STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 17, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alexi
Tracey A. Edwards
John B. Howard

CASE 20-E-0142 - Joint Petition of New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc. Regarding Amendments to Electric Service Agreement.

ORDER APPROVING AGREEMENT AMENDMENT

(Issued and Effective September 18, 2020)

BY THE COMMISSION:

BACKGROUND

In a petition filed on March 10, 2020 (the Petition), Nucor Steel Auburn, Inc. (Nucor) and New York State Electric & Gas Corporation (NYSEG) (together, the Parties) request approval of the sixth amendment to the Electric Service Agreement (the Agreement or ESA) that was initially entered into on April 1, 2002, in compliance with the Commission's March 25, 2002 Order.[1] The Agreement is a contract for the sale of capacity, energy and

[1] Case 01-E-0680, Nucor Steel Auburn, Inc., Order Directing Entry into a Flex Rate Contract (issued March 25, 2002) and Confirming Order (issued April 17, 2002).

delivery services from NYSEG to Nucor and has been amended five times previously. The Agreement was modified by two amendments that took effect in June 2009 and expired on April 1, 2012.[2] The Agreement was then modified by two more amendments that took effect in March 2012 and expired on December 31, 2013.[3] Finally, in November 2013, the Agreement was amended for a fifth time to extend the terms through December 31, 2020.[4]

Under the current terms, NYSEG provides delivery service to Nucor at its applicable Service Class 7(4) tariff rates but allows Nucor's entire load to be exempt from the System Benefit Surcharge (SBC), the Renewable Portfolio Standard, and the Energy Efficiency Portfolio Standard Surcharges (together, SBC Surcharges). NYSEG continues to coordinate Nucor's participation in the Special Case Resource (SCR) Program managed by the New York Independent System Operator, Inc. (NYISO) and the SCR benefits are shared between NYSEG and Nucor as provided for in the Agreement.

NYSEG and Nucor are now seeking approval for the sixth amendment to the Agreement, extending its term to December 31, 2027, and modifying certain terms governing NYSEG's notice of interruptions to Nucor to conform to the requirements of the NYISO's SCR and NYSEG's Dynamic Load Management Programs. Nucor also explicitly requests that its current exemption to the SBC Surcharges be continued through December 31, 2027. NYSEG takes

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[2] Case 08-E-0713, New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc., Order Approving Contract Amendment (issued June 25, 2009).

[3] Case 11-E-0641, New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc., Order Approving Contract Amendment Subject to Modifications (issued March 16, 2012).

[4] Case 13-E-0353, New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc., Order Approving Contract Amendment (issued November 19, 2013).

no position on the extension of the SBC Surcharges waiver under the same terms and conditions adopted in the prior Orders approving the contract amendments. By this Order, the sixth amendment to the ESA is approved. Nucor's request to continue its SBC exemption through December 31, 2027, is also granted.

THE PETITION

NYSEG and Nucor ask that the Agreement's terms, as modified by the sixth amendment, be extended through December 31, 2027. The Parties claim that extension of the Agreement is warranted because it facilitates the State's economic development goals and preserves the Commission's intent to help retain Nucor in New York when approving the original ESA and the subsequent extensions. The Petition states that Nucor acquired the steel manufacturing facilities in 2001 and makes a variety of commercial steel products from scrap metal which it then sells throughout New York State and the surrounding region. According to the Petition, Nucor is the largest steel recycling operation in New York State and its facility in western New York has an annual payroll of more than $24 million and non-payroll expenditures in excess of $100 million annually. As provided in the Petition, Nucor's operations support a chain of upstream and downstream vendors in New York.

The Parties emphasize that Nucor confronts exceptional challenges in conducting its steel manufacturing business in western New York. The Parties assert that Nucor, as an energy intensive manufacturer, the last surviving steel-making operation of its type in New York and the largest load on NYSEG's system, must manage its power costs to remain economically viable. Otherwise, the Parties claim that Nucor cannot successfully face the substantial competition from other steel producers.

The Parties also explain that, recognizing Nucor's significant economic benefits for the region, the New York Power Authority (NYPA) first awarded Nucor a ReCharge NY (RNY) power allocation of 10,000 kW, consisting of 5,000 kW of NYPA hydropower and 5,000 kW of market-priced power that NYPA purchases for its RNY loads, effective July 1, 2013, through June 30, 2020. Because Nucor upheld its job retention commitment during the term of its initial RNY power agreement, NYPA granted Nucor a second seven-year term, effective July 1, 2020, through June 30, 2027. This extension is reflected in the proposed sixth amendment to the Agreement.

The existing Agreement, the Parties explain, has been important to Nucor's economic competitiveness. According to the Parties, the Agreement has enabled Nucor to invest in modernizing its steel manufacturing facility and to continue its operations in New York. Extending the term of that Agreement through December 31, 2027, the Parties contend, facilitates the State's economic development goals and preserves the Commission's initial intent in approving the ESA. The Parties point out that jurisdiction over this contract was asserted when it was initially required in 2002, and so approval of the sixth amendment providing for the extension of the Agreement to December 31, 2027, is needed before the amendment can take effect.

The Parties report that the sixth amendment generally continues the surviving terms of the existing Agreement as last amended in 2013. Under those terms, the Parties explain that Nucor will continue to participate in the SCR Program for reducing electricity demand that is managed by the NYSIO and the contractual exemption from the SBC Surcharges will also continue. Finally, the Parties point out that the amendment revises the notice to curtail provisions from one to two hours

to conform with the NYISO SCR program as well as the requirements of NYSEG's Dynamic Load Management programs.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on April 22, 2020 [SAPA No. 20-E-0142SP1]. The time for submission of comments pursuant to the Notice expired on June 21, 2020. No comments were received.

LEGAL AUTHORITY

Under Public Service Law (PSL) §65, the Commission has broad powers over the provision of utility service by electric corporations, which includes the ability to regulate the means by which electric corporations provide service to their customers and the responsibility to ensure just and reasonable charges.

DISCUSSION AND CONCLUSION

Nucor's exemption from the SBC Surcharges and the extension of the Agreement between NYSEG and Nucor, pursuant to the sixth amendment, through December 31, 2027, is warranted because the Agreement is needed to retain Nucor and its economic development benefits in New York State. As discussed in prior Orders, the rate relief through the exemption of the SBC Surcharges was premised upon the economic development benefits from its steel operation in western New York. The Agreement has allowed Nucor to increase steel production at its facility and to retain high-paying manufacturing jobs. Nucor's concomitant injection of funds into western New York and local economies, in the form of payroll, direct purchases and other economic activities, has contributed significantly to maintaining the

economic health of those communities. Exemption of the SBC Surcharges will serve as a complement to Nucor's RNY allocation over its seven-year term, and the length of the extension is properly tied to that purpose. While the ReCharge Order[5] already provides for an exemption from the SBC Surcharges for the RNY Power allocation, NUCOR's total RNY allocation is only approximately 15% of its total energy requirement. If the SBC Surcharges on the non-RNY load were imposed now, Nucor would confront substantial challenges in maintaining operations in New York, notwithstanding the ReCharge NY Program and its objective of promoting economic development through advantageous electricity pricing. Imposing SBC Surcharges would also undermine the purpose of extending the Agreement, which is to retain Nucor's operations in New York because of the economic benefits Nucor provides to the state. Consequently, continuation of the exemption under the same terms and conditions is justified.

NUCOR has been exempt from the SBC Surcharges since 2002, therefore the lost revenue is already embedded in charges to other ratepayers. Continuing the SBC exemption would result in no immediate bill impacts for other rate payers.

Note that the Energy Efficiency Portfolio Standard (EEPS) Order[6] instructed the utilities to transition cost recovery associated with the energy efficiency programs from the EEPS Surcharge to base delivery rates. While the EEPS Surcharge will be eliminated, Nucor's exemption from EEPS Surcharge, or

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[5] Case 11-E-0176, Implementation of the ReCharge NY Power Program, Order Directing Certain Utilities to Submit Tariff Amendments (issued September 19, 2011) (ReCharge Order).

[6] Case 15-M-0252, In the Matter of Utility Energy Efficiency Programs, Order Authorizing Utility-Administered Energy Efficiency Portfolio Budgets and Targets for 2019-2020 (issued March 15, 2018) (EEPS Order).

the costs to be recovered from this surcharge, will continue for the entire term of the Agreement. The rate design preserving the Nucor's surcharge exemptions is being addressed in the pending rate proceeding, Case 19-E-0378. Furthermore, since Nucor does not contribute to the SBC, it is unable to participate in the energy efficiency programs funded by the SBC.

The additional benefits from the continuation of the Agreement includes Nucor's ongoing participation in the SCR Program, with its steel mill positioned among the largest interruptible electric loads available in western New York, also justifying continuation of the Agreement. Among those benefits are the enhancement of electric system reliability in the region where Nucor's steel facility is located as well as the financial benefit associated with NYSEG's share of the SCR credits. The portion of SCR payments allocated to NYSEG is included as an offset to supply charges for NYSEG's customers.

Finally, the provision within the sixth amendment that revise the notice to curtail from one to two hours is also reasonable as it conforms with the SCR program, as well as the requirements of NYSEG's Dynamic Load Management programs. Therefore, for the reasons stated above, the sixth amendment extending the Agreement to December 31, 2027, is approved.

The Commission orders:

1. The Joint Petition of New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc. requesting approval of the sixth amendment to the Electric Service Agreement between New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc. is approved.

2. This proceeding is closed.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary