

FILED
January 28, 2020
Data Center
Missouri Public
Service Commission



Missouri Public Service Commission

Judge or Division:	Appellate Number:
Appellant: Midwest Energy Consumers Group	Missouri Public Service Commission File Number: EO-2019-0244
Respondent: Missouri Public Service Commission	vs.

(Date File Stamp)

Notice of Appeal

Notice is given that Midwest Energy Consumers Group appeals to the Missouri Court of Appeals Western Eastern Southern District.

January 28, 2020
Date Notice of Appeal Filed
(to be filled in by Secretary of Commission)


Signature of Attorney or Appellant

The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. **Please make checks or money orders payable to the Missouri Court of Appeals.** At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney.

CASE INFORMATION

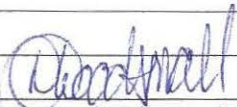
Appellant Name / Bar Number: David Woodsmall #40747	Respondent's Attorney / Bar Number: Shelley Brueggemann #52173	
Address: 308 E. High Street, Suite 204 Jefferson City, MO 65101	Address: P.O. Box 360 Jefferson City, MO 65102	
Telephone: 573-797-0005	Fax: 573-636-6006	
Telephone: 573-751-7393	Fax:	
Date of Commission Decision: November 13, 2019	Date of Application for Rehearing Filed: November 22, 2019	Date Application for Rehearing Ruled On: December 30, 2019

DIRECTIONS TO COMMISSION

A copy of the notice of appeal and the docket fee shall be mailed to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.

Certificate of Service

I certify that on January 28, 2019 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.
See attached service list for Missouri Public Service Commission Case No. EO-2019-0244


Appellant or Attorney for Appellant

Service List for Missouri Public Service Commission Case No. EO-2019-0244
(all parties will be served via electronic mail)

Missouri Public Service Commission

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Evergy Missouri West

Jim Fischer
101 Madison Street, Suite 400
Jefferson City, MO 65101
jfischerpc@aol.com

Evergy Missouri West

Joshua Harden
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
joshua.harden@stinson.com

Nucor Steel Sedalia, LLC

Stephanie S. Bell
308 E. High Street, Suite 300
Jefferson City, MO 65101
sbell@ellingerlaw.com

Nucor Steel Sedalia, LLC

Peter J. Mattheis
1025 Thomas Jefferson Street, NW
Washington DC 20007
pjm@smxblaw.com

Office of the Public Counsel

Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@opc.mo.gov

Evergy Missouri West

Rob Hack
P.O. Box 418679
1200 Main, 19th Floor
Kansas City, MO 64141-9679
rob.hack@evergy.com

Evergy Missouri West

Roger W. Steiner
P.O. Box 418679
1200 Main, 19th Floor
Kansas City, MO 6414109679
roger.steiner@evergy.com

Nucor Steel Sedalia, LLC

Michael K. Lavanga
1025 Thomas Jefferson Street, NW
Washington DC 20007
mkl@smxblaw.com

Missouri Public Service Commission

Nicole Mers
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102
nicole.mers@psc.mo.gov

Notice of Appeal (Case No. EO-2019-0244, Mo. P.S.C.)

DESCRIPTION OF CASE

On November 13, 2019, the Missouri Public Service Commission (“Commission” or “PSC”) issued a Report and Order (“Order”) granting a Special Incremental Load Contract between Nucor Steel Sedalia, LLC. and Evergy Missouri West Inc., f/k/a KCP&L Greater Missouri Operations Company (“GMO” or “Company”).

On November 22, 2019, the Midwest Energy Consumers Group (“MECG”) timely filed its Application for Rehearing from the Order, which the Commission denied on December 30, 2019. This appeal challenges that denial, as well as the Order, for the reasons set forth in MECG’s Application for Rehearing and the following Statement of Appellate Issues.

Notice of Appeal (Case No. EO-2019-0244, Mo.P.S.C.)

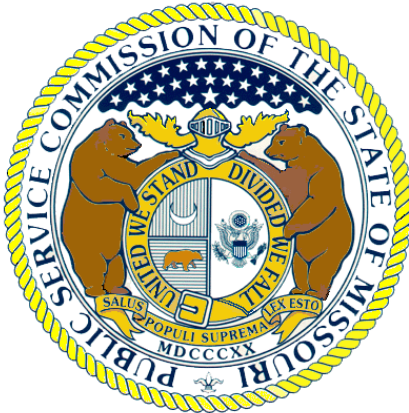
STATEMENT OF APPELLATE ISSUES

To date the Public Service Commission has not indicated whether it approved the Special Incremental Load Contract pursuant to Section 393.355 or pursuant to some other statutory authority. As such, MCEG plead its application for rehearing in the alternative.

A. In the event that the Commission approved the special contract pursuant to Section 393.355: The Report and Order is unlawful in that the Commission failed to implement the net income tracker mandated by Section 393.355.

B. In the event that the Commission approved the special contract pursuant to other alleged statutory authority: The Report and Order is unlawful in that the Commission lacks statutory authority, outside of Section 393.355, to make the special contract rate binding on future commissions.

**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) **File No. EO-2019-0244**
Special Rate for a Facility Whose Primary Industry) **Tariff No. YE-2020-0002**
Is the Production or Fabrication of Steel in or)
Around Sedalia, Missouri)

REPORT AND ORDER

Issue Date: November 13, 2019

Effective Date: November 23, 2019

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 Rate for a Facility Whose Primary Industry Is the Production or Fabrication of Steel in or Around Sedalia, Missouri)
) **File No. EO-2019-0244**
) **Tariff No. YE-2020-0002**
)
)

APPEARANCES

Robert J. Hack and Roger W. Steiner, Attorneys at Law, Kansas City Power & Light Company, 1200 Main Street, Kansas City, Missouri 64105, and

James M. Fischer, Attorney at Law, Fischer & Dority, P.C. 101 Madison Street, Suite 400, Jefferson City, Missouri 65101.

For Evergy Missouri West, f/k/a KCP&L Greater Missouri Operations Company.¹

Michael K. Lavanga and Peter J. Mattheis, Attorneys at Law, Stone Mattheis Xenopoulos & Brew, PC, 1025 Thomas Jefferson Street, N.W., Suite 800 West, Washington, D.C. 20007, and

Stephanie S. Bell, Attorney at Law, Ellinger & Associates, LLC, 308 East High Street, Suite 300, Jefferson City, Missouri 65101.

For Nucor Steel Sedalia, LLC.

Kevin A. Thompson, Chief Staff Counsel, Missouri Public Service Commission, 200 Madison Street, Suite. 800, Jefferson City, Missouri 65102-0360.

For the Staff of the Missouri Public Service Commission.

Caleb Hall, Senior Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

For the Office of the Public Counsel and the Public.

David L. Woodsmall, Attorney at Law, 308 E. High Street, Suite 204, Jefferson City, Missouri 65101.

For the Midwest Energy Consumers' Group.

Chief Regulatory Law Judge: **Morris L. Woodruff**

¹ KCP&L Greater Missouri Operations Company has changed its name to Evergy Missouri West. The Commission will refer to the company by its new name throughout this Report and Order.

REPORT AND ORDER

Table of Contents

Appearances	2
Procedural History	3
Findings of Fact	5
Conclusions of Law	9
Decision	12
Ordered Paragraphs.....	14

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On July 12, 2019, Evergy Missouri West (EMW), then known as KCP&L Greater Missouri Operations Company (GMO) filed an Application seeking authority from the Commission to implement a special incremental load rate for a steel production facility in Sedalia, Missouri. The Application explains that EMW and Nucor Steel Sedalia, LLC, (Nucor) the owner of the steel production facility, have signed a Special Incremental Load Rate Contract that establishes the rate and terms of service by which EMW intends to serve Nucor. Along with the Application, EMW filed a Special Incremental Load Tariff to

implement the agreed-upon rate for Nucor. That tariff carries a January 1, 2020 effective date.²

The Commission directed that notice of EMW's Application be given to potentially interested parties. Nucor and the Midwest Energy Consumers' Group (MECG) were allowed to intervene. Thereafter, the Commission adopted a procedural schedule.

EMW prefiled direct testimony along with its Application. Although the procedural schedule allowed for the prefiling of rebuttal and surrebuttal testimony, no such testimony was filed.³ An evidentiary hearing was held on October 17, 2019. Thereafter, the parties filed initial briefs on November 1, 2019, and reply briefs on November 8, 2019.

The Stipulation and Agreement

EMW, the Staff of the Commission, and Nucor filed a non-unanimous stipulation and agreement on September 19, 2019. That stipulation and agreement purports to resolve all pending issues and would have the Commission approve the contract between EMW and Nucor, as well as an amended Special Incremental Load Tariff. Public Counsel did not sign the stipulation and agreement, but did not oppose it. However, on September 24, 2019, MECG filed a timely objection to the stipulation and agreement.

