

**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. )

**EVERGY MISSOURI WEST’S RESPONSE TO  
MECG’S INITIAL POST-HEARING BRIEF**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (f/k/a KCP&L Greater Missouri Operations Company) (“GMO” or the “Company”)<sup>1</sup>, and for its Response to Midwest Energy Consumers Group (“MECG”) Initial Post-Hearing Brief (“Response”) in this matter:

**I. INTRODUCTION**

In this proceeding, the Initial Briefs of GMO, Nucor Steel Sedalia, LLC, a Division of Nucor Corporation (“Nucor”), and Staff (“Staff”) for the Missouri Public Service Commission (“Commission”) filed on November 1, 2019, largely anticipated and addressed at length the arguments of the Midwest Energy Consumers Group (“MECG”) raised during the evidentiary hearings. After the evidentiary hearings were completed, MECG withdrew its objection to the Non-Unanimous Stipulation and Agreement (“Stipulation”) on October 28, 2019.<sup>2</sup> The Office of the Public Counsel (“OPC”) also stated in its Initial Brief that:

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<sup>1</sup> Effective October 7, 2019, Evergy Missouri West, Inc. d/b/a Evergy Missouri West adopted the service territory and tariffs of KCP&L Greater Missouri Operations Company.

<sup>2</sup> In its Withdrawal of Objection filed on October 28, 2019, MECG unequivocally stated: “MECG hereby withdraws its objection” [to the Non-Unanimous Stipulation filed on September 19, 2019].

Given Nucor's acceptance of the special rate, and GMO's commitment to hold all other customers completely harmless from increased costs due to Nucor's cost of service, OPC does not object to the stipulation and agreement.

(OPC Brief at 2)

With MECG's withdrawal of its objection on October 28, 2019 and OPC's position that it does not object to the Stipulation, the Commission may treat the Stipulation as unanimous under 20 CSR 4240-2.115(2)(c) as explained in GMO's Initial Brief at 2, 22-23. The Company continues to believe that the Commission should do so.

Notwithstanding MECG's statement that "MECG hereby withdraws its objection" filed on October 28, 2019, MECG nevertheless takes a totally inconsistent and contrary position in its brief when it reverts to its original, unsubstantiated argument that "the [S]tipulation should be modified to be consistent with Section 393.355." (MECG Brief at 2) It is not at all apparent to GMO what MECG intends by its various contradictory filings but, at a minimum, MECG's conduct has been disrespectful of the regulatory process. Given MECG's contradictory filings, GMO suggests that it would be entirely appropriate for the Commission to ignore MECG's initial brief and recommends that the Commission do so. Nevertheless, MECG continues to be mistaken that Section 393.355 is the exclusive authority for approving the Nucor Agreement with a contract term of ten years. (MECG Brief at 1) The Company, Nucor, and Staff have thoroughly refuted this erroneous MECG argument in their initial briefs (GMO Brief at 8-14; Nucor Brief at 12-21; Staff Brief at 2-10), but a brief reply is necessary to address MECG's latest inconsistent and unsupported position.

## II. ARGUMENT

### A. **THE COMMISSION SHOULD APPROVE THE SPECIAL INCREMENTAL LOAD (“SIL”) TARIFF PROPOSED BY GMO AND THE SPECIAL INCREMENTAL LOAD RATE PROPOSED FOR NUCOR SUBJECT TO THE CUSTOMER PROTECTIONS AND MONITORING AND REPORTING REQUIREMENTS RECOMMENDED BY STAFF, NUCOR, AND GMO, INCLUDING THE TEN-YEAR TERM OF THE CONTRACT.**

While MECG has abandoned virtually all of its arguments against approval of the Nucor Agreement and the SIL Tariff, including withdrawal of its objection to the Stipulation, it has now attempted to leverage Nucor’s need for a 10-year term for the contract as a reason for the Commission to reject the traditional statutory authority (Sections 393.130, 393.140(11), and 393.150(1)) relied upon by GMO, Nucor, and Staff, and in so doing, promote MECG’s renewed desire to use Section 393.355 as a means to ensure that GMO and its other non-Nucor customers do not profit from the Nucor Agreement. MECG fails to explain how its recommended approach is in the interest of GMO’s non-Nucor customers, or even the interests of the commercial and industrial customers that MECG purportedly represents. The Commission should summarily reject MECG’s approach as being inconsistent with its withdrawn objection and not being in the interest of GMO, Nucor, GMO’s other non-Nucor customers, or in the broader public interest.

As the Company, Nucor, and Staff have already demonstrated, (a) Section 393.355 is not the exclusive statutory provision for approving special contracts, (b) Section 393.355 was primarily designed to address the unique situation of Noranda Aluminum (“Noranda”) in 2016, and (c) Section 393.355 is ill-suited for the facts of this case that include the need for GMO to invest in and earn a return on more than \$18 million of facilities to serve Nucor. (GMO Brief at 8-14; Nucor Brief at 12-21; Staff Brief at 2-10)

Contrary to the position of MECG, the Commission does not lack the statutory authority to approve the 10-year term set forth in the Nucor Agreement without relying upon Section 393.355.

(GMO Brief at 8-12, 17-20; Nucor Brief at 12-21; Staff Brief at 2-10) In fact, the Commission has previously approved numerous special contracts with terms of 10 years or more without relying upon Section 393.355.<sup>3</sup> (Nucor Brief at 12-14, 18 fn. 84)

As Staff has clearly demonstrated, the approach recommended by MECG (i.e., using Section 393.355), if utilized by the Commission, would ensure other customers of GMO would be adversely affected by the Nucor Agreement. As Staff stated, “This [Section 393.355.3] tracker is supplemental to the direct subsidy created in § 393.355.2(2), RSMo., which requires that ‘[after approval of the special rate, the Commission allocates in each general rate proceeding of the electrical corporation serving the facility the reduced revenues from the special rate as compared to the revenues that would have been generated at the rate the facility would have paid without the special rate to the electric corporation’s other customers through a uniform percentage adjustment to all components of the base rates of all customer classes[.]’” (Staff Brief at 23-24; Tr. 47-48) MECG fails to address this clear adverse impact upon GMO’s non-Nucor customers if MECG’s position prevailed and provisions of Section 393.355 were utilized.

GMO and Nucor do not want other customers to subsidize Nucor’s rate in any way. (Tr. 82, 85, 117-18) Instead, the Nucor rate is designed to recover the incremental costs of serving Nucor and make a meaningful contribution to GMO’s fixed costs. (Tr. 27, 51) As recognized by OPC (OPC Brief at 2), the Stipulation also includes customer protections that ensure that other customers will be held completely harmless from increased costs due to Nucor’s cost of service

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<sup>3</sup> See e.g., *Order Approving Stipulation and Agreement*, p. 3, Re Union Electric Company, Case No. EA-2005-0180, Mar. 10, 2005) (Noranda/Ameren Missouri proposed LTS Tariff and power supply agreement for Noranda with a fifteen-year term); *Order Concerning Agreement and Tariffs, Application to Intervene, and Motions to Suspend Tariffs*, p. 9, Re Missouri-American Water Company, Case No. WT-2004-0192 (Nov. 20, 2003)(Nestle/Missouri-American Water Company contract term in excess of ten years); *Order Approving Agreement, Granting Waiver of Tariff Provisions, and Approving Tariff*, p. 4, Re: Missouri-American Water Company, (Sept. 3, 2008)(Nestle Purina Pet Care/Missouri-American Water Company contract term “in excess of ten years and may be renewed.”).

over the 10-year term of the contract. (GMO Brief at 5-7; Nucor Brief at 10-11; Staff Brief at 17-22) Throughout the 10-year term of the Nucor Agreement, Staff and OPC will have the opportunity to actively monitor and review the costs and revenues associated with the Nucor Agreement under the monitoring and reporting provisions contained in the Stipulation in Paragraphs 7 and 8. See also, GMO Original Sheet No. 157.2, paragraph 4. Adjustments will be made to the revenue requirement, if appropriate and necessary, in each and every rate case filed by the Company during the ten-year term of the contract. This recurring Commission review of the incremental cost of serving Nucor and its relationship to revenues produced by Nucor offers significant customer protections that are available to future commissions and which were not included in the Noranda arrangement. In light of these customer protections, there is nothing about a 10-year term of the contract that will in any way adversely affect either GMO's other non-Nucor customers or the ability of future commissions to take action to protect GMO's other non-Nucor customers. Notably, this was a significant factor in OPC's decision not to object to the Stipulation. (OPC Brief at 2)

