BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

Case 20-E-____

JOINT PETITION OF NEW YORK STATE ELECTRIC & GAS CORPORATION AND NUCOR STEEL AUBURN, INC. REGARDING AMENDMENTS TO ELECTRIC SERVICE AGREEMENT

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Dated: March 10, 2020

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I. INTRODUCTION

1. In accordance with the New York State Public Service Commission's ("Commission") March 25, 2002 Order in Case 01-E-0680,[1] Nucor Steel Auburn, Inc. ("Nucor") and New York State Electric & Gas Corporation ("NYSEG") entered into an Electric Service Agreement ("ESA" or the "Flex Rate Contract") that became effective April 1, 2002. The ESA is a contract for the sale of capacity, energy, and delivery services from NYSEG to Nucor pursuant to NYSEG's tariff Schedule SC-14. A copy of the ESA has previously been filed as trade secret material.

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[1] Case 01-E-0680, *Nucor Steel Auburn, Inc. – Complaint Seeking Resolution of a Dispute With New York State Electric & Gas Corporation Regarding Application of Tariff Rates*, Order Directing Entry Into A Flex Rate Contract (Mar. 25, 2002); Case 01-E-0680, *Nucor Steel Auburn, Inc. – Complaint Seeking Resolution of a Dispute With New York State Electric & Gas Corporation Regarding Application of Tariff Rates*, Confirming Order (Apr. 17, 2002).

2. By Orders dated June 25, 2009,[2] March 16, 2012,[3] and November 19, 2013,[4] the Commission approved, with modifications, various revisions to the ESA that were jointly proposed by Nucor and NYSEG, granted Nucor's request to be exempt from the System Benefits ("SBC"), the Renewable Portfolio Standard ("RPS"), and the Energy Efficiency Portfolio Standard ("EEPS") surcharges (the "SBC exemption"), and extended the effective term of the Agreement. Under the current ESA, which remains in effect until December 31, 2020, NYSEG provides delivery service to Nucor at its applicable tariffed rates, Nucor remains exempt from the SBC, RPS and EEPS surcharges, and the terms governing interruptibility and Nucor's continued participation in the NYISO Special Case Resource ("SCR") program are modified slightly from prior ESA versions.

3. In the November 2013 Order, the Commission extended the Nucor-NYSEG ESA and the Nucor SBC exemption to match Nucor's ReCharge New York ("RNY") power allocation from the New York Power Authority ("NYPA"). Nucor's initial RNY power allocation commenced on July 1, 2013, and runs through June 30, 2020. As discussed more fully below, New York State has awarded Nucor a second seven-year RNY power allocation that will be in effect through June 30, 2027.

4. In this joint petition, Nucor and NYSEG request approval of a corresponding extension of the Nucor-NYSEG ESA, including both the Nucor SBC exemption and associated

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[2] Case 08-E-0713 – *Joint Petition of New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc. Regarding First Amendment to Electric Service Agreement*, Order Approving Contract Amendment (June 25, 2009) ("June 2009 Order").

[3] Case 11-E-0641 – *New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc. – Joint Petition Regarding Amendments to an Electric Service Agreement*, Order Approving Contract Amendment Subject to Modifications (Mar. 16, 2012) ("March 2012 Order").

[4] Case 13-E-0353 – *New York State Electric & Gas Corporation and Nucor Steel Auburn, Inc. – Joint Petition Regarding Amendments to an Electric Service Agreement*, Order Approving Contract Amendment (Nov. 19, 2013) ("November 2013 Order").

NYSEG lost revenue recovery through December 31, 2027. The amendment also proposes a slight revision to the interruptibility notice provision to conform to prevailing requirements of the NYISO SCR and NYSEG's Dynamic Load Management ("DLM") programs. All other terms of the ESA, as modified by the Fifth Amendment and approved by the Commission, will remain in full force and effect. Nucor expressly requests that the Commission approve a continued extension of the SBC surcharge exemption that the Commission originally authorized in Case 08-E-0713 and reauthorized in Cases 11-E-0641 and 13-E-0353, as well as Case 14-M-0094 through the remaining term of the extended ESA. Nucor considers the surcharge exemption to be a critical element to the ESA extension and is a material issue affecting the economic competitiveness of Nucor's Auburn facility. As it has stated in previous petitions concerning the ESA, NYSEG takes no position on the extension of the surcharge waiver under the same terms and conditions adopted in Case 08-E-0713 (*i.e.*, "the waiver can be effectuated only if the revenues lost as a result can be recovered from other customers"[5]). The Parties respectfully request that the Commission approve the Sixth Amendment to the ESA.

