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 THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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Glossary of Terms

As used in this brief,

- "BDR" means Business Demand Response
- "Evergy" means Evergy Missouri West, Inc. d/b/a Evergy Missouri West
- "MEEIA" means Missouri Energy Efficiency Investment Act
- "MISO" means Midcontinent Independent System Operator
- "Nucor" means Nucor Steel Sedalia, LLC
- "SIL" means Special Rate for Incremental Load Service
- "SPP" means Southwest Power Pool
- "the Company" means Evergy Missouri West, Inc. d/b/a Evergy Missouri West

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Introduction

This case concerns an attempt by Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy" or "the Company") and Nucor Steel Sedalia, LLC ("Nucor") to force the bulk of Evergy's customers to subsidize Nucor's ongoing operation through the use of Evergy's currently approved business demand response ("BDR") program.[1] If the Company's request is approved, Nucor can expect a windfall of more than ** _____ ** dollars annually – while Evergy itself receives an additional sum of more than ** _____ ** dollars annually – all paid out of the pocket of Evergy' other customers. [Ex. 100, *Rebuttal Testimony of Jordan T. Hull*, pg. 3 ln. 12 – pg. 5 ln. 2]. The remainder of Evergy's customers, however, are poised to receive virtually nothing of value in return for the money they are now being asked to provide. Moreover, this forced subsidization is occurring even though Nucor is already benefiting from a special rate (created for it alone) that was purposefully made to reduce what Nucor would otherwise pay if it were charged the same as Evergy's other customers. A special rate that, despite existing explicitly to shift costs *away* from Nucor, contains at least a façade of consumer protection in the form of a "hold harmless" provision that was intended to prevent the very cross-subsidization now being requested.[2] And, as if to rub salt in a wound, this request, if granted, will further result in stunting – if not outright killing – any form of legitimate competition for demand response programs that might be developing in this state. Needless to say, the Commission should not approve of the Company and Nucor's request.

To present its argument cleanly and efficiently while still abiding by the Commission's *Order Setting Procedural Schedule*, the OPC's brief will be divided into two parts. The first will consist of a marshaling of the relevant facts and the presentation of the overarching argument for why the Company's request to modify

[1] The BDR is authorized under the Missouri Energy Efficiency Investment Act ("MEEIA").

[2] Unsurprisingly, Evergy now asks the Commission to plainly ignore this hold harmless provision because its operation would result in what the Company considers an "absurd" result (*i.e.* working as intended).

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Nucor's existing Special Rate for Incremental Load Service ("SIL") contract should be denied. The second will be a relatively shorter review of the filed list of issues meant to ensure every issue subject to Commission determination has been properly addressed.

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Central Argument

This brief will present three main points in its central argument for why the Commission should deny the request:

1. The benefits arising from Nucor's participation in the BDR program do not exceed the costs of its participation

2. The request violates the existing SIL tariff

3. The request is promoting anti-competitive behavior

There is a fourth point that the Commission should certainly consider regarding this request, and that is the lack of quality information available for Nucor – in particular its load forecasts – that casts serious doubts on the ability to reasonably measure the actual demand reductions arising from Nucor's participation in the BDR program. However, the OPC will leave that issue to be addressed by the Commission's Staff (as they are the ones who first raised it) and return to discuss it only as necessary. With that, we turn to the first point to address.

The benefits gained from Nucor's participation in the BDR program do not exceed the costs that will be incurred

To understand that the benefits of Nucor's participation in the BDR program do not exceed the costs, we must first define what the costs and benefits are. The costs are simple to determine; they are the amount Nucor would be paid for its participation in the BDR program and the earnings opportunity that Evergy would make based on that participation.[3] Using Nucor's past illegal participation in the BDR program as a proxy, one could easily estimate those costs would together exceed ** _____ ** dollars. [Ex. 100, *Rebuttal Testimony of Jordan T. Hull*, pg. 3 ln. 19 – pg. 4 ln. 9]. What then are the benefits? To answer that, one must first consider the original purpose of the BDR program.

[3] Assuming that Evergy meets the threshold requirements to receive its earning opportunity.

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As explained by Staff witness Jordan T. Hull, the BDR program is designed to "compensate[] commercial customers who reduce, or curtail, their electrical load during high-demand days." [*Id*. at pg. 3 lns. 2 – 4]. This is further enforced by the explanation provided by the OPC's witness Dr. Geoff Marke:

> Large commercial customers can get paid to curtail their power during select "events" that are typically aligned with peak energy usage. At a large enough scale, the combined efforts of these aggregated large customer curtailments can have the same impact as firing up a peaker plant to meet load but at a much more affordable price point.

[Ex. 201, *Surrebuttal Testimony of Geoff Marke*, pg. 3 lns. 3 – 6]. It is extremely important to understand, however, that merely swapping the firing of a peaker plant for a curtailment event does not itself produce a benefit. On the contrary, it actually creates something of a detriment.

The hypothetical peaker plant that is *not* being fired up when a demand response event is called still cost money to build. It is therefore an investment that Evergy will ultimately seek to recover from customers. If Evergy actually did "fire up" (*i.e.* activate) the peaker plant during a period of peak energy usage and then sell the resulting energy into the Southwest Power Pool ("SPP"), the Company would receive revenues that would partially offset the cost of the plant being recovered from customers.[4] So it is economically reasonable, and in fact outright desirable, that Evergy activate and use its existing peaker plants any time the revenues to be gained from doing so will exceed the cost of operating the peaker plant. [Tr. Vol. 1 pg. 256 lns. 6 – 14]. Not running the peaker plant when it is profitable to do so and instead calling a demand response event to reduce peak demand therefore denies Evergy revenue and is thus detrimental overall.

[4] This is assuming that it is economically fuel efficient to run the plant, *i.e.* that the revenues generated for the given period exceed the cost of running the plant for that same period. Because peaker plants are, by definition, only run at times of "peak" energy usage, where the cost of energy has risen to their highest points, this is most often the case.

Given that calling a demand event can actually be detrimental when compared to running an existing peaker plant, one must naturally ask why the demand response program exists at all. The answer to that question lies in the fact that the demand response program will be beneficial to customers if it means that the utility can avoid building additional generation. This is because building additional generation would be significantly more expensive than calling the demand response event. [Ex. 201, *Surrebuttal Testimony of Geoff Marke*, pg. 3 lns. 3 – 6]. So, to reiterate, not running an *existing* peaker plant due to a demand response event is unhelpful because it deprives a utility of revenue that would otherwise offset the costs already incurred to build that *existing* peaker plant but avoiding having to build a *new* peaker plant by calling demand response events is helpful because it eliminates the cost of building a *new* peaker plant. Thus, the critical question this Commission needs to consider is whether allowing Nucor to participate in the existing BDR program will result in the Company avoiding have to build additional generation, because that is what will ultimately create a benefit for utility customers.

Allowing Nucor to participate in the existing BDR program will categorically not result in Evergy avoiding having to build additional generation. We know this because Evergy is already "long" on generation, meaning that "they have more generation than they will be able to utilize." [Tr. Vol. 1 pg. 248 lns. 15 – 25, pg. 256 lns. 21- 25]. Evergy Missouri alone, for example, has exceeded its resource adequacy requirements by more than 100 MW. [*Id*. at pg. 257 lns. 1 – 24]. If Evergy Kansas is also considered, that number jumps to more than 800 MW. [*Id*. at pg. 258 lns. 4 – 6]. Because it already has more generation than it needs while currently serving Nucor, the Company has no reason to build additional generation to serve Nucor. At the same time, though, Evergy is also already building more generation due to an expected increase in load caused by the addition of new data centers within its footprint. [*see* Commission case EA-2026-0154, *Application for CCN* (EFIS Item no. 2), pg. 12] So, no matter what the Commission approves here, Evergy will be building

more generation regardless. This leads to the inescapable conclusion: Nucor's participation will not result in an avoided costs for Evergy, as Dr. Marke explained:

> Well, Mr. Pringle, we're not avoiding anything. I mean that -- that's really at the heart of it. We're not avoiding anything and the CCNs that we've got in front of the Commission are evidence of that.

[*Id.* at pg. 246 lns. 13 – 18]. And without any avoided costs, calling demand response events just results in lost revenues, which serves no benefit.[5]

Because there are effectively no benefits to Evergy's customers for having Nucor participate in the BDR program, the costs of that participation is obviously greater than what is to be gained. The result, as stated before, is Nucor's participation becomes nothing but a subsidy for one customer, paid at the expense of all other customers. As Dr. Marke explained on the stand:

> There are **no benefits** for ratepayers if the Commission approves this today, **zero**. It's -- we're -- we're effectively saying here's a million and quarter dollars that we're -- we're going to go ahead and section off to the company and Nucor.

[*Id.* at pg.248 lns. 2 – 7 (emphasis added)]. This simple reason is, on its own, more than enough reason for this Commission to deny Evergy's request to modify Nucor's SIL contract to allow Nucor to participate in Evergy's BDR program.

[5] It is also important to note that there is no capacity market in the Southwest Power Pool ("SPP") for which excess capacity can be readily sold in the same manner as exists for the Midcontinent Independent System Operator ("MISO") footprint. "And that's why demand response, unlike in the MISO footprint, runs into a number of challenges on the SPP footprint. Their -- the value for ratepayers is severely diminished because of the vertically integrated nature of SPP." [Tr. Vol. 1 pg. 256 lns. 15 – 20].

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Allowing Nucor to participate in the BDR program would violate the terms of the SIL tariff

As explained in the introduction, Nucor is currently served under Evergy's SIL tariff. That tariff sheet contains a special provision referred to as the "hold harmless provision." [JE-2020-0046, *Evergy Missouri West Tariff* P.S.C. Mo. No. 1 1st Revised Sheet no. 157.2; Ex. 102, *Rebuttal Testimony of Justin Tevie*, pg. 2 lns. 4 – 7]. The specific language of the provision reads:

> Non-participating customers **shall** be held harmless from **any** deficit in revenues provided by any customer served under this tariff.[6]

[*Id.* (emphasis added)]. If allowed to participate in the Evergy BDR program, "Nucor will get a discounted bill, while other ratepayers do not." [Ex. 102, *Rebuttal Testimony of Justin Tevie*, pg. 3 lns. 2 – 4]. The "discounted bills" means Evergy will not receive as much revenue as they otherwise would have received from Nucor and thus necessarily result in a "deficit in revenues provided by a[] customer served under this tariff." Because the BDR program will result in discounted bills for Nucor – thereby creating a "revenue deficit" – non-participating customers will be charged higher rates to cover that deficit. This means the non-participating customers will no longer be "held harmless" for the deficit in revenues provided by Nucor while being served under the SIL tariff and thus Nucor's participation in the BDR program will necessarily violate the hold harmless provision of the SIL tariff.

The OPC acknowledges that it is possible to avoid the violation just described, but that is only by effectively charging Nucor the amount for which its bills were discounted under the BDR program through the hold harmless provision's enforcement mechanisms. [*See Id.* at lns. 4 – 6 ("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.")]. This result

[6] This is followed by a more extensive explanation of how the provision is to be actually administered. [JE-2020-0046, *Evergy Missouri West Tariff* P.S.C. Mo. No. 1 1st Revised Sheet no. 157.2; Ex. 102, *Rebuttal Testimony of Justin Tevie*, pg. 2 lns. 4 – 7].

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would effectively eliminate the BDR program incentives for Nucor (exactly as expected for the hold harmless provision), and thus is not what Evergy intends to do. [*Id.* at lns. 11 – 16]. Instead, the Company simply intends to violate the SIL tariff's hold harmless provision. [*Id.*]. This Commission should not permit such a result to occur.

"Nucor's participation in the MEEIA is a cost of serving them if they are allowed to participate." [*Id.* at lns. 18 – 20]. "From the perspective of the hold harmless provision, this cost **must be included**." [*Id.* (emphasis added)]. Evergy's current proposal would result in Nucor receiving a bill discount of approximately ** ———————— ** annually. [*Id.* at pg. 4 lns. 9 – 12]. This would be paid by Evergy's non-Nucor customers, "directly contradicting the hold-harmless provision." [*Id.*]. Such a blatant violation of the existing SIL tariff should be, standing on its own, sufficient reason for the Commission to deny Evergy's request to modify Nucor's SIL contract to allow Nucor to participate in Evergy's BDR program.