MECG argues that "the Signatories have failed to provide any statutory authority or case law which would call into question the Commission's findings in the Ameren case (Exhibit 7) or provide a basis for this Commission to bind future commissions to the terms and conditions of the GMO/Nucor special contract for a 10-year term." (MECG Brief at 2). MECG is simply wrong. (See GMO Brief at 17-20; Nucor Brief at 2-3, 17-18; Staff Brief at 25-26)

MECG continues to cite the Commission's order in the Ameren Missouri rate case order related to Noranda as if it is binding on the Commission in this case. (MECG Brief at 1-2) MECG's position is totally inconsistent with its argument that one commission is not bound by the findings of a previous Commission. MECG is correct that *stare decisis* does not apply to the

Commission,<sup>4</sup> and as a result, this Commission is not bound to follow a previous decision in the Noranda case. The facts and circumstances of Noranda were totally different from the facts and circumstances of this case. In Noranda, the Commission was very concerned about the “precarious financial condition” of Noranda and the effect that the loss of Noranda’s load would have on other ratepayers.<sup>5</sup> In the case at hand, Nucor is strong financially and is the largest steel maker in the United States. The Nucor Agreement is designed to recover the incremental costs and provide a meaningful contribution to the recovery of the Company’s fixed costs which will reduce the rates of the other customers. It is new load that has the potential to benefit all of GMO’s customers.

Unlike the Noranda case, the Stipulation in this case contains substantial monitoring and reporting requirements and commitments by the Company to absorb any possible revenue deficiencies in the future, in the unlikely event that Nucor’s operations had an adverse impact on the revenue requirement of other customers. Under the Stipulation, the Commission will assess the relationship of revenues and incremental costs in each rate case during the term of the contract. This recurring Commission review of the incremental cost of serving Nucor and its relationship to revenues produced by Nucor offers significant customer protections. Although Nucor’s rate will not change as a result of those rate case reviews, if any of those reviews indicate that revenues from Nucor fall short of the incremental cost, then an adjustment will be made to the Company’s revenues requirement to hold other customers harmless. (Ex. 5-P, Stipulation, p. 2-3) The Nucor-related costs will appear in the FAC reporting, but will be excluded in the calculation of the FAC rates. The Nucor costs flow through the same FERC accounts as the Company’s other fuel and fuel related costs. Account coding will allow the Company to separate and remove the Nucor

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<sup>4</sup> State ex rel. Aquila v. Public Service Commission, 326 S.W.3d 20, 31-32 (Mo.App. 2010).

<sup>5</sup> See Report and Order, Re Union Electric Company d/b/a Ameren Missouri’s Tariff to Increase Its Revenue for Electric Service, Case No. ER-2014-0258, pp. 131-32 (April 29, 2015).

costs. Contrary to the implication of MECG's arguments, future commissions will not be bound in any way that would prevent those commissions from protecting other customers in the event of some unexpected Nucor-related costs.

The fact that the Commission and the parties will have active monitoring and reporting of the incremental costs and revenues associated with serving Nucor, will provide additional customer protections to ensure that there are no adverse impacts upon other customers over the 10-year term. These additional protections should alleviate any concerns about the term of the contract "binding any future commission." (Tr. 60, 67, 72) They certainly did for OPC, as these provisions were a significant factor in OPC's decision not to oppose the Stipulation. (OPC Brief at 2)

Finally, MECG quotes a statement of GMO's counsel that merely pointed out that there is case law that indicates that the Commission retains the police power to review all rates to promote just and reasonable rates. (MECG Brief at 2) This proposition in no way suggests that the Commission may not approve a special contract with a term of ten years or more. It merely stands for the proposition that the Commission has plenary authority over the rates of a regulated public utility. The Commission should continue its traditional practice of approving special contracts with terms of up to ten years or more when the contracts are in the public interest (which the Nucor contract clearly is).

**WHEREFORE**, the Company respectfully submits its Response to MECG's Brief and requests that the Commission approve the Nucor Agreement and the Company's SIL Tariff, with the additional customer protections contained in the Stipulation filed on September 19, 2019.

Respectfully submitted,

*/s/ Roger W. Steiner*

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 8<sup>th</sup> day of November 2019, to all counsel of record.

*/s/ Roger W. Steiner*

Roger W. Steiner