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JOINT REPORT AND APPLICATION §  
OF ONCOR ELECTRIC DELIVERY §  
COMPANY AND TEXAS ENERGY §  
FUTURE HOLDINGS LIMITED §  
PARTNERSHIP PURSUANT TO §  
PURA § 14.101 §

BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS

**NUCOR STEEL – TEXAS’ RESPONSE TO APPLICANTS’ RESPONSE TO  
NUCOR STEEL’S LETTER CONCERNING EXHIBITS AND REQUEST FOR  
PREHEARING CONFERENCE**

Nucor Steel-Texas (“Nucor”), a division of Nucor Corporation, hereby files *Nucor Steel – Texas’ Response to Applicants’ Response to Nucor Steel’s Letter Concerning Exhibits and Request for Prehearing Conference* (“Response”). In support of its Response, Nucor states as follows:

**I. Introduction**

On November 13, 2007, Texas Energy Future Holdings Limited Partnership (“TEF”) and Oncor Electric Delivery Company (“Oncor”) (collectively, “Applicants”) filed their *Applicants’ Response to Nucor Steel’s Letter Concerning Exhibits and Request for Prehearing Conference* in the referenced docket. The second part of their “response” proposed certain conditions Applicants wish to be applied to attendance of their witnesses at hearing. The final portion of their pleading requests that Your Honor hold a prehearing conference during the last week of November to finalize the order of witnesses and estimate the likely length of the hearing. Nucor respectfully urges Your Honor to deny Applicants’ requests.

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II. **Response in Opposition to Applicants' Request for Advance Identification of Witnesses to Be Cross-Examined and Subject Matter.**

In their response, Applicants state that they intend to offer in evidence at hearing the direct, rebuttal, and supplemental direct testimonies of witnesses identified in the Order attached as Exhibit A to the Stipulation filed on October 24, 2007 in this proceeding. Witnesses who have filed supplemental direct testimony in support of the Stipulation (and, presumably, witnesses who will file rebuttal testimony in support of the Stipulation) will be available for cross-examination at hearing.

However, for any other witness - those who filed direct and rebuttal testimony prior to the filing of the Stipulation - Applicants have asked Your Honor to require non-settling parties to file a list of witnesses they intend to cross-examine at hearing, including the issues they intend to cover in cross-examination for each witness. Applicants suggest that the deadline for this submission be set at 12:00 noon on November 21<sup>st</sup>, when non-settling parties must file their direct testimony. In other words, Applicants are asking Your Honor to order non-settling parties to decide upon and reveal their hearing strategy three weeks before the hearing and two weeks before rebuttal testimony is due.

We respectfully ask Your Honor to deny this request. To begin with, Your Honor imposed no such restrictions in the first phase of this proceeding. As of the October 5, 2007 prehearing conference, there was no requirement for parties to identify witnesses for cross-examination. Procedural Rule § 22.225(b) plainly states a witness offering written testimony "shall submit to cross-examination."

Our experience is that parties often, as a courtesy, indicate at the prehearing conference immediately preceding the hearing – on December 11, 2007, in the present case – which witnesses they are likely to cross-examine at hearing. We will endeavor to identify witnesses we are likely to cross-examine no later than that date, and expect the same courtesy from Applicants and the other Settling Parties.

In a practical sense, Nucor will not know which witnesses it will cross-examine until after the Settling Parties file supplemental rebuttal testimony on December 5, 2007. Issues conceivably could be addressed in supplemental rebuttal testimony that relate back to matters discussed by witnesses in their previously submitted direct and rebuttal testimony. We will need time to prepare our case following the submission of supplemental rebuttal testimony and are unlikely to make final decisions on which witnesses we will cross-examine until shortly before the currently scheduled December 11<sup>th</sup> prehearing conference.

There is no requirement in the Commission's rules that opposing parties designate the issues they will address in cross-examination of individual witnesses. Applicants ask Your Honor to order Nucor to disclose its attorneys' trial strategy well in advance of the hearing – a clear violation of attorney work product protection. Nucor will be spending the remaining time between now and November 21<sup>st</sup> preparing its supplemental direct testimony. We will have given little, if any, thought to which witnesses we will call for cross-examination three weeks hence, let alone which issues we will address. Moreover, we know of no case, including the first phase of the present case, where a party was required to

designate the issues upon which it would cross-examine a witness and, we assume, would be held to those issues at hearing. Your Honor's Order No. 29 of September 20, 2007, establishing guidelines for the original prehearing conference and hearing scheduled in this docket, contained no such requirements. We respectfully ask you to deny their request for a designation of witnesses and issues for cross-examination prior to the scheduled December 11, 2007 prehearing conference..

**III. Response in Opposition to Applicants' Request for An Additional Prehearing Conference**


Your Honor should deny the request to convene a prehearing conference during the last week in November and stay with the schedule set forth in Order No. 35. For the reasons stated above, Nucor will not make final decisions, nor is it required or able to make final decisions, regarding which witnesses to cross-examine two weeks before the scheduled hearing. Applicants' will not even have filed their supplemental rebuttal testimony by the week during which they propose to have an additional prehearing conference. The date of the currently scheduled prehearing conference – December 11, 2007 – was agreed to by the Applicants at the October 9<sup>th</sup> prehearing conference before the Commission. The length and dates of the hearing were set at the same October 9<sup>th</sup> prehearing conference and agreed to by the Applicants – two days, December 12-13. Applicants have offered no changed circumstances that justify making their requested alterations to the procedural schedule.

Nucor is willing to work with all other parties in identifying witnesses for cross-examination at or shortly before the December 11<sup>th</sup> prehearing conference. However, no party should be placed under an obligation to make such decisions prior to that time. To the extent that a witness requires a date certain, parties should file a request to that effect and Your Honor can resolve that issue without the need for a prehearing conference. Any other procedural issues that need to be resolved in advance of the December 11<sup>th</sup> procedural conference can be addressed in the same manner.

WHEREFORE, for the reasons stated above, Nucor Steel – Texas respectfully requests that Your Honor:

- Deny Applicants' request for identification of witnesses and issues for cross-examination;
- Deny Applicants' request for prehearing conference; and
- Grant Nucor such other and further relief to which it may be justly entitled.

Respectfully submitted,


  
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**AUTHORIZED REPRESENTATIVES FOR  
NUCOR STEEL-TEXAS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was hand delivered and/or mailed this 16<sup>th</sup> day of November, 2007 by First Class, U.S. Mail, postage pre-paid to all parties of record.

  
Nelson H. Nease *by permission*  
*sdp*