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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Investigation of Revenue Requirement
Impacts of the New Federal Tax Legislation
Titled: “An act to provide for reconciliation
pursuant to titles II and V of the concurrent
resolution of the budget for fiscal year 2018

Docket No. 17-035-69
**Comments of Nucor-Steel Utah on Rocky
Mountain Power’s proposed Tariff
Schedule 197**

In accordance with the March 7, 2018 Scheduling Order in this docket, Nucor Steel-Utah (“Nucor”) files these comments in response to filings made by Rocky Mountain Power (“Company”) and other interested parties in this docket. As a special contract customer of the Company, Nucor provides the following comments on the appropriate treatment of special contract customers generally, and Nucor’s contract specifically, in the Company’s proposed Tariff Schedule 197.

RECOMMENDATION

Nucor recommends that the Commission refund the anticipated annual savings resulting from the Tax Cuts and Jobs Act (“Tax Act”) to special contract customers in the same manner as other customer classes, based on the average overall revenue requirement impact on all retail customers, and according to the terms of the specific customer’s contract and any relevant state law.

BACKGROUND AND DISCUSSION

On December 21, 2017, the Commission opened this docket to investigate the revenue requirement impacts of the Tax Act on Utah utilities and ratepayers.¹ The Utah Association of Energy Users (UAE) filed a motion for an Order for Deferred Accounting Treatment for the likely benefits of reduced federal tax rates on January 2, 2018. On February 28, 2018, the Commission granted the Motion, but sought additional input from parties “concerning the duration of the deferred accounting treatment, the quantification of impacts on revenue requirement, and any appropriate refund mechanisms....”²

In its initial comments filed on February 7, 2018, the Company outlined the likely revenue requirement impact of the Tax Act, but did not include a detailed breakdown of how the expected savings would be allocated among the Company’s customer classes. However, the Company proposed the following general plan for an interim rate reduction:

While this filing is pending, the Company proposes to reflect a \$20 million, or one percent rate reduction, beginning May 1, 2018, as discussed above. The Company proposes to allocate the May 1, 2018 rate based upon each class’ allocation of rate base from the most recent annual cost of service study. The Company earns a return on its rate base and is ultimately taxed upon that return. It is therefore reasonable to allocate a tax-related sur-credit back to customers on this basis.³

At the time, the Company did not exclude any customer classes from receiving an allocated share of the expected rate reduction. Nucor could support this general approach to allocating the

¹ See Generally, Docket No.17-035-69, *Investigation of Revenue Requirement Impacts of the New Federal Tax Legislation Titled: An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution of the budget for fiscal year 2018.* (Hereinafter “Docket No.17-035-69.”)

² Order Granting Motion for Deferred Accounting Order and Notice of Scheduling Conference, Docket No. 17-035-69, at 3 (Feb. 28, 2018).

³ Comments of Rocky Mountain Power, Docket No.17-035-69, at 10 (Feb. 7, 2018).

benefits, or other approaches, provided all customer classes are treated in a roughly equivalent manner.⁴

Nucor is very concerned by comments filed by the Utah Division of Public Utilities (Division) in its February 23, 2018 Action Request Response, where the DPU recommended that anticipated tax savings from the Tax Act not be allocated to Special Contracts because “Special Contracts are negotiated independently and any benefits from the Tax Act will be realized when contracts are renegotiated.”⁵ We are also concerned that the Company, in its March 16, 2018 Application, expressed its agreement with the Division’s recommendation:

As the Division noted, special contract rates are negotiated independent from the revenue requirement used to set other retail rates. Any consideration of the impact of the Tax Reform Act in the Company’s negotiations with special contract customers would need to be made in light of each special contract customer’s contract provisions and unique circumstances.⁶

The position of the Division, later repeated by the Company, is inconsistent with the way rate changes have been historically applied to Nucor, and is inconsistent with the specific provisions of Nucor’s recently-approved contract. Moreover, it would create an unwarranted and arbitrary windfall for other customers at Nucor’s expense.

Nucor’s contract is specifically designed to incorporate the impact of generally applicable overall changes to the Company’s revenue requirement and resulting retail rates, as well as changes to existing and new riders that pass through costs or benefits directly to customers (such as the Energy Balancing Account), as approved by the Commission. We note that even though

⁴ Although Nucor generally supports the Company’s approach to allocating the benefits of the Tax Act to customer classes based on each class’s allocation of the rate base, Nucor does not support the Company’s proposed plan to refund only ¼ of the estimated reduction in revenue requirement. Nucor supports the approach proposed by the UAE in its February 23, 2018 Comments, in which 80% of the estimated savings would initially be passed through to customers.

⁵ Action Request Response, Docket No.17-035-69, at 3 (Feb. 23, 2018).

⁶ Application of Rocky Mountain Power, Docket No.17-035-69, at 12 (Mar. 16, 2018).

the Company agreed with the Division's recommendation to treat special contracts differently in Tariff Schedule 197, the Company added that "Any consideration of the impact of the Tax Reform Act in the Company's negotiations with special contract customers would need to be made *in light of each special contract customer's contract provisions and unique circumstances.*"⁷ Thus, the Company acknowledges that even if the Commission agrees that special contracts deserve different treatment in Tariff Schedule 197, the Commission would need to review the details of the special contracts to determine whether, how, and when the new surcharge or rate change applies to that customer.

Changes to existing surcharges, general rate cases, and new surcharges were specifically addressed by the parties involved in reviewing Nucor's contract. Exactly two days before it adopted the Division's approach to special contracts (above), the Company referenced the applicability of changes in surcharge rates and other adjustments to base rates in testimony filed in support of its new contract with Nucor. The Commission summarized RMP's March 14 testimony supporting Nucor's contract in its March 23, 2018 Order approving the contract:

PacifiCorp notes Nucor will continue to be subject to surcharge rates, including the Energy Balancing Account, REC Balancing Account, Low Income Residential Lifeline, and Solar Incentive Surcharge. Similar to the Existing ESA, the ESA includes other provisions related to surcharges or surcredits and adjustments to the base rate charges for power and energy.⁸

Nucor's contract was clearly designed to adjust according to generally applicable changes in revenue requirements resulting from current and new riders, as well as base rate changes, as approved by the Commission. We have no reason to doubt that if the Tax Act had resulted in increased taxes (and presumably increased revenue requirements), the Company would request

⁷ *Id.* (emphasis added).

⁸ Order Approving Electric Service Agreement, *Application of Rocky Mountain Power for Approval of Electric Service Agreement between PacifiCorp and Nucor-Plymouth Bar Division, a Division of Nucor Corporation*, Docket No. 17-035-72, at 2-3 (Mar. 23, 2018).

that Nucor pay a share of the increase. We see no reason to distinguish between the other pass-through riders that have been made applicable to Nucor and the proposed Tariff Schedule 197, simply because it would result in a cost reduction rather than an increase for Nucor.

Rocky Mountain Power's proposed vehicle for delivering the anticipated savings to customers is a deferred liability account (Tariff Schedule 197) that would "record the revenue requirement impacts until the effective date of new rates set in a future general rate case, to ensure that customers receive the benefit of the Tax Reform Act."⁹ We see no difference between this tariff and other deferred liability accounts, such as the EBA and REC accounts. We also see no reason why this particular rider should be inapplicable to contract customers in general, or Nucor in particular. These tariffs are all designed to pass through certain costs and benefits directly to customers, based on changes to the Company's revenue requirement, in between General Rate Cases. Nucor's rates adjust automatically with changes to EBA and REC and other accounts, as well as overall rate increases or decreases in General Rate Cases. We see no distinction between this deferred liability account and others to which Nucor is subject, and urge the Commission to apply this revenue requirement change in the same manner as other riders or General Rate Case changes to rates.

Finally, we note that although the current docket and the docket concerning Nucor's contract overlapped somewhat, the timing of key actions is important. The full impact of the Tax Act was unknown at the time the contract was negotiated, and indeed, the impact will not be known until the completion of this docket. Nucor's contract was negotiated throughout 2017 and was executed in December 2017, before the Tax Act went into effect and well before it was clear

⁹ Comments of Rocky Mountain Power, Docket No.17-035-69, at 10 (Feb. 7, 2018).

exactly how the Tax Act would impact the Company. As noted above, even the Company's February 7, 2018 Comments – filed over a month *after* the final passage of the Tax Act – provided only cursory analysis of the potential impact. It is not reasonable to assume that the Company or Nucor could have, or should have, incorporated these impacts into their negotiations in late 2017.

To now exempt special contract customers from receiving an allocated share of the benefits of the Tax Act until the negotiation of a future contract (possibly 2-4 years in the future) would result in Nucor continuing to pay rates incorporating a substantially higher federal tax rate, while other customer classes would be paying rates reduced by not only the changes in federal taxes, but also by a subsidy paid by Nucor and other special contract customers. This would be an unjust and arbitrary result in this docket.

CONCLUSION

Nucor recommends that Tariff Schedule 197 allocate the anticipated revenue requirement reductions to special contract customers in a manner consistent with the allocation applied to other customer classes, and in a manner consistent with the terms of Nucor's contract and any applicable state laws.

DATED this 9th day of April 2018.

/s/ Jeremy R. Cook

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via email this 9th day of April 2018 to the following:

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