

**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 of an Amendment to)
Nucor Steel Sedalia, LLC Agreement) Case No. EO-2026-0129

INITIAL BRIEF OF NUCOR STEEL SEDALIA, LLC

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COMES NOW, Nucor Steel Sedalia, LLC (“Nucor”), and respectfully submits its initial brief in this proceeding.¹

I. INTRODUCTION

In 2019, the Missouri Public Service Commission (“Commission”) approved a Special Incremental Load Rate Contract between Evergy Missouri West (“Evergy,” “EMW,” or “Company”) and Nucor (the “Nucor Contract”) that authorized Nucor to take service from Evergy under the Company’s Special Incremental Load (“SIL”) Tariff.² The Commission approved the Nucor Contract as part of a Non-Unanimous Stipulation and Agreement in Case No. EO-2019-0244, which together include robust ratepayer protections to ensure that service to Nucor does not result in harm to non-Nucor EMW customers. Since beginning operations in the State of Missouri, Nucor has taken electric service from Evergy pursuant to the terms of that contract. Under the terms of the SIL Tariff, Nucor is prohibited from participating in demand response programs without specific authorization from the Commission.³ After discussions with Evergy, Nucor and the Company determined that Nucor’s participation in Evergy demand response programs would

¹ This brief is organized to match the presentation of the issues as filed in the Joint Proposed List of Issues and Witnesses, Order of Opening Statements, and Order of Cross-Examination.

² See Case No. EO-2019-0244, *Report and Order* at 14 (November 13, 2019).

³ See Schedule SIL - P.S.C. MO. No. 1 Original Sheet No. 157.

benefit Nucor and the Evergy system. Nucor and Evergy negotiated an amendment to the Nucor Contract, and Evergy filed this case for Commission approval. The contract amendment modifies the Nucor Contract to allow Nucor to participate in any demand response programs offered by EMW, including Missouri Energy Efficiency Investment Act (“MEEIA”) demand response programs.

While the contract amendment as originally proposed provides ratepayer benefits and protections, Nucor and Evergy agreed to modify their request in this case in the form of a Non-Uniform Stipulation and Agreement (“Stipulation”) to address concerns raised by Commission Staff and the Office of the Public Counsel (“OPC”). The Stipulation prescribes a conditional framework for Nucor’s participation in the Company’s Business Demand Response (“BDR”) program in 2027, preserves existing ratepayer protections under the SIL Tariff and the settlement agreement in Case No. EO-2019-0244, requires a performance evaluation to determine whether the benefits of Nucor's participation exceed the cost, and places limits on Evergy's earnings opportunities.⁴ The Stipulation is a reasonable compromise by Evergy and Nucor in response to Staff and OPC’s concerns, and Nucor requests that the Commission find that the Stipulation and contract amendment are in the public interest and should be approved.

⁴ See Stipulation at 2; Brian A. File Testimony in Support of Non-Uniform Stipulation & Agreement at 4:8-5:8.

II. ARGUMENT

A. **The Commission should approve the amendment to the Nucor Contract, as supplemented and modified by the Non-Unanimous Stipulation and Agreement, filed May 18, 2026.**

The Commission should approve the amendment to the Nucor Contract and Stipulation because the Stipulation provides reasonable conditions for Nucor's participation in Evergy demand response programs and Nucor's participation would provide benefits to Evergy ratepayers.

1. **The Commission should approve the contract amendment, as supplemented and modified by the Non-Unanimous Stipulation and Agreement, to allow Nucor to participate in any demand response programs offered by Evergy, including MEEIA demand response programs and the BDR program.**

The Commission should approve the contract amendment and Stipulation because together they allow for beneficial participation by Nucor in Evergy's demand response programs while providing for meaningful ratepayer protections, as captured in the conditions of the Stipulation.

a. **The Commission should approve the contract amendment, subject to the conditions detailed in the Non-Unanimous Stipulation and Agreement.**

The Commission should approve the contract amendment, as supplemented by the Stipulation, because it allows Nucor to participate in Evergy MEEIA demand response programs while providing meaningful additional protections for other Evergy ratepayers. The Stipulation provides that, if approved, Nucor's participation in the BDR program will be conditional for 2027.⁵ After Nucor's 2027 participation, an independent evaluation will be conducted to measure Nucor's performance in the BDR program.⁶ If the analysis shows that Nucor's participation results in a net benefit to all customers, then the Stipulation and contract amendment will extend through the end

⁵ Stipulation at 1.

⁶ *Id.* at 2.

of the Nucor Contract term.⁷ If the analysis shows that the benefits from Nucor's participation do not exceed the cost to all customers, then the contract amendment will expire.⁸ The Stipulation also provides that the conditional period will limit Evergy's earnings opportunity in 2027 and will limit the application of Nucor's contribution to MEEIA program goals.⁹ Taken together, these conditions provide meaningful protections for non-Nucor customers that would not otherwise apply when a customer participates in the BDR program.

While Nucor and Evergy originally negotiated a contract amendment that did not contain conditional participation language or restrictions on Evergy's earnings opportunities, in response to concerns raised by Staff and OPC, Nucor and Evergy agreed to the conditions contained in the Stipulation. Nucor has demonstrated a proven ability to provide system reliability benefits and avoided capacity benefits through participation in demand response, and the conditional approval period under the Stipulation allows the Commission to confirm that Nucor's participation is beneficial going forward. As such, the Commission should approve the contract amendment, and the conditions detailed in the Stipulation, to allow Nucor to participate in any demand response programs offered by Evergy, including MEEIA demand response programs and the BDR program.

2. Nucor's participation in Evergy demand response programs has shown it can produce benefits, and Nucor's future participation would produce benefits to all customers.

Nucor has shown that it can adequately perform under the BDR program, and such performance can produce system benefits. These benefits would be appropriately measured and

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

⁹ *See id.*; Section II.C *infra*.

verified under the BDR program rules, and such benefits would be maximized through participation in the BDR, rather than another demand response program.

a. The benefit/cost ratio for Nucor’s participation aligns with and exceeds the standards set by the MEEIA, and Nucor’s participation provides qualitative benefits.

Nucor’s historical performance under the BDR program is indicative of the expected performance going forward, and such performance has and is expected to provide benefits consistent with the MEEIA. The MEEIA avoided cost benefit and cost standards are generally evaluated based on the Total Resource Cost (“TRC”) test, with the TRC being the preferred cost-effectiveness test under MEEIA.¹⁰ In the Commission’s MEEIA Cycle 3 Amended Report and Order (“Cycle 3 Order”), the Commission explained that the TRC test compares the cost to deliver a program to the value of the program benefits, and if the TRC results for a program are greater than one, then the program is determined to be cost-effective.¹¹

Applying the MEEIA Cycle 3 approved avoided cost shows that Nucor’s participation can provide quantitative capacity avoidance benefits, and the evidence in this case shows that Nucor’s participation can provide other qualitative benefits as well. Nucor previously participated in Evergy’s BDR program from 2021-2023,¹² and applying Nucor’s demand reduction to the approved MEEIA Cycle 3 avoided costs showed measurable benefits from Nucor’s participation.¹³ Nucor’s curtailment and participation in the BDR program resulted in over \$2.5 million in avoided capacity cost benefits to EMW customers.¹⁴ The benefit/cost ratios for the BDR program for

¹⁰ See Case No. EO-2019-0132, *Amended Report and Order* at 10 (March 11, 2020); Mo. Rev. Stat § 393.1075.

¹¹ See Case No. EO-2019-0132, *Amended Report and Order* at 10 (March 11, 2020).

¹² As acknowledged by Company witness Brian File, Nucor was removed from the BDR program after determining there was a conflict between the SIL Tariff and Nucor’s participation. Evergy Direct Testimony of Brian A. File at 7:11-16.

¹³ See Evergy Surrebuttal Testimony of Brian A. File at 3:7-12.

¹⁴ See Evergy Direct Testimony of Brian A. File at 7:19-8:4.

program years 2021 and 2022 were 2.45 and 2.47, respectively under the TRC test and 1.21 and 1.17, respectively under the Program Administrator Cost Test.¹⁵ Nucor’s participation resulted in a similar benefit/cost ratio. As such, Nucor’s participation has shown it can produce quantifiable benefits to customers that align with and exceed the standards set by the MEEIA.