With the stipulation and agreement having been objected to, the evidentiary hearing proceeded on the assumption that the stipulation and agreement had become merely a joint position statement of the signatory parties, which they continued to support. After the conclusion of the hearing, but before initial briefs were filed, MECG filed notice on October 28, 2019, withdrawing its objection to the stipulation and agreement. The Commission will

² Tariff No. YE-2020-0002.

³ EMW prefiled the Direct Testimony of Kevin Van de Ven, Vice President and General Manager of Nucor. Nucor was not a party at the time the testimony was prefiled. At the evidentiary hearing, Nucor, which by that time had been allowed to intervene, sponsored Mr. Van de Ven's testimony on its own behalf.

address the treatment of the now unanimous stipulation and agreement later in this Report and Order.

Findings of Fact

1. EMW is a Missouri certificated electrical corporation as defined by Subsection 386.020(15), RSMo 2016, and is authorized to provide electric service to portions of Missouri, including the Sedalia, Missouri area.

2. Nucor and its affiliates manufacture steel and steel products at over 60 facilities in the United States, including 21 steel mills that use electric arc furnaces to produce steel.⁴

3. Nucor is constructing a steel rebar producing micro mill in Sedalia. The Sedalia plant will utilize an electric arc furnace to recycle scrap steel into steel rebar. At full production, the Sedalia plant will convert scrap steel into approximately 380,000 tons of steel rebar per year.⁵

4. When operational, the Nucor steel mill will be the largest energy user within EMW's service territory. The mill will take electric power with a high load factor.⁶

5. The Nucor steel mill will take electric power directly from a newly constructed EMW substation at 13,800 volts.⁷

6. At the time of the hearing, construction of the mill was approximately ninety percent complete.⁸ Nucor expects to begin commercial steel production in the first quarter of 2020.⁹

⁴ Van de Ven Direct, Ex. 4, Page 3, Lines 15-17.

⁵ Van de Ven Direct, Ex. 4, Pages 3-4, Lines 22-23, 1-2.

⁶ Ives Direct, Ex. 2, Page 8, Lines 19-21. The numbers shown in the testimony are confidential.

⁷ Transcript, Page 132, Lines 1-4.

⁸ Transcript, Page 92, Lines 20-22.

⁹ Transcript, Page 93, Lines 6-11.

7. Nucor needs to have its electric rate approved and in effect before starting commercial operations.¹⁰

8. Upon completion, the Nucor project will encompass more than \$250 million of private investment and will create 250 new employment opportunities. The new employment positions include highly technical, skilled, well compensated positions, with an estimated average annual salary of \$65,000, nearly double the current average wage in the Sedalia area.¹¹

9. The opening of the Nucor steel production plant will significantly increase the tax base for local government units, benefiting the Sedalia area.¹²

10. Nucor accepted Sedalia and Missouri's bid to host the steel production plant after a competitive bidding process that included proposals from other states.¹³

11. Competitive electricity rates are very important to Nucor and were a primary factor in its decision to locate its plant in Sedalia.¹⁴

12. Absent the availability of a special electric rate, Nucor would not have chosen to locate its steelmaking operations in Sedalia.¹⁵

13. The contract between EMW and Nucor provides that EMW will supply electricity to Nucor at a fixed rate for a period of ten years. That fixed rate is expected to exceed EMW's average incremental cost to serve Nucor over that period, meaning the contract rate will contribute to recovery of EMW's fixed costs and thereby reduce rates paid

¹⁰ Transcript, Page 93, Lines 12-21.

¹¹ Stombaugh Direct, Ex. 3, Pages 2-3, Lines 22-23, 1-3.

¹² Craig Direct, Ex. 1, Page 4, Lines 9-16.

¹³ Ives Direct, Ex. 2, Page 4, Lines 10-12.

¹⁴ Ives Direct, Ex. 2, Page 5, Lines 9-13.

¹⁵ Van de Ven Direct, Ex. 4, Page 8, Lines 5-6.

by EMW's other customers below the level that would exist if EMW did not serve Nucor.¹⁶

14. EMW will obtain the power needed to serve Nucor by entering into a power purchase agreement for the delivery of wind power. This power purchase agreement will enable the incremental cost of serving Nucor to be more easily isolated from other EMW energy supply sources.¹⁷

15. EMW will track the costs to serve Nucor separately from the energy costs incurred to serve other customers, and those costs will not be considered as a component in the calculations associated with EMW's Fuel Adjustment Clause.¹⁸

16. The stipulation and agreement¹⁹ provides that the Commission should approve the contract between EMW and Nucor. Further, it provides that the Commission should approve and amended Special Incremental Load Tariff to become effective on January 1, 2020.

