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Exhibit No. 105

Staff – Exhibit 105
Memorandum attached to Staff Suggestions in Opposition
Case No. EO-2026-0129

Memorandum – Specific Objections

On May 18, 2026, Evergy Missouri West (“EMW” or “Evergy”) and Nucor submitted with the Commission a *Non-Unanimous Agreement* (“Stipulation”). This agreement would allow Nucor to participate in Missouri Energy Efficiency Investment Act (“MEEIA”) demand-response programs offered by EMW. Nucor’s participation could be extended through the SIL contract term through 2029, and allow Nucor to be paid incentives at the Business Demand Response (“BDR”) contractual rate, along with giving Evergy an additional earnings opportunity, and paying significant administrative costs, all paid for by Evergy’s customers. Staff opposes this for the reasons set out below, and in the Staff Position Statement, which is incorporated here-in by reference. In short, Section 393.1075.4, RSMo, permits cost recovery only within limits. The statute provides that recovery for demand-side programs “shall not be permitted” unless the programs are approved by the Commission, result in energy or demand savings, and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether all customers use the programs. The costs and benefits of demand-side programs shall also be fairly apportioned to each customer class.¹

Staff Responses to EMW’s Stipulation

(1) Evergy’s Claimed Avoided Capacity Cost Net Benefits

Evergy witness Brian File stated in testimony that in 2021 and 2022, when Nucor improperly participated in EMW’s MEEIA BDR program, Nucor produced verified peak demand reductions of more than 19 MW each year, resulting in avoided capacity-cost benefits exceeding \$2.5 million, for a benefit-cost ratio greater than 2.2. Staff opposes this claim because: 1) Witness File’s testimony is based on 2021 and 2022 data, which was during Evergy’s MEEIA Cycle 3, and there has not been any analysis done to identify actual capacity cost avoidance for MEEIA Cycle 4, 2) The avoided capacity cost net benefit used by Evergy was never approved by the Commission for Evergy’s MEEIA Cycle 4. There is no reference to avoided cost values in the Stipulation, or the Report and Order approving it, in Case Nos. EO-2023-0369 and EO-2023-0370. Evergy’s assumed net benefit therefore has several layers of assumptions, and inaccurate data that cannot be used as the leading argument for avoided capacity cost benefits to all customers. This is a flawed assumption of net benefits for Evergy ratepayers. Additionally, Staff specifically noted the lack of evidence that the avoided cost assumptions utilized by Evergy are reasonable estimations of ratepayer benefits of avoided energy and demand in the Staff

¹ Section 393.1075.5 RSMo.

1 response to the non-unanimous Stipulation and Agreement in the Cycle 4 cases,
2 attached as Appendix A.

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4 *Written by staff witness Mark Kiesling*

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6 (2) Evergy Has Not Shown That Benefits Exceed All Costs

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8 As stated prior, MEEIA requires a net benefit for all ratepayers. A net benefit
9 calculation must include all costs: incentive costs, administrative costs, earnings
10 opportunity costs, and any other participation cost charged to ratepayers.² The costs
11 have already been illustrated in Staff's rebuttal testimony and within several data
12 request responses. EMW's current incentive structure for its BDR program is
13 \$60/kW-year. If Nucor can curtail the estimated 19 MW that is being proposed, which
14 is 19,000 kW multiplied by the \$60/kW, and which totals \$1.14 million annually in
15 incentives for Nucor. EMW does not currently have any customer participating in
16 their BDR program that receives over a million dollars in incentives. EMW says the
17 average incentive paid out in their BDR program for 2025 was ** [REDACTED] **. ³
18 Another cost to be borne by ratepayers would be the administrative cost charged by
19 Evergy's third party BDR implementer, which would be approximately ** [REDACTED] **
20 attributable to Nucor. On top of those costs passed on to ratepayers, EMW
21 shareholders could receive approximately \$200,000 in additional earnings
22 opportunity by allowing Nucor's participation. This is a total of \$1,786,500 per year,
23 attributable to Nucor. Nucor is alone in its rate class, so all these costs will be passed
24 on to other ratepayer classes to be recovered. No concrete data or analysis has been
25 provided demonstrating benefits for all customers.

26
27 Staff opposes the Stipulation because it does not require that all-cost
28 calculation before approval. Instead, it permits participation first and asks whether
29 the statutory requirements were satisfied later. Additionally, the proposal fails to
30 demonstrate: (1) a reduction in capacity purchases directly attributable to Nucor's
31 participation; (2) whether ratepayers, by customer class, realize any resulting
32 savings; and (3) how verified and ratepayer-realized reductions in capacity costs
33 compare to the total costs of implementation, including incentives, administrative
34 costs, earnings opportunity costs, and other participation-related expenses.
35 Evergy is not demonstrating any of these, therefore there are no net benefits for
36 the customers.

