BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Nucor Steel Auburn, Inc. to Terminate its Mandated Electric Service Agreement with New York State Electric & Gas Corporation and Provide Other Appropriate Relief	:	Case _____

PETITION OF NUCOR STEEL AUBURN, INC. TO TERMINATE ITS MANDATED ELECTRIC SERVICE AGREEMENT WITH NEW YORK STATE ELECTRIC & GAS CORPORATION AND PROVIDE OTHER APPROPRIATE RELIEF

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Dated: April 24, 2009

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I. OVERVIEW

1. In accordance with the New York State Public Service Commission's March 25, 2002 Order in Case 01-E-0680,[1] Nucor Steel Auburn, Inc. ("Nucor") entered into an Electric Service Agreement ("ESA" or "the "Flex Rate Contract") with New York State Electric & Gas Corporation ("NYSEG") that became effective April 1, 2002. Except as described below, the Flex Rate Contract expired on April 1, 2009. The ESA is a contract for the sale of capacity and energy from NYSEG to Nucor pursuant to NYSEG's tariff Schedule SC-14. A copy of the ESA is attached as Exhibit A.

2. The terms of the Flex Rate Contract were the result of a Commission determination following the submission of competing Nucor and NYSEG proposals that

[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, Confirming Order (Apr. 17, 2002).

disagreed on basic price, contract duration, and related issues. Among the compromises struck in the March 2002 Order, the Commission set a term for "Incremental Usage" (a tier of energy consumption defined in the ESA) that differed from the term applicable to all other provisions of the ESA.

3. As service under the ESA progressed, NYSEG and Nucor both recognized that the extended term applicable only to Incremental Usage created issues that rendered continued implementation of the contract problematic. To remedy this, on June 18, 2008, Nucor and NYSEG jointly submitted a First Amendment to Electric Service Agreement ("First Amendment") for Commission approval (Case No. 08-E-0713). The First Amendment proposed to extend all contract provisions to match the longer term that attached to Incremental Usage. Further, by joint letter dated February 24, 2009, NYSEG and Nucor revised the proposed First Amendment to update the Base price of electricity contained in the ESA to align that price with current market conditions. The Commission neither approved nor disapproved the proposed First Amendment prior to April 1, 2009, and, as a result, all provisions of the ESA other than Article 5, section 5.3(a)(2) relating to rates applicable to "Incremental Usage" expired on that date.

4. The purpose of any flex rate contract is to assist at-risk manufacturing loads in remaining cost-competitive. As discussed below, continued implementation of the "Incremental Usage" section of the ESA while the contract has otherwise expired, however, has become an impediment to Nucor's effort to obtain cost effective power supply. Although NYSEG has also recognized the impracticality of continuing with the Incremental Usage component of the ESA alone, both parties are constrained from taking appropriate, necessary and commonsense measures because the Commission mandated the ESA in Case No. 01-E-0680. Corrective action by the Commission is, therefore, necessary, and Nucor requests the following:

(a) The Commission order the termination of Section 5.3 (a)(2) relating to Incremental Usage as defined in the ESA. In its stead, since the economic imperative for an economically competitive flex rate arrangement remains, Nucor requests that the Commission waive the SBC/RPS surcharge that otherwise would apply to delivery service from NYSEG. This waiver is consistent with treatment the Commission previously has approved for Empire Zone customers of National Grid.

(b) If the Commission does not terminate the Incremental Usage remnant of the ESA, it should issue an order declaring that, effective April 1, 2009, only Section 5.3(a)(2) of the ESA, and other provisions within Section 5.3 that are referenced in Section 5.3(a)(2) remain in effect, and that all other provisions of the ESA have expired. In particular, the Commission should clarify that section 4.8 of the ESA, relating to interruptibility requirements, expired on April 1, 2009.

(c) Because the expiration date for all of the ESA other than Section 5.3 (a)(2) has already occurred, and both the presence of the Incremental Usage remnant and uncertainty regarding the remaining impact of the ESA are impeding Nucor's efforts to acquire power supply, Nucor requests that the Commission take this action on an emergency and expedited basis.

