

**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 ) File No. EO-2026-0129  
West for Approval of an Amendment to )  
Nucor Steel Sedalia, LLC Agreement )

**EVERGY MISSOURI WEST’S INITIAL POST-HEARING BRIEF**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW” or the “Company”), for its *Initial Post-Hearing Brief* (“Brief”) to the Missouri Public Service Commission (“Commission” or “PSC”), states as follows:

**I. INTRODUCTION**

The Missouri Energy Efficiency Investment Act (“MEEIA”), Section 393.1075, embodies the State’s policy of placing demand-side resources on equal footing with traditional supply-side investments.<sup>1</sup> Under that framework, the Commission approved EMW’s MEEIA Cycle 4 portfolio by order dated December 11, 2024. This included the Business Demand Response (“BDR”) program, which compensates participating customers for curtailing load during peak-demand events and runs through 2027.<sup>2</sup> The May 18, 2026 Non-Unanimous Stipulation and Agreement (the “Stipulation”) asks the Commission to take one incremental step: approve an amendment (the “Amendment”) to the Special Rate for Incremental Load Service (“Schedule SIL”) agreement of EMW and Nucor Steel Sedalia, LLC (“Nucor”), permitting Nucor to participate in EMW’s demand response programs, including MEEIA BDR.<sup>3</sup>

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<sup>1</sup> See § 393.1075.3. Unless otherwise noted, all statutory citations are to the Revised Statutes of Missouri (2016), as amended.

<sup>2</sup> Report & Order, *In re Evergy Metro, Inc. & Evergy Missouri West, Inc.*, Nos. EO-2023-0369/0370 (Dec. 11, 2024) (“Cycle 4 Order”) at 6 (finding the Cycle 4 Stipulation “meets the afore-mentioned MEEIA standards”), ordered ¶ 1 (approving the Stipulation and incorporating it by reference).

<sup>3</sup> See Ex. 8, Non-Unanimous Stipulation & Agreement (filed May 18, 2026). To be clear, nothing in MEEIA limits Nucor’s participation or requires any incremental program change. The sole step needed is the Schedule SIL amendment the Stipulation proposes, because Schedule SIL, not MEEIA, is what currently conditions Nucor’s participation on Commission approval.

The only remaining issue in this proceeding is whether a single customer, Nucor, may participate in a program the Commission has already approved. The record establishes that Nucor's participation benefits every customer on EMW's system and harms none.

Three points control. First, by approving the Cycle 4 portfolio, the Commission found that the Cycle 4 Stipulation meets the governing MEEIA standards.<sup>4</sup> Staff nonetheless asks the Commission to reach the opposite conclusion about the very same program structure it approved fifteen months ago. Second, the conditions urged by Staff and the Office of the Public Counsel ("OPC") would single Nucor out, subjecting one customer to requirements that no other BDR participant must satisfy and that appear nowhere in Section 393.1075. Third, ratepayers are protected because of the Stipulation's conditional approval and 2027 expiration supplements the five consumer protections already built into Schedule SIL.

The benefits of Nucor's participation are not theoretical. Nucor's verified 2021 and 2022 peak-demand reductions produced avoided capacity-cost benefits that exceeded the incentives paid, for a benefit-cost ratio well above one.<sup>5</sup> Those reductions also produce Southwest Power Pool ("SPP") resource-adequacy ("RA") value that counts towards the capacity EMW must otherwise procure, which can reduce costs for every customer.

The Commission should approve the Stipulation and its proposed Amendment as just, reasonable, and in the public interest,<sup>6</sup> and should reject the conditions proposed by Staff and OPC.

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<sup>4</sup> See Tr. 251:8–13, 18–21 (judicial notice of the Cycle 4 Order taken at Staff counsel's request).

<sup>5</sup> See Ex. 1 at 3–8 (File Direct); Ex. 3 at 2–6 (File Surrebuttal); Sched. BF-5 [CONFIDENTIAL]. The specific benefit, cost, and curtailment figures are confidential and are designated [CONFIDENTIAL] in this public version; EMW will file a confidential version of this Brief containing those figures under seal pursuant to 20 CSR 4240-2.135.

<sup>6</sup> See Cycle 4 Order, *supra*, at 6 (finding the Cycle 4 Stipulation "is a reasonable resolution of the issues contained therein, meets the afore-mentioned MEEIA standards, and should be approved).

## **II. STANDARD FOR APPROVAL AND BURDEN OF PROOF**

The Stipulation comes before the Commission under 20 CSR 4240-2.115, which permits the parties to present a stipulation and agreement as a proposed resolution of all or any part of a contested case and authorizes the Commission to resolve the case on that basis.<sup>7</sup> Because Staff and OPC objected, the Stipulation is considered the position of its signatories, EMW and Nucor, no party is bound by it, and all issues remain for determination after hearing.<sup>8</sup> The hearing has now been held, and the question is whether the relief the Stipulation proposes is just, reasonable, and in the public interest on the record made.<sup>9</sup> For a MEEIA demand-side program, this standard is measured against the substance of Section 393.1075.4.<sup>10</sup> The Commission’s decision on this question must be lawful and reasonable, meaning “supported by competent and substantial evidence upon the whole record.”<sup>11</sup>

As the proponent of the Stipulation, EMW bears the burden of proof by a preponderance of the evidence on the record as a whole.<sup>12</sup> EMW has carried that burden through filed Direct and Surrebuttal testimony, third-party-verified evaluation, measurement, and verification (“EM&V”), and SPP accreditation of Nucor’s reductions. Staff suggests that any response pointing to EMW’s verified results improperly shifts the burden to Staff.<sup>13</sup> It does not. EMW’s affirmative proof—verified historical reductions, no missed events, and third-party EM&V that no reviewer ever

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<sup>7</sup> See 20 CSR 4240-2.115(1)(A)–(B).

<sup>8</sup> See 20 CSR 4240-2.115(2)(D).

<sup>9</sup> See Cycle 4 Order, *supra*, at 6 (finding the Cycle 4 Stipulation “is a reasonable resolution of the issues contained therein, meets the afore-mentioned MEEIA standards, and should be approved).

<sup>10</sup> See § 393.1075.4; Cycle 4 Order, *supra*, at 6.

<sup>11</sup> Mo. Const. art. V, § 18; see also *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 120 S.W.3d 732, 734–35 (Mo. banc 2003).

<sup>12</sup> See *In re KCP&L Greater Mo. Operations Co.*, No. ER-2016-0156 (applicant bears the burden of proof by a preponderance of the evidence).

<sup>13</sup> Staff Suggestions in Opposition to Non-Unanimous Stipulation & Agreement (Public), § VII.

flagged—independently satisfies the preponderance standard. Neither Staff nor OPC offered any other quantitative analysis of the benefits or costs of Nucor’s participation.

