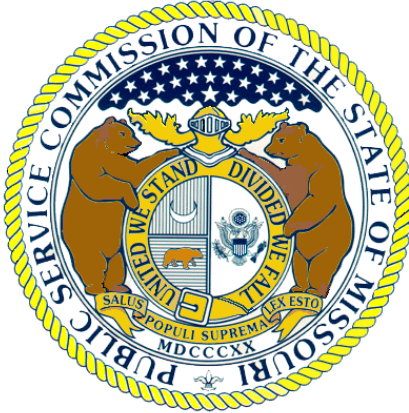


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



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  
)  
)

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**REPORT AND ORDER**

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**Issue Date: November 13, 2019**

**Effective Date: November 23, 2019**

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OF THE STATE OF MISSOURI**

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 ) **File No. EO-2019-0244**  
 ) **Tariff No. YE-2020-0002**  
 )

**APPEARANCES**

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**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.<sup>1</sup>

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For the Midwest Energy Consumers' Group.

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

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<sup>1</sup> 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

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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.<sup>2</sup>

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.<sup>3</sup> 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

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<sup>2</sup> Tariff No. YE-2020-0002.

<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

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

6. At the time of the hearing, construction of the mill was approximately ninety percent complete.<sup>8</sup> Nucor expects to begin commercial steel production in the first quarter of 2020.<sup>9</sup>

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<sup>4</sup> Van de Ven Direct, Ex. 4, Page 3, Lines 15-17.

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

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

<sup>7</sup> Transcript, Page 132, Lines 1-4.

<sup>8</sup> Transcript, Page 92, Lines 20-22.

<sup>9</sup> Transcript, Page 93, Lines 6-11.

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

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.<sup>11</sup>

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

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.<sup>13</sup>

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

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

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

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<sup>10</sup> Transcript, Page 93, Lines 12-21.

<sup>11</sup> Stombaugh Direct, Ex. 3, Pages 2-3, Lines 22-23, 1-3.

<sup>12</sup> Craig Direct, Ex. 1, Page 4, Lines 9-16.

<sup>13</sup> Ives Direct, Ex. 2, Page 4, Lines 10-12.

<sup>14</sup> Ives Direct, Ex. 2, Page 5, Lines 9-13.

<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

16. The stipulation and agreement<sup>19</sup> 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.<sup>20</sup> The stipulation and agreement addresses that possibility by providing that no such revenue

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<sup>16</sup> 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.

<sup>17</sup> Ives Direct, Ex. 2, Page 13, Lines 5-11.

<sup>18</sup> Ives Direct, Ex. 2, Page 14, Lines 1-6.

<sup>19</sup> The stipulation and agreement is Ex. 5.

<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup>

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

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."<sup>26</sup> The Noranda

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<sup>21</sup> Ex. 5 and Transcript, Page 115, Lines 11-16.

<sup>22</sup> Transcript, Page 146, Lines 17-25.

<sup>23</sup> Ives Direct, Ex. 2, Page 11, Lines 9-12.

<sup>24</sup> Transcript, Page 125, Lines 3-18.

<sup>25</sup> Ives Direct, Ex. 2, Page 7, Lines 17-19.

<sup>26</sup> *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.<sup>27</sup>

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

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<sup>27</sup> 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.<sup>28</sup>

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.”<sup>29</sup> 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,”<sup>30</sup> 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

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

<sup>29</sup> Section 393.355.1.(2)(b), RSMo.

<sup>30</sup> 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.”<sup>31</sup>

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.

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<sup>31</sup> 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**



*Morris L Woodruff*

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 13<sup>th</sup> day of November, 2019.

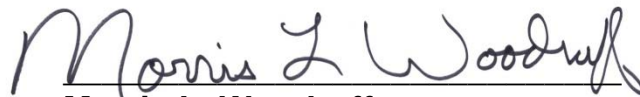
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS** my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 13<sup>th</sup> day of November 2019.



  
Morris L. Woodruff  
Secretary



**MISSOURI PUBLIC SERVICE COMMISSION**

**November 13, 2019**

**File/Case No. EO-2019-0244**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.