17. The stipulation and agreement also includes provisions to protect EMW's other customers from any adverse effects from the special rate being provided to Nucor. EMW expects that the overall aggregate revenues it receives from Nucor over the ten-year period of the special contract and rate will exceed the company's incremental cost to provide that service. However, EMW acknowledges that on a month-to-month view, conditions could fluctuate enough to produce an under-recovery of incremental costs in a specific month or months of the test year used to establish rates in a future rate case.²⁰ The stipulation and agreement addresses that possibility by providing that no such revenue

¹⁶ Ives Direct, Ex. 2, Page 10, Lines 4-16. The numbers describing EMW's incremental costs and the contract rate are included in the testimony, but are confidential. The entire contract is attached to Ives' Direct Testimony as Confidential Schedule DRI-2.

¹⁷ Ives Direct, Ex. 2, Page 13, Lines 5-11.

¹⁸ Ives Direct, Ex. 2, Page 14, Lines 1-6.

¹⁹ The stipulation and agreement is Ex. 5.

²⁰ Ives Direct, Ex. 2, Page 15, Lines 1-9.

deficiency would be reflected in EMW's cost of service during the ten-year term of the special contract and rate.²¹ In other words, EMW's shareholders would be responsible for any such revenue shortfall, not ratepayers.

18. EMW does not want to recover such a revenue deficiency from its other ratepayers, and the special rate is not designed to allow for such recovery.²² Indeed, because Nucor will represent new load, EMW's revenues will increase as a result of serving Nucor, so there will be no need to spread any reduction of revenues, or shortfall of cost recovery to other customers.²³

19. EMW will incur substantial capital costs to provide electric service to Nucor, including approximately \$18 million needed to construct a new substation to serve the mill. All such incremental costs are included in the calculation of the special rate.²⁴

20. EMW is not requesting approval of the special contract and special rate under the provisions of section 393.355, RSMo.²⁵

21. In a 2015 rate case decision involving Union Electric Company, d/b/a Ameren Missouri and its largest customer, Noranda, the Commission approved a special electric rate for service to Noranda. However, in denying a request that the rate be established for a ten-year period, the Commission said: "the Commission cannot bind future Commission's, 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."²⁶ The Noranda

²¹ Ex. 5 and Transcript, Page 115, Lines 11-16.

²² Transcript, Page 146, Lines 17-25.

²³ Ives Direct, Ex. 2, Page 11, Lines 9-12.

²⁴ Transcript, Page 125, Lines 3-18.

²⁵ Ives Direct, Ex. 2, Page 7, Lines 17-19.

²⁶ *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Revenues for Electric Service*, Report and Order, File No. ER-2014-0258, 25 Mo PSC 3d 70, 204, (April 29, 2015.) The applicable portions of the Report and Order are Ex. 7.

case is factually different from this case in that Noranda and Ameren Missouri had not presented an agreed-upon contract to the Commission for approval. Rather the Report and Order established a rate devised by the Commission after a hotly contested rate case.

22. EMW, the Staff of the Commission, and Nucor filed a non-unanimous stipulation and agreement on September 19, 2019. That stipulation and agreement purports to resolve all pending issues and would have the Commission approve the contract between EMW and Nucor, as well as an amended Special Incremental Load Tariff. Public Counsel did not sign the stipulation and agreement, but did not oppose it. MECG filed a timely objection to the stipulation and agreement on September 24, 2019, but withdrew that objection on October 28, 2019. Since the stipulation and agreement is now unopposed, it may be treated as unanimous.

23. The stipulation and agreement asks the Commission to approve a modified Special Incremental Load (SIL) tariff that was attached as exhibit 4 to the stipulation and agreement. That modified tariff differs from the SIL tariff filed with the application, Tariff No. YE-2020-0002, which is currently on file, and will go into effect on January 1, 2020, unless withdrawn by EMW, or rejected by the Commission.

Conclusions of Law

A. Subsection 386.020(15), RSMo 2016 defines “electrical corporation” as including:

every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, ... owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

By the terms of the statute, EMW is an electrical corporation and is subject to regulation by the Commission pursuant to Section 393.140, RSMo 2016.

B. Commission rule 20 CSR 4240-2.115(2)(C) provides that if no party timely objects to a non-unanimous stipulation and agreement the Commission may treat it as unanimous. No party objects to the stipulation and agreement filed on September 19, 2019, so the Commission will treat it as unanimous.

C. Section 536.060, RSMo 2016 provides that a contested case before an administrative agencies may be resolved by stipulation and agreement among the parties.