That evidentiary void is most acute for OPC. Its witness Mr. Payne conducted no independent analysis of the benefits or costs of Nucor’s participation, did not quantify or verify the SPP RA value of Nucor’s accredited curtailment, and did not independently analyze whether any alternative pathway would deliver RA value to EMW.<sup>14</sup> Asked on redirect examination whether his testimony relies instead on the analyses of Staff or EMW, he answered: “No, it does not.”<sup>15</sup> An opinion resting on neither the witness’s own analysis nor anyone else’s is not competent and substantial evidence, and it is entitled to no weight on the contested benefit, cost, verification, hold-harmless, and earnings-opportunity questions.<sup>16</sup>

### **III. ARGUMENT**

***A. Should the Commission approve an amendment to the Schedule SIL agreement dated July 11, 2019 (the “Nucor Agreement”) that would allow Nucor to participate in any demand response programs offered by EMW?***

Yes. Nucor’s participation benefits customers and harms no one, and Schedule SIL itself contemplates the very Commission approval the Stipulation seeks.

Schedule SIL authorizes the Amendment. Sheet No. 157 bars a Schedule SIL customer from demand response and MEEIA participation “unless otherwise ordered by the Commission when approving a contract for service under this tariff.”<sup>17</sup> The relief sought here is precisely that

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<sup>14</sup> Tr. 238:24–239:12 (Payne) (has not quantified the SPP RA value of Nucor’s curtailment—“I have not”); Tr. 240:3–7 (Payne) (has not independently analyzed whether any non-MEEIA pathway delivers RA value, “That is true”).

<sup>15</sup> Tr. 240:24–241:2 (Payne).

<sup>16</sup> See AG Processing, 120 S.W.3d at 734–35 (Commission decisions must be reasonable, meaning supported by competent and substantial evidence upon the whole record); State Bd. of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146, 155–56 (Mo. banc 2003) (Section 490.065.1(3) supplies the standard for expert testimony in contested administrative cases; an opinion must rest on facts or data “of a type reasonably relied upon by experts in the field”); Mueller v. Bauer, 54 S.W.3d 652, 657 (Mo. App. E.D. 2001) (opinion resting on “mere conjecture and speculation” lacks evidentiary value).

<sup>17</sup> Schedule SIL Sheet No. 157.

order. Authorizing the Amendment also benefits EMW’s short- and long-term capacity needs. The SPP reserve margins are tightening for summer 2026,<sup>18</sup> and EMW’s 2026 Integrated Resource Plan (“IRP”) Annual Update projects capacity needs across the planning horizon. Nucor is a resource cheaper than the market alternatives,<sup>19</sup> and Nucor’s track record is both proven and harmless. Its 2021 and 2022 reductions were third-party verified, produced a benefit-cost ratio above one, and harmed no other customer.<sup>20</sup>

OPC would only permit an amendment for non-MEEIA demand response. But, as explained at Issue A.2.c, routing Nucor outside MEEIA—whether through an ARC or the SPP wholesale markets—delivers no RA credit to EMW, and MEEIA is the framework the Commission has already approved. In any event, every non-MEEIA pathway OPC prefers would itself require a Commission-approved amendment to Nucor’s Schedule SIL agreement before Nucor could pursue it.<sup>21</sup>

***A.1. Should the Commission approve an amendment permitting Nucor to participate in EMW’s BDR program pursuant to MEEIA?***

Yes. Nucor participating in MEEIA BDR fits squarely within the Commission-approved Cycle 4 framework and harms no ratepayer.

MEEIA is Missouri law, and the Commission approved the Cycle 4 BDR program with a defined budget and MW capacity.<sup>22</sup> Customers who opt out of the demand-side investment mechanism may nonetheless participate in interruptible or curtailable programs under Section 393.1075.10. The Commission classified BDR as such a program in its March 11, 2020, order in

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<sup>18</sup> See Ex. 1 at 3–8 (File Direct); 2026 IRP Annual Update. The specific winter and summer reserve-margin figures are confidential.

<sup>19</sup> See Tr. 93:5–9 (Meitner) (“[W]hen you look at the MEEIA BDR all-in costs in the . . . latest IRP . . . those costs are lower than the assumed paper capacity options for the next several years, ‘27 through ‘29 time frame.”).

<sup>20</sup> See Ex. 1 at 3–8 (File Direct); Sched. BF-5 [CONFIDENTIAL].

<sup>21</sup> See Tr. 214:19-215:1 (Hull).

<sup>22</sup> See Cycle 4 Order, supra.

Case No. EO-2019-0132, and Nucor sits in the same posture as any other opt-out customer eligible to participate.<sup>23</sup> Nucor would participate on the same pay-for-performance terms as every other Cycle 4 BDR participant.<sup>24</sup>

Staff and OPC object that the BDR program expires at the end of 2027, making participation through 2029 impractical or uncertain.<sup>25</sup> The objection misreads the Amendment. The 2029 horizon tracks the Schedule SIL contract term, and the Stipulation conditions continued participation on a 2027 performance test. EMW witness Mr. File confirmed the 2029 horizon is tied to the Schedule SIL contract, and the Amendment is conditional on 2027 performance.<sup>26</sup> He also acknowledged that the Amendment contains “no specific language” carving out a Nucor-only BDR program should MEEIA BDR lapse after 2027.<sup>27</sup> If no post-2027 MEEIA demand response program exists, there is no MEEIA BDR program for Nucor to participate in and the concern dissolves. On the other hand, if a successor program is adopted, Nucor’s participation would be addressed like any other participant through that cycle’s ordinary program design, rather than as a recurring special case. The 2027 expiration is not a reason to deny the Amendment.

***A.1.a. If the Commission approves Nucor’s participation in MEEIA BDR, what, if any, conditions should apply?***

None. The protections already in force under Schedule SIL, the Nucor Agreement, the Stipulation approved in Case No. EO-2019-0244, and the May 18, 2026, Stipulation suffice.<sup>28</sup> The five protections include: the Schedule SIL hold-harmless provision; the Schedule SIL-specific Fuel

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<sup>23</sup> See Order, EO-2019-0132 (Mar. 11, 2020), at 30; § 393.1075.10, RSMo; Ex. 3 at 4–5, 12 (File Surrebuttal).

<sup>24</sup> See Ex. 3 at 2, 10 (File Surrebuttal) (Nucor compensated on the same pay-for-performance basis as every other BDR participant); Ex. 8, Non-Unanimous Stipulation & Agreement ¶ 4.

<sup>25</sup> Ex. 105 (Staff Mem.) at 3 (Kiesling) (“Staff questions the practicality of this provision because the current BDR program is scheduled to expire at the end of 2027.... At this time, there is no proposed extension of the BDR program beyond 2027”).

<sup>26</sup> See Tr. 102:6–10 (File).

<sup>27</sup> *Id.* at 103:10–16.

<sup>28</sup> See Ex. 6 at 3–7 (Nunn Surrebuttal); Ex. 1 at 10–12 (File Direct); Schedule SIL Sheet 157.2; Non-Unanimous Stipulation & Agreement, EO-2019-0244, ¶¶ 7–8; Ex. 8, Non-Unanimous Stipulation & Agreement.

Adjustment Clause (“FAC”) subaccounts; rate-case revenue imputation; 25%/4-hour deviation tracking; and planned-outage notices. The Stipulation adds three more: a conditional approval with a 2027 expiration, a 2027 EM&V run by Staff’s consultant, and a carve-out under which Nucor’s kW will not count toward EMW’s already-established MEEIA earnings-opportunity vesting threshold. EMW addresses the specific conditions urged by Staff and OPC in Section IV.

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

Yes. The benefit is system-wide capacity value, delivered through SPP RA credit, which reaches every customer on EMW’s system.

The RA value is real and measurable. SPP credits Nucor’s tested summer reductions against EMW’s RA obligation, reducing the quantity of capacity EMW must account for in its RA position. To the extent EMW would otherwise procure that capacity through contracts or new generation, either of these alternatives would cost more than Nucor’s participation.<sup>29</sup> EMW witness Mr. Meitner explained that once SPP confirms the reduction before the peak season, “that value is brought to the customer through the workbook . . . in a reduction of demand response that would need to come from somewhere else.”<sup>30</sup> Contrasting MEEIA BDR with non-MEEIA and wholesale demand response routed through an ARC, Mr. Meitner agreed with Chair Hahn that MEEIA BDR is “the only one as far as capacity accreditation that you get credit for in resource adequacy at SPP,” with the demand-response portion taken against the peak load forecast.<sup>31</sup> That

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<sup>29</sup> See Ex. 3 at 5–7 (File Surrebuttal); Ex. 1 at 8 (File Direct).

<sup>30</sup> Tr. 85:6–11 (Meitner).

<sup>31</sup> *Id.* at 227:12–19.

testimony ties the RA value to a concrete, measurable reduction in EMW’s capacity obligation. Put another way, the RA value *is* the statutory benefit.<sup>32</sup>

Indeed, in approving the Cycle 4 portfolio, the Commission found that the Cycle 4 Stipulation “meets the afore-mentioned MEEIA standards” and incorporated the Stipulation by reference.<sup>33</sup> Staff now asks the Commission to find that the identical program structure does not satisfy the same standards, even though every customer shares in the reduction, and neither Staff nor OPC offered any independent quantitative benefit-cost analysis of Nucor’s participation.

Staff responds that RA value “may exist” but does not satisfy MEEIA—and is, in fact, “irrelevant”—because it does not establish amount, reliability, customer realization, or net benefit. This goalpost-shifting is based on a false premise. As noted above, the RA value *is* the statutory benefit. It is a verified reduction in EMW’s capacity obligation, accredited by SPP and carried in EMW’s seasonal RA workbooks, and thus falls squarely within Section 393.1075.4. Staff’s spurious four-part test—demanding that the value be separately verified, credited, monetized, and shown to exceed all program cost<sup>34</sup>—appears in no Commission order<sup>35</sup> and appears to have been constructed for this case. Section 393.1075.4 conditions cost recovery on the programs being

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<sup>32</sup> That benefit should be measured not against 2026, but against the remainder of the program term beginning in 2027. File acknowledged on recross that summer-2026 RA is already set, so that under currently approved MEEIA, Nucor’s participation “would just be for next summer.” Tr. 131:9–21 (File). The single season in which RA does not bind does not define the benefit. Rather, the value attaches to 2027 accreditation and the full contract term. § 393.1075.4, RSMo; Cycle 4 Order, supra.

<sup>33</sup> See Cycle 4 Order, supra, at 6, ordered ¶ 1; Tr. 251:8–13, 18–21 (judicial notice taken at Staff counsel’s request).

<sup>34</sup> Staff Suggestions in Opposition (Public), § IX, at 10 (asserting EMW must show the claimed resource-adequacy value is “verified, credited, monetized or otherwise realized by ratepayers, and greater than the total cost of participation”).

<sup>35</sup> Ameren’s MEEIA Cycle 2 program does not supply a rationale for this test and is in fact materially distinguishable. The benefit-cost ratio here is materially higher than the 1.06 ratio in Ameren’s Cycle 2 (the specific figure is confidential); [CONFIDENTIAL] retrospective EM&V is present here and was absent in 2015; this case involves a single-customer Schedule SIL class rather than the predominantly residential class (approximately 87%) at issue in 2015; and the order’s own “permissive in nature” framing cuts against treating Section 393.1075 as a set of mandatory gating predicates. Report & Order, In re Union Elec. Co. d/b/a Ameren Mo., File No. EO-2015-0055 (Oct. 22, 2015), at 6 (“MEEIA is permissive in nature and, by its express language, does not require utilities to offer demand-side programs.”); see id. at 17 (1.06 cost/benefit ratio; approximately 87% of customers residential).

approved by the Commission, producing energy or demand savings, and being “beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.” It does not, by its terms, erect a pre-participation gate.

OPC’s Dr. Marke testified that there are “no benefits for ratepayers if the Commission approves this today, zero,” and that the transaction merely “section[s] off” a sum to the Company and Nucor.<sup>36</sup> He added that “Evergy is long on capacity” and so Nucor “[is] not moving the needle one way or the other.”<sup>37</sup> The record contradicts each of these points. Dr. Marke never quantified the RA value, and he admitted that he reviewed the Stipulation only cursorily.<sup>38</sup> His “long on capacity” assertion lacks foundation and is misdirected, as it describes Evergy, Inc., the holding company, not EMW. Moreover, even if SPP were to view the combined Evergy entities as long on capacity, EMW would still need to transact for any shortfall in its own resource-adequacy position. Nucor’s demand response thus reduces the capacity EMW must acquire to meet its obligation. And in any event, Mr. Marke’s “long on capacity” assertion is refuted by EMW’s 2026 IRP Annual Update, which projects needs and describes a plan to seek CCN(s) for substantial new generation, together with tightening SPP margins. Furthermore, and as explained in Issue A.2.a., the figure he invoked is a gross, full-commitment incentive number, not a net cost after the Stipulation’s 30% cap and 65% carve-out.<sup>39</sup>

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<sup>36</sup> Tr. 248:2–7 (Marke).

<sup>37</sup> Id. at 248:20–25.

<sup>38</sup> See id. at 253:2–3.

<sup>39</sup> OPC’s Mr. Payne also opposes the existence of any benefit to customers. Ex. 200 at 2–3 (Payne Surrebuttal) (Nucor’s “proposed participation... is not in the best interest of the public and increases the burden on EMW’s ratepayers”; “Nucor’s participation results in a shift in cost from Nucor to other ratepayers without sufficient evidence that those ratepayers will receive commensurate benefits”). For the reasons given above, however, his opinion merits no weight, as it rests on no analysis of his own and none of anyone else’s.

***A.2.a. Do the quantified benefits of Nucor’s participation exceed the quantified costs?***

Yes. The avoided capacity-cost benefits exceed the incentives paid, yielding a benefit-cost ratio substantially greater than one.<sup>40</sup>

The historical benefit-cost ratio rests on Commission-approved Cycle 3 avoided capacity costs and third-party measured-and-verified reductions, and it excludes transmission-and-distribution avoided costs—meaning the stated ratio understates the full benefit.<sup>41</sup> The Stipulation’s 2027 financial analysis and the Cycle 4 EM&V will, by contrast, run on the Cycle 4 application avoided costs, a distinct set from the Cycle 3 values that underlie the historical figure. Both, however, rest on Commission-approved foundations: the Cycle 3 values were set in the March 2020 order in Case No. EO-2019-0132, and the Cycle 4 Order incorporated the Cycle 4 Stipulation by reference.<sup>42</sup> Moreover, the going-forward value is likely greater than the historical figure, because EMW’s 2026 IRP shows market capacity in 2026 through 2028 costing substantially more than Nucor’s participation.<sup>43</sup>

Staff’s Mr. Kiesling contends that EMW offered no work papers, that the Cycle 4 avoided costs were never approved, that neither the Cycle 4 Stipulation nor the Cycle 4 Order references them, and that the figures are stale Cycle 3 data from a period when Nucor “improperly participated.”<sup>44</sup> None of this withstands scrutiny. The historical benefit and the forward analysis use different avoided costs, so Staff’s “no approved Cycle 4 avoided cost” objection attacks a number EMW does not use for the historical benefit. Rather, the forward figure will be tested in the Staff-supervised 2027 EM&V. Further, the Cycle 4 approval incorporated the Stipulation by

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<sup>40</sup> See Ex. 1 at 3–8 (File Direct); Ex. 3 at 2 (File Surrebuttal); Sched. BF-5 [CONFIDENTIAL].

<sup>41</sup> See Sched. BF-5 [CONFIDENTIAL]; Ex. 1 at 7–11 (File Direct); Ex. 3 at 2–3 (File Surrebuttal).

<sup>42</sup> See Order, EO-2019-0132 (Mar. 11, 2020), at 22; Cycle 4 Order, *supra*, at ¶1.

<sup>43</sup> See Tr. 93:5–9 (Meitner) (“[W]hen you look at the MEEIA BDR all-in costs in the . . . latest IRP . . . those costs are lower than the assumed paper capacity options for the next several years, ‘27 through ‘29 time frame.”); Ex. 1 at 7–11 (File Direct).

<sup>44</sup> See Ex. 105 (Staff Mem.) at 1 (Kiesling).

reference,<sup>45</sup> and that Stipulation was submitted under MEEIA, which requires the Commission to evaluate demand-side programs for cost-effectiveness before approval. By approving the Stipulation, the Commission necessarily determined that the programs it covered, including BDR, were cost-effective under the statutory standard.

In addition, Mr. Kiesling’s “improper participation” argument should be afforded no weight. The reductions were real and third-party verified, the prior Cycle 3 participation issues were resolved by a Commission-approved unanimous stipulation with no finding of wrongdoing,<sup>46</sup> and no Commission order has ever declared Nucor’s 2021 or 2022 participation unauthorized or unlawful. The burden to show otherwise is Staff’s, which it has not met.

Mr. Kiesling’s own testimony confirms that his “unsubstantiated” label rests on the absence of an order, not on any flaw in the analysis. He agreed that the sole basis for the label is the lack of work papers and the lack of a Commission-approved Cycle 4 avoided cost.<sup>47</sup> He also acknowledged that the underlying Cycle 3 figures were produced by ADM & Associates,<sup>48</sup> and that ADM’s work was overseen by Staff’s own review consultant, Evergreen Economics.<sup>49</sup> He never contacted ADM before filing his rebuttal,<sup>50</sup> and does not know whether either firm ever flagged the methodology.<sup>51</sup> And he performed no independent quantitative analysis and “didn’t use an avoided cost.”<sup>52</sup> His critique therefore identifies no tested methodological error.

Staff also presses an all-cost critique: that the net-benefit calculation must absorb incentives, administrative costs, the earnings opportunity (“EO”), and EM&V, producing a

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<sup>45</sup> Cycle 4 Order, *supra*, at ¶1.

<sup>46</sup> *See* Ex. 200 at 3 (Payne Surrebuttal) (resolution of Cycle 3 participation issues by unanimous stipulation in Case Nos. EO-2023-0407/0408), read into the record at Tr. 125:25–126:4.

<sup>47</sup> *See* Tr. 180:1–11 (Kiesling).

<sup>48</sup> *See id.* at 180:19–20.

<sup>49</sup> *See id.* at 181:3–7.

<sup>50</sup> *See id.* at 181:8–11.

<sup>51</sup> *See id.* at 181:14–20.

<sup>52</sup> *Id.* at 181:21–182:1.

substantial annual cost shifted to other classes.<sup>53</sup> Even on Staff’s own terms, the benefit-cost ratio (which excludes T&D avoided costs) exceeds total cost, and the Stipulation’s 2027 analysis is itself an all-cost-versus-avoided-cost comparison.<sup>54</sup> More fundamentally, the Total Resource Cost (“TRC”) test is MEEIA’s preferred cost-effectiveness test,<sup>55</sup> and TRC does not treat the earnings opportunity as a program cost.<sup>56</sup> Staff’s insistence on loading the EO into the calculation runs contrary to this governing test.<sup>57</sup> The earnings opportunity is a utility incentive, not a program resource cost, and it is weighed at the resource-planning stage, where demand-side programs are screened against supply-side alternatives on a net-present-value basis before a portfolio is selected. Excluding it from the TRC test is therefore how the framework is supposed to operate.

In any event, the cost-stack figure is a gross number, and the incentive is paid only for verified performance. In camera, Mr. Kiesling confirmed that the annual incentive equals the full contracted commitment multiplied by the per-kW-year rate.<sup>58</sup> Notably, the incentive is earned only on verified curtailment: the admitted Stipulation provides that Nucor “will only be paid for kW reduced ... at the BDR contractual rate based on the final EM&V kW achieved values that align with [SPP] accreditation.”<sup>59</sup> On redirect, Mr. Kiesling agreed that payment follows event

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<sup>53</sup> See Ex. 105 (Staff Mem.) at 2–3 (Kiesling) (“A net benefit calculation must include all costs: incentive costs, administrative costs, earnings opportunity costs, and any other participation cost”); see also Staff Suggestions in Opposition (Public), § VI [CONFIDENTIAL as to specific figures].

<sup>54</sup> Sched. BF-5 [CONFIDENTIAL].

<sup>55</sup> § 393.1075.4 (“The commission shall consider the total resource cost test a preferred cost-effectiveness test.”); see also § 393.1075.2(6) (defining the test as a comparison of the sum of avoided utility costs and avoided probable environmental compliance costs against the sum of all incremental costs of end-use measures implemented due to the program, as defined by the Commission in rules); 20 CSR 4240-20.092(1)(WW).

<sup>56</sup> 20 CSR 4240-20.092(1)(WW).

<sup>57</sup> This case does not reopen the cost-effectiveness of the BDR program itself. The Commission already evaluated and approved that program, including its earnings-opportunity structure, in the Cycle 4 Order. The only question here is Nucor’s participation in it.

<sup>58</sup> See Tr. (In Camera Vol. 2) 268:5–11 (Kiesling) [CONFIDENTIAL].

<sup>59</sup> Ex. 8, Non-Unanimous Stipulation & Agreement ¶ 4.

verification once an event is called.<sup>60</sup> Thus, to the extent his in-camera testimony suggested payment on signing “regardless” of curtailment,<sup>61</sup> that characterization is incorrect.

Staff contends that baseline unreliability renders the benefits unquantifiable. That argument is addressed in greater detail at Issue A.2.b, but is easily defeated by verified historical performance and unflagged third-party EM&V. As for OPC, Mr. Payne neither performed an independent analysis nor relied on any, so his testimony as to whether benefits exceed costs<sup>62</sup> should be afforded no weight.

***A.2.b. Does EMW’s MEEIA BDR program have a sufficient verification process for curtailments?***

Yes. The process pairs independent third-party EM&V with SPP accreditation.

ADM & Associates sets and runs the baseline, and Staff’s own consultant, Evergreen Economics, oversees the work. Neither ADM nor Evergreen flagged Nucor’s baseline or method in 2021 or 2022. Participants are paid only for measured reductions after each event, and SPP separately validates the MWs that count toward RA. This verification is no more demanding than EMW’s own, because SPP’s heightened verification requirements apply to the energy and ancillary services markets, not to capacity accreditation. Moreover, Nucor has already demonstrated that it can curtail to a defined level.<sup>63</sup> The FERC attachment on which Staff relies itself catalogs several accepted M&V methodologies, including the default methodology the third-party evaluator uses here. Staff’s “variable baseline” critique turns on a term that appears nowhere

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<sup>60</sup> See Tr. 184:25–185:4 (Kiesling).

<sup>61</sup> Tr. (In Camera Vol. 2) 268:13–269:16 (Kiesling) [CONFIDENTIAL].

<sup>62</sup> See Ex. 200 at 3, 9 (Payne Surrebuttal) (“Nucor’s participation results in a shift in cost from Nucor to other ratepayers without sufficient evidence that those ratepayers will receive commensurate benefits”; recommending denial because EMW’s position “would impose costs on ratepayers without sufficient evidence of corresponding benefits”).

<sup>63</sup> See Ex. 3 at 8, Figure 1 (File Surrebuttal) [CONFIDENTIAL].

in the record. No other BDR participant faces the added hurdles which Staff would impose on Nucor.<sup>64</sup>

The contract terms confirm that payment follows performance. The Stipulation provides at paragraph 4 that Nucor “will only be paid for kW reduced ... at the BDR contractual rate based on the final EM&V kW achieved values that align with [SPP] accreditation.”<sup>65</sup> The incentive is thus earned on measured curtailment, after an operational test or an actual event, third-party verified and tied to SPP RA. This is consistent with Mr. Kiesling’s testimony that, once an event is called, “it’s verified and then a payment will be made.”<sup>66</sup>

Mr. File supplied the verification record in his direct testimony. The third-party evaluator builds the baseline from nine of the last ten comparable non-event days and validates the metered kW.<sup>67</sup> Additionally, there was no called event at which Nucor failed to perform.<sup>68</sup> SPP then verifies the RA-obligation credit EMW receives through the MEEIA BDR program.<sup>69</sup>

Mr. Tevie’s testimony reinforces the point. He described the nine-of-ten adjusted customer baseline load as his interpretation of a data-request response and attributed the method to the EM&V group.<sup>70</sup> He explained that he addressed only the baseline method and is not the witness responsible for the demand response program or its benefits; instead, he deferred those questions to Mr. Kiesling and Mr. Hull.<sup>71</sup> Further, he confirmed that no MEEIA requirement bars customers with unpredictable loads and that he knows of no other customer barred for load volatility.<sup>72</sup> Thus, nothing in the record shows that the nine-of-ten method ever overstated Nucor’s reductions.

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<sup>64</sup> See Ex. 3 at 7–10 (File Surrebuttal).

<sup>65</sup> Ex. 8, Non-Unanimous Stipulation & Agreement ¶ 4.

<sup>66</sup> Tr. 184:25–185:4 (Kiesling).

<sup>67</sup> See Tr. 120:3–18, 121:7–10 (File).

<sup>68</sup> See Tr. 122:15–18 (File).

<sup>69</sup> See Tr. 217:4–8 (Hull).

<sup>70</sup> See Tr. 154:1–17; 155:6–18 (Tevie).

<sup>71</sup> See Tr. 157:15–158:7; 162:12–24 (Tevie).

<sup>72</sup> See Tr. 164:5–15 (Tevie).

Staff’s reliance on FERC measurement materials reflects its own policy preference, not the MEEIA legal standard or the approved Cycle 4 EM&V protocol. Applying those materials to a single customer would be disparate treatment. And once again, Mr. Payne’s contrary opinion on sufficiency rests on no analysis and thus merits no weight.

***A.2.c. Are there other demand response participation pathways available for Nucor, and what benefits or detriments do those alternatives have?***

No alternative is viable, because EMW receives SPP resource-adequacy credit only for demand response delivered through its own programs as the load-responsible entity (“LRE”). Any alternatives are more costly to customers and do not deliver RA value to EMW as the LRE.

Demand response outside an Evergy program—including through an aggregator (“ARC”)—produces no RA credit that flows to EMW. The Market-Based Demand Response (“MBDR”) program is a supplement to BDR, designed for the SPP energy and ancillary-services markets, and whatever RA value it could provide is already captured through BDR. And the off-MEEIA routes are worse for customers on the merits, as they deliver no SPP resource-adequacy credit to EMW, they remove Nucor’s curtailment from the unified program EMW administers, and they still require cost recovery, because an aggregator must still be paid.<sup>73</sup>

OPC urges that aggregators are a superior market-based alternative available at “no direct cost,”<sup>74</sup> that they promote competition, and that the SPP demand response tariff offers better verified-performance protections. The record refutes each claim. Aggregator and direct-SPP routes give EMW no RA credit.<sup>75</sup> Further, SPP imposes a capacity obligation but operates no capacity market, so accredited capacity reaches EMW’s resource-adequacy workbook only through a

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<sup>73</sup> See Tr. 76:13–77:16 (Meitner); Tr. 137:14–138:25 (File); Ex. 3 at 13–14 (File Surrebuttal).

<sup>74</sup> Ex. 201 at 6 (Marke Surrebuttal) (competitive ARCs “operate in most wholesale energy markets today at no direct cost to ratepayers”); see also OPC Statement of Positions, Issue A(2)(c), at 7.

<sup>75</sup> See Tr. 76:13–77:16 (Meitner); Ex. 5 at 4 (Meitner Surrebuttal) (in SPP, only Evergy as the load-responsible entity receives resource-adequacy value through its programs, and an ARC benefits EMW’s resource adequacy only as a vendor to an Evergy program).

bilateral transaction—and no ARC has one with EMW.<sup>76</sup> At bottom, OPC’s “unnecessary middleman”<sup>77</sup> mischaracterization simply betrays its hostility for MEEIA, which runs contrary to the Legislature’s intent that demand-side resources are to be valued on par with supply-side ones.

Under the current tariff framework, MEEIA BDR is the only avenue through which Nucor’s curtailment delivers resource-adequacy credit to EMW. Mr. Meitner confirmed that the MEEIA BDR program “would be the only avenue to supply the demand response towards [EMW’s] resource adequacy,”<sup>78</sup> and that only the MEEIA BDR tariff currently yields RA treatment.<sup>79</sup> The reason is because demand response counts for RA only “as a load reduction against the LRE’s peak demand forecast,”<sup>80</sup> which is precisely what the MEEIA program captures and what an off-MEEIA or wholesale-market route does not.

Neither Staff witness’s testimony is to the contrary. Mr. Hull’s observation that a customer “can participate in those programs and they can count it toward resource adequacy” outside MEEIA, with “nothing excluding it,”<sup>81</sup> describes a theoretical or future pathway, not one available today. He conceded in the same examination that “you can’t get capacity credit until [SPP] decide[s] what to do with” the pending SPP Revision Request 703.<sup>82</sup> And while Mr. Meitner allowed that, “conceptually” a customer “could . . . today” participate through other programs,<sup>83</sup> conceptual eligibility is not RA credit flowing to EMW. And as his very next answer made clear, “the only tariff program that . . . Evergy has available to . . . participate in resource adequacy is

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<sup>76</sup> See Tr. 82:11–17 (Meitner) (SPP “is a capacity obligation but not a capacity market,” so a bilateral transaction is required for accredited capacity to reach EMW’s resource-adequacy workbook); Ex. 5 at 3 (Meitner Surrebuttal).

<sup>77</sup> Ex. 201 at 7 (Marke Surrebuttal) (ratepayers “overpaying a middleman—Evergy”).

<sup>78</sup> Tr. 228:21–25 (Meitner).

<sup>79</sup> See Tr. 227:12–16 (Meitner).

<sup>80</sup> Tr. 219:7–21 (Hull, agreeing with Chair Hahn).

<sup>81</sup> Tr. 196:7–9, 16 (Hull); see also Tr. 218:2–4 (Hull).

<sup>82</sup> Tr. 218:17–22 (Hull); Tr. 220:20–25 (Hull) (agreeing with Chair Hahn that demand response cannot count toward capacity for resource adequacy until FERC litigates Revision Request 703).

<sup>83</sup> Tr. 86:15–16 (Meitner).

MEEIA.”<sup>84</sup> A pathway that delivers no RA credit until a future SPP rulemaking concludes is not a present alternative to the program before the Commission.

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

Yes. MEEIA BDR costs flow through the Demand-Side Investment Mechanism (“DSIM”), not the Schedule SIL hold-harmless provision, and Schedule SIL’s revenue imputation and FAC tracking fully protect non-SIL customers.

Staff’s theory conflates two distinct mechanisms. MEEIA program costs and incentives flow through the DSIM Rider, not through base rates or the Schedule SIL hold-harmless term.<sup>85</sup> The hold-harmless provision, by its terms, operates in the revenue-requirement context. At each rate case, the incremental cost of serving Nucor net of PPA revenues is assigned to Nucor, any shortfall is cured by a revenue adjustment that holds non-SIL customers harmless, and deficiencies fall on shareholders.<sup>86</sup> A separate provision of the same 2019 Stipulation preserves cost-allocation disputes for the future. No party is prejudiced in litigating the allocation, tracking, or treatment of Nucor’s costs and revenues in future FAC filings and rate proceedings.<sup>87</sup> Beyond the FAC, the protections are multilayered: Schedule SIL-specific FAC subaccounts, 25%/4-hour deviation tracking, rate-case revenue imputation, and planned-outage notices, with the most recent accumulation period producing a net decrease to non-Nucor customers.<sup>88</sup>

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<sup>84</sup> Tr. 86:18–21 (Meitner).

<sup>85</sup> See Ex. 6 at 3–4 (Nunn Surrebuttal); Order, EO-2019-0132 (Mar. 11, 2020), ordered ¶¶ 1, 3; Ex. 3 at 4–5 (File Surrebuttal).

<sup>86</sup> Non-Unanimous Stipulation & Agreement, EO-2019-0244, ¶ 8.

<sup>87</sup> See *id.*, ¶ 11.

<sup>88</sup> See Ex. 6 at 3–7 (Nunn Surrebuttal); Ex. 1 at 10–12 (File Direct); Sched. BF-4 at 3–4; Sched. BF-6 [CONFIDENTIAL]; Schedule SIL Sheet 157.2 (“Non-participating customers shall be held harmless from any deficit in revenues ...”).

Ms. Nunn supplied the record on the hold-harmless question. She confirmed on cross that the administrative and incentive costs of MEEIA participation should not enter the Schedule SIL hold-harmless calculation because they are “not a cost of serving electricity to Nucor.”<sup>89</sup> Routing those costs through the hold-harmless provision would lead to the “unbalance[d]” result of shareholders “completely responsible for all the costs” while every other customer received the benefits.<sup>90</sup> Mr. File corroborated that MEEIA administrative costs are allocated at the program level and are not a cost of serving electricity to Nucor.<sup>91</sup>

Staff’s own remedy theory undercuts its position. Mr. Kiesling described the proposed clawback as a true-up whereby the financial analysis is performed, the money is “set aside,” and it is “trued up” in a rate case if the benefits do not materialize, flowing back to customers.<sup>92</sup> But this function is already satisfied by the Stipulation’s conditional approval and expiration, together with the Schedule SIL protections.

