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October 15, 2007

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VIA HAND-DELIVERY

Hon. Jaclyn Brilling
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

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

Dear Secretary Brilling:

Enclosed is an original and five (5) copies of *Nucor Steel Auburn, Inc.'s Response to New York Department of Public Service Staff Preliminary Proposal for Energy Efficiency Program Design and Delivery* in the above-referenced proceeding.

Please call if you have any questions or concerns.

Very truly yours,

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

Cc: Active Parties (electronically)

NUCOR STEEL AUBURN, INC.'S RESPONSE TO NEW YORK DEPARTMENT OF PUBLIC SERVICE STAFF PRELIMINARY PROPOSAL FOR ENERGY EFFICIENCY PROGRAM DESIGN AND DELIVERY

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Standard

Comments of Nucor Steel Auburn, Inc. on the New York Department of Public Service Staff's Preliminary Proposal for Energy Efficiency Program Design and Delivery

Background

In an April 19, 2007 speech, Governor Eliot Spitzer articulated a Clean Energy Strategy intended to confront the three critical challenges that New York faces: "rising energy bills, rising global temperatures, and a rising tide of young people leaving New York for opportunity elsewhere." A central component of the Governor's strategy called for a 15% reduction in electric demand from forecasted levels by 2015 through efforts to increase energy efficiency. This objective does not purport to be an empirically determined level of end use intensity that is required to establish a sustainable balance between energy use and production in New York.[1] Neither can it be taken as a mandate to pursue an endless list of centrally managed programs regardless of the cost to New York consumers that already suffer from un-competitively high energy prices (a point emphasized by the Governor in his "15 by 15" speech). Rather, the Governor's speech recognized both that existing energy use patterns in New York are not sustainable and require transforming shifts in those patterns, and that the efforts to effect that

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[1] See, e.g., Jeffrey Harris, Rick Diamond, Maithili Iyer, Christopher Payne, Carl Blumstein, Hans-Paul Siderious, *Toward a Sustainable Energy Balance: Progressive Efficiency and the Return of Energy Conservation*, University of California Energy Institute, Center for the Study of Energy Markets, September 2007.

transformation must encourage the retention and attraction of quality jobs and help lower emissions.

As is discussed below, New York has attempted various strategies in the past to promote greater end use efficiency, and there are a dizzying array of such programs and initiatives underway or being offered today. Primarily as a product of the Commission's embrace of electricity restructuring in the late 1990s, the implementation of most demand side management programs shifted from investor-owned utilities to NYSERDA some time ago.[2] Certain initiatives of general applicability, such as Energy Star and enhanced energy codes and standards, have been relatively successful. On the other hand, while the costs and benefits of programs that target specific customer sectors or types of uses (e.g., lighting) can be debated, the consensus seems to be that historic consumer participation rates in the traditional "DSM" programs collectively have been low[3] and that significant levels of improvement are feasible and achievable in these areas.

By Order issued on May 16, 2007,[4] the Commission initiated this proceeding regarding an Energy Efficiency Standard ("EPS"). The May 16 Order established target goals for a significant reduction in electricity end use efficiency in New York by 2015 based on the Governor's "15 by 15" speech. On August 28, 2007, the DPS Staff released its Preliminary Proposal for Energy Efficiency Program Design and Delivery ("Staff Proposal" or "SPP"). The Staff Proposal outlines eighteen General Principles and

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2 The NYSERDA White Paper submitted on September 10, 2007 in this docket does a commendable job of listing the many public and private entities that have significant roles in implementing existing energy efficiency programs and policies today.

3 See Staff Proposal at p. 73.

4 Case No. 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Instituting Proceeding (issued May 16, 2007) ("May 16 Order").

describes a series of recommendations that require further Commission action or actions by other jurisdictional entities. The recommendations, in turn, are divided between "fast track" efficiency items, based primarily upon expansion of existing programs; and "ideas that do not fit into traditional end use program models or would require planning and refinement to achieve." (SPP at p. 9). Staff further divided the latter into short term and longer term efforts.

Staff's proposal estimates the costs of the Fast Track programs, electric and gas, to be in excess of $5.5 billion through 2012. (SPP, Table 2). The Staff Proposal does not specifically address regional differences within New York State or among utility systems. In fact, Staff recommends, without elaboration, that the method for allocating program costs to the various service classifications within a utility should be uniform for all utilities. (SPP at p. 73).

Consistent with the then-existing schedule, several parties, including Joint Utilities, NYSERDA, NRDC and the City of New York, submitted their own proposals for organizing, structuring and implementing an aggressive state-wide energy efficiency initiative. In a number of crucial areas, the alternative proposals suggest different ways to manage this effort.

In a letter-ruling dated September 13, 2007, Administrative Law Judge Eleanor Stein modified the schedule of filings in this matter to invite comment on the "fast track" elements of the Staff Proposal. By letter dated October 1, 2007, Administrative Law Judges Stein and Stegemoeller further invited parties to identify short lists of existing programs that they propose be fast tracked. Nucor Steel Auburn, Inc. ("Nucor") provides these comments to the Staff Proposal, and, as applicable, the Parties Alternatives.

About Nucor

Nucor is the largest electric arc furnace-based steel producer in the United States. It has accomplished this feat by investing in new electric arc furnace-based technologies that recycle and recast scrap steel into a variety of steel products. Electric arc furnace-based steelmaking is energy intensive. Electric power costs represent a significant portion of total operating costs, and the Nucor Auburn facility is New York State Electric & Gas Corporation's largest single load. At the same time, this "mini-mill" process is dramatically more energy efficient, and requires far fewer greenhouse gas emissions, than blast furnace methods employed by traditional integrated steel companies as well as most steel producers in the world's developing nations.

I. Summary of Comments

Nucor strongly supports cost-effective efforts that reward consumer and business demand response and energy efficiency improvements. Nucor also believes that Governor Spitzer correctly tied the State's Clean Energy Strategy to lowered energy costs, reduced emission levels, and the retention and creation of quality jobs. Each of these three elements must be addressed by the Commission's actions in this docket. Nucor has succeeded in globally competitive commodity markets in large part by investing in more efficient production technologies that recycle the energy content captured in steel scrap and require less energy to produce a ton of steel. This is a testament to the fact that the Governor's three objectives are not mutually inconsistent and can be achieved.

In Nucor's view, the "Fast Track" aspect of the Staff Proposal is deficient in the following areas:

1. New York needs to expedite development of a coherent, customer-oriented energy efficiency strategy that should begin by delivering timely price signals to most energy users.

2. There are enormous regional differences in New York. These must be addressed in any sustainable EPS policy.

3. The Staff proposal fails to confront the rate impact, rate design and cost allocation ramifications of its recommendations.

II. Comments

A. New York Needs to Expedite Development Of A Coherent, Customer-Oriented Energy Efficiency Strategy That Begins By Delivering Timely Price Signals To Most Energy Users.

The Staff Proposal adopts the following as two of its general principles:

- Where possible, the marketplace should be providing services without the need for ratepayer support; and
- Getting energy price signals better aligned with the costs of providing services is a critical part of effectively developing energy efficiency as a resource.

(Staff Proposal at pp. 10-11). Staff elaborates that advanced metering, time differentiated rates, and rate structures that more accurately reflect utility costs should all be encouraged, but it relegates advanced metering and innovative pricing to the list of "Activities with the Potential for Significant Energy Efficiency Savings in the Long Term" (SPP, attachment 2). In its Mandatory Real Time Pricing Order,[5] the Commission directed that very large (1 MW and larger) electric loads be subject to hourly electric price signals. In Upstate areas, these loads tend to be the very manufacturing loads that the State cannot afford to lose. For the vast majority of smaller users in New York that are not subject to mandatory RTP pricing, however, the

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[5] Case 03-E-0641, *Order Denying Petitions for Rehearing and Clarification In Part and Adopting Mandatory Hourly Pricing Requirements*, issued April 24, 2006.

Commission continues to promote commodity hedging strategies and rate structures that shield consumers from those same price signals concerning the cost and availability of power supplies.

There is an unmistakable disconnect between the above-noted general principles and Staff's Fast Track recommendations. Apart from the standards and codes effort, Staff's Fast Track program is premised on expanding existing NYSERDA, or utility, centrally designed, administered and evaluated programs. While Staff asserts that most of the fast track programs have reasonable cost/benefit ratios, these are the same programs that have elicited low customer participation rates in the past. See SPP at p. 73. In our view, to achieve a paradigm shift in consumer energy end use, the Commission should focus on the items that motivate consumers. That must start by delivering meaningful price signals to most loads on the system, and particularly the weather sensitive loads that drive electric system peaks. Staff opts instead to spend a stunning amount of ratepayer and taxpayer dollars on traditional programs, re-orienting program administration through utilities, utility performance incentives, and program assessment and evaluation. This is not a sustainable approach. In fact, it actually avoids confronting the pricing, inter-class cross-subsidies, and rate structure defects that blunt widespread consumer interest in more efficient energy end use.

Levels of spending on centrally directed and managed energy efficiency programs should not be confused with leadership and success in promoting energy efficient end use. (See SPP comparison of state efficiency spending levels on p. 23). On the other hand, the historic low customer participation levels for existing New York programs (SPP at pp. 23 and 73) should be a cause for serious concern. Increased program spending will not necessarily translate into increased consumer interest. Also, consumers may not necessarily be uninformed about energy efficient products and alternatives, but the vast majority of consumers certainly have been rendered largely indifferent by historic metering, rate design and billing practices. Any serious effort to initiate the transformation in consumer interest in improved end use efficiency that is required to achieve the "15 by 15" objectives must prioritize advanced metering and electric rate design.

Also, while energy efficiency experts often split hairs between "demand response" and "energy efficiency" in terms of program design (and funding priorities), consumers simply are interested in greater energy value (i.e., saving on energy costs without compromising service). As Dan Delurey, the Executive Director of the U.S. Demand Response Coordinating Committee observed: "We are seeing energy efficiency and demand response becoming intertwined. The customer wants them both and doesn't really care about the names or terms."[6]

In short, rather than accelerating spending on an expanding slate of programs that historically have reached a limited audience (regardless of perceived benefit/cost ratios), the paramount purpose of the Commission's fast track efforts should be to align customer financial interests with the state's energy efficiency objectives. Consequently, the Commission should be fast tracking smart metering and time-based pricing initiatives for all, or the vast majority, of loads. The Commission should move aggressively to correct inter-class cross-subsidies and other known rate structure and cost allocation barriers to

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6 Public Utility Fortnightly, January 2007, p. 35.

improved energy price signals, and it should reconcile its policies regarding hedging practices and timely price signals for consumers. These are bedrock issues that lie entirely within the Commission's jurisdiction and areas of expertise.

B. Regional Differences in New York Must Be Addressed In Any Sustainable EPS Policy.

There are quite fundamental differences between the energy profiles of Upstate New York and Downstate (Lower Hudson Valley and NYC regions). The Downstate areas are characterized by steadily growing peak demands, constrained transmission, planned generation retirements, and looming needs for both generation and transmission capacity additions.[7] Electric load growth in most Upstate areas has been anemic for some time, as the region continues to struggle to retain and attract quality jobs.[8]

EPS program implementation, funding and cost recovery should be tailored to accommodate these regional differences. New York City's Plan NY 2030 report recognized and proposed energy efficiency and demand reduction initiatives designed for and coordinated by city entities. Similarly, Staff should work with interested parties to develop an Upstate-oriented EPS. The Staff Fast Track proposal should be modified accordingly.

C. The Staff Proposal Fails To Confront The Rate Impact, Rate Design And Cost Allocation Ramifications Of Its Recommendations.

The Staff Proposal limits its discussion of funding to cover expanded energy efficiency to a list of possible sources, but the proposal plainly contemplates increased

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7 See NYISO 2007 Reliability Needs Assessment, pp. 10-11 (March 2007)

8 The NYISO projects that Upstate has adequate generation capacity through 2016. Reliability Needs Assessment, p. 12.

volumetric (kwh) energy charges in the form of increased SBC or comparable charges as a principal means of funding. In brief, the proposal gives insufficient attention to rate impacts and the allocation of program costs. These are important considerations that should be addressed in a manner consistent with cost causation principles and the economic development element of the Governor's three core objectives.

The Staff Preliminary Proposal, and particularly the recommended Fast Track program, however, focuses on a traditional publicly funded (i.e., ratepayer and taxpayer) ($5.5 Billion through 2012), administratively directed program approach. This will constitute a significant added burden for New York consumers and care must be taken to avoid creating or worsening inter-class cost subsidies. For each approved Fast Track program, program costs should be allocated to the customer classes that are targeted by or eligible for those program measures.

Moreover, the Commission should introduce some flexibility into the program to encourage large, energy intensive or price sensitive loads to explore and implement energy efficiency measures that may not be addressed by specific program measures. For example, it should consider crediting customers (through EPS or SBC surcharge abatements) that make substantial energy efficiency improvements in areas not targeted by established programs.

CONCLUSION

Implementation of effective and sustainable energy efficiency efforts in New York requires greater levels of innovation, greater attention to rate-making fundamentals, and a clearer sense of structure and purpose. The Staff Preliminary Proposal certainly contemplates a role for technological innovation (see Working Group IV), but the proposal's Fast Track priorities are mis-directed. The SPP Fast Track primarily builds upon existing programs in the State. In practical terms, this means near term rate (surcharge) increases for all consumers and later term thinking about the role of metering, price signals and emerging technologies. Rather than rushing to increase SBC funded programs, which ultimately are not sustainable and will not achieve the Governor's objectives, Nucor recommends that the Staff Fast Track proposal be revised to prioritize the elimination of metering, pricing and rate structure barriers, and to adopt rate setting approaches that align consumer financial interests with more efficient energy end use. Further, the Fast Track initiative should recognize and address the highly disparate demand response, energy efficiency and economic development challenges and opportunities that exist between Upstate and Downstate consumers and businesses.

Respectfully submitted,

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