# In the United States Court of Federal Claims

No. 00-238C
Filed September 30, 2005

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NORTH STAR STEEL CO., *
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Plaintiff, *
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v. *
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THE UNITED STATES, *
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Defendant. *
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**ORDER**

On November 15-19, 2004, a trial was held to resolve the remaining issues in this case, identified in the court's Memorandum Opinion in *United States* v. *North Star Steel Co.*, 58 Fed. Cl. 720 (2003). By March 22, 2005, the court received the parties' post-trial briefs; the Post-Trial Additional Report of the court's expert, Dr. Barbara Barkovich; and the Post-Trial Sur-Rebuttal Report of Plaintiff's expert, Mr. R. Mark Clements.

The court has reviewed the record and is in the process of issuing a final memorandum opinion and final order. Two issues still concern the court. First, Dr. Barkovich's Post-Trial Additional Report stated that:

> In order to determine the cost of the part of the facilities that is being used for Regulation, I multiple $23.88/kW x (.103). Then I add a factor of 1.1 to reflect the added wear and tear that the [Western Area Power Administration ("WAPA")] states (but has not documented) has been caused by the load variations displayed by [Plaintiff]. I characterize this additional factor as one for nonstandard Regulation. Thus the rate for the nonstandard Regulation service is $23.88/kW-year x (.103) x (1.1), or $2.71/kW-year. The monthly charge would be $0.226/kW-month. This would be multiplied by the monthly peak demand of [Plaintiff] to determine its charges for Regulation. I have done this in Revised Table 2.

Court Ex. 3 at 2 and Revised Table 2.

The "wear and tear" factor of 1.1 was provided to Dr. Barkovich by WAPA, but the court would like Dr. Barkovich to identify the trial exhibit or other source in which this "factor" appears. The court also seeks Dr. Barkovich's opinion as to whether, in her experience, such a "factor" typically is included in an electric generation and transmission costs and how the 1.1 factor compares with other utilities, with which she has experience. Finally, the court would like Dr. Barkovich to recalculate the Revised Tables to exclude the 1.1 factor.

Second, according to Mr. Clement's February 15, 2005 Sur-Rebuttal Report, after hearing WAPA's witnesses at the November 15-19, 2004 trial, Mr. Clements apparently decided to investigate "new" allegations made at trial regarding the location and amount of Bureau of Reclamation capacity devoted to regulation. *See* Pl. Ex. 202 at 3. Mr. Clements located a BOR document: "A Method For Calculating Production Costs For Ancillary Generation Service," Bureau of Reclamation's Ancillary Services Team, presented Power Operations and Maintenance Workshop: Denver, Colorado (May 19-21, 1998). *See* Pl. Ex. 203. Therein, Mr. Clements claimed he learned that capacity costs were recognized as incurred, only when capacity is consumed and:

> *only increases in capacity–not decreases–produced costs* that should be charged to the customer:
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> > The actual regulation signal will swing the unit loading above and below the calculated average capacity. . . . The capacity for regulation which swings the unit above the average capacity is one half of the total regulation. The regulation capacity reduces the amount of capacity available for spinning reserve. The reduction of the spinning reserve by regulation must be calculated in order to account fully for capacity utilization while the unit is operating. The capacity for regulation is the product of one half the percent regulation (expressed in decimal form) multiplied by the average capacity while on line.

Pl. Ex. 202 at 4 (citing Pl. 203 at 5) (emphasis in original). This additional information confirmed Mr. Clements' position that North Star's regulation never occurred in the peak period, "except for under schedule which are paid for by the Penalty Payment." Pl. Ex. 202 at 4. Instead, scheduled energy in excess of North Star's load, was provided at no charge to WAPA and in an amount "so large" that the Return Energy exceeded the "In-Kind Energy" payment by a factor of 4 to 1. *Id.* (citing Pl. Ex. 204); *see also* Pl. Ex. 26 (WAPA referring to the excess energy from AEPCO/North Star as "dispositive of the spoils."). Therefore, Mr. Clements concluded that the excess capacity AEPCO provided WAPA became costly for North Star because, in the end, North Star paid both AEPCO and WAPA the power provided for regulation. *See* Pl. 202 at 4.

The court would like Dr. Barkovich's views on this aspect of Mr. Clements' February 15, 2005 Sur-Rebuttal Report.

The court would appreciate if Dr. Barkovich submit her views within 30 days not to exceed 10 pages, excluding the Revised Tables. Additional submissions by the parties and their experts are not requested and are not necessary.

IT IS SO ORDERED.

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**SUSAN G. BRADEN**
**Judge**