

**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.**

REPLY BRIEF OF NUCOR STEEL AUBURN, INC.

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I. INTRODUCTION

On April 11, 2008, initial briefs in this matter were filed by the Department Staff, the Joint Petitioners, CPB, Multiple Intervenors, Nucor, NYPA, DEC, IPPNY, Empire State Development Corp., and Strategic Power Management, LLC (“SPM”). Nucor’s initial brief addressed the limited issues of the need for specific commitments regarding enhanced economic development if the IBERDROLA acquisition of Energy East is approved by the Commission, and for further evaluation of revenue decoupling mechanisms in subsequent dockets. In this reply, Nucor addresses the ultimate acquisition issue (approval or disapproval) in relation to rate adjustments, and a proposal by SPM in its brief that amounts to an open offer of settlement with respect to Positive Benefit Adjustments (“PBAs”).

II. ACQUISITION APPROVAL, TANGIBLE RATE BENEFITS AND THE SPM PROPOSAL

Staff opposes approval of the IBERDROLA acquisition of Energy East because it deems the risks posed by the transaction to be unacceptable to ratepayers. Staff IB at 3. In the event that the Commission approves the acquisition, Staff seeks consumer rate protections through conditions that include requiring immediate rate filings, after closing on the acquisition, covering NYSEG and RG&E electric and gas rates to be structured for new rates

to go in place by January 1, 2009 (or on an expedited basis if that date cannot be met). Staff IB at 172. Staff's proposed conditions also include vertical market power restrictions affecting IBERDROLA wind power development in the utilities' service territories, and financial structures and conditions to protect New York consumers. The Joint Petitioners dispute Staff's rate adjustments and claim that rate issues should be litigated elsewhere, but concede a portion of Staff's conditions and adjustments in the March 14, 2008, Partial Acceptance Document (Exhibit 50).

Among the intervenors, MI correctly notes that, absent an agreement to the contrary arising from this docket, NYSEG may make a new electric delivery rate filing at any time.¹ MI would remedy this with a specific stay-out commitment as a condition of merger approval. Strategic Power Management offers a different approach that seeks to bridge the gap between the \$201.6 million in PBAs offered in the Partial Acceptance and Staff's \$646 million recommended PBAs. SPM suggests the following:

1. The PBAs described in the Partial Acceptance would be adopted as a condition of acquisition approval, and produce immediate rate reductions upon closing in accordance with the Partial Acceptance offer.
2. Half of the remaining disputed difference between Staff and IBERDROLA on PBAs would be converted to a revenue requirement reduction amount subject to refund that would be finally settled in rate filings that would occur 4-6 months following closing.
3. The Commission would adopt Staff's proposed financial protections.

SPM IB at 2.

SPM's "split the difference" approach unfortunately stumbles quickly upon the necessary details of which adjustments would be accepted and how benefits would be allocated

¹ MI IB at 26; SM 1722-23.

among the NYSEG and RG&E electric and gas operations, assuming that Staff, the Joint Petitioners or the Commission would even consider the basic split to be reasonable. The latter concern actually is the biggest problem with the SPM proposal. Obviously, IBERDROLA has committed to closing the acquisition based on the terms offered in its Partial Acceptance. Staff, on the other hand, insists that its proposed conditions (and no less) are required to protect consumers. Taking into account the cut-and-dried nature of litigation positions, it can be inferred from Joint Petitioners' positions that IBERDROLA may take its investment dollars elsewhere if it considers those terms too onerous. The SPM proposal presumes, without any record basis actually, both that Staff would be satisfied and that IBERDROLA would not walk if the Commission simply split the disputed PBAs in half.

We suspect that Staff, the Petitioners, or both, also would object to setting delivery rates on a temporary basis subject to refund. Consequently, this does not appear to be a valid approach for resolving contested rate issues. Nucor urges the Commission to adopt a more certain approach that is less reliant upon the outcome of subsequent rate litigation.

Nucor's over-riding concern lies in ensuring stability in electric delivery rate service if the Commission approves the acquisition. With respect to PBAs, Nucor, like all consumers, favors a significant positive benefit adjustment, but what we require is certainty with respect to delivery rates for as long as is feasible. Rather than require litigation of general electric and gas rate cases for both utilities immediately after closing, particularly on an expedited basis, as Staff advocates, Nucor would rather see the utilities postpone the filing of such rate cases. Notwithstanding decisions on PBAs that may be announced in this docket, the ultimate outcomes in a general electric rate case as to rate levels, cost allocation and rate design would be uncertain. For this reason, Nucor supports the approach proposed in the Partial Acceptance

(i.e., immediate delivery rate adjustments reflecting specified PBAs upon closing of the acquisition without requiring expedited general electric and gas rate filings). This approach provides a certainty of benefits that is preferable to subsequent rate case litigation.

III. ECONOMIC DEVELOPMENT

Nucor's initial brief discussed the need for an enhanced utility commitment to economic development. Nucor's testimony discussed expanded use of existing economic development mechanisms (i.e., 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. As a condition of approving the IBERDROLA acquisition to be implemented following closing, 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.

In its initial brief, Empire State Development ("ESD") also recommended enhanced economic development initiatives by NYSEG and RG&E. ESD specifically recommended that, in their next rate cases, the utilities increase economic development funding and work with Staff, ESD and interested companies in developing the expanded Economic Development Plans. ESD IB at 4-5. Nucor strongly endorses ESD's recommendations, but does not believe that this effort should await the next rate case (since Nucor favors delaying rather than expediting those cases, as discussed above.) The utilities, ESD and interested parties should begin addressing economic development vehicles that do not require increased funding (e.g., surcharge exemptions for qualified loads) immediately following closing on the acquisition.

CONCLUSION

For the foregoing reasons, Nucor does not oppose Commission approval of the application, subject to prompt implementation of all conditions specified in the Partial Acceptance and a commitment to enhance utility economic development initiatives as discussed above and in Nucor's Initial Brief.

Respectfully submitted,

/ s /

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