
BRICKFIELD BURCHETTE
RITTS & STONE, PC

November 9, 2004

VIA FEDERAL EXPRESS

Hon. Jaclyn Brillling
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

RE: Case No. 03-E-0188 – Retail Renewable Portfolio Standard

Dear Secretary Brillling:

By letter dated October 25, 2004, the Small Hydro Group (“SHG”) requested clarification or reconsideration of the Commission’s *Order Regarding Retail Renewable Portfolio Standard*, issued September 24, 2004 (the “RPS Order”). SHG does not specifically articulate an alleged error of law or fact, or changed circumstances, as is required for a petition for rehearing. *See* 16 NYCRR, part 3.7(b). Hence the letter-petition is deficient. Moreover, the relief SHG seeks is not plainly stated and is difficult to discern. SHG, however, appears to object to central procurement of RPS contracts by NYSERDA because existing small hydro sites may not qualify for payments from NYSERDA if they are baseline renewable resources. Also, SHG objects to that portion of the RPS Order that exempts from RPS premiums economic development customers that do not pay Stranded Benefits Charges (“SBC”).¹

Nucor Steel Auburn, Inc. (“Nucor”) is a large electric arc furnace based steel recycler located in Auburn, New York. Nucor has been an active participant in the RPS docket and responds to SHG’s complaint regarding the above-noted exemption from RPS premiums.

SHG does not contest the Commission’s finding that it would be “counterproductive to economic development goals” to assign RPS premium costs to customers that require electricity “at reduced prices to achieve economic development objectives such as sustaining or creating jobs.” (Order at 55). Since SHG does not even address the balancing of economic development and renewable objectives that are discussed in the Order, there is no basis for granting SHG’s petition for rehearing.

At the same time, it also bears noting that the solution crafted in the RPS Order (exempting from RPS premiums economic development and municipal customers that

¹ RPS Order at 10-11.

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are exempt from SBC surcharges) does not accomplish the purpose that is articulated in the Order. The Commission certainly is correct that many manufacturing loads, particularly those with energy intensive operations, require reduced price arrangements in order to remain in business in New York. The economic competitiveness of New York electricity rates has been a chronic concern that the State has sought to address through allocations of NYPA power, Empire Zone rates and flex rate contracts.

All economic development power supply arrangements, however, do not provide relief from SBC charges. For example, NYSEG's Empire Zone and similarly tariffed economic development incentive rates do not offer SBC relief. Further, individually negotiated, or "flex rate", service arrangements contain terms that typically are confidential in nature, so a general characterization regarding SBC charges and flex rate contracts is not possible. In those cases, however, the parties attempt to establish flex rate terms that will achieve a net "pricing objective" that is considered necessary to attract or retain load.² There is no single means to achieving that purpose. For example, the objective could be achieved through an arrangement that specified a certain contract rate and waived SBC charges, a lower rate that did not waive SBC charges, or various other alternatives. Thus, to exempt from RPS premiums only flex rate loads that are SBC exempt is an arbitrary and ineffective exclusion. At a minimum, applying RPS surcharges will undercut the pricing objective intended in existing flex rate arrangements. To address economic development considerations adequately as the RPS order intends, existing flex rate customers should be RPS exempt, and Nucor urges the Commission to clarify the RPS order in that regard.

Very truly yours,

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

Cc: Active Parties (electronically)

² See, e.g., Case 03-E-1761, Proceeding on Order of the Commission to Reexamine Policies and Tariffs for Flexible Rate Contract Service to Economic Development Customers (Generic Flex Rate proceeding), *Staff Straw Proposal for Flex Rate Guidelines*, dated July 7, 2004.