BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval of a Special Incremental Load Rate for a Steel Production Facility In Sedalia, Missouri	))))))	Case No. EO-2019-0244

REPLY BRIEF OF NUCOR STEEL SEDALIA, LLC

COMES NOW, Nucor Steel Sedalia, LLC, a Division of Nucor Corporation ("Nucor"), and respectfully submits its reply brief in this proceeding.

I. INTRODUCTION

Nucor and Evergy Missouri West, Inc., (f/k/a/ KCP&L Greater Missouri Operations Company) ("Evergy") have negotiated a ten-year contract for power supply to the Sedalia facility. As detailed in the initial briefs in this proceeding, the power supply agreement was a critical factor in Nucor's decision to site the plant in Sedalia. The SIL Tariff and power supply agreement and rate (the "Nucor Contract") currently before the Commission were the result of extensive, good faith negotiations between Nucor and Evergy. As the initial briefs demonstrate, the Nucor Contract will provide Nucor the power supply rate and term it needs, and that was promised in the negotiations that brought Nucor to Sedalia. Further, under the terms of the SIL Tariff and the Stipulation, Evergy's other non-Nucor customers are expected to receive a benefit from the Nucor rate in the form of a contribution by Nucor to the fixed costs of Evergy's system, and in no case will other customers have to subsidize the Nucor rate.

No party challenged these facts in its initial brief. In fact, all parties in this case either support or do not oppose the Stipulation in this case. Only the Missouri Energy Consumers Group ("MECG") – despite having withdrawn its prior objection to the Stipulation – challenges

the authority by which the Commission may approve the Nucor Contract. As discussed herein, MECG's arguments are vague, confusing, and ultimately wrong. Contrary to MECG's apparent position, the notion that one Commission may not bind future Commissions in no way limits the Commission's ability to approve a ten-year contract, or a contract of any term, based on the facts of a particular case. The Commission should reject MECG's arguments and approve the SIL Tariff and the Nucor Contract as proposed, subject to the additional provisions and protections reflected in the Stipulation.

II. ARGUMENT

A. MECG Continues to Sow Confusion in this Case

MECG has taken seemingly contradictory positions throughout this case. For example, MECG has stated on several different occasions that it supports the Nucor rate,[1] yet MECG's actions in this case seem designed to undermine Nucor's negotiated arrangement with Evergy. Similarly, MECG was the sole party to object to the Stipulation, which made the Stipulation non-unanimous and led to the need for the hearing on October 17, 2019. Then, on October 28, 2019, MECG withdrew its objection without explanation. Even on the question of who MECG represents in this case, MECG has taken contradictory positions – first insisting that MECG represents no specific customers,[2] then claiming at the hearing that MECG does, in fact, represent customers.[3]

MECG continues this pattern of confused and contradictory reasoning in its initial brief. Without acknowledging that MECG withdrew its objection to the Stipulation, MECG reiterates the arguments it made at the hearing as to why the Commission lacks the ability to approve the

[1] *See* MECG Statement of Position at 1 ("MECG does not object to a special contract, including the rates contained in the settlement, if that special contract fully complies with Section 393.355."); Tr. Vol. III at 57-58.
[2] Tr. Vol. I at 6-7.
[3] Tr. Vol. III at 103-04.

Nucor Contract under its traditional ratemaking authority. But then, MECG appears to conclude that the Commission can approve the Nucor Contract as proposed if the 10 year term is "not critical" to Nucor.[4] MECG asserts that the Commission cannot bind a future Commission, but then insists that the decision in the *Noranda*[5] case must bind the Commission in this case (even though the factual differences between *Noranda* and this case could not be more different).[6] MECG even appears to be confused about Nucor's position in this case. MECG asserts "the Signatories believe that this Commission can preclude future commissions from reviewing the terms of the contract and establishing other rates or terms of service."[7] Nucor has never taken this position and, as discussed below, does not believe that whether future Commissions can be bound has any bearing on the Commission's decision here.

Reading MECG's brief, particularly in light of MECG's decision to withdraw its objection to the Stipulation, Nucor is frankly unclear whether MECG's position is that the Commission may, or may not, approve the Nucor Contract as proposed. Nevertheless, we address the arguments raised by MECG challenging the Commission's authority to approve the Nucor Contract further below, and demonstrate why those arguments fail.

B. The *Noranda* Order Does Not Stand for the Proposition that the Commission May Not Approve a Ten Year Contract

Evergy, Staff, and Nucor cite numerous cases where the Commission approved special contracts, some for ten years or longer, pursuant to its traditional ratemaking authority.[8] By contrast, MECG's argument relies on one case – *Noranda*. In that case, the Commission declined to approve a ten-year rate for Noranda, and instead approved a three-year rate. The

[4] MECG Initial Brief at 2.
[5] Case No. ER-2014-0258, Report and Order (Apr. 29, 2015) ("*Noranda*").
[6] *See* Post Hearing Brief of Nucor Steel Sedalia, LLC 17-18.
[7] MECG Initial Brief at 1.
[8] Evergy Missouri West's Initial Post Hearing Brief at 8-10; Staff's Brief at 4-5; Nucor Post Hearing Brief at 12-15.

Commission noted that it "cannot bind future Commissions, nor can it preclude future litigants from presenting contrary positions in future rate cases, positions to which the Commission will need to give due consideration."[9] Nowhere in this statement, nor anywhere else in the *Noranda* decision, does the Commission state that it does not have the authority to approve a ten-year contract.