II. OVERVIEW AND DISCUSSION

5. The Nucor steelmaking facility located in Auburn, New York, melts recycled scrap steel in an electric arc furnace and re-casts the molten metal into a variety of commercial products sold throughout the State and surrounding region. By electrifying steelmaking in this fashion, Nucor recycles, melts and re-casts more than one billion pounds of steel scrap annually, making it the largest steel recycling operation in New York. At the same time, with a power demand

[5] June 2009 Order at 9.

exceeding 60 MW, it is one of the largest and most electricity-intensive manufacturing consumers in NYSEG's service territory.[6]

6. Nucor's location in Central New York allows it to rely upon Upstate electric generation sources that are largely carbon-free.[7] Nucor's continuous manufacturing operation is also an important electric load, particularly during low load periods on the system when increasing amounts of intermittent generation are often injected into New York's Upstate grid. Nucor's ability to curtail load as a Special Case Resource in response to electric system emergencies provides important reliability benefits as well.

7. Nucor's operation is an economic anchor for Central New York. The Nucor Steel Auburn facility supports nearly three hundred (300) quality jobs with average salaries that exceed $75,000, and an annual payroll in excess of $24 million. In addition, Nucor's non-payroll expenditures in New York exceed $100 million, and Nucor's operation supports an extensive chain of upstream and downstream vendors and fabricators throughout New York. In short, Nucor provides the type of stable, high-quality manufacturing jobs that New York desperately seeks to attract and retain.

8. Like all steelmaking operations, Nucor faces intense competition from domestic and global producers. There is no comparable steelmaking operation in New York, but Nucor faces competition from as close as New Jersey and as distant as Turkey. Because electricity

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[6] While extremely energy intensive, making steel using recycled steel scrap in an electric arc furnace requires less than one-third the total energy and emissions per ton compared to traditional methods that combine iron ore and coke in a blast furnace.

[7] Nearly 90% of the energy generated upstate (nuclear, hydro, and wind) has no associated greenhouse gas emissions. *See* NYISO, *Power Trends 2019: Reliability and a Greener Grid*, at 1 (2019), *available at* https://www.nyiso.com/documents/20142/2223020/2019-Power-Trends-Report.pdf/0e8d65ee-820c-a718-452c-6c59b2d4818b?t=1556800999122.

comprises a significant portion of total production costs, it is imperative that Nucor effectively manage its power costs to remain economically viable.

9. In Case 08-E-0713, Nucor and NYSEG proposed various revisions to the original 2002 ESA ordered by the Commission in Case 01-E-0680 (the "Second Amendment" to the ESA). Revisions in the Second Amendment resolved certain questions arising from the partial expiration of the ESA in April 2009, established an updated, market-based method for establishing energy commodity prices for the "incremental usage" segment of NYSEG's service to Nucor, clarified the application of the "interruptibility" provisions of the ESA and Nucor's participation in the NYISO SCR program through NYSEG, and addressed Nucor's request for waiver of the SBC surcharges. For the reasons stated in its June 25, 2009 Order in Case 08-E-0713, the Commission approved the Second Amendment to the ESA and authorized the SBC surcharge waiver as reasonable, appropriate, and consistent with other State and Commission policy.[8]

10. In Case 11-E-0641, Nucor and NYSEG jointly proposed to extend the term of the ESA until December 31, 2013, to take into account NYPA's initial implementation of the ReCharge NY program enacted in that year and Nucor's application for a RNY power allocation.[9] The Commission approved that extension of the ESA, including Nucor's SBC exemption, and again acknowledged the economic importance of Nucor's operations to Central New York and the incongruity of exposing Nucor to surcharges that would undermine the fundamental purpose of the ESA.[10] The Commission conditioned its approval of the ESA extension on the elimination of the market-priced formula for incremental energy usage. Nucor and NYSEG accepted this modification, which was reflected in the conforming Fourth Amendment to the ESA.