Staff and OPC respond that Nucor receives a discounted bill while other customers bear the administrative, incentive, and EO costs,<sup>93</sup> that those are a “cost of serving Nucor” that must enter the Schedule SIL hold-harmless calculation;<sup>94</sup> and that, because Nucor is the sole Schedule SIL customer and pays no DSIM, only the hold-harmless provision can fairly apportion the costs.<sup>95</sup> This argument is flawed at each step. MEEIA participation is separate from Schedule SIL electric

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<sup>89</sup> Tr. 144:4–13 (Nunn).

<sup>90</sup> Id. at 146:17–147:11.

<sup>91</sup> See Tr. 114:6–9; 114:24–115:3 (File).

<sup>92</sup> Tr. 182:14–183:8 (Kiesling).

<sup>93</sup> See Ex. 102 at 3 (Tevie Rebuttal) (Nucor “will get a discounted bill, while other ratepayers do not,” and the “costs include the cost of administering the program, participant incentives, and an earnings opportunity for EMW”); see also OPC Statement of Positions, Issue B, at 8–9.

<sup>94</sup> See Ex. 102 at 3 (Tevie Rebuttal) (“Nucor’s participation in the MEEIA is a cost of serving them if they are allowed to participate[;] [f]rom the perspective of the hold harmless provision, this cost must be included”); see also OPC Statement of Positions, Issue B, at 9.

<sup>95</sup> See Ex. 101 at 6 (Kiesling Rebuttal) (“Nucor currently is the only customer in its [sic] rate class, so if the Commission would allow Nucor to participate in EMW’s BDR program and Nucor is not subject to the DSIM charge, there would be no other Schedule SIL customers to pay for the costs of Nucor participating in the BDR program”); see also Staff Suggestions in Opposition (Public), § VIII, at 8–9.

service, and its costs flow through the DSIM by Commission design, exactly as they do for every other opt-out and BDR customer. The Commission has already determined that opt-out customers may participate in BDR while DSIM costs flow to others. Staff’s contrary theory would compel the “unbalance[d]” result Ms. Nunn identified whereby shareholders potentially fund participation while every customer reaped the capacity benefit.<sup>96</sup> Further, Stipulation Paragraph 11 reserves any allocation dispute for a future FAC or rate proceeding.<sup>97</sup> Moreover, any “structural impossibility” is overstated: Nucor’s incentive payments are a discrete, separately stated figure that EMW identifies and tracks.<sup>98</sup> Ms. Nunn’s testimony supplies independent reasons why MEEIA participation is not a cost of serving electricity to Nucor.<sup>99</sup>

Staff’s separate contention—that incremental wind-PPA capacity following the SPP accreditation change must go through the hold-harmless calculation<sup>100</sup>—raises a Schedule SIL mechanics question, not a demand response question. The Stipulation already prices incremental capacity into the next rate case hold-harmless analysis. Staff’s condition-9 argument, invoking paragraph 7 of the Stipulation in Case No. EO-2019-0244, contends that EMW fails to account fully for the capacity needed to serve Nucor’s entire peak demand.<sup>101</sup> But existing tracking and revenue imputation already capture incremental capacity, and the condition itself is unclear and relates to rate-case work the Company already performs.<sup>102</sup>

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<sup>96</sup> Tr. 146:17–147:11 (Nunn).

<sup>97</sup> Non-Unanimous Stipulation & Agreement, EO-2019-0244, ¶ 11.

<sup>98</sup> See Tr. (In Camera Vol. 2) 268:4–11 (Kiesling) [CONFIDENTIAL]; Ex. 1 (File Direct); Sched. BF-4.

<sup>99</sup> See Ex. 6 at 3–4 (Nunn Surrebuttal).

<sup>100</sup> See Ex. 102 at 6–7 (Tevie Rebuttal) (“Any cost attributable to serving Nucor should be included in the hold-harmless provision”).

<sup>101</sup> See *id.* at 12 (recommending the Commission order EMW to “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”).

<sup>102</sup> See Non-Unanimous Stipulation & Agreement, EO-2019-0244, ¶ 7; Ex. 6 at 5–7 (Nunn Surrebuttal).

**C. *If the Commission approves Nucor’s participation in MEEIA BDR, what 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?***

None. Given the voluntary carve-out in the Stipulation, EMW should receive the standard earnings opportunity on Nucor’s verified savings once vested, consistent with the Cycle 4 EO structure the Commission has already approved.

The carve-out resolves any concern about target arbitrage. Nucor’s 2027 kW will not count toward EMW’s 65% EO-vesting threshold, and EMW is on track to clear that threshold without Nucor.<sup>103</sup> Vesting and earning are distinct, however. Excluding Nucor’s MW from the threshold does not waive EMW’s eligibility for the standard pay-for-performance EO on third-party-verified savings once the threshold is met. That position is consistent with the approved Cycle 4 EO structure, which attaches the EO only to third-party-verified value, and to which a 30% portfolio cap also applies.<sup>104</sup>

OPC and Staff respond that the targets were set without Nucor, so counting Nucor would skew the EO;<sup>105</sup> that including a large excluded customer does not reflect “broad-based” participation;<sup>106</sup> and that the EO would rest on ratepayer-funded incentives without proven incremental benefits.<sup>107</sup> But the target arbitrage concern is already addressed by the carve-out barring Nucor’s kW from the 65% threshold. More importantly, this objection conflates threshold vesting with the separate, statutorily contemplated EO on verified savings. Stripping the standard

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<sup>103</sup> See Ex. 3 at 6–12 (File Surrebuttal); Ex. 8, Stipulation ¶¶ 6–7; Tr. 127:23–128:12 (File).

<sup>104</sup> § 393.1075.3(3), RSMo; Cycle 4 Order, *supra*; Ex. 3 at 6–12 (File Surrebuttal).

<sup>105</sup> See Ex. 200 at 4, 6 (Payne Surrebuttal) (the EO targets “were set without the inclusion of Nucor,” allowing EMW to “meet its demand response targets more easily”); Ex. 101 at 3 (Kiesling Rebuttal) (“at the time the BDR program targets were established, Nucor was not allowed to participate”); *see also* OPC Statement of Positions, Issue C, at 9–10.

<sup>106</sup> See Ex. 200 at 6–7 (Payne Surrebuttal) (including “a large, previously excluded customer” “may not reflect the type of broad-based customer participation that MEEIA programs are intended to achieve”); *see also* OPC Statement of Positions, Issue C, at 10.

<sup>107</sup> See Ex. 200 at 6–7 (Payne Surrebuttal) (“EMW could earn an EO based on participation that shifts costs to ratepayers without sufficient evidence of corresponding incremental benefits”); Ex. 101 at 5 (Kiesling Rebuttal) (ratepayers “paying additional incentives to Nucor that are completely unnecessary”).

