

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

In the Matter of the Application of) Every Missouri West, Inc. d/b/a) Every Missouri West For Approval of) an Amendment to Nucor Steel Sedalia,) LLC Agreement)	Case No. EO-2026-0129
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STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Statement of Positions*, states as follows:

In the *Order Setting Procedural Schedule* issued by this Commission in the above referenced case file on February 17, 2026, this Commission ordered that “[e]ach party shall file a simple and concise statement summarizing its position on each disputed issue” and that such position statements were to be filed on May 20, 2026. Pursuant to this order, the OPC files this statement summarizing its position on each disputed issue included in the filed *List of Issues*, as set forth below:

Positions

Issue A: Should the Commission approve an amendment to the Special Rate for Incremental Load Service (“SIL”) dated July 11, 2019 (the “Nucor Agreement”) between EMW and Nucor Steel Sedalia, LLC (“Nucor”), which would allow Nucor to participate in any demand response programs offered by Every Missouri West, Inc. d/b/a Every Missouri West (“EMW”) (subject to the availability and terms of each specific program)?

Position: The Commission should allow, but not require, an amendment to the Nucor Agreement that would permit Nucor to participate in non-MEEIA

demand response programs.

Explanation: This case concerns an application for Nucor to participate in the business demand response program that is currently offered by EMW pursuant to the Missouri Energy Efficiency Investment Act (“MEEIA”). As explained below, that application should be denied. However, it would be acceptable for the Commission to allow Nucor to participate in existing demand response programs available outside of EMW’s current MEEIA framework.¹ In order to permit Nucor to make use of the alternative options, the Commission would need to approve an amendment to the existing Nucor Agreement to allow Nucor to participate in these non-MEEIA demand response programs. The exact language for such an amendment was suggested in the rebuttal testimony of Staff witness Jordon T. Hull.²

Issue A(1): In doing so, should the Commission approve an amendment permitting Nucor to participate in EMW’s business demand response (“BDR”) program pursuant to the Missouri Energy Efficiency Investment Act, RSMo § 393.1075 (“MEEIA”)?

Position: No.

Explanation: The OPC’s witness Dr. Geoff Marke provided the following non-

¹ See, e.g., *Surrebuttal Testimony of Manzell Payne (Public and Confidential)*, pg. 8 lns. 13 – 17 (“Q. So, in your opinion, it would be acceptable for Nucor to participate in the kind of demand response program discussed in Mr. Hull’s rebuttal testimony? A. Yes. To be very clear, I am not against demand response programs in general nor am I against Nucor’s participation in such programs generally.”).

² *Rebuttal Testimony of Jordan T. Hull (Public and Confidential)*, pg. 12 ln. 18 – pg. 13 ln. 4.

exhaustive list of reasons why the application to allow Nucor to participate in EMW's MEEIA should be denied:

- It is not aligned with the current approved MEEIA portfolio;
- ARC's represent a preferable market-based alternative;
- Evergy represents a middleman of unnecessary costs to existing ratepayers; and
- The SPP demand response construct is undergoing material changes, which necessitate a larger dialogue around demand response programs and especially the role of hyperscalers moving forward.³

OPC witness Manzell M. Payne highlighted further concerns regarding this application:

[T]he concerns identified regarding cost allocation, tariff consistency, and the lack of demonstrated benefits associated with EMW's position are all reasons why Nucor should not participate in EMW's MEEIA BDR program. The overall proposed participation of Nucor in the BDR program is not in the best interest of the public and increases the burden on EMW's ratepayers.⁴

Issue A(1)(a): If the Commission approves Nucor's participation in the MEEIA BDR program, what, if any, conditions should Nucor's participation in the MEEIA BDR program be subject to?

Position: To reiterate, the Commission should not approve Nucor's participation under any circumstances for the reasons laid out in the testimony of the witnesses for the OPC and the Commission's Staff. If the

³ *Surrebuttal Testimony of Geoff Marke*, pg. 2 lns. 14 – 21.

⁴ *Surrebuttal Testimony of Manzell Payne (Public and Confidential)*, pg. 2 lns. 25 – 29.

Commission so chooses to allow Nucor to participate despite these reasons, then, at a minimum, the Commission should order the alternative recommendations provide in Staff witness Justin Tevie's testimony.⁵

Explanation: Staff's recommended alternatives represent the next best option to mitigate the negative impacts of allowing Nucor to participate in EMW's MEEIA based demand response program.

Issue A(2): Would Nucor's participation in EMW's MEEIA BDR program produce benefits to all EMW customers?

Position: No.

Explanation: OPC witness Manzell M. Payne provided a high-level explanation of this issue:

The underlying issue is that Nucor's participation results in a shift in cost from Nucor to other ratepayers without sufficient evidence that those ratepayers will receive commensurate benefits. The concern is that Nucor and EMW will benefit through the incentives and earnings opportunity, respectfully, and in doing so those costs will be shifted on to ratepayers.⁶

A far more extensive understanding of the all the myriad ways that Nucor's participation in EMW's MEEIA BDR program will fail to produce benefits for all EMW customers can be found in the testimony of Staff and OPC's witnesses. For sake of brevity, they will not be listed here, but some are addressed in the following sub-issues.

⁵ *Rebuttal Testimony of Justin Tevie (Public and Confidential)*, pg. 12 lns. 5 – 16.

⁶ *Surrebuttal Testimony of Manzell Payne (Public and Confidential)*, pg. 3 lns. 2 – 5.

Issue A(2)(a): Do the quantified benefits of Nucor’s participation in EMW’s MEEIA BDR program exceed the quantified costs?

Position: No.

Explanation: The critical word in this issue is “quantified.” As explained by Staff witness Justin Tevie, Evergy relies on a load forecast “to reasonably measure the benefits of the business demand response program by calculating the demand reduction.”⁷ However, Mr. Tevie also points out that “Nucor’s load is known to fluctuate widely”⁸ This is a problem because “[w]hen load deviates significantly from the average, [Evergy’s] approach inaccurately estimates potential demand reductions from a demand response program.”⁹ Mr. Tevie concludes as such:

It is important to have an accurate measure of the baseline load because the baseline load is used to calculate the magnitude of demand savings or reductions. In addition, estimated savings are used as an input in the calculation of the incentive payment to Nucor and from other ratepayers. Overstated demand reductions skew results of analyses that rely on the estimated benefits, i.e. rate impact analysis, cost-effectiveness tests, etc. For example, if demand savings are overstated, a benefit impact analysis would conclude that benefits are much higher than they would otherwise have been. This is misleading and gives the impression that the benefits to all customers exceeds the costs.¹⁰

As explained by Mr. Tevie, the wild fluctuations in Nucor’s load makes it

⁷ *Rebuttal Testimony of Justin Tevie (Public and Confidential)*, pg. 8 lns. 11 – 13.

⁸ *Id.* at pg. 9 lns. 2 – 5.

⁹ *Id.*

¹⁰ *Id.* at pg. 11 lns. 8 – 15 (emphasis added).

effectively impossible for the Commission to quantify the actual benefits that arise from Nucor's participation and thus cannot determine if the quantified benefits exceed the quantified costs.

Issue A(2)(b): Does EMW's MEEIA BDR program have a sufficient verification process for curtailments?

Position: No.

Explanation: The issue is tied directly to the difficulty in quantification discussed in the preceding sub-issue. Staff witness Jordan T. Hull provides a clearer explanation of how the two issues interact in this discussion comparing SPP offered demand response programs to EMW's MEEIA program:

Under SPP, savings must be backed by detailed baseline calculations, real-time performance data, and strict compliance with dispatch instructions, ensuring that any committed load reductions are both reliable and auditable. In contrast, Evergy Missouri West's demand response program is generally more flexible, with less stringent measurement and verification requirements, allowing for easier participation but with less emphasis on precision and enforceability. As a result, while SPP's program can offer greater credibility and integration into wholesale energy markets, it also demands a higher level of operational discipline and accuracy from participants. One example of this is regarding calculating an accurate baseline. Evergy Missouri West uses the customer baseline load (CBL) model or Day averaging whereas SPP required a hourly baseline from the last 30 calendar days as mentioned above.¹¹

¹¹ *Rebuttal Testimony of Jordan T. Hull (Public and Confidential)*, pg. 10 lns. 1 – 12.

Issue A(2)(c): Are there other demand response participation pathways available for Nucor and what benefits or detriments, if any, do those alternative pathways have?

Position: There are other demand response participation pathways available for Nucor and those alternatives are substantially better suited to allow Nucor to participate in demand response programs at little to no cost to EMW's other ratepayers.

Explanation: There are several better avenues for Nucor to participate in demand response programs than through EMW's MEEIA. Once such options would be the entities commonly known as "aggregators of retail choice" or "ARC's."¹² OPC witness Dr. Geoff Marke provides an extensive discussion of the benefits these ARCs have over Evergy's MEEIA:

Simply put, the existence of ARCs represents a market-based alternative available to select customers. This competitive environment results in increased consumer welfare for demand response participants through choice, and for nonparticipating customers who no longer have to rely on the incumbent utility and the attendant regulatory red tape of costs that minimize collective benefits.¹³

And

Competitive ARC's operate in most wholesale energy markets today at no direct cost to ratepayers. Voltus, CPower, or other ARC's do not require the three funding streams necessary for utility-sponsored demand side management (e.g., program costs, a throughput disincentive, and an earnings opportunity from captive ratepayers). ARC participation in wholesale markets serves the public interest because the lower clearing price that results from bidding demand response in RTO/ISO markets benefits all customers in those markets, not just the bidding demand response aggregator. This is a positive externality. When an action causes a positive externality, that action is typically under-invested and can be viewed as a market imperfection. Conversely, a utility's failure to use cost-effective demand response can be seen as causing a negative externality, as the inaction raises the market price for

¹² *Surrebuttal Testimony of Geoff Marke*, pg. 2 lns. 4 – 7.

¹³ *Id.* at pg. 5 lns. 13 – 17.

everyone.¹⁴

In addition to these ARCs, the evidence presented by both Staff and the OPC identified a completely separate and distinct alternative to Nucor participating in EMW's MEEIA in the form of demand response tariff options offered directly by SPP.¹⁵ There is even more extensive discussion on these SPP tariff options, but for the sake of brevity the OPC will simply cite this summarization from its witness Manzell M. Payne:

In the SPP's DR program, participants receive compensation or incentives whenever called upon to reduce electricity consumption or lower load. Thus, Nucor can still participate in demand response, while receiving an incentive, without doing so in MEEIA. Additionally, SPP has certain criteria, such as verified performance, that must be backed by detailed baseline calculations for incentives to be paid. EMW's MEEIA BDR does not have this. Through SPP's DR program, EMW's customers will be better protected due to the reporting requirements.¹⁶

Issue B: Would the existing hold-harmless and cost-tracking protections in the Nucor Agreement, Schedule SIL, and the Stipulation approved in File No. EO-2019-0244 protect non-Schedule SIL customers from any cost shift attributable to Nucor's service under Schedule SIL if Nucor were to participate in any EMW demand response programs?

Position: No. On the contrary, the approval of the amendment sought by Everygy would result in a violation of the existing hold-harmless provision.

Explanation: As explained by Staff witness Justin Tevie, "The Special Rate, Provisions, and Terms section of Schedule SIL states that 'Non-participating

¹⁴ *Id.* at pg. 6 lns. 4 – 14.

¹⁵ *Surrebuttal Testimony of Manzell Payne (Public and Confidential)*, pg. 8 lns. 1 – 5.

¹⁶ *Id.* lns. 6 – 12.

customers shall be held harmless from any deficit in revenues provided by any customer served under this tariff.”¹⁷ As Mr. Tevie further explains:

By participating in the [MEEIA BDR], Nucor will get a discounted bill, while other ratepayers do not. This cost to non-Nucor ratepayers must be included in the hold harmless provision as part of the cost of serving Nucor and should contribute towards the under-or over recovery amounts.¹⁸

“Nucor’s participation in the MEEIA is a cost of serving them if they are allowed to participate. From the perspective of the hold harmless provision, this cost must be included.”¹⁹

Issue C: If the Commission approves Nucor’s participation in the MEEIA BDR program, what, if any, impact should that have on EMW’s ability to receive an earnings opportunity for verified savings produced by Nucor’s participation under § 393.1075.3(3), RSMo?

Position: EMW should not be allowed to count Nucor’s participation for purposes of meeting the threshold for its earning opportunity to vest.

Explanation: The EO vesting targets were set without the inclusion of Nucor, which means that including Nucor in the question of whether those thresholds are met would skew the results. As OPC’s witness Manzell M. Payne explained:

Since the MEEIA BDR program was approved by the Commission with targets that were set by the Company

¹⁷ *Rebuttal Testimony of Justin Tevie (Public and Confidential)*, pg. 2 lns. 4 - 7.

¹⁸ *Id.* at pg. 3 lns. 2 – 6.

¹⁹ *Id.* at lns. 18 – 20.

without consideration of Nucor’s participation, the target was set lower than it would have been if Nucor is allowed to participate, allowing EMW to meet its demand response targets more easily. This was the case when EMW unlawfully included Nucor in its MEEIA BDR program from June of 2020 to September of 2023. However, the concern is not simply that EMW may achieve its target and earn the earnings opportunity, but rather how those targets are achieved. More specifically, including Nucor introduces a large, previously excluded customer into the program, which was not contemplated when the targets were established. This result may cause EMW to achieve its performance metrics using a resource that may not reflect the type of broad-based customer participation that MEEIA programs are intended to achieve. Additionally, as Mr. Kiesling explains, Nucor’s participation would be supported by ratepayer funded incentives while Nucor does not contribute to MEEIA program costs if they were to opt out. This raises a concern that EMW could earn an EO based on participation that shifts costs to ratepayers without sufficient evidence of corresponding incremental benefits.²⁰

Evergy’s own witness Brian A. File acknowledges this problem in filed surrebuttal and further requests that the Commission not permit Evergy to include Nucor in the calculation of whether the utility has met its threshold for the earnings opportunity to be vested.²¹ Therefore this issue can be deemed non-contested in so far as Evergy has agreed to the OPC’s position.

²⁰ *Surrebuttal Testimony of Manzell Payne (Public and Confidential)*, pg. 6 ln. 16 – pg. 7 ln. 2.

²¹ *Surrebuttal Testimony of Brian A. File (Public and Confidential)*, pg. 9 lns. 18 – 21 (“If the Commission were to allow Nucor to participate in demand response programs as requested in this application, Evergy proposes that any Nucor kW contributed to EMW 2026 or 2027 DR goals under MEEIA Cycle 4 will not count towards Evergy meeting the 65% threshold of goal for Earning’s Opportunity (“EO”) to be vested”).

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this statement of the OPC's position on each contested issue in this case and rule consistent with each position so presented.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this twentieth day of May, 2026.

 /s/ John Clizer