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[8] *See* June 2009 Order at 14.

[9] *See* Chapter 60, part CC, Laws of 2011 (establishing § 188-A of the Economic Development Law).

[10] *See* March 2012 Order at 8.

11. Following the implementation of the Fourth Amendment to the ESA, NYPA awarded Nucor a 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 ReCharge NY loads. Nucor's initial RNY allocation became effective on July 1, 2013 and runs through June 30, 2020. The statutory requirements for ReCharge NY power allocations emphasize energy-intensive, regionally significant enterprises that face significant competitive challenges from entities not based in New York. As described above, Nucor's steelmaking operation in Auburn, New York, epitomizes the type of manufacturing facility that those criteria seek to support. Neither Nucor's importance to the economy in the region nor Nucor's dependence on competitively-priced power have diminished since the Commission first approved the Nucor SBC exemption in Case 08-E-0713.

12. In Case 11-E-0176, the Commission directed the State's regulated transmission-owning utilities to adopt tariff provisions exempting ReCharge NY recipients from the SBC/RPS/EEPS surcharges for the portion of a customer's load that receives a ReCharge NY power allocation.[11] While Nucor's eligibility for a ReCharge NY power allocation was never in question, it was also true that statewide applications for RNY allocations far exceeded the 910 MW of power available under the program. The 10,000 kW allocation to Nucor was the highest allocation by NYPA to any single customer at the time, but it nonetheless covers only a small portion of Nucor's total electric load.

13. In Case 13-E-0353, Nucor and NYSEG proposed to combine the delivery discount that attaches to Nucor's ReCharge NY power allocation with a matching surcharge exemption for the balance of Nucor's load. In its November 19, 2013 Order in Case 13-E-0353 which granted

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[11] Case 11-E-0176, *In the Matter of the Commission's Implementation of Certain provision of the Recharge New York Power Program*, Order Directing Certain Utilities to Submit Tariff Amendments (Sept. 19, 2011).

that joint petition, the Commission repeated and reinforced its previous findings regarding Nucor's economic importance to Central New York and its recognition of the global competitive pressures that the Auburn steelmaking facility faces.[12] The Commission approved the Fifth Amendment to the ESA and authorized the continuing exemption from the prevailing surcharges as consistent with the prior ESA amendments.[13] The Commission further noted that withholding the SBC exemption as it relates to Nucor's load would be inconsistent with the ReCharge NY Program.[14] Finally, the Commission noted that approving the ESA amendment would facilitate Nucor's ongoing participation in the NYISO Special Case Resource (SCR) program as one of the largest interruptible electric loads in the region.

14. By Order dated January 21, 2016 (the "CEF Order"), the Commission consolidated several existing and incremental clean energy programs into the Clean Energy Fund ("CEF") and directed that CEF related costs be recovered through the SBC surcharge.[15] In the CEF Order, the Commission directed that the CEF surcharge be implemented in a manner that preserved surcharge exemptions which the Commission had approved, including the exemption applicable to Nucor.[16]

15. In Case 15-M-0252, the Commission instructed utilities to transition cost recovery of utility-administered energy efficiency programs costs from the EEPS surcharge to base delivery rates while developing rate design and cost allocation methods to preserve surcharge exemptions.[17]

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[12] *See* November 2013 Order at 5-6.

[13] *Id.*

[14] *Id.* at 6.

[15] Case 14-M-0094 *et al.*, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund,* Order Authorizing the Clean Energy Fund Framework (Jan. 21, 2016) ("CEF Order").

[16] *See id.* at 94; *see also* Case 14-M-0094, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*, Order Granting Clarification, (Apr. 26, 2016).

[17] 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, at 22 (Mar. 15, 2018).

NYSEG has proposed to implement the required transition in its pending electric delivery rate case (Case 19-E-0378).