In addition to the quantitative benefits of Nucor’s participation in the BDR program, there are several qualitative benefits facilitated by Nucor’s participation. As explained by Evergy witness Brian File, demand response can be implemented quickly, cost-effectively, and without the long lead times and capital expenditures associated with new generation or transmission resources.¹⁶ Large load demand response can also help reduce the risk of outages¹⁷ and can help reduce the system peak.¹⁸ In fact, witness File emphasized the importance of robust demand response participation, and large customer demand response in particular, and its contribution to resource adequacy in light of the current “unprecedented surge in electricity demand, driven by the rapid expansion of large manufacturers, data centers, and electrification across the region.”¹⁹

The Commission also explained in the Cycle 3 Order that “[b]enefits from a reduction in a customer’s bill is not the only benefit to customers,” and that benefits can also include “indirect societal benefits, such as improved health and safety, investment in local economies, and local job creation.”²⁰ Nucor’s participation and demand reductions under the BDR program will also support Evergy’s needs towards meeting its resource adequacy requirements for SPP.²¹ Thus, Nucor’s participation is consistent with the goals of the MEEIA programs, and Nucor’s participation in the

¹⁵ *Id.* at 8:11-15.

¹⁶ *Id.* at 6:7-9.

¹⁷ *Id.* at 6:20-7:2; Tr. at 161:11-20.

¹⁸ Tr. at 161:21-25.

¹⁹ Evergy Direct Testimony of Brian A. File at 5:3-19.

²⁰ Case No. EO-2019-0132, *Amended Report and Order* at 15 (March 11, 2020).

²¹ Evergy Surrebuttal Testimony of Brian A. File at 12:13-15.

BDR program can produce quantifiable avoided capacity benefits, and a variety of qualitative benefits as well.

b. The BDR program measurement and verification requirements are sufficient for the purpose of resource adequacy.

The MEEIA and BDR program rules prescribe the process by which Evergy will measure and verify load reduction under the BDR program. The Commission has jurisdiction over Evergy’s BDR program and the Commission approved the measurement and verification requirements contained in the BDR program rules.²² Furthermore, Nucor’s participation in the BDR program—or any Evergy demand response program—will be evaluated by Staff’s Evaluation, Measurement, and Verification (“EM&V”) consultant pursuant to the program rules approved by the Commission. For example, in Cycle 3, the measurement methodology was determined and utilized by a third-party evaluation consultant (ADM & Associates) with oversight from Staff’s EM&V consultant (Evergreen Economics).²³ Thus, the measurement process will be consistent with the MEEIA construct and will be vetted by appropriate third-parties.

The Commission should reject Staff’s recommendation that Nucor not be allowed to participate in the BDR program.²⁴ This recommendation appears to be largely based on Nucor’s load profile and Staff’s perceived difficulty in establishing a baseline for Nucor.²⁵ However, these concerns are overstated, and Staff’s argument that Nucor’s load profile should disqualify it from participating in the BDR program is unpersuasive. In fact, Nucor’s experience participating in the

²² Tr. at 197:21-198:12. *See* Mo. Rev. Stat § 393.1075 (allowing utility earnings opportunities “associated with cost-effective measurable and verifiable efficiency savings”); Case No. EO-2023-0370, *Order Approving Agreement and Tariffs* (December 11, 2024) (approving Stipulation and Agreement providing for Evergy Cycle 4 programs, which includes the current BDR program).

²³ Evergy Surrebuttal Testimony of Brian A. File at 8:8-12.

²⁴ Staff Rebuttal Testimony of Justin Tevie at 12:3-4.

²⁵ *See generally* Staff Rebuttal Testimony of Justin Tevie at 9-11.

BDR program in 2021-2022 points to the exact opposite conclusion. As Evergy witness File testifies, Nucor's demand reductions during these years were measured and verified by a third-party.²⁶ As a result, Nucor produced \$2.5 million in avoided capacity cost savings.²⁷

In addition, Staff's proposal to exclude Nucor from the BDR program based on its load shape is counter to the terms of the BDR program rules. As Staff witness Tevie testified at the hearing in this case, he is not aware of any specific requirements in the MEEIA program restricting customers with unpredictable loads from participating, and he is not aware of any customer being barred from participating in the BDR program based on their load shape.²⁸ Evergy witness File testified that while Nucor's load may have variations, all customer load changes or is variable.²⁹ Thus, singling out and prohibiting Nucor from participating in the BDR program based on its load shape, when the terms of the program do not provide a basis for such exclusion, would be unreasonable. It would also be counter-productive, as prohibiting Nucor (one of Evergy's largest customers) from participating in Evergy's demand response programs would needlessly sideline a significant demand response resource that could otherwise provide many MWs of load reduction to relieve stress on the system at times of peak demand and lower capacity costs paid by all Evergy customers.

c. Other demand response pathways would not count toward Evergy's resource adequacy requirements.

Evergy's MEEIA programs and the BDR program are the best option for Evergy and customers to realize the benefits of Nucor's participation in demand response programs. Both Staff and OPC suggest that they do not oppose demand response, nor do they oppose Nucor's

²⁶ Evergy Direct Testimony of Brian A. File at 7:17-8:8.

²⁷ *Id.* at 7:20-8:1.

²⁸ Tr. at 164:5-15.

²⁹ Tr. at 109:2-20.

participation in demand response programs.³⁰ In fact, Staff agrees that participation in demand response by Nucor could provide benefits.³¹ But they do not want Nucor participating in Evergy’s MEEIA programs.³²

While Nucor may be capable of participating in various demand response programs, Nucor and Evergy negotiated a contract amendment and Stipulation providing that Nucor can participate in Evergy’s MEEIA demand response programs—specifically the BDR program—because there are benefits that MEEIA programs uniquely provide. Evergy explains in its testimony that the “primary purpose and benefit of the MEEIA BDR program is to achieve MW reduction savings that support Evergy’s needs towards meeting its resource adequacy requirements for SPP.”³³

At the hearing in this case, Evergy witness James (JP) Meitner explained that if a demand response customer’s load is not included directly as part of Evergy’s workbook in SPP, it cannot be claimed toward resource adequacy requirements.³⁴ In response to a question from Chair Hahn, Mr. Meitner confirmed that BDR is the only program as far as capacity accreditation that Evergy gets credit for in resource adequacy at SPP and that the demand response portion would be taken against the peak load forecast.³⁵ Evergy cannot achieve this purpose, and unlock the associated benefits, if Nucor participates in a demand response program outside of the BDR program. Thus,

³⁰ Staff Rebuttal Testimony of Jordan T. Hull at 5:12-14; *see* OPC Surrebuttal Testimony of Dr. Geoff Marke at 6:8-12 (discussing the benefits of bidding aggregators of retail choice demand response into wholesale markets).

³¹ *See, e.g.*, Staff Rebuttal Testimony of Jordan T. Hull at 5:6-8 (explaining that “it makes sense for one of Evergy Missouri West’s largest customers to participate in curtailments to provide system benefits in circumstances where the grid is strained”).

³² *See id.* at 13:7-9; OPC Surrebuttal Testimony of Manzell Payne at 8:22-24.

³³ Evergy Surrebuttal Testimony of Brian A. File at 12:13-15.

³⁴ Tr. at 77:7-12.

³⁵ Tr. at 227:12-19. Staff witness Hull also testified to a similar conclusion. *See id.* at 219:6-18 (confirming that demand response for resource adequacy purposes can only be claimed as a load reduction against the load responsible entity’s peak).

while there are other demand response programs available, none of those programs provide the same value to Evergy and its customers in SPP as the BDR program does.

B. Existing hold harmless provisions and cost-tracking provisions, along with conditions of the Non-Unanimous Stipulation, 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.

The SIL Tariff and Nucor Contract include robust customer protections that insulate ratepayers from any potential cost recovery shortfall resulting from Evergy's electric service to Nucor—those contract provisions are unaffected by the contract amendment and Stipulation. One key ratepayer protection is the “hold harmless” provision of the SIL Tariff, which essentially says that if the revenues collected from Nucor do not exceed the cost to serve Nucor, then other customers will be held harmless and Evergy will make up the difference in costs.³⁶ While these protections are unaffected by the contract amendment and Stipulation, Staff argues that the cost of Nucor's participation in the BDR program (including the payment to Nucor) should be included in the Nucor Contract hold harmless calculation and should contribute towards the under-or over-recovery amounts.³⁷ This proposed approach misunderstands the purpose of the incentive payments under the BDR program and the definition of cost to serve under the SIL Tariff and the Nucor Contract.

As explained by Evergy witness File, any payment that Nucor receives for participation in the BDR program would be in return for the specific activity of participation in the program.³⁸ Said differently, the incentive payment under the BDR program is a payment for services—Nucor would reduce load when called upon in times of system stress and Nucor would receive a payment

³⁶ See Schedule SIL - P.S.C. MO. No. 1 Original Sheet No. 157.2.

³⁷ Staff Rebuttal Testimony of Justin Tevie at 3:4-6.

³⁸ Evergy Surrebuttal Testimony of Brian A. File at 2:7-9.

for doing so. Absent participation, Nucor would be under no obligation to curtail load during such times of system stress. Similarly, as explained by Evergy witness Linda Nunn, the hold harmless provision relates specifically to “the provision of electricity to Nucor. The requested participation in demand response is separate from and unrelated to the provision of electric service.”³⁹ Payments under the BDR program are payments for a service provided by the participating customer unrelated to the provision of electric service to said customer (in fact, by curtailing during a demand response event, the customer is actively *not* taking its usual electric service).

The only possibility of a cost shift from Nucor’s demand response participation is if by reducing load, Evergy’s sales to Nucor would in turn be reduced, which could possibly result in Evergy not recovering sufficient revenue from Nucor to cover the incremental cost of service. As witness File explains, this situation is unlikely because if Nucor reduces its peak demand, the cost to serve Nucor will also likely reduce.⁴⁰ However, to the extent there is any under-recovery, the hold harmless provision would ensure that other customers do not bear that cost.⁴¹ Regardless, if there were some under-recovery directly caused by Nucor’s demand response participation, it would likely be negligible compared to the benefits provided by Nucor’s participation.⁴²

Thus, there is no basis or reasonable argument to justify including the costs of Nucor’s BDR program participation in the hold harmless calculation. However, to the extent that Nucor’s participation results in a revenue shortfall such that Evergy cannot recover its incremental costs to serve Nucor, Evergy’s customers will continue to be protected through the hold harmless provision

³⁹ Evergy Surrebuttal Testimony of Linda J. Nunn at 3:20-22.

⁴⁰ Evergy Direct Testimony of Brian A. File at 10:1-4.

⁴¹ *Id.* at 10:19-11:14.

⁴² *Id.* at 10:4-5.

and the other protections provided for in the SIL Tariff and the settlement agreement in Case No. EO-2019-0244 as they are today.

C. EMW should have the ability to receive an earnings opportunity for verified savings produced by Nucor's participation in the BDR program subject to the conditions specified in the Non-Unanimous Stipulation and Agreement.

To address concerns raised by Staff and OPC that Nucor's participation was not contemplated when MEEIA Cycle 4 was approved, the Stipulation establishes reasonable conditions on Evergy's earnings opportunity related to Nucor's participation. The Stipulation provides, in relevant part, that Nucor's demand that contributes to EMW BDR goals will not be greater than 30% of final EM&V values, but if Nucor's demand accounts for greater than 30%, EMW's earnings opportunity will be reduced to reflect only 30% of the portfolio.⁴³ Also, the Stipulation explicitly carves out Nucor load from contributing toward Evergy's 65% threshold goal for the Company's earnings opportunity to be vested for 2027.⁴⁴ MEEIA Cycle 4 ends after 2027, so parties will have the right to present evidence on the appropriate earnings opportunities for Evergy in the expected Cycle 5 and thereafter. Thus, by excluding Nucor participation from potential earnings opportunities in 2027, the Stipulation provides reasonable boundaries on Evergy's earnings opportunities, and Evergy should have the ability to receive such earning opportunities consistent with the Stipulation.

III. CONCLUSION

The Non-Unanimous Stipulation and Agreement strikes a balance between competing interests by allowing Nucor to participate in Evergy's demand response programs, while providing a one-year conditional period to assess the benefits and costs, and by placing guardrails on

⁴³ Stipulation at 2.

⁴⁴ *Id.*

Evergy's earnings opportunities related to Nucor's participation in the BDR program. In recognition of that balance, and for the reasons stated herein, Nucor respectfully asks that the Commission approve the Non-Unanimous Stipulation and Agreement and associated contract amendment to allow Nucor to participate in Evergy's demand response programs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission on June 25, 2026.

/s/ Marc H. Ellinger
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