5. Nucor's facility in Auburn is an energy intensive manufacturing process and economically competitive power supply is critical to its operation. The successful implementation of the ESA since 2002 has been a significant factor in Nucor decisions to invest in modernizing the Auburn facility and to expand its production capability. The expiration of the ESA except for the Incremental Usage remnant, however, now impedes Nucor's ability to obtain power supply for its expected load at a time when pressures to remain cost-effective are intense. World-wide steel production has been crippled by the severe global recession and Nucor Auburn has not been spared the recession's impacts. The recovery in the industry is, at best, expected to be slow, and some existing high cost facilities likely will not survive. Nucor Auburn faces an exceptionally challenging economic environment for several years to come. It is essential that the Commission provide necessary and appropriate relief in this matter as quickly as possible.

II. BACKGROUND

6. Nucor Steel Auburn, Inc. is a Delaware corporation formed on February 16, 2001, with its principal place of business at 25 Quarry Road, Auburn, NY 13021. Nucor Auburn is a certified Empire Zone business. Effective April 1, 2001, Nucor Auburn acquired the assets of Auburn Steel Company, Inc., for a purchase price of $115 million, and it has operated the steel recycling and production facility in Auburn since that time. This "mini-mill" utilizes an electric arc furnace ("EAF") to melt and recycle steel scrap to produce reinforcing bar and other merchant products. This is one of the largest recycling facilities in New York. The process for recycling and reusing steel using an electric arc furnace is significantly more efficient than steelmaking that employs traditional blast furnaces using coke and iron ore, but it is electric energy intensive.

7. Since acquiring the facility in 2001, Nucor has invested an additional $35 million to modernize critical components at the Auburn operation, including a complete re-build of the facility's 25 year old electric arc furnace. During that period, Nucor has increased the permanent jobs in Auburn and increased the facility's production to more than 500,000 tons annually, an increase of 40% from annual production under the previous owners. From an Upstate economic development perspective, Nucor's acquisition and operation of the Auburn mill has been an uncommon success in a region that continues to struggle to retain quality manufacturing jobs.

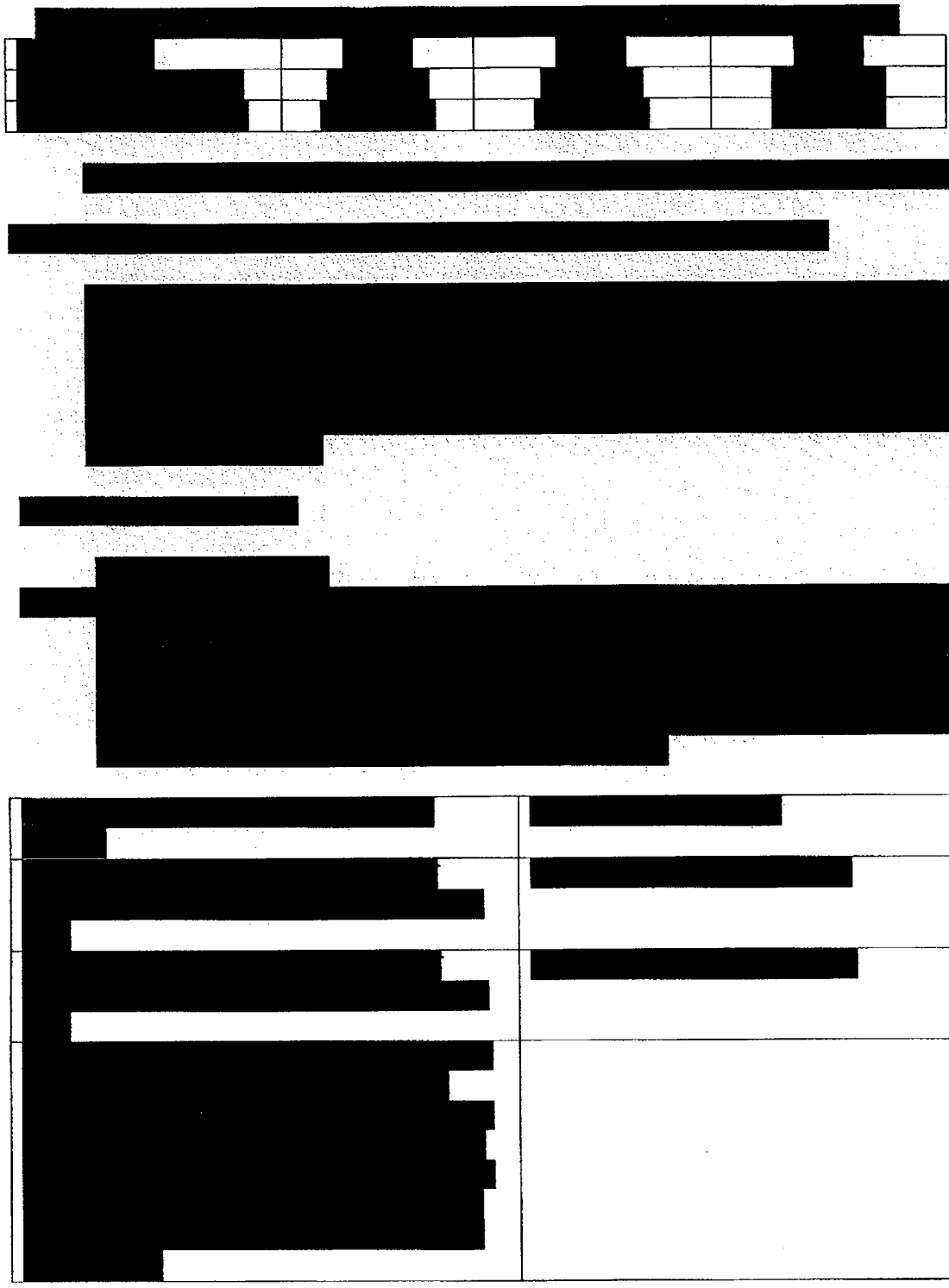
8. Nucor is a key economic engine for Upstate New York. Nucor's expenditures in New York exceed $100 million annually, excluding the facility's payroll of $22 million. With an electric load of approximately 60 MW, Nucor-Auburn is one of the largest electric consumers in the region. The cost of electricity comprises a significant portion of Nucor's total cost of operation.

9. By letter dated March 30, 2001, Nucor applied for electric service from NYSEG for all of its load at the Auburn facility under Service Classification No. 7 (Industrial/High Load Factor Rate Provision) and the then-prevailing Economic Development Zone Incentive ("EDZI") discount offered by NYSEG's tariffs to Empire Zone customers.[2] The EDZI discount applied for a period of ten years for qualifying load. NYSEG disputed the eligibility of some or all of the Nucor load for the EDZI discount and offered to enter into a flex rate contract with Nucor instead. Pursuant to the Commission's prevailing flex rate contract policy, such contracts could carry a maximum term of seven years.[3] By complaint dated April 20, 2001, Nucor requested that the Commission direct NYSEG to apply the EDZI discount to the Auburn facility's electric usage (Case No. 01-E-0680). By Order dated November 2, 2001, the Commission directed NYSEG and Nucor to attempt to negotiate a flex rate contract over a 60 day period. A negotiated agreement was not reached and, pursuant to that Order, NYSEG filed a proposed flex rate contract and Nucor filed alternative terms and conditions. By orders dated March 25, 2002, April 17, 2002, and May 23, 2002, the Commission set the terms of the ESA and directed NYSEG to enter into the contract.

[redacted] In pertinent part, the ESA established **[TRADE SECRET REDACTED START]** [redacted]

[2] At the time, the applicable NYSEG tariffs were P.S.C. No. 115-Electricity seventh revised Leaf Nos. 16-E and F, and second revised Leaf No. 39-E-1.

[3] Case 93-M-0229, Competitive Opportunities for Electric and Gas Service, Opinion No. 94-15 (issued July 11, 1994).



[redacted] [END TRADE SECRET REDACTED]

III. DISCUSSION

A. The Remnant "Incremental Usage" Aspect of the ESA No Longer Serves an Economic Development Function, But Is an Impediment to Nucor's Procurement of Power Supply That Should be Terminated

12. With the expiration of the ESA except for Incremental Usage, the vast majority of Nucor's electric load has become subject to mandatory hourly pricing in accordance with Commission policy[5] and NYSEG's tariffs. While the past year has shown a broad-based collapse in energy prices, the high prices and price volatility evidenced in much of 2008 are hardly a distant memory. Given the highly competitive steel commodity market in which Nucor sells its products and the energy intensity of its steel-making operations, a return to rising and volatile energy prices could be devastating to the Auburn operation. Nucor must be able to manage that risk by exploring power supply opportunities with market participants. The Commission's policy

[4] The referenced section 5.3(e) is an error and actually does not appear in the contract.

[5] Case No. 03-E- 0641, Proceeding on Motion of the Commission Regarding Expedited Implementation of Mandatory Hourly Pricing for Commodity Service, Order Instituting Further Proceedings and Requiring the Filing of Draft Tariffs (issued September 23, 2005).

in recent years has promoted transitioning industrial flex rate contract customers to market based supply arrangements for precisely this purpose.[6]

13. Nucor's efforts to secure power supply arrangements from market participants have been hampered by the continued effectiveness of the Incremental Usage remnant of the ESA. As described above, the Incremental On-peak and Off-peak pricing provisions are triggered by cumulative monthly power usage and only apply once the specified monthly energy consumption thresholds are attained. It is impossible to predict with accuracy the point in any month in which either Incremental on-peak or off peak energy usage levels will be reached, if at all. Market based energy commodity products, on the other hand, are hourly products whether they apply around the clock, during peak periods, or off-peak. Because the two approaches would define Nucor's electric usage using different parameters (i.e., total kWhs per month and kWhs per hour), it is virtually impossible to structure a coherent power supply arrangement that can accommodate established market products and Incremental Usage from the ESA. Either Nucor must be substantially un-hedged (largely negating price volatility mitigation through an ESCO) or it likely would be billed by both NYSEG and an ESCO for the same usage.

14. Nucor has expended considerable effort in trying to reconcile the ESA's Incremental Usage provisions and ESCO market products, and it simply is not feasible. Nucor does not object to the prices that would be obtained under the pricing for Incremental Usage, but it cannot layer Incremental Energy from NYSEG on top of a market-based product. As stated in the Joint Petition filed in Case No. 08-E-0713, Nucor's, and NYSEG's, preferred solution had

[6] See Case 00-M-0504, Statement of Policy on further Steps Toward Competition in retail energy Markets. (recommending a five year phase out of flex rate arrangements)(issued August 25, 2004)(mimeo at pp. 39-40); also Case No. 03-E- 1761, Proceeding to Reexamine Policies and tariffs for Flexible Rate Contract Service to Economic Development Customers, Order Approving Guidelines for Flexible Rate Service Contracts (issued April 14, 2005).

been to extend the ESA to align the ESA term with the Incremental Usage. With the expiration of the ESA, Incremental Usage has become an impediment that does not serve its originally intended purpose and must be removed. Nucor requests that the Commission order the termination of the Incremental Usage remnant of the ESA. Flex rate contracts are a form of a rate subject to Commission jurisdiction. The Commission accordingly possesses the authority, upon petition or its own motion, to reform or terminate an arrangement it has approved which it determines is no longer in the public interest.[7]

B. After April 1, 2009, only Section 5.3(a)(2) and those other provisions in Section 5.3 of the ESA that expressly modify or condition the operation of Section. 5.3(a)(2) remain in effect.

15. In instances where the Commission has approved, or in this case mandated, an electric service contract, the Commission is empowered to resolve any contractual uncertainties regarding the rates and terms it has approved. See Indeck-Yerkes Energy Services, Inc. v. Public Service Commission, 164 A.D.2d 618 (3rd dept. 1991). Such clarification is required here in the event that the Commission does not order the termination of the Incremental Usage remnant of the ESA.

[redacted] **[TRADE SECRET REDACTED START]** [redacted]

[redacted]

[7] See New York State Electric and Gas Corp. v. NY PSC, 308 A.D.2d 108 (3rd Dept. 2003)

[redacted]

19. [redacted]

[8] Case No. 01-E-0680, Submittal of NYSEG on Disputed Issues, dated January 10, 2002, p. 16.

[9] Upon information and belief, NYSEG has continued to include Nucor's load in its filings with the NYISO relating to the Special Case Resource ("SCR") program, at least for the months of April and May 2009. On April 22, 2009,

[redacted]

[redacted] [END TRADE SECRET REDACTED]

C. The Commission Should Waive Application of NYSEG's SBC/RPS Surcharge

20. There is no comfortable way to describe the impact of the global recession on American manufacturing, and Upstate New York is particularly vulnerable.[10] Across the U.S., steel mill utilization, an industry description comparable to "load factor", is roughly 40% today compared to 90% a year ago.[11] In plain terms, at this juncture, a steel–making facility is fortunate if it is operating at half capacity. A quick recovery is not being forecast. To the contrary, it may

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NYSEG advised Nucor that the NYISO intended to call for an SCR performance test on April 23. Nucor explained to NYSEG that its interruptibility obligations to the NYISO through NYSEG had expired on April 1, 2009, but that Nucor would voluntarily cooperate with NYSEG if a performance test actually were called. The NYISO in fact called for SCR curtailment testing, and Nucor curtailed its manufacturing operation and reduced its load to less than 3MWs on April 23 in response to the NYISO call. In short, in the month of April, Nucor has incurred costs to satisfy the NYISO SCR requirements while NYSEG receives the SCR-related payments from the NYISO and charges Nucor firm service rates.

[10] See, e.g., "NY Manufacturing Slump Worsens in February," Yahoo! Finance, February 17, 2009 (reporting that the New York Federal Reserve's Empire State factory index fell to an all-time low.)

[11] U.S. Department of Commerce, International Trade Administration. Steel Industry Executive Summary: April 2009, p. 4.. Retrieved from http://hq-web03.ita.doc.gov/License/Surge.nsf/webfiles/ SteelMillDevelopments/$file/ Apr09%20exec%20summ.pdf.

take years for production levels to be fully restored. In an April 7, 2009 report "2009 Global Steel Cost Analysis" analysts from Morgan Stanley concluded:

> We forecast global steel operating rates below 75% through 2012. At these levels producers lack pricing power and steel has reverted to a cost-push industry. As a result, we expect steel prices to range between average cost and the 80th percentile producer's cost. *In this environment many high-cost mills will experience cash losses* and understanding the cost curve is now critical to steel investing." (Emphasis supplied)

21. Electric rates in New York State has long been among the most expensive states in the continental U.S., and the uncompetitively high rates are known to be a critical factor in Upstate's continuing manufacturing job losses. Apart from NYPA economic development programs, the Empire Zone program and the Commission's flex rate policies have been critical elements in retaining manufacturing loads. With the expiration of the ESA, Nucor is transitioning from a flex rate arrangement that allowed it to invest in the facility to modernize equipment, increase production and improve efficiency to market based products that are more costly today, even with the substantial decline in wholesale power costs in recent months. In the longer term, as the overall economy begins to improve, Nucor expects that both natural gas prices and New York power market prices will increase as well. Further significant increases in the cost of electricity will seriously impair the economic competitiveness of Nucor's Auburn facility.

22. The Commission has tools to support utility job retention efforts. In particular, we note that National Grid's economic development program does not charge Empire Zone customers the SBC/RPS surcharges.[12] As an energy intensive Empire Zone load, Nucor requests that the Commission adopt a similar approach here and replace the problematic Incremental Usage remnant with a waiver of the SBC/RPS surcharges from NYSEG's delivery rates to Nucor.

[12] See Case No. 01-M-0075, Economic Development Plan Annual Report of Niagara Mohawk Power Corporation, d/b/a National Grid, dated August 28, 2008, p. 3.

D. Circumstances Warrant Commission Action on an Expedited Basis

23. At this date, the ESA has expired except as discussed above, and Nucor has an immediate need to conclude arrangements for market based energy supply. We also have an immediate need to gain clarity from the Commission that the interruptibility provision of the ESA expired on April 1, 2009 so that neither Nucor nor NYSEG take inappropriate actions with respect to the SCR program. Individually, any of these circumstances would warrant expedited Commission action. Collectively, it is essential that the Commission take corrective action as quickly as possible, and Nucor requests that such action be taken on an emergency basis.

CONCLUSION

For the foregoing reasons, Nucor Steel Auburn, Inc. respectfully requests that the Commission grant the relief requested herein and such other and further relief as may be deemed just and proper.

Dated: April 24, 2009.

Respectfully submitted,

By: _____

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For Nucor Steel Auburn, Inc.

APPENDIX A

(REDACTED)

2009 APR 24 PM 3:58

BRICKFIELD BURCHETTE RITTS & STONE, PC

WASHINGTON, D.C.
AUSTIN, TEXAS

April 24, 2009

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

Re: Petition of Nucor Steel Auburn, Inc. to Terminate its Mandated Electric Service Agreement with New York State Electric & Gas Corporation and Provide Other Appropriate Relief

Dear Secretary Brilling:

Enclosed please find for filing an original and five (5) copies of the Petition of Nucor Steel Auburn, Inc. to Terminate its Mandated Electric Service Agreement with New York State Electric & Gas Corporation and Provide Other Appropriate Relief. The Petition has been redacted to remove confidential trade secret information. In accordance with the New York State Public Service Commission's ("Commission") regulations, an unredacted copy of the Petition (including exhibits) has been filed with the Commission's Records Access Officer.

Should you have any questions regarding this filing, please contact me.

Respectfully submitted,

James W. Brew

cc: Brian T. FitzGerald, Esq.