² 20 CSR 4240-20.092(1)(WW). Total resource cost test or TRC means a test that compares the sum of avoided utility costs, including avoided probable environmental costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand side program and costs of statewide TRM or TRM and statewide TRM.

³ DR 21 response.

1 The Stipulation includes several provisions that merely restate requirements
2 EMW must already follow under its existing tariff. For example, the stipulation states
3 that Nucor’s kW contribution to EMW’s BDR goal will not exceed 30%.⁴ The
4 current BDR tariff already prohibits any single customer from accounting for more
5 than 30% of the jurisdiction’s annual MW participation requirement. Another
6 provision states that EMW will not count any Nucor kW curtailment towards meeting
7 the 65% threshold required to vest its earnings opportunity for the BDR program.⁵
8 Staff notes this is largely a hollow provision because EMW is already positioned to
9 achieve the 65% EO vesting threshold without Nucor’s participation. The Stipulation
10 also proposes allowing Nucor to continue participating in EMW’s BDR program
11 through 2029. Staff questions the practicality of this provision because the current
12 BDR program is scheduled to expire at the end of 2027. At this time, there is no
13 proposed extension of the BDR program beyond 2027. As a result, Staff is concerned
14 that it is unclear what a post-2027 BDR program would look like, whether such a
15 program would continue to exist, and how it would be funded.
16

17 *Written by staff witness Mark Kiesling*
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19 (3) Evergy’s Calculation of the Baseline is Not Reliable
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21 EMW used a 9-of-10 unadjusted customer baseline model for evaluating
22 demand response reductions for Nucor. Under that method, hourly load is averaged
23 from the highest nine of ten prior non-event, non-holiday weekdays during typical
24 event or peak hours. But Nucor’s load fluctuates widely. An averaging method is not
25 satisfactory for realistically evaluating Nucor load because it may not capture the
26 lows and highs of Nucor’s load deviations. EMW cannot accurately forecast the peak
27 demand reduction resulting from a demand-response event utilizing the described
28 method. Southwest Power Pool (“SPP”) requirements for demand response
29 products reflect the uncertainty of highly variable load, as quoted in Staff witness
30 Jordan Hull’s testimony.⁶ If a baseline method is to be used to evaluate demand
31 reductions, it must also account for the reduced quantity of verifiable demand
32 savings caused by the variation as required by SPP for demand response products.
33

34 *Written by staff witness Justin Tevie*

⁴ Stipulation, Paragraph 6.

⁵ Stipulation, Paragraph 7.

⁶ Hull, Rebuttal Pages 8lines 17-25, pg 9, lines 1-20.

1 (4) SPP Resource Adequacy Values and Other Pathways
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3 Evergy witness File states that the primary value of Nucor’s participation is
4 resource-adequacy credit from SPP, reducing the capacity (measured in
5 megawatts “MW”) EMW must account for through capacity contracts or other
6 generation. However, the SPP summer resource adequacy requirements for 2026 are
7 already final and do not include Nucor participation.⁷

8 In the Stipulation it claims that the “the kW accreditation values will align with
9 SPP for accreditation in MEEIA BDR,” however Evergy has not presented a way to
10 show accreditation alignment. The starting baseline for MEEIA BDR participation is
11 different than the SPP baseline for demand response products. Additionally,
12 the SPP board of directors approved minimum requirements of a 36% winter-season
13 planning reserve margin and a 16% summer-season planning reserve margin. This
14 means that load responsible entities in SPP’s region must have access to enough
15 generating capacity to serve peak consumption with at least 36% margin during
16 winter and at least 16% during summer. Evergy will need to have capacity available
17 to serve Nucor load in both resource adequacy seasons.

18 Staff identifies participation through the SPP wholesale demand
19 response markets, including through EMW’s existing Market Based Demand
20 Response (“MBDR”) tariff or through a third-party Aggregator of Retail Customers
21 (“ARC”), as viable alternatives. These market-based options provide
22 opportunities for compensation, capacity accreditation, and operational benefits
23 while relying on verified wholesale market performance standards rather than
24 MEEIA-funded incentives.

25 Participation through the SPP demand response tariff provides safeguards to
26 ensure that Nucor’s curtailments are verified, accurate, and compensated fairly.
27 Not only does SPP utilize a 30-day average to help establish a more accurate
28 baseline, but there is also provision ensuring that the baseline can be adjusted by an
29 average deviation if the participant cannot curtail what is requested of them.
30 The “average deviation” provision is designed to ensure that a Demand Response
31 (“DR”) participant’s submitted baseline accurately reflects the facility’s actual
32 electricity consumption when the resource is not dispatched. The Market Participant
33 initially submits an hourly baseline based on average historical usage from the
34 previous 30 calendar days. However, SPP reviews this baseline against the facility’s
35 actual metered load during non-dispatched periods to determine whether the
36 submitted baseline is consistently overstating normal consumption.

⁷ Southwest Power Pool presentation, Resource Adequacy & Summer Assessment, Bruce Rew, Page 7. [05-21-2025 SPP Status Update.pdf](#)

1 The average deviation is calculated by comparing the submitted hourly
2 baseline to the actual integrated metered load for the same hours over the
3 previous 30 days when the DR resource was not dispatched. If the actual metered
4 load deviates from the baseline, SPP calculates the average difference between the
5 two values. When this average deviation exceeds 5% below the submitted baseline,
6 the baseline is considered inaccurate and is automatically adjusted downward.

7 For example, if a participant submits a 30 day average baseline of 10 MWh
8 based on average load for a particular hour, but the actual metered load in that hour
9 for the review period varies between 7 MWh and 13 MWh during comparable
10 non-dispatched periods, the average deviation would be 3 MWh, or 30% below the
11 baseline. Because the deviation exceeds the 5% threshold, SPP would reduce the
12 submitted baseline by the average deviation amount to account for the uncertainty
13 associated with the actual load. This prevents participants from inflating their
14 baseline and receiving excessive DR compensation for reductions that did not
15 actually occur. The Stipulation does not account for this level of uncertainty despite
16 Nucor's highly variable load shape.

17 SPP performs this assessment daily and notifies the Market Participant
18 whenever a baseline adjustment is made. This ongoing correction process helps
19 maintain fairness, improves the accuracy of DR performance calculations, and
20 ensures that only verifiable and reliable load reductions are compensated within
21 the SPP Market.

22 Through Staff's research on variable loads participating in demand response
23 programs, such as Nucor, many of these type of industries can remedy this by
24 utilizing a firm level of service cap. A firm service level cap in a DR program is a
25 contractual or operational limit that defines the maximum amount of electrical
26 demand a utility or grid operator is willing to tolerate while still treating the customer
27 load as "firm" or reliably controllable. For facilities with volatile load changes such
28 as data centers, industrial batch processes, EV fast-charging hubs, crypto mining,
29 refrigeration plants, or variable manufacturing, the cap helps prevent unstable or
30 unpredictable behavior from undermining grid reliability during DR events.⁸

31 Utilities and DR aggregators establish firm service level caps to manage
32 customers with highly variable electrical loads. These caps define the maximum
33 amount of firm demand a customer may use while participating reliably in a DR
34 program. For example, a facility may be allowed up to 10 MW of firm service, while
35 any usage above that threshold could become interruptible, subject to curtailment
36 during DR events, or billed at higher rates.

⁸ FERC, Measurement and Verification for Demand Response, Prepared for the National Forum on the National Action Plan on Demand Response: Measurement and Verification Working Group, Page 49, Feb. 2013. Attached hereto as Appendix B.

1 Staff opposes the Stipulation because it does not demonstrate the safeguards
2 needed to provide accurate incentives for curtailments in a demand response
3 program. The Stipulation does not require any analysis for changes in seasonal
4 resource adequacy requirements but alludes to the perceived benefit without
5 verification.

6
7 *Written by staff witness Jordan Hull*
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9 (5) The Hold Harmless Provision
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11 Schedule SIL contains a hold-harmless protection. Customers shall be held
12 harmless from any deficit in revenues provided by a customer served under the tariff,
13 and if the customer's revenues do not exceed incremental cost to serve the
14 customer, EMW must make an additional revenue adjustment through the true-up
15 period to ensure non-Schedule SIL customers are held harmless. Alternatively, if the
16 revenues from serving Nucor fall short of the costs of serving them, then the cost will
17 be borne by EMW shareholders not ratepayers.
18

19 Nucor's MEEIA BDR participation would give Nucor a discounted bill while
20 other ratepayers potentially bear the cost. Those costs include program
21 administration, participant incentives, and an earnings opportunity for EMW.
22 In Staff's view, those costs must be included in the hold-harmless provision as part
23 of the cost of serving Nucor.
24

25 This is an additional reason why Staff opposes this Stipulation.
26 Evergy proposes to place the costs on other customers through DSIM while
27 excluding those costs from the SIL hold-harmless mechanism. But if Nucor does not
28 pay the DSIM charge, and if Nucor is the only Schedule SIL customer, then the costs
29 of Nucor's MEEIA participation cannot be fairly assigned to the class that causes
30 them unless the hold-harmless mechanism includes the cost of participation. While
31 Staff's interpretation of the hold-harmless agreement would include the potential
32 costs associated Nucor MEEIA participation. Without explicitly accounting for MEEIA
33 participation costs, non-Nucor customers pay costs that are not proven to be offset
34 by customer-realized benefits.
35

36 Lastly, Staff opposes the Stipulation because it does not accurately account
37 for the cost of capacity necessary to serve the entirety of Nucor's peak demand in all
38 future cost and revenue tracking reports in accordance with Paragraph 7 of the
39 Stipulation and Agreement from Case No. EO-2019-0244.
40

41 In conclusion, because the baseline is unreliable for Nucor's unpredictable
42 load the cost-benefit comparison is unreliable Therefore, the Commission cannot

1 find net benefits to all affected customers or fairly apportion costs and benefits
2 among classes.

3
4 The FERC document referenced above by Staff witness Jordan Hull above,
5 among other things, specifies a variety of methods for calculating the baseline,
6 identifying the baseline window, and adjusting the baseline once it has been
7 established. FERC document supports Staff's position that the current baseline
8 method used by Evergy is unreliable.

9
10 *Written by staff witness Justin Tevie*

11 12 **Necessary Conditions if the Commission Approves Participation**

13 If the Commission approves Nucor's participation in EMW's MEEIA BDR program,
14 Staff recommends that approval be conditioned as follows:

- 15 1. **Firm Cap / Firm Service Level or account for load variation.** In order to
16 remediate the verification/quantifiable problems created by Nucor's volatile
17 resource use, Nucor must be subject to a firm cap on usage during each called
18 demand-response event. The cap must be set at a level sufficient to assure, within
19 a reasonable degree of certainty, that Nucor's curtailment will produce a net
20 benefit to all affected customers. Performance should be evaluated using a
21 Firm Service Level, meaning the expected load of a controllable demand-response
22 program measured over a statistically significant defined time period after
23 deployment. Alternatively, if a baseline approach is utilized it must account for the
24 variability in Nucor's load. SPP's evaluation of DR products explicitly accounts for
25 the variability and so should the evaluation of Nucor participation in MEEIA.
- 26 2. **Verified SPP Resource-Adequacy Credit.** EMW must demonstrate that Nucor's
27 curtailment produces verified credit from SPP toward EMW's resource-adequacy
28 obligations and that the impact is reflected in EMW's SPP seasonal resource-
29 adequacy workbooks.
- 30 3. **All-Cost Net-Benefit Calculation.** EMW must compare verified and
31 ratepayer-realized capacity-purchase reductions by class against the total cost of
32 implementation, including incentive costs, administrative costs, earnings
33 opportunity costs, EM&V costs, and any other participation cost.
- 34 4. **Ratepayer Realization by Class.** EMW must demonstrate not merely modeled
35 system value, but actual ratepayer realization of reductions in capacity purchases
36 by customer class.
- 37 5. **Hold-Harmless Inclusion.** All Nucor participation costs must be included
38 in the SIL hold-harmless provision, including incentives, administrative costs,

1 EM&V costs, and any EMW earnings opportunity associated with Nucor's
2 participation. Nucor participation in MEEIA is an incremental cost and should be
3 included in the calculation of any revenue shortfall.

4 6. **Clawback / Status Quo Ante Protection.** If verified, customer-realized benefits
5 do not exceed all costs, EMW and/or Nucor must credit or refund all amounts
6 necessary to restore non-participating customers to the *status quo ante*.

7 7. **Payment Only for Verified Performance.** If EMW does not call Nucor for
8 demand-response events, or if Nucor fails to curtail to the specified firm cap
9 during each event, incentive payments and administrative costs associated with
10 that failed participation may not be recovered from ratepayers.

11 8. **Winter Capability.** EMW must demonstrate Nucor's capability to curtail during
12 winter peak periods consistent with future SPP winter resource-adequacy
13 periods.

14 9. **Full Peak-Demand Capacity Accounting.** EMW must accurately account for the
15 cost of capacity necessary to serve the entirety of Nucor's peak demand in all
16 future Cost and Revenue tracking reports.

17 These conditions do not punish Nucor for not curtailing. Rather, they meet the
18 minimum threshold for Nucor's participation under MEEIA. They ensure that any
19 MEEIA-funded participation produces competently measurable, verifiable, customer-
20 realized net benefits; and that non-participating customers are protected if the promised
21 benefits fail to materialize.

22 **Conclusion**

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24
25 The Commission should not approve the Non-Unanimous Stipulation and
26 Agreement as filed. Every cannot show that Nucor's participation in EMW's MEEIA BDR
27 program will produce net benefits to all affected customers, that the claimed demand
28 reductions can be reliably measured and verified, or that the costs and benefits can be
29 fairly apportioned among customer classes. Staff does not oppose curtailment.
30 Staff opposes charging customers for unproven benefits. The MEEIA statute requires
31 energy or demand savings, customer benefits, measurable and verifiable results, net
32 economic benefits, and fair apportionment of costs and benefits.