In fact, if the Commission did not have the authority to approve a ten-year rate in *Noranda* absent some new, express statutory authorization, then how could it have approved a rate for even three years? Under MECG's flawed reasoning, approving a three-year rate would seem to raise the same concerns over "binding" future Commissions as would a ten-year rate. But the Commission did approve a three-year rate in *Noranda*, just like it has approved rates with terms of five years, ten years, and longer.

A more reasonable reading of *Noranda* is that the Commission decided, based on the unique facts of that case, that a ten-year rate for Noranda was too long and too risky for Ameren's other customers. Nucor's initial brief addresses in detail the key factual differences between Nucor's situation and the *Noranda* case.[10] We will not repeat those details here, except to note that, unlike the rate at issue in *Noranda*, the Nucor Contract and the SIL Tariff, as supplemented by the provisions of the Stipulation in this case, ensure that the Nucor rate is designed to recover the costs to serve Nucor, and that non-Nucor customers will benefit from the Nucor rate and in no case will subsidize the rate over the ten-year term. The *Noranda* case does not preclude the Commission from approving the Nucor Contract, Schedule SIL, and the Stipulation in this case.

[9] *Noranda* at 133. Because the Commission cites no authority for this statement in its order, the only support supplied by MECG in support of this proposition is arguably dicta.
[10] Nucor Post Hearing Brief at 17-18.

C. Whether the Commission Can Approve a Ten-Year Contract and When and Whether the Commission Can Reopen a Contract Rate That Has Been Approved are Different Questions

As discussed above and in the initial briefs of Evergy, Staff, and Nucor, it is clear that the Commission can approve (and has approved) ten-year contracts under its traditional ratemaking authority. MECG appears to believe that because the Commission may not bind future Commissions, this also means that the Commission may not approve a ten-year contract. As discussed above, carried to its logical end, this would mean that the Commission could not approve a special contract or rate for any term, except by proceeding under Section 393.355, RSMo. If MECG is correct, the Commission's hands would be tied and its ability to approve special contracts or rates would be seriously curtailed. If the Commission could only approve a special contract through Section 393.355 (where the utility is prevented from earning a return on the investment it may make to serve the customer), this would be a serious blow to economic development in Missouri.

Fortunately, MECG is wrong. There is nothing inconsistent with: (i) the Commission having the authority to approve a special contract or rate of any particular term, so long as the rate is just and reasonable and in the public interest, and (ii) the proposition that a Commission may not bind future Commissions (even assuming that proposition is correct). In deciding whether to approve the ten-year Nucor Contract, there is no need for the Commission to speculate on what it might do if the contract or rate is challenged at some point in the future.

As we made clear throughout this case, the ten-year rate is very important to Nucor. Nevertheless, we recognize that, assuming the Nucor Contract is approved by the Commission, it is possible that at some point in the future, some party may try to challenge some aspect of the Nucor Contract or rate and, if that were to happen, the Commission would ultimately have to

decide how to resolve that challenge. While Nucor hopes to never face that situation, Nucor will determine how to address such a challenge if and when it occurs.

On a final note, we would observe that proceeding under Section 393.355 is no guarantee that a rate approved under that statute would be immune from challenge for the full term of the contract. To date, a contract or rate under Section 393.355 has never been proposed, much less approved by the Commission. Section 393.355 has never been construed by the Commission or the courts, so it is unclear how the language in the statute would be interpreted and applied. A party seeking to overturn a Section 393.355 rate could challenge the legality of the statute or its interpretation. Our intention here is not to suggest that Section 393.355 is somehow flawed or invalid. Instead, we only mean to point out that proceeding under Section 393.355 (and Section 393.356) is not without risk.

D. Proceeding Under Section 393.355 Would Not Provide Non-Nucor Customers With the Same Level of Benefit and Protection Against Risk as Proceeding Under the Commission's Traditional Ratemaking Authority

As discussed at length in the briefs of Staff, Evergy, and Nucor, the rate under the Nucor Contract is designed to recover more than Evergy's incremental cost to serve Nucor, and the revenues received by Evergy under the rate will be used to make a contribution to Evergy's fixed costs, thereby benefiting other Evergy customers. At the same time, non-Nucor customers will not be at risk for any under-recovery by Evergy should the Nucor rate not recover Nucor's incremental cost. Instead, Evergy will accept the risk of under-recovery over the course of the Nucor Contract.

Section 393.355 does not allow for a similar approach. Section 393.355 precludes Evergy from earning a return on the investment it made to provide service to Nucor (which is detrimental to Evergy), and requires Evergy's other customers to shoulder the risk of under-

recovery (which is detrimental to non-Nucor customers). MECG appears to pay no mind to the fact that non-Nucor customers will bear the risk under the Section 393.355 approach, even though the industrial and commercial customers MECG purports to represent would be put at risk along with all of Evergy's other customers. Nevertheless, given how other customers may be disadvantaged under the Section 393.355 approach, proceeding under that statute may very well make the rate more susceptible to challenge than proceeding as the stipulating parties have proposed in this case. Nucor believes that the Commission approving the Nucor Contract under its traditional ratemaking authority, which will facilitate all of the customer protections reflected in the SIL Tariff and the Stipulation, is the just and reasonable approach.

III. CONCLUSION

The Commission should approve the SIL Tariff and the Nucor Contract, subject to the customer protections and monitoring and reporting requirements outlined in the Stipulation.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission on November 8, 2019.

/s/ Stephanie S. Bell
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