16. Throughout the term of the Fifth Amendment to the ESA and its initial RNY power agreement, Nucor upheld its job retention commitments to NYPA and invested more than $50 million to upgrade and modernize its operations. In March 2019, NYPA's Board of Trustees responded by awarding Nucor a second seven-year RNY power allocation of 10,000 kW identical in all relevant aspects to its initial RNY allocation. The second RNY agreement between Nucor and NYPA takes effect July 1, 2020 (*i.e.*, immediately upon the expiration of the initial RNY term). Nucor continues to face a highly challenging environment in the marketplace for its steel products. Industrial customers in NYSEG's service territory continue to decline, and Nucor's economic significance to Central New York has only been increasing. Accordingly, Nucor and NYSEG jointly propose to continue to combine the delivery discount that attaches to Nucor's ReCharge NY power allocation with an equivalent discount (surcharge exemption) for the balance of Nucor's load.

III. DESCRIPTION OF PROPOSED CHANGES TO THE AGREEMENT

17. Beginning with the implementation of the Fourth Amendment to the ESA filed in March 2012, NYSEG ceased serving Nucor's energy commodity requirements. This proposed Sixth Amendment mirrors the previously approved Fifth Amendment and constitutes a straightforward extension of the prevailing terms which provide benefits to Nucor and NYSEG while supporting the Central New York economy.

18. **Interruptibility.** The interruptibility provisions of the ESA allow curtailment of most of Nucor's load in the event of a system emergency called by NYSEG or NYISO and

generally follows the requirements of the NYISO SCR program.[18] This amendment revises the notice to curtail provision of the ESA to two (2) hours to conform to the SCR program, as well as the requirements of NYSEG's DLM program.

19. **Term of the Agreement.** Nucor and NYSEG propose to extend the term of the ESA to follow Nucor's extended RNY power allocation from NYPA (*i.e.*, through December 2027).[19] Nucor's non-RNY energy purchases remain subject to all of the vagaries of New York's wholesale power markets, but the proposed extended ESA term will provide a measure of long-term price stability for Nucor and will closely align the surcharge exemption associated with the ESA with the corresponding exemption that is linked to Nucor's ReCharge NY power allocation that becomes effective July 2020. Such pricing stability goes to the very core of the seven-year term afforded ReCharge NY recipients under the statute and is an important consideration in justifying continued capital investment that is essential to the operation of an electric arc furnace steelmaking operation.

20. In all other respects, the terms and conditions of the ESA, as amended by the Second, Third, Fourth, and Fifth Amendments, would remain in full force and effect.

IV. CONCLUSION

The ESA ordered by the Commission in 2002 and the subsequent amendments cooperatively negotiated between Nucor and NYSEG and approved by the Commission in 2009, 2012, and 2013 have, in Nucor's view, been important to the economic competitiveness of the facility and have significantly influenced Nucor's decisions to invest in modernizing major

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[18] Section 4.8 of the ESA.

[19] As noted, Nucor's RNY allocation agreement will expire at the end of June 2027, but the ESA would run through the end of 2027 to maximize the benefits to NYSEG and other ratepayers provided by the interruptibility requirements of the ESA.

components of the plant since acquiring it in 2001. Nucor and NYSEG agree that extending the current provisions of the ESA through December 31, 2027, serves both Parties' needs and interests, facilitates the State's economic development goals, and preserves the Commission's initial intent in approving the ESA.

For the reasons first stated in Case 08-E-0713, NYSEG takes no position on the extension of the surcharge waiver under the same terms and conditions (*i.e.*, NYSEG is authorized to recover the revenues lost as a result of the waiver from other customers). Nucor and NYSEG cannot effectuate this extension unilaterally without Commission approval because the Commission mandated the ESA in Case 01-E-0680. The Joint Petitioners accordingly request that the Commission approve the Sixth Amendment to the ESA extending its term and grant such other and further relief as may be deemed just and proper. In addition, Nucor respectfully requests that the Commission extend the surcharge waiver approved in Cases 08-E-0713, 11-E-0641, and 13-E-0353 through the amended ESA term.

Respectfully submitted,

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Dated: March 10, 2020

SIXTH AMENDMENT TO ELECTRIC SERVICE AGREEMENT

This is the Sixth Amendment to the April 1, 2002, Electric Service Agreement ("ESA"), entered into this 28th day of February 2020, between NEW YORK STATE ELECTRIC & GAS CORPORATION, a New York corporation having an office for the transaction of business in Binghamton, New York ("NYSEG"), and NUCOR STEEL AUBURN, INC., a Delaware corporation having an office for the transaction of business in Auburn, New York ("Nucor"). NYSEG and Nucor shall be referred to collectively as the "Parties."

