STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

BRIEF ON EXCEPTIONS OF NUCOR STEEL AUBURN, INC.

Overview

The Recommended Decision ("RD") issued on June 3, 2004, culminates a fifteen month effort to assess the practical ramifications of a Commission policy to spur development of renewable resources to serve New York's growing electric load. As described in the Introduction and Background section to the RD, mounting state concerns regarding the environmental costs of fossil-fired generation (particularly air emissions) and growing dependence on natural-gas fired generators are the prime motivators for more aggressive pursuit of "clean" energy resources.

This interest in renewable, low-emitting or non-emitting resources is inextricably linked to New York's policies to promote economic development. As Chairman Flynn remarked in his address to the Center for Business Intelligence forum on New York Power Supply in New York City on June 11, 2004:

> From Clean-Fueled vehicle programs designed to encourage development of cleaner transportation technologies and alternative fuels, to Executive Order lll's call for more efficient and cleaner use among state-owned facilities, to tax credits that encourage construction of "green" buildings, Governor Pataki has developed a comprehensive energy agenda that balances the need for more energy resources with the need to protect our environment and encourage economic development. The Governor has consistently

> emphasized the importance of energy's role in linking environmental protection with economic development.[1]

Nucor Steel Auburn, Inc. ("Nucor") has been an active participant in this docket. Throughout this proceeding, Nucor has emphasized its support for a state energy resource policy that is environmentally and economically beneficial. These combined objectives, after all, are cornerstone principles of Nucor's business. Corporate-wide, Nucor is the largest recycler in the nation, and Nucor Steel Auburn is New York's largest recycling manufacturing operation. Nucor's electric arc furnace-based method of making steel products from recycled scrap is three times more energy efficient and results in significantly lower emissions of regulated pollutants per ton of steel produced than a traditional coke-iron ore blast furnace facility. Reliable and competitively priced electricity, however, is critical to the economic viability of an electric arc furnace operation.

While Nucor supports New York's pursuit of more efficient and lower emitting power resources, the RPS program described in the Recommended Decision needs a reality check. Our exceptions to the Recommended Decision described below urge the Commission to adopt a renewable energy policy that will aim for achievable, economic and sustainable results. This cannot happen unless the proposed RPS policy is reconciled with certain basic facts. The facts are these:

- New York has a serious and chronic electricity dilemma that grows more precarious every summer peak season. Overall, the state has adequate generation capacity and energy, but it has limited ability to deliver power when needed to Long Island and New York City. Thee are the areas that

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[1] Chairman Flynn's remarks to Center for Business Intelligence 2nd Annual Forum on New York Power Supply, as posted on the PSC's website.

have been experiencing the fastest load growth, and which encounter the most difficulty in siting new generation or natural gas pipelines. Viable long term solutions must increase the capability and flexibility of transmission networks and promote significant improvements in demand response. The eligible renewable technologies described in the RD are barely relevant to solving this dilemma (very few renewable energy additions from eligible measures as defined in the RD are expected in congested areas).

- High electricity rates remain a significant barrier to New York economic development, and New York's manufacturing base continues to struggle Upstate. Nucor, and most other manufacturing facilities, depend upon flex rate contracts, economic development zone incentive rate discounts, or allocations of NYPA economic development power ("EDP") for their economic survival.

- Resources deemed eligible as "renewables" in the RD are, by definition, not economically competitive with other resources, (*i.e.,* all conventional supply resources, including nuclear,[2] as well as the expected cost of demand reduction).

    - Premiums to fund the long term contracts for differences ("CFDs") to be paid to qualifying renewable projects require surcharges that will be added to ratepayers bills for 20 years and more.

    - The magnitude of the RPS costs to be imposed on ratepayers is uncertain. Estimates of those costs discussed in the RD and by the parties vary widely, but the external drivers to those estimates (projected electricity and natural gas market prices, load growth, changes in the existing generation mix, etc.) likely will render most of the estimates useless in short order.

    - Long-term purchase commitments to be made based on today's forecasts of a highly dynamic mix of factors is precisely the path New York chose, to its regret, in the long run avoided cost contracts issued to non-utility generators in the 1980s.

    - Projected price depressing effects on wholesale electricity prices of renewable energy production that are reflected in the cost estimates to make rate impacts appear palatable, are heavily backloaded (over half are presumed to occur in 2012-13) and rest upon speculative assumptions that the RD does not discuss.

[2] On June 10, 2004, Energy East announced the completion of the sale of its Ginna nuclear station to Constellation Energy for $408 million (excluding existing fuel), or roughly $825/kW.

- Permitting renewable imports from non-New York resources may eviscerate the economic development benefits to the state claimed for construction and operation of renewable projects.

In short, the "25% by 2013" objective described in the RD is not realistic or economically sustainable if any of a dozen key assumptions in the Cost Analysis are inaccurate (e.g., the amount of wind generation that actually can be sited in New York). The proposed RPS program will add to ratepayers' cost burdens. Although the precise extent of the rate impacts is highly uncertain, the RD does not propose to limit or control how high RPS costs could reach other than through a program review in 2008. The expected contribution of renewables to New York's peak demand and reliability needs is slight or negative, but, in addition to the RPS premiums, ratepayers inevitably will be charged for the improvements that will have to be made to meet those system needs.

In Nucor' view, the Commission should adopt a more disciplined and focused pursuit of cleaner energy resources. If the near-term bottom line objective is to provide some impetus for wind power and fuel cell development in the State, cost-justified and limited projects featuring those techniques could be entertained. Awarding CFD contracts that commit ratepayers to long-term cost obligations of uncertain magnitude that will be determined by energy priced bids for projects whose defining characteristics are very high capital costs and little or no fuel costs makes little sense and could well become another energy millstone around the neck of New York's economy.

If, however, the Commission is committed generally to the RPS approach described in the Recommended Decision, at least three basic changes to the proposed policy must be adopted. First, the recommendation that the Commission review the "25% by 2013" schedule in 2008 (the "2008 Review") (RD at 15) is inadequate to protect ratepayers. The Commission should reassess RPS progress relative to targets, projected ratepayer costs, changes in market assumptions and other factors at least on an annual basis and be prepared to modify its policies as appropriate to protect the public interest. Second, a rational and comprehensive "green power" strategy must more aggressively pursue demand reduction programs and strategies that are more economic than the targeted renewable technologies. Finally, the Commission must reconcile its RPS policy program with established economic development efforts.

A. The RD's Cost Estimates are Based on Unreliable, Long-Term Energy Price Forecasts.

The RD adopts the cost estimates and projections contained in Cost Study II, Prime Case, with certain minor modifications. RD at 14. The RD explains:

> The cumulative cost of premium payments for renewables, to achieve the recommended RPS design, will reach between $1.14 and $1.35 billion by 2013, depending upon the pricing approach chosen. However, these premiums will be offset by reductions in wholesale energy costs, as New York reduces its reliance upon fossil fuels, reaching an annual reduction of $137 million by 2013. The net present value estimate (in 2003 dollars) of the program ranges from $158 to $328 million.

RD at 21.

In its comments on Cost Study II, Nucor noted that the cost projections in the Prime Case rely heavily on anticipated wholesale price decreases that the study's authors hope will occur as a result of the RPS. Over half of the reductions for the period 2006-2013 are projected to occur in the last two years, and, absent these offsets, the RPS cost to ratepayers is significantly greater than the RD portrays. (*See* RD, Appendix B, Spreadsheet RD Case-Results-6-03-04.x15). The wholesale price savings were derived using long-term natural gas price projections. There was no argument among the parties or DPS Staff, however, that the farther out you go, the more speculative and uncertain those price projections become. Further, given the vagaries of electric market prices, natural gas prices, improvements (or lack thereof) in the relative economics of eligible renewable technologies, load growth, and other factors, the net cost to ratepayers of long term RPS contract for differences payments is highly unsettled.

The RD recognizes that changing conditions in New York could impact cost and effectiveness of the RPS programs, but recommends only that the Commission monitor the results of the RPS and review its rules in 2008. *See* RD at 74. This one-time-only review is insufficient to protect consumers from excessive long-term contractual commitments because the cost risks to consumers are too great. In Nucor's view, given New York's struggling Upstate economic climate, Downstate's need for enhanced generation, transmission and demand response (and not the off-peak energy contribution expected from most renewables), and New York's prior experience with PURPA-based contracts with non-utility generators, the recommended program does not provide adequate ratepayer protection.

Because of the above noted uncertainties, the Commission needs to monitor the progress of the RPS program and assumptions and determine whether changes should be made to the targets and/or baseline on an annual basis. Only by analyzing the program on an annual basis will the Commission be able to ensure that the benefits of an RPS to New York consumers are not outweighed by the costs. In the Commission's final policy statement, Nucor urges the Commission not to adopt the targets and baseline contained in the RD as fixed and immutable targets. Rather, beyond the initial year, they should be considered guidelines only. The actual baseline and targets for subsequent year RPS auctions should be reevaluated and revised as necessary on an annual basis to ensure that the RPS promotes rather than impedes economic development in the New York.

B. The RD Should Include Demand Response as an "Eligible Resource"

For many years, the Commission has recognized that demand response is an energy resource comparable to generation supply. Nucor has requested that demand response be permitted to participate in the RPS as an "eligible resource." The analyses presented in Cost Study II show that demand response is a far more economical resource than all of the renewable technologies contemplated in the Prime Case. Cost Study II, Volume B, Section III-E at 10. Demand response is a zero-emission resource that avoids fuel consumption. It is a resource that typically provides its greatest benefits at periods of peak demand when high cost, inefficient and high emitting fossil fuel generators are otherwise in use. It lowers congestion costs, and introduces sorely needed liquidity to energy and ancillary service markets.

The RD gives a nod to demand response, recommending that the Commission "consider the complementary role of future demand side management initiatives to reduce the overall load, thereby increasing the proportion of renewables." RD at 21. The RD, however, offers no rationale for excluding demand response from the list of eligible measures. *See* RD at 104. In Nucor's view, the RD's preference for uneconomic combustion (landfill gas and biomass) and other natural gas consuming technologies (fuel cells) over accelerated pursuit of far more economic (and reliability valued) demand response is puzzling and incongruous when compared with the stated environmental objectives outlined in the RD's introduction.

Further, under the technology eligibility standards proposed by the RD, the majority of the incremental renewable generation that is expected to be added through the RPS is wind generation. The RD notes the intermittent, primarily off-peak nature of wind production (RD at 84, 88), as well as the fact that most attractive potential wind power sites are west of the Central-East Interface. *Id.* at 88. By contrast, the RD does not discuss the superior capacity, reliability, environmental and economic benefits of improved and expanded demand response measures. This is a serious error in the recommended policy.

Rather that reserving the RPS for a select group of favored technologies, RPS eligibility should be open to any resources that can help meet system needs economically while reducing emissions. New York has neither the time, nor ratepayer resources, to tinker with an ineffectual and expensive RPS program for several years while more practical and effective means of solving its resource needs are neglected.

C. The Final Policy Statement Must Reconcile New York's RPS and Economic Development Objectives.

The RD addresses economic development only to the extent that it summarizes positions of the parties that commented on the issue. As noted earlier, a renewable energy policy cannot be divorced from New York's economic development objectives. Unchecked RPS cost premiums, particularly if projected wholesale energy price offsets do not occur, will hurt the State's manufacturing sector. (Premium costs are projected to exceed $100 million annually by 2009) (R.D. App. B, Table 5).

Jobs created in the construction and operation of renewable projects would provide some benefit if the projects actually were located in New York. The RD, however, is indifferent to the location of renewables as long as a project is a winning RPS bid and can physically schedule delivery to New York (i.e., imports are permitted to participate subject to a deliverability requirement.)

New York cannot create and sustain a regional RPS program by itself, and the State's economic development imperatives will be hurt, not advanced, by a program that charges New Yorkers premiums to subsidize otherwise uneconomic renewable projects in Pennsylvania, Ontario or New Hampshire. Nucor has suggested that only New York renewable projects be eligible for the RPS program. The RD does not recommend that limitation. As noted earlier, the Commission must establish some cost discipline for this program by limiting the overall and annual costs to ratepayers. Failing that, the Commission must at least avoid undercutting its electric rate economic development programs by exempting flex rate contract, economic development zone incentive and similarly economically at-risk loads from paying RPS premiums.

CONCLUSION

For the reasons stated above, Nucor urges the Commission to adopt Nucor's proposed revisions to the RPS policy contained in the Recommended Decision.

Respectfully submitted,

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