STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 20, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 14-M-0094 - Proceeding on Motion of the Commission to Consider a Clean Energy Fund.

CASE 10-M-0457 - In the Matter of the System Benefits Charge IV.

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

CASE 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

ORDER GRANTING CLARIFICATION

(Issued and Effective April 26, 2016)

BY THE COMMISSION:

INTRODUCTION

By order issued January 21, 2016, the Commission provided, inter alia, for consolidation of existing and incremental surcharges for clean energy programs into the surcharge supporting a Clean Energy Fund (CEF), to be collected through the System Benefits Charge (SBC) tariff.[1] The Commission

[1] Cases 14-M-0094 et al, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) (CEF Framework Order).

stated, moreover, that current exemptions related to energy supplied by the New York Power Authority (NYPA) would continue and would include exemption from CEF incremental collections. By a Petition for Clarification and Rehearing (Petition) filed on February 16, 2016, Nucor Steel Auburn, Inc. (Nucor) asked for clarification that customers currently exempt from surcharges would remain exempt. Multiple Intervenors (MI), supported the Petition, but claims clarification is unnecessary for NYPA allocations.

BACKGROUND

The CEF Framework Order directed the New York State Research and Development Authority (NYSERDA) to consolidate all ratepayer-funded activities into a comprehensive Clean Energy Fund capped at an annual collections level that would result in an immediate decrease and continued decline in ratepayer collections. It further provided for consolidation of the collections to support CEF activities under the SBC tariff. The Commission directed utilities to eliminate the separate tariff for Renewable Portfolio Standard (RPS) surcharges and incorporate previously authorized SBC, RPS and Energy Efficiency Portfolio Standard (EEPS) surcharges, as well as incremental CEF collections, into a single SBC surcharge.[2] In addition, the Commission responded to the MI observation that NYPA exemptions

[2] Id. at 95, 107. The total amount collected through this SBC surcharge in 2016 will be approximately $91 million less than collections to support NYSERDA activities in 2015 and these collections will continue to decline as illustrated in Appendix H of the CEF Framework Order. Even though surcharge collections decreased, the CEF Framework Order referred to "incremental CEF collections" because the scheduled 2015 expiration of some programs meant that the surcharges were, technically speaking, greater than they otherwise would have been. This order uses the same terminology.

have been in place for each of the existing surcharges by providing for maintenance of all current NYPA exemptions for those surcharges.[3]

Each affected utility submitted tariff amendments to implement the new collections framework consistent with the CEF Framework Order by February 28, 2016. Those tariffs became effective by operation of law on March 1, 2016. Each utility's revised tariff continued existing surcharge exemptions and applied those exemptions to the entire SBC, now supporting the CEF and including previously authorized and incremental collections.

Nucor has a flexible rate contract for the purchase of electric energy and capacity at its steel recycling and manufacturing facility in Auburn, New York, pursuant to New York State Electric & Gas Corporation's (NYSEG) Service Classification Number (S.C. No.) 14. The Commission most recently approved an extension to the contract through December 31, 2020, in an order which approved an agreement providing for continued Nucor exemption from SBC and RPS surcharges.[4] The tariff for NYSEG's S.C. No. 14, as amended and effective March 1, 2016, states that the SBC will be collected from S.C. No. 14 customers only to the extent permitted by each customer's individual service agreement.

---

[3] Id. at 94.

[4] Case 13-E-0353, New York State Electric & Gas Corporation/Nucor Steel Auburn, Amendments to Electric Service Agreement, Order Approving Contract Amendment (issued November 19, 2013) (Contract Amendment Order) at 6.

SUMMARY OF PETITION

In its Petition Nucor recites that in addition to exempting NYPA industrial and municipal loads from SBC, EEPS and RPS surcharges, the Commission has granted exemptions for economic development customers, including Nucor's operations. Nucor observes that while the Commission explicitly continued to exempt NYPA customers from existing renewable energy and energy efficiency-related surcharges, it did not state that all customers previously exempt from paying such surcharges will remain exempt. It contends that customers that have been granted surcharge exemptions for economic development and related reasons should continue to be exempt from RPS, SBC, EEPS and CEF surcharges, now that all such surcharges are to be recovered under the SBC tariff in order to support the CEF.

Nucor points to the Commission's long recognition of the importance of competitively priced electric power for energy intensive manufacturers subject to competitive risk and argues that there is a continuing need for exemptions to protect manufacturing jobs, citing, among other things, the surcharge exemptions for businesses receiving ReCharge New York power allocations.[5] Nucor also asserts that the Commission has repeatedly recognized the regional economic significance of Nucor's facility, competition in the steel industry and the importance of energy prices to its mill's ability to remain competitive. It points to Commission-approved flex rate contracts providing for an RPS/SBC exemption and a guidance letter from Department Staff that surcharge exemptions will continue for a new utility energy efficiency tracker.[6] In the

[5] Nucor Petition at 4.

[6] Nucor Petition at 5.

event the Commission does not grant clarification, Nucor requests that the Commission reconsider its determination.

NOTICE WITH RESPECT TO PETITION FOR CLARIFICATION

On February 19, 2016, the Secretary issued a Notice stating that the Petition would be treated as one for clarification. While the Notice observes that the Petition was styled as one for clarification or rehearing, it did not appear to attempt to state an error of law. The Notice accordingly treated the Petition as one for clarification. It made responses to the Petition due by March 2, 2016.

SUMMARY OF COMMENT

Only MI responded, in support of the Petition. MI supported the Nucor request for clarification that all economic development customers currently exempt from surcharges be exempted from the CEF surcharges. Like Nucor, MI observes that the Commission previously exempted customers with negotiated flex rate contracts from the SBC, RPS and EEPS surcharges to achieve economic development goals. It argues that high energy prices in New York pose a continued impediment for the conduct of energy-intensive operations in the State and cites the State Energy Plan as recognizing that more needs to be done to lower utility rates. MI goes on to opine that it would be highly inequitable for the Commission to modify and/or frustrate the intent of the existing flex rate contracts containing exemptions from SBC, RPS and EEPS in creating CEF, a successor program. It claims that customers relied upon those exemptions in making significant investments in New York.

In addition, MI contends that no clarification is needed with respect to the NYPA allocations because the CEF Framework Order is clear and unambiguous on the continued

exemption of such allocations from surcharges. It observes that such exemptions have been in place for years and been recognized in numerous decisions intended to secure important economic development benefits for New York. MI argues that continued exemptions from surcharges are absolutely essential for promoting economic development and energy affordability, as recognized in the statement of an exemption from incremental CEF collections for existing NYPA allocations.

DISCUSSION AND CONCLUSION

Nucor's clarification request is granted. The CEF Framework Order provided for consolidation of the RPS and EEPS collections, as well as incremental CEF collections, into the SBC tariff to fund CEF.[7] Nucor and other similarly situated entities are, pursuant to prior Commission Orders, exempt from the SBC surcharge and thus are exempt from collections through the SBC tariff, which is now the CEF funding source. In consolidating existing surcharges the CEF Framework Order did not change those surcharges, and thus maintained the exemptions from them, as delineated in the orders originally creating the surcharges, and in orders providing for surcharge exemptions, such as the 2013 Contract Amendment Order for Nucor. This maintenance of existing exemptions is reflected in the tariff filings by the utilities, such as NYSEG's, which consolidated the collections for CEF into the SBC tariff and did not modify exemptions from collections under that tariff.

[7] CEF Framework Order at 95 ["Consistent with the consolidation of NYSERDA's clean energy activities under the umbrella of the Clean Energy Fund, we take this opportunity to instruct the utilities to eliminate the separate RPS tariff and collect all CEF funds through the SBC tariff, including previously authorized RPS, EEPS, and [SBC] collections . . . ."]

Further, as argued by Nucor and MI, continuation of economic development exemptions from those surcharges was appropriate, as is an exemption for the incremental collections to support CEF. The current exemptions should be maintained to continue efforts to retain high load factor industrial customers creating economic development benefits in New York. Further, the explicit statement that NYPA customers were exempt from surcharges implicitly recognized that treatment applied to other customers exempt from surcharges for economic development reasons.

The Commission orders:

1. The Petition for Clarification of Nucor Steel Auburn, Inc., filed February 16, 2016, that 1) exemptions from surcharges for the Renewable Portfolio Standard, Systems Benefits Charge and Energy Efficiency Portfolio Standard stated in prior Commission Orders will continue and 2) such exemptions will apply to Clean Energy Fund collections through the Systems Benefit Charge surcharge mechanism, as implemented through the utility tariffs effective as of March 1, 2016, is granted.

2. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary