BRICKFIELD BURCHETTE
RITTS & STONE, PC

March 4, 2005

Via Hand Delivery and E-Mail

Jaclyn A. Brilling, Secretary
New York State Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Re: Case 05-M-0090 – In the Matter of the System Benefits Charge III

Dear Secretary Brilling:

Enclosed for filing, please find an original and fifteen (15) copies of Nucor Steel Auburn, Inc.'s comments the above captioned proceeding. Please do not hesitate to contact us if there are any questions or concerns regarding this filing. Thank you for your assistance in this matter.

Very truly yours,

Brickfield, Burchette, Ritts & Stone, P.C.

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James W. Brew
Attorneys for Nucor Steel Auburn, Inc.

Enclosure

CC: Active Parties List (via e-mail)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-M-0090 – In the Matter of the System Benefits Charge III

COMMENTS OF NUCOR STEEL AUBURN, INC.

I. Introduction

The Commission established the System Benefits Charge (SBC) in Opinion No. 96-12[1] to provide a funding source during the transition to competitive electricity markets for public policy initiatives not expected to be adequately addressed by competitive markets. The Commission's September 2004 *Statement of Policy on Further Steps Toward Competition in Retail Energy Markets* signals the agency's intention to complete the transition to competitive markets for electric commodity supply. This requires, as the Commission plainly recognized in its January 28, 2005 Notice Soliciting Comments[2] in this docket, that the direction, goals, and funding of the SBC should be re-assessed.

As discussed further below, the Commission needs to ensure that the SBC, if further extended, advances the overall goals of New York's economic development and energy policies. Also, the overlap between SBC-funded renewable efforts and the new RPS program must be addressed. Pursuant to the Notice Soliciting Comments, Nucor Steel Auburn, Inc. ("Nucor") submits the following comments on the SBC.

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1 Case 94-E-0952 et al., *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996).

2 Case 05-M-0090, *In the Matter of the System Benefits Charge III*, Notice Soliciting Comments (issued January 28, 2005).

About Nucor Steel Auburn

Nucor operates an electric arc furnace based steel recycling facility in Auburn, New York that is the largest single load served by New York State Electric & Gas Corporation ("NYSEG") and is the largest steel recycler in the State. As an energy intensive business operating in highly competitive regional, national and global markets, Nucor has a strong interest in economic and reliable electricity supply in New York.

II. Comments in Response to Notice

A. Question 3 – Have conditions changed since the establishment of the SBC that would necessitate a change in the overall goals and objectives of the SBC? If so, what changes are recommended?

As a general matter, electricity rates in New York are not cost competitive with rates charged to manufacturing loads in Midwestern, Southern or most nearby states. For years, the state has been heavily dependent upon NYPA hydroelectric power allocations, Empire Zone discounts, and individually negotiated (or "flex") rate contracts for economic development. Today, notwithstanding the Commission's efforts to establish robust and genuinely competitive power markets, New York's overall retail electric rates are the second highest in the nation, and are 57% above the national average.[3] New York's industrial and commercial rates are also well above the national average.[4] This is undeniably a significant factor in Upstate New York's chronic inability to create and retain quality manufacturing jobs. From 1990-2003, Upstate experienced a mere 2.3% growth in jobs, compared to 10.4% growth in Ohio, 20.9% growth in Virginia, and 18.7%

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[3] The Public Policy Institute of New York State, Inc., Average Retail Price of Electricity, available at http://www.ppinys.org/reports/jtf2004/electricprice.htm.

[4] *Id*. New York's industrial rates are 19% higher than the national average, and commercial rates are 43% higher than the national average.

growth nationally.[5] Over that same time period, Upstate manufacturing jobs declined by 31.8%, compared to a 20.7% drop in Ohio and a 17.9% drop nationwide.[6] This has contributed to anemic overall population growth in Upstate New York, and to a significant population decline in the 20-34 age group.[7]

The driving force behind the Commission's efforts in Opinion 96-12 was a desire to improve the state's economic competitiveness, support economic development and lower energy costs to all consumers. Through the ensuing years, dramatic structural and energy market changes have been initiated by the Commission, NYISO, and market participants; but virtually none of the promised consumer benefits have been realized. Electric rates are higher and fewer economic development options are available.[8] In short, energy market structures have changed dramatically in New York since 1996, but this has not produced an improved outlook for consumers and manufacturers. The bottom line remains that energy costs have become an increased impediment to economic development in New York. The Commission must take this overall circumstance into account when assessing continuation of SBC programs and charges.

Next, on September 24, 2004, the Commission issued an order adopting a renewable portfolio standard ("RPS") for New York, with the goal of New York

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5 The Public Policy Institute of New York State, Inc., *Could New York Let Upstate be Upstate?* At p. 2 (May 2004).

6 *Id*. at p. 4.

7 *Id*. at pp. 6-8.

8 In 2003, for example, the Commission approved a revised Economic Development Zone Incentive ("EDZI") tariff for NYSEG that reduced EDZI rate discounts by approximately 75% for new customers. *See* Case 01-E-0359 and Case 02-E-0576, *New York State Electric & Gas Corporation – Petition for Approval of its Electric Price Protection Plan and Proceeding on Motion of the Commission as to the Tariff Revisions to the Economic Development Zone Incentive, the Economic Development Incentive, and Small Business Growth Incentive*, Order Modifying Economic Development Plan and Tariffs and Denying Rehearing (issued May 9, 2003).

obtaining 25% of its energy from renewable sources by 2013.[9] The RPS, which will fund long term payments for renewable energy, will be funded through surcharges on the delivery portion of consumers' electric bills. NYSERDA has already awarded the first contracts for renewable attributes under the RPS.

The RPS is a significant change in the regulatory landscape since the institution of the SBC. A major portion of the SBC is currently devoted to "research and development," which includes renewable resources. As is discussed below, the Commission should prevent overlap and duplication of functions between the programs.

B. Question 5 – How might the SBC programs be adjusted given the Commission's order, issued September 24, 2004, regarding a Renewable Portfolio Standard (Case No. 03-E-0188) ("RPS Order")?

1. The Commission should eliminate or reprogram SBC funds dedicated to the development of renewable technologies.

In its RPS Order, the Commission recognized that that the RPS and portions of the SBC could serve duplicative functions:

> [T]he creation of an RPS necessitates that DPS Staff work with NYSERDA to examine the state of the SBC program and propose strategies to reprogram funding as necessary to ensure the SBC and RPS programs are not duplicating efforts. This may require that SBC resources currently targeted to support renewable initiatives be reprogrammed to support efficiency efforts.

RPS Order at 12-13. Currently, renewable initiatives account for roughly a quarter of the total budget of the Energy Smart Program administered by NYSERDA.[10] The RPS establishes a market for renewable attributes, and New York's ratepayers will bear the

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9 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).

10 *See* New York Energy Smart Program Evaluation and Status Report, Final Report ("SBC Report"), Volume 1 at ES-42-43 (May 2004).

costs of the RPS premiums paid to renewable generators. The RPS also establishes an "SBC-like tier" to fund distributed generation such as small wind and solar, which also receives funding through the SBC.

There should be a single coherent state program regarding renewable technology development that is administered by NYSERDA and funded through the RPS. Consequently, SBC funds currently dedicated to development of renewable resources should be removed from the SBC budget to offset some of the costs of the RPS or reprogrammed to support energy efficiency initiatives.

2. The Commission Should Exempt Flex Rate Contract Customers From SBC Surcharges.

In the RPS Order, the Commission acknowledged the basic conflict between adding yet another surcharge to customers' bills and the State's struggle to attract and retain at-risk manufacturing loads that require flex rate contracts. The Commission addressed this concern in part by exempting from the RPS surcharge those flex rate customers that are exempt from the SBC.[11] There are many flex rate loads that did not fall in that category but to whom that Commission's rationale would equally apply, but the Commission left for this docket to consider whether an SBC/RPS exemption should apply to all flex rate customers.[12]

As the Commission has observed, "flex rate contracts were intended to retain, as customers of a utility, those businesses considering competitive alternatives to utility service, such as installation of on-site generation, relocation out-of-state, or ceasing

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[11] RPS Order at 55.

[12] Case 03-E-0188, *Order Regarding Petition for Clarification and Reconsideration*, issued December 15, 2004, mimeo at 12-13.

operations."[13] These considerations are as pressing as ever. At this juncture, the Commission should re-assess the "multiple objectives" to be balanced in re-directing SBC programs and costs. In particular, given the dramatic increases in electricity commodity costs,[14] the Commission is losing the battle to encourage existing or prospective manufacturers to invest in Upstate New York.

Flex rate customers have established themselves as at-risk loads likely to close or relocate absent a flex rate contract. These are the remaining manufactures and employers that the State cannot afford to lose. The economic development imperatives associated with flex rate contract customers currently exempt from the SBC are indistinguishable from the jobs, economic benefits, and risks associated with customers whose flex rate contracts do not now include an SBC exemption. The Commission should exempt all flex rate loads from SBC/RPS surcharges.

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13 Case 03-E-1761 – *Proceeding on Motion of the Commission to Reexamine Policies and Tariffs for Flexible Rate Contract Service to Economic Development Customers*, Order Instituting Proceeding at 1.

14 For example, the supply component of NYSEG's Bundled Rate Option (BRO) for industrial high load factor customers who signed onto the BRO on or before March 31, 2003 was recently increased from 5.57 cents/kwh to 7.63 cents/kwh on-peak (a 37% increase), and from 3.29 cents/kwh to 5.2 cents/kwh off-peak (a 58% increase). *See* NYSEG website at: https://ebiz1.nyseg.com/prices/ele.asp?mode=today&rateopt=BRO&rateclass=&rateclassn=19.

III. Conclusion

Nucor urges the Commission to revise its SBC policy to incorporate the recommendations described in the above comments.

Respectfully submitted,

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Dated: March 4, 2005