D. Section 393.130.1, RSMo 2016 requires that all charges made or demanded by an electrical corporation for electrical service be just and reasonable and not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

No ... electrical corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for ... electricity ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

No ... electrical corporation ... shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The courts that have examined this issue have made fact-based inquiries about the statutory proscription against unjust and unreasonable rates and undue or unreasonable preference or disadvantage.²⁷

E. Section 393.140(11), RSMo 2016 gives the Commission power to:
require every ... electrical corporation ... to file with the commission ...

²⁷ For example see, *State ex rel. City of Joplin v. Pub. Serv. Comm'n*, 186 S.W.3d 290 (Mo. App. W.D. 2005).

schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used to be used, and all general privileges and facilities granted or allowed by such ... electrical corporation

EMW has appropriately filed the Nucor contract and related tariff with the Commission.

F. Section 393.150.1, RSMo 2016 gives the Commission authority to conduct a hearing regarding any “new rate or charge, or any new form of contract or agreement” submitted by a utility, and to make an order regarding the propriety of such rates, charges, contract or agreement.

G. The Nucor contract and related tariff concern a new service being offered by EMW and do not change EMW’s existing rates. Therefore, the Commission can approve the new rates outside a general rate case, without engaging in prohibited single-issue ratemaking.²⁸

H. Section 393.355, RSMo authorizes the Commission to establish a special rate for a “[f]acility whose primary industry is the production or fabrication of steel.”²⁹ Nucor would qualify for a special rate under this statute.

I. Section 393.355, RSMo gives the Commission “authority to approve a special rate, outside a general rate proceeding, that is not based on the electrical corporations cost of service for a facility,”³⁰ but limits that authority to situations where the Commission determines (1) that the facility would not commence operations absent the special rate, and that the special rate is in the interest of the state of Missouri and its citizens; (2) that after approving the special rate, the Commission allocate the revenue difference between the special rate and the utility’s applicable standard rate to all the other customers of the

²⁸ *State ex rel. Sprint Spectrum L.P. v. Mo. Pub. Serv. Comm’n*, 112 S.W.3d 20 (Mo. App. W.D. 2003).

²⁹ Section 393.355.1.(2)(b), RSMo.

³⁰ Section 393.355.2, RSMo.

electric utility; and (3) that the Commission approve a tracking mechanism that would ensure that the “changes in net margins experienced by the electrical corporation between general rate proceedings as a result of serving the facility are calculated in such a manner that the electrical corporation’s net income is neither increased nor decreased.”³¹

J. Section 393.355.5, RSMo provides that a special rate established under this section may be in effect for no more than ten years from the date the special rate is authorized.

K. Section 393.356, RSMo provides that once the Commission has approved a special rate under section 393.355, it may not modify or eliminate that special rate during the specified term of that rate.

L. Section 393.355, RSMo gives the Commission authority to approve a special electric rate under specific circumstance, but its terms do not limit any other authority the Commission has to approve a special electric rate under more general authority granted by other statutory provisions.

Decision

If the Commission is to find that EMW’s special contract, and related tariff, to provide service to Nucor should be approved, it must find that the rates established in that contract and tariff are just and reasonable, and that they do not establish an undue or unreasonable preference in favor of a particular customer. The evidence shows that a special contract for Nucor is in the public interest. The opening of the Nucor steel plant in Sedalia will provide unquestioned economic development benefits to that city and region, and to the State of Missouri as a whole. The evidence also shows that the steel plant will not be viable without the certain and stable electric rates made available by this special contract and tariff.

³¹ Section 393.355.2.(1-3), RSMo.

The rates afforded to Nucor under this special contract and tariff will be greater than EMW's incremental cost to serve the steel plant, and will contribute to the utility's fixed costs and thereby provide a financial benefit to all of EMW's customers.

The evidence also shows that Nucor will be a unique customer of EMW because it uses more electricity than any other EMW customer. Further, it uses that electricity at a high load factor. Under these circumstances, a rate for Nucor that is less than its fully allocated cost, but more than its incremental cost, is just and reasonable within the meaning of Section 393.130, RSMo 2016, and is not unduly or unreasonably preferential.

Questions have been raised about why EMW chose not to seek a special rate under the provisions of section 393.355, RSMo. That statute seems to have been designed to address the conflict between Noranda and Ameren Missouri, and consequently contains provisions that do not fit well with the cordial and cooperative relationship between EMW and Nucor. If the Commission is to approve a special rate under the authority granted by section 393.355, the statute requires that it must allocate the revenue difference between the special rate and the utility's applicable standard rate to all other customers. EMW does not want that benefit, and such an allocation would not be in the best interest of EMW's other customers.

