BRICKFIELD BURCHETTE RITTS & STONE, PC

July 8, 2004

Via Federal Express

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

Re: Case 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard

Dear Secretary Brilling:

Enclosed for filing, please find an original and twenty-five (25) copies of the *Reply Brief on Exceptions of Nucor Steel Auburn, Inc.* in the above captioned proceeding. As provided in the Notice issued June 3, 2004, active parties are being served electronically. 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.

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

REPLY BRIEF ON EXCEPTIONS
OF NUCOR STEEL AUBURN, INC.

OVERVIEW

The two basic criticisms of the RPS policy urged in the Recommended Decision ("RD") issued on June 16, 2004 are 1) the program would be too costly, and 2) consumers may not see the promised benefits. The RD recounts flaws and inconsistencies raised by several parties concerning the cost analyses and sensitivities filed in the case, but it does not address those deficiencies. Further, other than recommending a mid-course (2008) review, the RD does not propose any program limitations or restrictions to prevent runaway RPS costs.

Second, consumers may see little or no real benefits from the premiums to be invested in the selected "renewable" technologies. Staff's modeling analyses assume that energy production from eligible resources will be predominantly from wind power facilities in Western New York. (*See* RD, App. B, Table 3). As the Joint Utilities most artfully put it, "These facilities have power production characteristics almost perfectly out of sync with the needs of the New York electrical system . . . (Joint Utilities Exceptions, p. 31). The RD does not recommend any actions to ensure that renewable additions will actually help meet New York's electrical needs. In short, there is a serious disconnect between the recommended RPS program design and the State's economic and electrical needs. We had hoped that the Recommended Decision would have critically assessed the core assumptions, risk factors, and performance concerns, but the RD rarely engages these issues. In the following reply to exceptions, Nucor briefly notes core policy changes that must be adopted to protect New York consumers.

A. RPS Program Costs

The RD concludes, with little critical assessment, that the cost to ratepayers, net of assumed wholesale energy reduction offsets, is sufficiently modest to recommend implementation of the described RPS policy. RD at 21. As MI points out, 1) without the assumed offsets, RPS premium costs to consumers are substantial, 2) there is no way for those offset benefits to reach ratepayers served under fixed price, flex rate contracts, and 3) the analyses ignored post-2013 cost obligations. MI Exceptions at 13, 40. Nucor previously has raised similar concerns, and has noted as well that the assumed wholesale price benefits are speculative and heavily backload (more than half the asserted benefits appear in 2012 and 2013). Nucor Exceptions at 5; citing RD, App. B, Spreadsheet RD Case Results – 6-03-04.xls.

The RD, however, does not endeavor to defend the Staff cost analysis upon which the RD's spreadsheets are based. Notwithstanding the errors, inconsistencies and unrealistic assumptions that have been identified, the RD concludes only that "these cost estimates are sufficient to advise the Commission on policy choices given the long-term uncertainties inherent in such forecasting." (RD at 105). The problem, of course, is that the RD is not simply advising the Commission on policy choices. It is recommending a course of action that requires long term financial commitments to be funded by ratepayers. Thus, the fact that it cannot be discerned from the RD whether the presence or absence of wholesale energy price savings would matter to the implementation of the

RPS program is a serious error that matters to those that will be asked to foot the bill. In short, the RD does not undertake the assessment required to ensure that ratepayer interests are adequately protected.

In its exceptions, RETEC chides the RD for discussing potential RPS cost considerations in "great detail" while "barely acknowledge[ing]" renewable benefits that the Staff cost studies do not quantify, *i.e.*, natural gas price suppression, increased price stability, and emission reduction. RETEC Exceptions at 32. RETEC concedes that quantifying these benefits is "difficult," but it nonetheless offers projected figures for each of these items for the life of the program. RETEC at 32. RETEC has not offered any quantitative basis for its projections, and they must be rejected.

B. The Baseline and Milestones Should be Re-evaluated on an Annual Basis.

The RD recognizes that the "vicissitudes of project development, site selection, fuel prices, and the economy" warrant a review of the RPS in 2008. (RD at 15). Given the forecasting uncertainty attached to most of the core cost and performance assumptions that the RD acknowledges, a single program review in 2008 is too little, too late. Nucor's main concern in this docket has been that an RPS program founded on long term contract for differences (CFD) tied to fixed increment production targets is a formula for disaster for ratepayers. For this reason, Nucor has maintained that the Commission should review the baseline and increment targets, the overall 25 % objective, renewable production and RPS costs to ratepayers on an annual basis.

In their brief on exceptions, Joint Utilities see the same problem but argue that the baseline and milestones for each year must be fixed numbers, not to be reopened as part of the 2008 review or any other review in order to minimize the added uncertainty of shifting targets. Joint Utilities Brief on Exceptions at 40. While Nucor clearly shares the Joint Utilities' RPS cost concerns, the long term CFD model[1] proposed in the RD will make ratepayer cost exposure a continually unsettled matter in any event. Regular PSC intervention is necessary to establish overall cost control.

The record already demonstrates the uncertainly that prevails even with respect to the most basic determinant of the RPS – the year 2005 baseline. In the 16 months since the RPS proceeding was initiated, the baseline has been adjusted three times. In Cost Study I, Staff proposed a baseline of 28,896,189 MWhs (17.48%), requiring an incremental renewables increase of 7.52% to get to 25% by 2013. In Cost Study II, Staff revised the baseline upwards, to 33,620,339 MWhs (20.34%) which dropped the incremental amount needed to 4.66%. In the Recommended Decision, the baseline was revised downward again to 31,937,479 MWhs, or 19.29%, thereby increasing the increment amount needed to 5.71%.

The RD explains that the changes to the baseline were justified based on new assumptions reducing the output from the NYPA Niagara and St. Lawrence hydropower projects and a reduced Green Marketing forecast. RD at 41-43. The RD acknowledges that this change results in an increase in cost to obtain the necessary renewable resources to achieve the 25% target. RD at 43 fn.60. Indeed, as Multiple Intervenors observed, the change would increase the cost of the RPS main tier by approximately $180 million. Multiple Intervenors' Brief on Exceptions at 32. The RD, however, concludes that reducing the baseline will not result in an overall increase in the net cost of the program because the incremental cost increase will be offset by wholesale price decreases. RD at

[1] MI's recommended cost of service approach would lead to a more efficient use of available RPS funds.

43 fn.60. As noted previously, in Nucor's view, the RD unreasonably relies on the latter assumption.

In practice, the baseline and the incremental targets to achieve the 25% goal by 2013 will be affected not only by the amount of renewable resources entering and leaving the New York markets, but also by myriad other changes (many unforeseeable today) in the non-renewable portions of New York's energy supply portfolio. Taking only one example, if Entergy's Indian Point nuclear power plant were to be closed early, roughly 16 million MWhs would be removed from New York's annual energy production mix. U.S. Nuclear Reactors (http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/ reactors/in_point.html). All such changes to New York's overall energy portfolio need to be taken into account regularly by the Commission, and the Commission needs to make such adjustments to the program as the public interest requires. If, however, the Commission adopts the RD's recommendation for a one-time-only reassessment of the RPS in 2008, the Commission should evaluate every aspect of the program, including the overall objective and time table.

C. Reliability Must be Paramount

Nucor has joined with most parties in maintaining that grid reliability must not be compromised as a result of the RPS. Nucor has observed that, since the parties currently have only the NYSERDA/NYISO Phase I report on wind integration, the full reliability and cost impacts of the RPS are unknown today. Supplemental Comments of Nucor at 10. Nevertheless, the RD finds that the "Phase 1 Report provides sufficient certainty to proceed with the RPS design." RD at 91.

RETEC concurs with the RD's finding, but urges the Commission to go even further, stating that "the RD should have proceeded to state that the Phase I report is also sufficient to proceed with implementation of the RPS." RETEC Brief on Exceptions at 31. RETEC notes that the RPS will be implemented slowly over time, and that the Phase I report found that the existing system can accommodate at least 3,300 MW of wind energy. *Id*. at 31-32.

Nucor disagrees with RETEC's position. On this point, New York ISO's Brief on Exceptions provides an important reality check. The New York ISO explains that the RD overstated the completeness of the record when it asserted that the record contains a comprehensive examination of reliability considerations, and expresses concern that the RD commits to only take into consideration the yet-to-be-released NYISO/NYSERDA Phase II report. NYISO Brief on Exceptions at 2-3. Significantly, the New York ISO observes that voltage or stability constraints and operational considerations could ultimately decrease the Phase I report's determination that the transmission system could interconnect up to 3,300 MW of intermittent resources, and indicates that the RD jumped the gun by recommending that wind resources increase to just less than 3,000 MWs by 2013. *Id*. at 3. New York ISO also notes that the Phase I report did not examine the effects of new wind generation on existing generation, and that the retirement of existing generation, or the deferral or cancellation of expected new generation could be displaced by significant additions of new wind power and could, in turn, adversely impact reliability. *Id*. at 3-4.

Nucor agrees with New York ISO that the implementation phase of the RPS must accommodate the conclusions reached in the Phase II report and in the New York ISO's short-term reliability study. Since intermittent generation will be the prominent "eligible" resource if the RPS design in the RD is adopted, it is critical that the Commission and all stakeholders have a complete understanding of the reliability impacts attendant upon by such a design.

In short, if the RPS is implemented based on preliminary and incomplete reliability data, the RPS could turn out very different from the model envisioned in the RD. The Commission should reaffirm the position that reliability must not be compromised in implementing the RPS, and adopt New York ISO's position that the implementation phase of the RPS must accommodate the conclusions reached in the Phase II report and in the New York ISO's short-term reliability study.

D. The SBC-Like Tier

The RD recommends establishing an "SBC-like" tier of 2% of the production increments for as-yet immature or highly uneconomic technologies (solar, small wind and fuel cells). (RD at 8). As MI observes in its exception brief, the expected cost of this tier is almost $150 million between 2006 and 2013 at a unit cost more than 10 times the cost of conventional resources. MI Exception at 21-22. It should be apparent that a long-term CFD contractual model is not appropriate for technologies that are not close to being commercially feasible.

RTEC, however, maintains that the SBC-like tier should be increased to 5% of the production targets. RETEC exceptions at 18-20. RETEC asserts that this is a good idea, but does not attempt to argue that a 5% tier can be economically justified. Neither does RETEC assert that the increase is needed to support especially desirable or strategic projects. It is the Commission's task in this matter to establish reasonable program parameters and cost discipline. RETEC's exception should be rejected.

E. The Commission Should Reject the Alternative Compliance Mechanism Proposed in the RD.

The RD proposes an "alternative compliance mechanism" for LSEs that fail to acquire the required amount of renewables. Such LSEs would be required to make a payment in the amount of 150 percent of the past year's certificate cost. RD at 23. As MI observes in its exceptions, the proposed alternative compliance mechanism is punitive to ratepayers, and would unnecessarily increase the already above-market cost of renewable energy to customers. MI exceptions at 31-32. Joint Utilities also oppose this mechanism, arguing that it would be impossible to implement in the first year of the RPS (because no certificate cost information would be available from the previous year), and unnecessary in the later years of the RPS once a liquid market for certificates has been established. Joint Utilities Exceptions at 17-19.

Nucor agrees with those parties and urges the Commission to reject the alternative compliance mechanism proposed in the RD. Requiring a payment of 150% of the previous year's certificate cost would unfairly punish end users, who undoubtedly will bear the full cost of the penalty even though they would have no control over an LSE's renewable procurement practices. The 150% penalty, moreover, is arbitrary. The RD does not explain why the penalty should be considered necessary or appropriate, especially when the mechanism will have little or no effect on an LSE's renewable procurement efforts. If the Commission believes that an alternative compliance mechanism is necessary, however, Nucor agrees with Multiple Intervenors that the cost of such a mechanism should not exceed the cost of renewable resources.

CONCLUSION

Nucor urges the Commission to modify the proposed RPS program described in the June 16 recommended Decision by adopting the program and oversight changes noted above and in Nucor's brief on exceptions in this matter.

Respectfully submitted,

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