatories do not claim to have invited the views of any other party to this collaborative proceeding.

Nucor sympathizes with the signatories' interest in getting to a decision point on the basic structure for administering an aggressive state-wide energy efficiency initiative. The listing of multiple possible EPS governance model options in the Working Group I report provides little guidance to the Commission on the basic governance and administration questions that are fundamental to determining what entities are responsible for what, how much it will cost, and how the effort will be funded. Nevertheless, from a procedural perspective, the NRDC/Utility filing raises a basic concern about the collaborative process. This filing aims to undercut months of Working Group efforts by offering a new governance and administrative model that has never been discussed or examined by other collaborative stakeholders. Offering it as a "consensus recommendation" is disingenuous, and the larger concern is the signatories' effort to bypass any party not deemed by them to be like-minded. Your Honors' decision to invite comments on the proposal; and the January 24th Ruling, and particularly the Straw Proposal contemplated in that Ruling, obviates some of that concern. In developing that Straw Proposal, however, Nucor urges Your Honors to keep in mind that the NRDC/Utility Proposal has not been vetted by the Working Group participants.

Next, the NRDC/Utility filing advocates for an alternative governance process based on 1) utility administered efficiency programs, 2) a dramatically subordinated role for NYSEERDA, 3) assurances of full cost recovery and incentive payments to utilities for program energy savings, and 4) reliance on poorly described regional energy efficiency partnerships for strategic planning. Nucor has concerns regarding each element of this proposal.

First, the proposal offers no explanation or showing why the State should abruptly transition from NYSEERDA management of energy efficiency programs back to a 1980's style incentivized utility managed program. There is nothing in the proposal to suggest

that the utilities contemplate implementing materially different energy efficiency measures. Indeed, the Staff Fast Track proposal is premised upon continuation or expansion of most existing NYSERDA-run programs. There is no assertion that utility run programs, including incentives, will be more cost effective, more efficiently delivered, or minimize rate impacts for consumers better than the NYSERDA administered programs. To the contrary, reverting to utility run programs likely will hinder rather than accelerate energy efficiency initiatives since each utility will require time to hire and train staff. They will require time as well to develop service territory based energy savings estimates for each program offered (upon which incentive payments would be measured), measurement and verification metrics (to determine both program success and incentive payments), and to seek Commission approval of all of the above before they initiate those efforts.

Second, Nucor has serious concerns, based on New York's past experience, that incentivized utility energy efficiency programs encourage a pre-occupation with, and potential gaming of, claimed energy savings performance rather than actual consumer energy efficiency savings. A utility's interest in maximizing incentive payments that it earns directly influences program design, M&V metrics, and claimed performance. Rather than re-creating a closet consulting industry in these areas (and a concomitant increase in the Department Staff's workload), the Commission should favor models that emphasize consumer participation rather than those that focus on a proxy (i.e., consumer energy savings claimed by a utility seeking performance payments). The concerns in this area that motivated New York to transition this function from utilities to NYSERDA in the first place should not be discarded lightly.

Third, the proposal would vest strategic planning responsibility and considerable authority in regional energy efficiency partnerships. Nucor is not opposed to regional approaches to the energy efficiency initiative, especially in light of the very disparate energy needs of Upstate (anemic growth) and Downstate (immediate peak load management and reduction needs). There also is a need for coordination of utility, state agency and municipal actions, but any authority vested in a shadow entity like the proposed partnerships must be accompanied by appropriate accountability. The proposal altogether fails to provide sufficient detail as to the formation, operation and structure of these partnerships. It recognizes the need for energy efficiency plan filings by utilities that the Commission must approve, and nominally contemplates soliciting input from consumers and other interests, but it otherwise appears that the proposal's signatories intend that they will make all relevant strategic and implementation decisions regarding the efficiency partnerships. This is a flawed and insufficiently developed concept.

Nucor has maintained throughout this docket that the Commission must adopt an EPS process that is sustainable in the long term. This mandates broad input into program

Honorable Eleanor Stein
Honorable Rudy Stegemoeller
January 25, 2008
Page 4

design, a reasoned attention to cost causation and program benefits when allocating program costs, and appropriate balancing of responsibilities and accountability. The NRDC/Utility Proposal would create an intermediary bureaucratic tier that lacks transparency, accountability and stakeholder balance.

Nucor urges Your Honors to give serious consideration to the above concerns when assessing how to reflect the NRDC/Utility Proposal when developing their Straw Proposal.

Very truly yours,

James W. Brew
Attorneys for Nucor Steel Auburn, Inc.