Further, section 393.355, would require the implementation of a tracker designed to prevent EMW from increasing its net income between rate cases as a result of serving Nucor under the special rate. Such a provision is unnecessary and would be unfair to EMW, as it will incur substantial costs to construct new infrastructure to enable it to serve Nucor.

It was suggested that EMW and Nucor must proceed under section 393.355 if they are to ensure the ten-year term of their contract because of the provision in section 393.356 that prevents the Commission from modifying a contract approved under section 393.355 during its approved term. That provision would provide an extra measure of assurance to Nucor and EMW, but it does not prevent the Commission from approving the ten-year term

of the contract presented by Nucor and EMW.

The provisions of the unopposed stipulation and agreement, which the Commission will treat as unanimous, provide further protections to EMW's other ratepayers. In particular, the stipulation and agreement will protect those ratepayers from the risk of having to pay any under-recovery of EMW's incremental costs in a future rate case.

Based on its findings of fact and conclusions of law described in this Report and Order, the Commission will approve the stipulation and agreement of the parties, and will approve the special contract between EMW and Nucor, as well as the tariff that will implement that agreement.

Because of the need for a prompt resolution of this matter, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. The Special Incremental Load Rate Contract between Evergy Missouri West and Nucor Steel Sedalia, LLC is approved.
2. The Special Incremental Load Tariff pending before the Commission as Tariff No. YE-2020-0002 is rejected. Evergy Missouri West may file for approval the Special Incremental Load Tariff attached to the stipulation and agreement as exhibit 4.
3. The unopposed Stipulation and Agreement filed on September 19, 2019, is deemed to be unanimous and is approved.

4. This report and order shall be effective on November 23, 2019.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo 2016

Dated at Jefferson City, Missouri,
on this 13th day of November, 2019.

**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 Rate for a Facility) File No. EO-2019-0244
Whose Primary Industry is the Production or)
Fabrication of Steel in or Around Sedalia, Missouri.)

APPLICATION FOR REHEARING

COMES NOW, the Midwest Energy Consumers Group (“MECG”), pursuant to Section 386.500 RSMo. and 20 CSR 4240-2.160, and for its Application for Rehearing respectfully states as follows:

1. As an initial matter, MECG states that it is in favor of economic development. As a representative of large commercial and industrial interests, MECG supports legislation and policies that seek to attract new customers to Missouri. Indeed, MECG, and not Evergy, testified in support of House Bill 1 that provided the initial incentive for Nucor to explore expanding to Missouri.

2. That said, however, MECG is also concerned about the affordability of electric rates for the large commercial and industrial customers already operating in Missouri. Furthermore, MECG is careful to take positions that comply with statutes enacted by the General Assembly. In this regard, MECG suggests that the General Assembly has created a procedure by which the Commission may provide an incremental cost-based rate to new customers. That procedure expressly provides that the net income benefits of any new customer must inure to the benefit of current customers and not to the electric utility. In the immediate case, the Signatories to the non-unanimous stipulation, and the Commission in its Report and Order, seek to transfer those net income benefits from current customers and give those benefits instead to Evergy.

3. MECG urges the Commission to take steps to provide Nucor all of the benefits to which it is entitled under Section 393.355. That is, as provided in that statutory section, the Commission should ensure that Nucor is provided an incremental cost-based rate and to make that

rate binding on future commissions for a ten year period. That said, however, the Commission should also ensure that remaining customers are also provided all of the benefits to which they are entitled. Specifically, any net income benefits should inure to the benefit of these other customers and not transferred to Evergy. Indeed, it is the non-unanimous stipulation, approved by the Commission, which is contrary to economic development interest. Specifically, unlike the MECG position which seeks to ensure that net income benefits are used to help address affordability concerns of hundreds of thousands of Evergy customers, the non-unanimous stipulation instead seeks to transfer those net income benefits directly to Evergy.

BACKGROUND

4. In the context of Case No. ER-2014-0258, the Commission considered a request to establish a special rate for Noranda Aluminum. Specifically, Noranda asked that the Commission set a rate that is based upon incremental cost and to make that rate binding on future commissions for a 10 years period. Given the economic importance of Noranda to the southeast Missouri region, the Commission found that it was appropriate to set a rate based upon incremental cost. That said, however, the Commission found that it was powerless to make the rate binding on future commissions for a 10 year period.

[W]hile a stipulation and agreement can be binding on its signatories for ten years, the Commission 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.¹

5. Given the Commission's stated inability to make the rate binding for a period of time, Noranda immediately set out to provide a legislative fix to this problem. During the first extraordinary session of the 2017 General Assembly, legislation was passed to fix this problem. The basic premise of that legislation, codified at Section 393.355, is that the Commission could grant an incremental cost-based rate to certain large customers, including aluminum smelters and

¹ *Report and Order*, Case No. ER-2014-0258, issued April 29, 2015, page 133.

steel mills. That said, however, the section mandated that the Commission implement a tracker to ensure that the utility experiences no increase or decrease in net income. Therefore, any net income changes would instead be used to benefit current customers. Therefore, at the most basic level, the legislation provides that, while the new customer would receive a preferential rate and the utility held harmless, any income benefits would inure solely to other customers.

CASE NO. EO-2019-0244

6. On July 12, 2019, Evergy West (formerly known as KCP&L Greater Missouri Operations Company) filed its Application in this case. In that Application, Evergy sought Commission approval of the Schedule SIL tariff as well as a special rate for Nucor Steel Sedalia, LLC. (“Nucor”). As Evergy expressly indicated in that Application, while Section 393.355 has recently been enacted which allows for the approval of a 10 year special contract for steel mills, approval of the Nucor special rate was not sought pursuant to that statutory section. Rather, the requested relief is “significantly similar to Section 393.355 RSMo.”² Essentially, by seeking approval for a special rate outside of the express terms of Section 393.355, Evergy sought to retain any net income benefits for itself instead of transferring those financial benefits to other customers.

7. On September 19, 2019, Evergy, Nucor and Staff filed a non-unanimous stipulation and agreement. That stipulation sought commission approval of the Nucor special rate. In an effort to avoid the statutory requirement that any net income benefits inure to other customers, the stipulation rejected the net income tracker. Instead, the stipulation sought to pass those financial benefits directly to Evergy.

8. As expressed in the signatory parties’ position statements, approval of Schedule SIL and the Nucor special rate was not sought pursuant to Section 393.355. Rather, the Signatories

² Indeed, in its Report and Order, the Commission expressly recognized that approval was not sought pursuant to Section 393.355. “EMW is not requesting approval of the special contract and special rate under the provisions of section 393.355, RSMo.”

pointed out within those position statements that approval was sought pursuant to Sections 393.130, 393.140 and 393.150. On September 24, 2019, MECG filed its objection to the non-unanimous stipulation. The primary objection was MECG's assertion that, if approved under Section 393.355, any net income benefits should be returned to customers through the utilization of a mandated net income tracker. In the alternative, if approved under other statutory provisions, then the special rate could not be binding on future parties or commissions.

9. During the opening statements and within the initial briefs, the Signatories clarified the non-unanimous stipulation. Specifically, while the stipulation sought to bind future commissions to the rate contained in the Nucor special contract, the Signatories recognized that, since approval was not sought under Section 393.355, future commissions could review the Nucor special contract rate. Based upon the representation that review of the Nucor special rate could occur in future rate cases, MECG withdrew its objection to the stipulation.

10. On November 13, 2019, the Commission issued its Report and Order. In that Report and Order, the Commission goes significantly beyond the terms of the non-unanimous stipulation that MECG did not oppose.³ Specifically, while approval of the stipulation was not sought pursuant to Section 393.355, the Report and Order repeatedly relied upon that statutory section for approving the Nucor special rate. Included in the Report and Order, and contrary to the representations of the Signatories to the non-unanimous stipulation, is a provision that seeks to make the ten year term binding on future commissions.

³ It is unclear from the Report and Order whether the Commission sought to approve the stipulation pursuant to the terms of Section 393.355 or whether approval was granted pursuant to other statutory authority. Repeatedly the Order discusses the authority, granted by Section 393.355, to approve an incremental cost-based rate. That said, however, the Commission then claims to approve the terms of the stipulation even though the stipulation was premised on statutory authority outside of Section 393.355. Moreover, as further indicated in this pleading, the Commission claims that it has authority to make the rate binding on future commission outside of the provisions of Section 393.355. As will be discussed, MECG seeks rehearing under both possible scenarios. MECG suggests that, if the Commission relied upon Section 393.355, then it was required to implement the net income tracker. In the alternative, if the Commission relied upon statutory provisions outside of Section 393.355, then it is powerless to make that rate binding on future commissions. Bottom line, the Commission cannot both make the rate binding on future commissions and to forego the net income tracker.

It was suggested that EMW and Nucor must proceed under section 393.355 if they are to ensure the ten-year term of their contract because of the provision in section 393.356 that prevents the Commission from modifying a contract approved under section 393.355 during its approved term. That provision would provide an extra measure of assurance to Nucor and EMW, but it does not prevent the Commission from approving the ten-year term of the contract presented by Nucor and EMW.⁴

11. The Report and Order is legally problematic. While the Commission has statutory authority to approve a ten year term under Section 393.355, proceeding under that provision would mandate the implementation of a tracker to “ensure that the changes in net margin experienced by the electrical corporation between the general rate proceedings as a result of serving the facility are calculated in such a manner that the electrical corporation’s net income is neither increased nor decreased.”⁵ If approved using statutory provisions outside of Section 393.355, the Commission is powerless to bind future commissions to the ten year term of the Nucor special contract rate.

12. As MECG has repeatedly indicated, it has no problem with the Nucor special contract rate. Approval of that special rate could theoretically occur in two different ways. First, the Commission could approve the Nucor special rate, including the ten year term, under Section 393.355. As mentioned, however, approval under that statutory section would require the implementation of the net income tracker mandated by Section 393.355.3. Second, the Commission could approval the Nucor special rate without the net income tracker. Approval under this alternative method, however, would preclude this Commission from binding future commissions to the special contract rate for a ten year term. Effectively, there is no statutory basis, as the Commission now attempts to do, to both: (1) bind future commissions for a ten year term and (2) forego the implementation of the net income tracker. Essentially, the Commission must choose, either it can approve the special contract for a 10 year term under Section 393.355 including the net income tracker OR, as the signatories seemingly propose, it can approve using

⁴ Report and Order, pages 13-14.

⁵ See, Section 393.355.3.

other statutory authority and forego the net income tracker. This alternative means, however, that the rate would not be binding for ten years. MECG would not object to the Commission approving the special contract under either of these scenarios, but MECG does object and seeks rehearing for the Commission's attempt to order a ten year term while simultaneously foregoing the net income tracker.

POINT OF APPLICATION FOR REHEARING

13. As indicated in footnote 3, it is unclear whether the Commission sought to approve the non-unanimous stipulation pursuant to Section 393.355 or through other statutory provisions. Indeed, the Commission repeatedly points to the authority provided by Section 393.355. That said, however, the Commission also claims to have other statutory authority to make the rate binding for a ten year period. Given this uncertainty, MECG pleads this application for rehearing in the alternative depending on the authority that the Commission ultimately points to for issuing its Report and Order.

- A. In the event that the Commission approved the special contract pursuant to Section 393.355: The Report and Order is unlawful in that the Commission failed to implement the net income tracker mandated by Section 393.355.
- B. In the event that the Commission approved the special contract pursuant to other alleged statutory authority: The Report and Order is unlawful in that the Commission lacks statutory authority, outside of Section 393.355, to make the special contract rate binding on future commissions.

WHEREFORE, MECG respectfully requests that the Commission grant rehearing in this case.

Respectfully submitted,

/s/ David Woodsmall
David L. Woodsmall, MBE #40747
308 East High Street, Suite 204
Jefferson City, Missouri 65101
(573) 797-0005
david.woodsmall@woodsmalllaw.com

**ATTORNEY FOR THE MIDWEST
ENERGY CONSUMERS GROUP**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

/s/ David Woodsmall
David L. Woodsmall

Dated: November 22, 2019

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 30th day of December, 2019.

In the Matter of the Application of Evergy Missouri)
West for Approval of a Special Rate for a) **File No. EO-2019-0244**
Facility Whose Primary Industry is the Production or)
Fabrication of Steel in or Around Sedalia, Missouri)

ORDER DENYING APPLICATION FOR REHEARING

Issue Date: December 30, 2019

Effective Date: December 30, 2019

On November 13, 2019, the Commission issued a report and order that approved a Special Incremental Load Rate Contract between Evergy Missouri West (f/k/a KCP&L Greater Missouri Operations Company) and Nucor Steel Sedalia, LLC. That report and order became effective on November 23. The Midwest Energy Consumers Group (MECG) filed a timely application for rehearing on November 22.

Section 386.500.1, RSMo (2016), indicates the Commission shall grant an application for rehearing if “in its judgment sufficient reason therefor be made to appear.” In the judgment of the Commission, MECG has not shown sufficient reason to rehear the report and order. The Commission will deny the application for rehearing.

THE COMMISSION ORDERS THAT:

1. The Midwest Energy Consumers Group’s Application for Rehearing is denied.

2. This order shall be effective when issued.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge