

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

In the Matter of the Application of)
Evergy Missouri West, Inc. d/b/a)
Evergy Missouri West for Approval) **Case No. EO-2026-0129**
of an Amendment to Nucor Steel)
Sedalia, LLC Agreement)

STAFF’S POSITION STATEMENT

COMES NOW the Staff of the Missouri Public Service Commission, and states its positions for each of the issues contained in the *Joint List of Issues and Witnesses, Order of Opening Statements, List and Order of Witnesses, and Order of Cross-Examination.*

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 Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW”) (subject to the availability and terms of each specific program)?

Staff’s Position: The term “any” is ambiguous. Staff responds: No, not if the amendment would allow Nucor to participate in a demand response program offered by Evergy Missouri West that does not have the limitations necessary to protect other customers. Staff would support an amendment only if Missouri Energy Efficiency Investment Act (“MEEIA”) business demand response (“BDR”) participation is excluded ¹ or, if the Commission permits MEEIA BDR participation, only if that participation is subject to the restrictions set out in Staff’s positions in response to the other issues. Those restrictions include excluding ratepayer-funded incentives, earnings-opportunity effects, and administrative costs, unless Evergy demonstrates reliably verified customer

¹ Hull, Rebuttal Testimony, Page 13, lines 1-4.

benefits sufficient to justify them; requiring reliable measurement and verification of any curtailment; requiring any claimed capacity value to be tied to an appropriate SPP or market-based mechanism; and protecting non-Schedule SIL customers from any cost shift through the existing hold-harmless framework². Staff is not opposed to Nucor’s providing curtailment value. Staff opposes an unrestricted amendment that would allow Nucor to participate in “any” demand response program that does not have the limitations necessary to protect other customers.

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

Staff’s Position: No, unless Evergy demonstrates with reliable data that Nucor’s participation in EMW’s MEEIA BDR program satisfies the statutory criteria for MEEIA participation and cost recovery. Under § 393.1075, RSMo, recovery for a demand-side program is not permitted unless the program is Commission-approved, results in energy or demand savings, and is beneficial to all customers in the customer class in which the program is proposed; the Commission must also fairly apportion program costs and benefits among customer classes³. Accordingly, Nucor should not be permitted to participate in MEEIA BDR unless Evergy demonstrates, with reliable measurement and verification, that Nucor’s participation will produce actual demand or capacity savings, that those savings will be recognized and valued, that the verified benefits will exceed all program costs—including incentives, administrative costs, Evaluation, Measurement & Verification (“EM&V”) costs, and any earnings opportunity—and that the resulting benefits will be realized by and fairly apportioned to the affected customer classes. Absent that showing, Staff opposes approval of Nucor’s participation in EMW’s MEEIA BDR program

- 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?

² Tevie Rebuttal Testimony, Page 2, lines 3-27.

³ Kiesling Rebuttal Testimony, Page 6, lines 3-16.

Staff's Position: If the Commission permits Nucor to participate in EMW's MEEIA BDR program, that participation must be subject to conditions sufficient to protect non-Schedule SIL customers and to ensure compliance with MEEIA's statutory requirements. Those conditions include requirements not expressly set out in the MEEIA statute, but they are necessary because Nucor's energy usage is so large and so volatile that it is impossible at this time to forecast with reasonable certainty that Nucor's participation in MEEIA BDR will comply with the statute's mandatory customer-protection requirements⁴. Staff therefore recommends that the Commission require EMW to include all Nucor participation costs, including any earnings opportunity, in the SIL hold-harmless analysis; identify actual generation projects or specific capacity purchases that Nucor's participation can reasonably be expected to avoid; accurately account for the cost of capacity necessary to serve the entirety of Nucor's peak demand in future Cost and Revenue tracking reports; and make any necessary revenue adjustment through the true-up period in a general rate case so that non-Schedule SIL customers are held harmless. These requirements are necessary because, if the program later fails to satisfy the statutory mandates, the hold-harmless and true-up protections provide the mechanism for restoring affected non-Schedule SIL customers to the *status quo ante*.

2. Would Nucor's participation in EMW's MEEIA BDR program produce benefits to all EMW customers?

Staff's Position: No. Evergy claims that Nucor's participation in EMW's MEEIA BDR program would produce benefits to all EMW customers because Nucor's curtailment would create SPP resource adequacy value, reduce the MW capacity EMW must otherwise account for, and produce avoided capacity-cost benefits⁵. Evergy witness File asserts that prior Nucor participation produced more than \$2.5 million in avoided capacity-cost benefits, Meitner states that Evergy-registered DR can be used in SPP resource adequacy workbooks to reduce EMW's net peak demand, and Nunn states that Nucor's participation would provide system-wide avoided-cost benefits.

Staff's Position: is that Evergy has not demonstrated, with reliable data, that Nucor's MEEIA BDR participation would produce benefits to all EMW customers. Staff's testimony is that Nucor's load is large and highly volatile, that the proposed baseline method is not sufficiently reliable to forecast or verify demand reductions with reasonable certainty⁶, that EMW has not

⁴ Tevie Rebuttal Testimony, Page 9, lines 6-11.

⁵ Kiesling Rebuttal Testimony, Page 5, lines 1-11.

⁶ Tevie Rebuttal Testimony, Page 9, line 1-5.

shown actual generation projects or specific capacity purchases that would be avoided, and that Nucor's participation would impose ratepayer-funded incentives, administrative costs, and potential earnings opportunity without a demonstrated, customer-realized net benefit. Staff therefore opposes approval of the amendment absent verifiable savings, avoided capacity value, total costs, customer realization, and protection of affected customer classes; or in the alternative, conditions which provide the Commission with methods of verification to Evergy's claims.

Evergy bears the burden of proof. Section 393.1075, RSMo, does not authorize MEEIA cost recovery merely because a program is labeled demand response; it requires that approved demand-side programs produce energy or demand savings and be beneficial to all customers in the customer class, and it requires fair apportionment of costs and benefits among customer classes. As the applicant seeking Commission approval, Evergy must prove the facts necessary to obtain that approval by a preponderance of the evidence. The Commission has stated in application proceedings that the applicant bears the burden of proof and that the applicable standard is preponderance of the evidence.

Staff's overall position is that Evergy has not met that burden. Evergy has asserted system-wide benefits, but it has not shown with reliable, quantified evidence that Nucor's participation will produce verified demand savings, verified avoided capacity costs, benefits realized by all affected customers or customer classes, and benefits exceeding all costs. Therefore, Staff's answer to Issue 2 is No.

- a. Do the quantified benefits of Nucor's participation in EMW's MEEIA BDR program exceed the quantified costs?

Staff's Position: No. Staff's position is that the reliable evidence does not support the conclusion that the quantified benefits of Nucor's participation in EMW's MEEIA Business Demand Response program exceed the quantified costs.

Evergy claims that Nucor's participation would produce avoided capacity-cost benefits exceeding the incentives paid to Nucor⁷. But Evergy's showing depends on assumed or deemed values rather than demonstrated current savings. Its calculation relies on historical or estimated MW reductions, avoided-capacity-cost figures, assumed resource-adequacy treatment, and modeled portfolio effects. Evergy does not identify an actual avoided capacity purchase, an avoided generation project, or a specific reduction in costs to non-Nucor ratepayers. Instead, its claimed benefit rests on the proposition

⁷ Kiesling Rebuttal Testimony, Page 3, lines 5-21, through Page 4, lines 1-17.

that Nucor's participation would create resource-adequacy value that should be treated as a system benefit.

Staff's Position: is that this evidence is not reliable proof of net quantified benefits. Staff states that the avoided-capacity claim is unsupported by adequate workpapers or documentation, that the claimed Cycle 4 avoided-capacity benefits are unsubstantiated, and that non-Nucor ratepayers will not benefit unless EMW can actually avoid additional capacity purchases or reduce the amount of new generation needed to serve EMW customers.

By contrast, the costs are concrete. Staff identifies program administration costs, participant incentives, and an earnings opportunity for EMW. Nucor could receive approximately \$1.14 million per year in incentives, and EMW shareholders could receive approximately \$200,000 in additional earnings opportunity⁸.

Staff also questions the factual basis for the claimed benefits because Nucor's volatile load makes reliable baseline measurement impossible. If demand reductions are overstated, the benefit-cost analysis will be skewed and may create the misleading appearance that benefits exceed costs.

Accordingly, Staff concludes that Evergy has not proven that quantified benefits exceed quantified costs. Evergy's testimony is too dependent on unsupported assumptions and deemed values. Without a reliable evidentiary basis for accepting those assumptions, the testimony amounts to ipse dixit – "it's so because I say it's so--opinion rather than legally competent proof of net benefits to EMW's non-Nucor ratepayers.

b. Does EMW's MEEIA BDR program have a sufficient verification process for curtailments?

Staff's Position: No. Staff's position is that EMW's MEEIA BDR program does not provide a sufficient verification basis to determine whether the MEEIA statutory requirements are met.

EEIA does not merely permit a utility to pay incentives for assumed curtailments. It requires demand-side programs to produce energy or demand savings, to be beneficial to all customers in the affected class, and to be supported by cost-effective, measurable, and verifiable savings. Section 393.1075 also requires annual reporting of program expenditures, savings impacts, avoided costs, cost-effectiveness, and net economic benefits.

⁸ Kiesling Rebuttal Testimony, Page 3, lines 5-21, through Page 4, lines 1-17.

Staff's Position: is that, given Nucor's volatile load and EMW's baseline methodology, there is no reliable way on this record to know whether the claimed curtailments are real, whether the amount of curtailment is accurately measured, whether the claimed benefits exceed the costs, or whether non-Nucor ratepayers receive the statutory benefit.

Accordingly, the statutory problem is not merely procedural. It is substantive. Without reliable verification, the Commission cannot determine whether the MEEIA mandates have been satisfied. EMW's proposal therefore rests on assumed savings, assumed avoided costs, and assumed customer benefits, rather than verified facts sufficient to meet MEEIA's requirements. EMW therefore has not met its burden of proof.

- c. Are there other demand response participation pathways available for Nucor and what benefits or detriments, if any, do those alternative pathways have?

Staff's Position: Yes. Staff's position is that Nucor may be able to participate in demand response through pathways outside MEEIA, and that those alternatives are preferable if the Commission decides to allow Nucor to participate.⁹

Staff is not opposed to Nucor participating in demand response. Staff agrees that it makes sense for one of EMW's largest customers to curtail load during stressed grid conditions. But Staff's position is that Nucor should not do so through a ratepayer-funded MEEIA BDR program. Instead, EMW and Nucor should use or develop an alternative pathway that does not rely on DSIM-funded incentives, administrative costs, or earnings opportunities.

The available alternatives include participation in regional wholesale demand response markets, including SPP, either directly, through EMW, or through an Aggregator of Retail Customers. Staff also identifies EMW's Market Based Demand Response tariff as an existing tariff mechanism by which EMW could offer Nucor's curtailment into the SPP Integrated Marketplace, with compensation based on SPP settlement payments.¹⁰

The benefits of these alternatives are that they can still provide curtailment benefits, potential accreditation benefits, and financial benefits to both EMW and Nucor, while better protecting other ratepayers. Staff states that

⁹ Hull, Rebuttal testimony, Pages 5-13.

¹⁰ Hull Rebuttal Testimony, Page 7, lines 3-16.

non-MEEIA demand response would use SPP's more rigorous baseline and verification requirements, which are a better fit for Nucor's volatile load, and would help ensure that customers receive system benefits from verified curtailment without paying MEEIA incentives and earnings opportunities.

The detriments are practical rather than fatal. Nucor and EMW would need a contract amendment, and any SPP-based pathway would require compliance with SPP technical, metering, baseline, verification, and performance requirements. Those requirements are more demanding than EMW's MEEIA BDR process, but that is also why Staff views them as more reliable.¹¹

Accordingly, Staff recommends that if the Commission permits Nucor to participate in demand response, it should require EMW to do so outside MEEIA, through a pathway that avoids ratepayer funding but still preserves curtailment, accreditation, and financial benefits.¹²

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?

Staff's Position: No — not under EMW's proposal. Staff's position is that the existing hold-harmless and cost-tracking protections in the Nucor Agreement, Schedule SIL, and the EO-2019-0244 Stipulation would protect non-Schedule SIL customers only if all costs attributable to Nucor's participation are actually included in the hold-harmless and cost-tracking process.

That is not what EMW proposes. EMW proposes to treat demand-response costs and benefits as DSIM items, flowing through the DSIM Rider and excluded from base-rate calculations. Staff rejects that approach because Nucor's MEEIA BDR participation would impose costs on non-Nucor ratepayers, including incentives, administrative costs, and an EMW earnings opportunity. Staff's position is that those costs must be treated as costs of serving Nucor and included in the hold-harmless calculation.

¹¹ Hull Rebuttal Testimony, Page 8, lines 3-14.

¹² Hull Rebuttal Testimony, Page 13.

Staff also points out that Nucor's MEEIA participation was not contemplated when the EO-2019-0244 Stipulation and rate structure were approved, and Schedule SIL prohibits MEEIA or demand-response participation unless otherwise ordered by the Commission.

Accordingly, Staff's position is that the existing protections are not self-executing protection against a cost shift if EMW is allowed to put Nucor into demand response while excluding those costs from the SIL hold-harmless mechanism. If the Commission permits participation, Staff recommends that it order EMW to include Nucor's MEEIA BDR costs, including any EMW earnings opportunity, in the hold-harmless provision; identify actual benefits to non-Nucor ratepayers; accurately track the capacity costs needed to serve Nucor's full peak demand; and make any necessary revenue adjustment so non-Schedule SIL customers are held harmless.

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?

Staff's Position: Staff's position is that EMW should not receive an earnings opportunity based on Nucor's participation in the MEEIA BDR program.

Section 393.1075.3(3), RSMo, allows an earnings opportunity only for cost-effective, measurable, and verifiable efficiency savings. Staff's position is that those statutory predicates have not been proven here. Nucor's claimed curtailments depend on an unreliable baseline, and overstated demand reductions would skew the benefit-cost analysis and create the misleading impression that benefits exceed costs.

Staff also states that Nucor was not allowed to participate in the BDR program when EMW's Cycle 4 targets were established. Allowing Nucor in now would materially benefit EMW by helping it achieve target savings it might otherwise not achieve, thereby allowing shareholders to capture additional earnings opportunity funded by ratepayers.

Staff identifies that additional earnings opportunity as approximately \$200,000, in addition to approximately \$1.14 million in annual incentives to Nucor. Staff's position is that ratepayers should not pay an additional earnings opportunity where the claimed savings are not reliably established,

the avoided-capacity benefits are unsubstantiated, and the participation would impose unnecessary additional costs on ratepayers.

Accordingly, if the Commission approves Nucor's participation in MEEIA BDR, Staff's position should be that Nucor-related curtailments should not increase EMW's earnings opportunity and should not be used to satisfy any target, threshold, or savings calculation that would produce an earnings opportunity, unless and until EMW proves that those savings are cost-effective, measurable, verifiable, and beneficial to non-Nucor ratepayers.

WHEREFORE, the Staff respectfully submits its *Position Statements* in this case for the Commission's consideration.

Respectively Submitted,

/s/ Paul T. Graham

Paul T. Graham #30416
Senior Staff Counsel
P.O. Box 360
Jefferson City, Mo 65102-0360
(573) 522-8459
Paul.graham@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 20th day of May 2026.

/s/ Paul T. Graham