

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission  
to Consider a Clean Energy Fund**

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**Case 14-M-0094**

**COMMENTS OF MULTIPLE INTERVENORS  
ON PETITION FOR CLARIFICATION  
OF NUCOR STEEL AUBURN, INC.**

**Dated: March 2, 2016**

**MULTIPLE INTERVENORS  
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**PRELIMINARY STATEMENT**

On February 16, 2016, Nucor Steel Auburn, Inc. (“Nucor”) filed a *Petition for Clarification or Rehearing of Nucor Steel Auburn, Inc.* (“Petition”) requesting that the New York State Public Service Commission (“Commission”) clarify or, if necessary, grant rehearing concerning one aspect of the *Order Authorizing the Clean Energy Fund Framework* (“Order”) issued on January 21, 2016 in this proceeding. On February 19, 2016, the Commission issued a *Notice with Respect to Petition for Clarification* (“Notice”) indicating that it would treat the Petition as one for clarification, and directed that responses to the Petition be filed by March 2, 2016. In accordance with the Notice, Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby files these Comments in response to the Petition and the Notice.

In the Order, the Commission authorized the New York State Energy Research and Development Authority (“NYSERDA”) to establish a Clean Energy Fund (“CEF”) that would succeed the System Benefits Charge (“SBC”) and consolidate it, the Renewable Portfolio Standard (“RPS”) surcharge, and the Energy Efficiency Portfolio Standard (“EEPS”) surcharge into a single

revenue stream to fund the State's clean energy programs.<sup>1</sup> The Commission also adopted Multiple Intervenors' position that New York Power Authority ("NYPA") allocations that historically have been exempt from paying the Existing Surcharges would remain exempt from the CEF surcharge.<sup>2</sup>

Thereafter, Nucor filed its Petition seeking clarification or rehearing on the issue of whether the Commission should extend the exemption from the CEF surcharge to customers that historically have been accorded surcharge exemptions in contexts outside of NYPA allocations. Specifically, Nucor references existing, contractual surcharge exemptions that previously were approved by the Commission to further economic development in New York, particularly in the Upstate region. (*See* Petition at 3-6.)

Multiple Intervenors' Comments are organized into two points. In Point I, Multiple Intervenors details the Commission's prior support of economic development efforts and manufacturing industries in New York, many of which are energy-intensive and require low-cost electric power to remain competitive in their respective sectors (and, quite frankly, to maintain operations, and jobs, in the State). Previously, the Commission authorized exemptions from the Existing Surcharges to certain customers with individually-negotiated contracts. Multiple Intervenors submits that, in order to preserve the economic development purpose of these agreements, customers with contracts containing exemptions from the Existing Surcharges should retain such exemptions under the CEF. Indeed, inasmuch as the CEF is a successor program to

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<sup>1</sup> The SBC, the RPS surcharge, and the EEPS surcharge collectively are referred to herein as the "Existing Surcharges."

<sup>2</sup> *See* Order at 95.

the SBC, the RPS, and the EEPS programs, it would be highly inequitable to interfere with exemptions granted – and relied upon by customers – in existing contracts.

In Point II, Multiple Intervenors submits that the Order is patently clear that NYPA allocations that historically have been exempted from the Existing Surcharges will remain exempt from the CEF surcharge. Therefore, no clarification even is necessary with respect to surcharge exemptions applicable to NYPA allocations.

## **ARGUMENT**

### **POINT I**

#### **THE COMMISSION SHOULD GRANT THE PETITION AND CLARIFY THAT CUSTOMERS EXEMPT CURRENTLY FROM THE EXISTING SURCHARGES WILL BE EXEMPT FROM THE CEF SURCHARGE**

Multiple Intervenors supports Nucor’s position that customers exempt currently from the Existing Surcharges for economic development reasons, including customers with flex-rate contracts providing for such exemptions, should be exempt from the CEF surcharge. Multiple Intervenors in the past has advocated for surcharge exemptions for customers with flex-rate contracts, the purposes of which are to provide competitive rates to customers with viable alternatives so as to retain and/or expand load – and capital investments and jobs – within New York. Indeed, flex-rate contracts specifically were implemented as a means of spurring economic development in the State where energy prices often are among the highest in the nation, making it extremely challenging for New York industries with energy-intensive operations to remain competitive in their respective sectors.

Consistent with that policy, the Commission previously allowed customers to negotiate flex-rate contracts with utilities that contained provisions exempting such customers

from the Existing Surcharges. The Commission reasoned that saddling energy-intensive customers possessing viable competitive alternatives to continued utility service with financially-onerous surcharges would be antithetical to the State’s economic development goals. For example, in exempting SBC-exempt customers from RPS surcharges, the Commission held that “[s]uch customers are generally provided electricity at reduced prices to achieve economic development objectives such as sustaining or creating jobs. The Commission recognizes that requiring such customers to pay for the objectives of the RPS would be counterproductive to these economic development goals.”<sup>3</sup> The continuation of existing surcharge exemptions for customers, including customers with flex-rate contracts, also furthers the State’s policy to “maintain its focus on affordability, so ... more competitive industrial rates contribute to the growing mix of attributes that will attract new business to, and retain existing businesses in New York.”<sup>4</sup>

High energy prices in New York, including surcharges, continue to be a major impediment for customers with energy-intensive operations to conduct business in the State. The Energy Plan expressly recognizes this reality: “More needs to be done to lower rates given utility costs are frequently cited as barriers to business relocation or expansion across the State.”<sup>5</sup> Imposing the CEF surcharge on customers exempt currently from the Existing Surcharges would be disastrous in terms of retaining those businesses in New York. As the Commission is well

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<sup>3</sup> Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) at 10-11.

<sup>4</sup> See *The Energy to Lead: 2015 New York State Energy Plan, Volume 1*, New York State Energy Planning Board (issued June 2015) (hereinafter, the “Energy Plan”), at 25.

<sup>5</sup> *Id.*

aware, for large, high-load-factor customers, the Existing Surcharges often exceed, and sometimes are more than double, the cost of “traditional” electric delivery service.<sup>6</sup>

Additionally, it would be highly inequitable for the Commission to attempt to modify and/or frustrate the intent of existing flex-rate contracts that contain exemptions to the Existing Surcharges. The SBC, the RPS surcharge, and the EEPS surcharge are being consolidated into a single CEF surcharge. Thus, the CEF is the successor program to the SBC, the RPS, and the EEPS. Under such circumstances, contracts containing exemptions to the Existing Surcharges similarly should be deemed exempt from the CEF surcharge. To hold otherwise would interfere with, and frustrate the intent of, existing contracts. Contract customers with existing exemptions – whose contracts typically were approved in some form by the Commission – relied upon those exemptions in making business decisions, many of which involved significant investments in New York facilities and operations. To even consider utilizing the decision to consolidate the SBC, RPS, and EEPS programs into the CEF as grounds for modifying existing, contractual exemptions from surcharges would be highly inequitable, potentially unlawful, counterproductive to the State’s economic development goals, and unsupported by the record developed in this proceeding.

For the foregoing reasons, the Commission should grant the Petition and clarify the Order to confirm that all customers exempt currently from the Existing Surcharges, including customers with flex-rate contracts providing for such exemptions, shall be exempt from the CEF surcharge.

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<sup>6</sup> See Cases 10-M-0457, *et al.*, *In the Matter of the System Benefits Charge IV*, Petition of Multiple Intervenors for Expeditious Relief from Existing Surcharges (dated June 2, 2014) at 4-8.

## POINT II

### **NO CLARIFICATION EVEN IS NECESSARY WITH RESPECT TO SURCHARGE EXEMPTIONS APPLICABLE TO NYPA ALLOCATIONS**

While Multiple Intervenors is supportive of Nucor's request that the Commission clarify that customers exempt currently from the Existing Surcharges (including customers whose flex-rate contracts provide for such exemptions) will be exempt from the CEF surcharge, no clarification even is needed with respect to NYPA allocations. The Order is patently clear and unambiguous on this point: "As noted by [Multiple Intervenors], NYPA exemptions have been in place since each of the existing surcharges were implemented and were instituted for economic purposes. We shall maintain all current NYPA exemptions for incremental collections approved in this Order."<sup>7</sup>

The exemptions from the Existing Surcharges for NYPA allocations are longstanding, having been in place since each of those individual surcharges first were implemented. The Commission has recognized over the years and in numerous decisions that surcharge exemptions are needed and intended to secure important economic development benefits for New York, particularly for many large industrial and commercial customers that receive NYPA allocations.<sup>8</sup> Indeed, for many companies, NYPA allocations and the associated surcharge

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<sup>7</sup> Order at 94.

<sup>8</sup> See, e.g., Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion and Order No. 98-3 Concerning System Benefits Charge Issues (issued January 30, 1998) at 6-7; *id.*, Order Continuing and Expanding the System Benefits Charge for Public Health Programs (issued January 26, 2001) at 23; Case 05-M-0090, *In the Matter of the System Benefits Charge III*, Order Continuing the System Benefits Charge (SBC) and the SBC-funded Public Benefit Programs (issued December 21, 2005) at 29-30; Case 03-E-0188, *supra*, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) at 55.

exemptions are the primary reason they continue to conduct business operations in the State. Therefore, existing and continued exemptions from surcharges are absolutely essential for promoting economic development and a measure of energy affordability in New York, and the Commission already has recognized this reality by unequivocally granting a CEF surcharge exemption for existing NYPA allocations in the Order. Accordingly, clarification on this point is not necessary.

### **CONCLUSION**

For the foregoing reasons, Multiple Intervenors urges the Commission to resolve Nucor's Petition in a manner consistent with the positions advanced in these Comments.

Dated: March 2, 2016  
Albany, New York

Respectfully submitted,

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