WHEREAS, the ESA is a contract for the sale of capacity, energy and delivery services from NYSEG to Nucor authorized by and consistent with NYSEG tariff Schedule SC-14. By various orders issued in Case No. 01-E-0680, the New York State Public Service Commission ("Commission") directed NYSEG and Nucor to enter into the ESA based on terms and conditions specified in those orders, and the Commission further specified the full cost recovery for NYSEG lost revenues associated with service provided pursuant to the ESA;

WHEREAS, both Parties have acted in reliance on the Commission's orders and the ESA. As anticipated by the Commission in its orders, following execution of the ESA Nucor has increased steel recycling and production at the facility and its electric load by more than 20%, and has invested more than $50 million to modernize the facility, increase production and improve the efficiency of its operations;

WHEREAS, in Case No. 13-E-0353, the Commission approved the Fifth Amendment to the ESA, which extended the agreement to December 31, 2020. This

extension aligned the provisions of the ESA with Nucor's seven-year ReCharge New York power allocation (Recharge NY or "RNY") from the New York Power Authority.;

WHEREAS, on March 26, 2019, NYPA's Board of Trustees awarded Nucor a second RNY power allocation of 10,000 kWs. Nucor subsequently accepted a RNY "hydro-only" allocation of 5,000 kWs, and Nucor and NYPA entered into a seven year RNY agreement that becomes effective on July 1, 2020;

WHEREAS, In the Fifth Amendment, the Parties adopted certain modifications to the ESA to extend the term of the ESA and to reflect agreement between the Parties with respect to interruptibility and Nucor's continued participation in the Special Case Resource ("SCR") program through NYSEG;

WHEREAS, in this Sixth Amendment, the Parties agree to revise the interruptibility notification provisions of the ESA and to extend the prevailing terms of the ESA described in the Fifth Amendment to track the term of Nucor's RNY power allocation (i.e., through December 31, 2027). All other terms of the ESA shall remain in full force and effect; and

WHEREAS, the Parties agree that Commission approval is required for all revisions to the ESA, and each agrees to use its best efforts to obtain expeditious Commission approval to this amendment.

IN WITNESS WHEREOF, NYSEG and Nucor agree as follows:

Term. Article 3 of the ESA is amended to read as follows:

> This Agreement will be effective as of the Effective Date, which date shall be April 1, 2002. This Agreement will remain in full force and effect, subject to termination as provided herein, until April 1, 2012 (the "Expiration Date"), except Article 4, section 4.8 relating to Interruptibility and section 5.6 shall remain in effect until December 31, 2027 except as modified herein. Applicable provisions of this Agreement will continue in

effect after the expiration, or termination, of this Agreement to the extent necessary to (a) provide for final billings and adjustments related to the period prior to such expiration or termination, and (b) give effect to the Parties' rights and remedies under this Agreement, or at law or in equity.

Interruptibility. Section 4.8(d) is revised to read as follows:

(d) Notification NYSEG shall provide to any one of Customer's identified representatives, as previously designated in writing by Customer, (each, a "Customer Designee") with a minimum of two (2) hours telephonic notice prior to the initiation of an SEI, which notice shall include as much information as is available to a NYSEG Designee (as defined below) regarding the duration of the SEP. Upon the initiation of an SEI, Customer shall reduce its consumption at its Facility to the SEP Consumption Level. The SEP shall expire upon NYSEG's telephonic notice of such expiration to the Customer Designee, or, if such information was provided by NYSEG, at the time specified by NYSEG in the telephonic notice of the initiation of the SEP. For purposes of this Section 4.8(e), telephonic notice shall not include the leaving of an electronic message (e.g., voice mail) with the intended recipient of the notice.

Except as modified in this Sixth Amendment, all other terms of the ESA, as modified by the Second, Third, Fourth, and Fifth Amendments, shall remain in full force and effect.

This Sixth Amendment to the ESA shall become effective January 1, 2021.

NEW YORK STATE ELECTRIC & GAS CORPORATION

By: _____

Title: VP, Controller & Treasurer

NUCOR STEEL AUBURN, INC.

By: _____

Title: Controller