Allowing Nucor to participate in the BDR program would inhibit competition in the State of Missouri

When it comes to demand response programs, Evergy's BDR is hardly the only game in town. On the contrary, an entity like Nucor has multiple options to choose from to be able to participate in demand response programs that exist outside of the MEEIA BDR program. For example, Nucor can participate directly in SPP demand response programs offered through SPP's tariffs. [Ex. 100, *Rebuttal Testimony of Jordan T. Hull*, pg. 5 ln. 12 – pg. 7 ln. 2]. This direct participation would also result in incentive payments being made to Nucor, just not incentive payments funded by Evergy customers:

> Participants in demand response programs receive compensation or incentives for committing to reduce electricity consumption or for lowering their load when called upon. Payments may be linked to capacity obligations or performance in energy markets, and market-based payments can occur when demand reductions help supply energy during periods of high prices. The specific payment structure depends

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> on how the demand response resource is registered and the market product in which it participates. Payments are made to the registered Market Participant, which may be a utility, a retail electric provider, or a curtailment service provider (aggregator). **End-use customers (such as Nucor in this case) are then compensated according to private contractual arrangements with that participating entity**.

[*Id*. at pg. 7 lns. 3 – 12 (emphasis added)]. One of the options referenced in that excerpt is "curtailment service provider[s]" or "aggregator[s]." These are what are more commonly known as "ARCs."

The term "ARC" stands for Aggregators of Retail Customers. [*Id*. at pg. 12 lns. 7 – 10]. Staff witness Jordan Hull provides an excellent overview of their business model:

> An electricity aggregator is a company or organization that combines the electricity demand or supply of many customers and participates in energy markets on their behalf. By pooling many smaller resources together, aggregators create a large enough resource to buy, sell, or adjust electricity in wholesale markets. An aggregator acts as an intermediate between customers and the electricity market. They gather multiple participants (homes, businesses, or generators) and coordinate them as a single resource.

[*Id*. at lns. 12 – 17]. These ARCs have not had a major presence in Missouri due to prior restrictions placed on their participation by this Commission. However, those restrictions have just recently been lifted. [*Id*. at lns. 7 – 9; Ex. 201, *Surrebuttal Testimony of Geoff Marke*, pg. 3 lns. 19 – 21 ("After a lengthy prohibition on participation in demand response programs in Missouri by third-party ARC's, the Commission voted to lift the ban on ARC participation in Missouri, effective January 1st of 2024.")]. This re-introduction of a viable third-party alternative presents significant benefits to Evergy's ratepayers.

"Competitive ARCs operate in most wholesale energy markets today at no direct cost to ratepayers." [Ex. 201, *Surrebuttal Testimony of Geoff Marke*, pg. 6 lns.

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4 – 5]. They are easily superior to the existing Evergy BDR program as they "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)." [*Id.* at lns. 5 – 7]. Further, the participation of ARCs "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." [*Id.* at lns. 8 – 10]. This is extremely important, as Dr. Marke explained:

> The premise behind RTO/ISOs is that market forces will push prices down to "just and reasonable" levels. If these market forces are insufficient because demand response is absent (or suboptimal because of barriers to entry caused by government interference) then it calls into question the validity of the RTO/ISO market premise.

[*Id.* at lns. 15 – 18]. Consequently, denying access to these ARCs "deprives customers of the dynamic efficiencies and differentiated choices that minimize cost and maximize convenience." [*Id.* at pg. 7 lns. 2 – 4]. And allowing Nucor to participate in Evergy's existing BDR program results in just such a denial because the BDR program is inherently anti-competitive.

A utility like Evergy has an obvious advantage over non-utility competitors when it comes to offering demand response programs in that it is free to overpay participants using ratepayer backed funds. That is essentially what Evergy's BDR program is today; an expensive middleman who "provide[s] he same service a private actor would do without direct ratepayer compensation." [*Id.* at lns. 12 – 13]. This is a problem, as Dr. Marke explained:

> If Evergy continues to practice as the de facto middleman **with the financial backing of captive ratepayers**, then ARCs **have little reason to operate in Missouri**, and all of the workshops, the outside help from Lawrence Berkeley National Labs, and other efforts undertaken by the Commission's Staff in preparation of the Commission lifting the ban on ARCs will have been for nothing.

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[*Id.* at lns 14 – 18 (emphasis added)]. This is why, if the Commission truly wants to promote competition in this state, it must deny Evergy's request. And promoting competition is exactly what this Commission should be doing.

"The default option for regulators should be to enable competition whenever feasible and legally permissible." [*Id.* at pg. 4 lns. 24 – 25]. The importance of this principle is laid out at length in Dr. Marke's testimony:

> Economic regulation of natural monopolies is necessary because of the inherent market imperfections that result from their existence. Economic utility regulation serves as an essential proxy for the absence of a competitive market. Absent regulatory oversight, utilities could exploit their monopolistic privilege, and the public at large would be worse off. But natural monopolies' positions are not necessarily an inevitable, absolute outcome that cannot be modified or even absolved under emerging technological and market conditions.
>
> In fact, history is full of examples of former natural monopolies that have deregulated and consumer welfare has increased as a result (e.g., airline industry, telecom, railroads, large trucking, etc.). To quote the father of deregulation, economist Alfred Kahn:
>
> > "Whenever competition is feasible it is, for all its imperfections, superior to regulation as a means of serving the public interest."
>
> 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.

[*Id.* at pg. 5 lns. 1 – 17]. What is more, the Commission is clearly aware of the importance of promoting such competition, as it explicitly cited in the Commission's Mission Statement, twice. [*Id.* at pg. 5 ln 19 – pg. 6 ln. 2].

There can be no question that allowing Nucor to participate in Evergy's existing BDR program will have a negative impact on the growth of ARCs and similar competitive third-party alternative providers of demand response in Missouri. [*Id.* at

pg. 7 lns 14 – 18]. There should be no question that the Commission's objective, as referenced in its own mission statement, is to promote that very type of competition. [*Id.* at pg. 5. ln 19 – pg. 6 ln. 2]. For this reason alone, the Commission should deny Evergy's request to modify Nucor's SIL contract to allow Nucor to participate in Evergy's BDR program.

Summation

The OPC has offered three separate reasons which, each on their own, represent good reason for the Commission to deny Evergy's request. Allowing Nucor to participate in Evergy's BDR program will incur costs for ratepayers while offering no benefits in return. This makes the request nothing more than an open attempt to subsidize Nucor on the back of Evergy's other customers. [Tr. Vol. 1, pg.248 lns. 2 – 7]. It would further violate the terms of the existing SIL tariff's hold harmless provision. [Ex. 102, *Rebuttal Testimony of Justin Tevie*, pg. 4 lns. 9 – 12]. This deliberate effort to abolish the *one* provision designed to protect customers found in a rate that otherwise serves only to benefit Nucor alone should not be permitted. Finally, granting the request will result in the currently existing opportunity to generate real competition between third-party demand response providers being strangled in its crib. [Ex. 201, *Surrebuttal Testimony of Geoff Marke*, pg. 7 lns 14 – 18]. The elimination of competition should be something this Commission seeks to adamantly avoid. [*Id.* at pg. 5 lns. 1 – 17]. For all these reasons, the Commission should deny Evergy's request to modify Nucor's SIL contract to allow Nucor to participate in Evergy's BDR program.

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Review of the List of Issues

In order to comply with the Commission's *Order Setting Procedural Schedule* (which required that "[b]riefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission"), and to further ensure that every issue is properly addressed, the OPC will now provide a quick review of the filed list of issues and supplement its Central Argument where necessary.

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

The OPC's position on this issue is that 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. The OPC has taken this position because its goal is to prevent Nucor from participating in Evergy's MEEIA BDR program for the reasons set forth and addressed in the Central Argument section above. Those concerns, however, do not extend to all demand response programs, as expressed in the testimony of OPC witness Manzell Payne:

> **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

[Ex. 200, *Surrebuttal Testimony of Manzell Payne*, pg. 8 lns. 13 – 17]. Thus, the OPC believes 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. To do that, though, it would most likely be necessary to approve some kind of amendment to the existing Nucor Agreement to allow Nucor to participate in these non-MEEIA demand response programs. [Ex. 100, *Rebuttal Testimony of Jordan T. Hull*, pg. 12 ln. 18 – pg. 13 ln. 4].

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")?

No, for the reasons set forth and addressed in the Central Argument section of this brief.

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?

The Commission should in no way approve Nucor's participation in the MEEIA BDR program for the reasons set forth and addressed in the Central Argument section of this brief. If, however, the Commission is willing to accept the subsidies paid to Nucor from other ratepayers and the damage to developing demand response competition in this state that will occur as a result of granting Evergy's request (as set forth and addressed in the Central Argument section of this brief), then the Commission should, at a minimum, order Evergy to:

(i) include the costs of Nucor participation in the MEEIA BDR in the hold harmless provision, including any [Evergy] earnings opportunity associated with the participation;
(ii) detail out the benefits to non-Nucor ratepayers from Nucor's participation in a MEEIA demand response program by

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identifying actual generation projects or specific capacity purchases that can reasonably be expected to be avoided;

(iii) accurately account for the cost of capacity necessary to serve the entirety of Nucor's peak demand in all future Cost and Revenue tracking reports in accordance with Paragraph 7 of the Stipulation and Agreement from Case No. EO-2019-0244; and

(iv) [] make an additional revenue adjustment covering the shortfall to the revenue requirement calculation through the true-up period in a general rate case, to ensure that non-Schedule SIL customers will be held harmless.

[Ex. 102, *Rebuttal Testimony of Justin Tevie*, pg. 12 lns. 6 – 16]. These are necessary to address the violation of the existing SIL hold harmless provision, which is addressed in the Central Argument section of this brief.

Issue A(2)

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

No, for the reasons set forth and addressed in the Central Argument section of this brief.

Issue A(2)(a)

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

No, for the reasons set forth and addressed in the Central Argument section of this brief.

Issue A(2)(b)

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

No. This can most easily be seen in the testimony of Staff witness Jordan T. Hull who compares the SPP offered demand response programs to EMW's MEEIA BDR program:

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> 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.

[Ex. 100, *Rebuttal Testimony of Jordan T. Hull*, 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?

Yes. This was set forth and addressed in the Central Argument section of this brief.

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?

No, for the reasons set forth in the Central Argument section of this brief.

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?

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This is, generally speaking, no longer an actual issue in this case. The earnings opportunity Evergy may receive through its MEEIA programs are limited by threshold targets that must be achieved first. This creates a small problem for the present case because the current targets for the earnings opportunity to vest were set without the inclusion of Nucor. This means that including Nucor when calculating whether those thresholds are met would skew the results. [Ex. 200, *Surrebuttal Testimony of Manzell Payne*, pg. 6 ln. 16 – pg. 7 ln. 2]. However, this has also been acknowledged by Evergy's own witness, Mr. Brian A. File, who further requested 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. [Ex. 4, *Surrebuttal Testimony of Brian A. File*, pg. pg. 9 lns. 18 – 21]. This is then still further reiterated in the Non-Unanimous Stipulation and Agreement filed between Evergy and Nucor. [Ex. 8, *Non-Unanimous Stipulation and Agreement*, pg. 2 ("Any Nucor kW contributed to EMW 2027 demand response goals will **not** count towards Evergy meeting the 65% threshold of goal for EO to be vested.") (emphasis added)]. So, regardless of how the Commission rules on the larger issue of whether to approve Evergy's request to modify Nucor's SIL contract to allow Nucor to participate in Evergy's BDR program, this issue should be resolved.

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WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rule in the OPC's favor on the issues presented herein and grant any such other relief as is just and reasonable under the circumstances.

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 twenty-fifth day of June, 2026.

/s/ John Clizer

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