EO would penalize EMW for delivering precisely the resource MEEIA exists to procure. Staff's related charge that the carve-out is "hollow" because EMW reaches 65% without Nucor anyway proves only that there is no target-arbitrage risk, not that the standard EO on verified value should be denied. Finally, OPC's position here rests once more on Mr. Payne, whose opinion merits no weight, leaving EMW's position unrebutted.

#### **IV. THE PROPOSED CONDITIONS**

EMW's position is that the Commission should impose no conditions beyond the protections already in place and proposed by the Stipulation. Many of the conditions Staff urges are new arguments that no Staff witness supported in testimony, and several of these—the "try it and see" framing,<sup>108</sup> the "no approval without a clawback" demand, and the four-part RA test—rest on no PSC precedent whatsoever. EMW nonetheless addresses each in turn. The unifying point is that Staff casts all nine conditions as minimum requirements for lawful MEEIA participation, when in fact several exceed what any other BDR participant must satisfy and impose case-specific hurdles found nowhere in the statute, the rules, or program practice. Several of the conditions compound that flaw by importing requirements from SPP's wholesale-market constructs (firm service levels, variability-adjusted baselines, market-style verification, and dispatchability across seasons) that govern participation in the SPP markets, not retail participation in a Commission-approved MEEIA BDR program. Grafting wholesale-market obligations onto a retail demand-side program subjects Nucor to a standard no other BDR participant must meet and finds no basis in MEEIA or the Cycle 4 Order.

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<sup>108</sup> Staff's "try it and see" framing is particularly misplaced: Nucor's participation is not an experiment but a proven arrangement, with verified 2021 and 2022 reductions already in the record, so the Commission is not being asked to approve an untested theory.

**Condition 1 — Firm cap / firm service level (or variability-adjusted baseline).** EMW opposes this condition as framed, as its meaning remains unclear. Staff’s witness defined “firm service level cap” only in the abstract, in the Memorandum attached to Staff’s opposition to the Stipulation; no Staff witness tied that concept to any MEEIA requirement or to Schedule SIL, and none established on cross-examination that a firm cap is a condition of MEEIA BDR participation. The term appears drawn from SPP wholesale-market practice, not from MEEIA or the Cycle 4 Order, and no other BDR participant is subject to it in any event. Furthermore, “variable baseline” is undefined in the record and the FERC attachment endorses the third-party evaluator’s default methodology. While Mr. Tevie tied the concern to baseline volatility, he conceded that no other customer is barred from MEEIA for volatility.<sup>109</sup>

**Condition 2 — Verified SPP RA credit in seasonal workbooks.** This condition largely restates current practice. Third-party-verified results are already submitted and tested for SPP RA, and the same framework would apply to Nucor. Mr. Hull confirmed that SPP verifies the RA credit EMW receives from the MEEIA BDR program.<sup>110</sup> Because the condition restates existing practice, EMW already operates within it.

**Condition 3 — All-cost net-benefit calculation.** The TRC test—MEEIA’s preferred cost-effectiveness test—does not treat the EO as a program cost. Loading the earnings opportunity onto the cost side, as Staff urges, would also single Nucor out, as the Commission approved the Cycle 4 programs without subjecting them to an all-cost test that treats the EO as a program cost. Nothing in MEEIA or the Cycle 4 Order warrants applying a different, more demanding standard to one

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<sup>109</sup> See Tr. 164:5–15 (Tevie).

<sup>110</sup> See Tr. 217:4–8 (Hull).

customer. EMW therefore opposes any condition that would force the EO into the cost side of the calculation.<sup>111</sup>

**Condition 4 — Ratepayer realization by class.** This is untenable. MEEIA’s rules and statute already define “benefits” and already address program benefits at the class level. Staff adds a “realization”-by-class criterion found in neither the rules nor the statute. Nucor will participate in programs the Commission already approved, under budgets it already set. Nothing new is being created, and a new cost-effectiveness test is not warranted for a single customer. The premise underlying the condition—that MEEIA is lawful only as a strict “replacement” resource—has already been rejected by the Commission, which held that nowhere does the MEEIA statute require that a supply-side resource be avoided or deferred.<sup>112</sup> A “realization”-by-class requirement demands proof of impossibilities and operates as a trap.

**Condition 5 — Include all Nucor MEEIA costs in the Schedule SIL hold-harmless.** As discussed above, this condition conflates the DSIM with the Schedule SIL hold-harmless provision, which is contrary to the Commission’s established cost-recovery framework and thus should be rejected. Ms. Nunn’s testimony supplies multiple reasons why MEEIA is not a cost of serving electricity to Nucor, and routing these costs through the hold-harmless calculation would force the unjust result of shareholders funding participation while all customers receive the benefit.<sup>113</sup>

**Condition 6 — Clawback / status-quo-ante protection.** EMW opposes this condition, as ratepayers are already sufficiently protected by the Stipulation’s conditional approval and the

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<sup>111</sup> Cf. § 393.1075.4 (“The commission shall consider the total resource cost test a preferred cost-effectiveness test.”); see also § 393.1075.2(6) (defining the test as a comparison of the sum of avoided utility costs and avoided probable environmental compliance costs against the sum of all incremental costs of end-use measures implemented due to the program, as defined by the commission in rules); 20 CSR 4240-20.092(1)(WW).

<sup>112</sup> Amended Report & Order, EO-2019-0132 (Mar. 11, 2020), § K, at 22 (“Nowhere does the MEEIA statute say that a supply-side resource must be avoided or deferred.”).

<sup>113</sup> See Tr. 144:4–13; 146:17–147:11 (Nunn).

biennial MEEIA prudence review of MEEIA spending. Thus, a bespoke clawback is unnecessary. What is more, “no approval without a clawback” has no precedent in any prior MEEIA cycle order. Staff’s own witness undercuts it: Mr. Kiesling, prompted by the Chair, described a workable true-up mechanism, which confirms that the Stipulation’s conditional-approval and expiration trigger, together with the Schedule SIL protections, already perform the function Staff seeks in this proceeding, without establishing any precedent for future MEEIA cycles.<sup>114</sup>

**Condition 7 — Payment only for verified performance.** EMW agrees with the verified-performance principle, but Staff’s premise misreads the contract. The Stipulation establishes pay-for-performance at paragraph 4: Nucor “will only be paid for kW reduced ... at the BDR contractual rate based on the final EM&V kW achieved values that align with [SPP] accreditation.”<sup>115</sup> The incentive is thus earned on measured curtailment after an operational test or actual demand-response event, third-party verified, and tied to SPP RA. Mr. Kiesling’s redirect is consistent with this process.<sup>116</sup> Thus, EMW agrees with the verified-performance principle but opposes tying it to the undefined firm cap of Condition 1.

**Condition 8 — Demonstrate winter curtailment capability.** All current BDR customers are eligible to be called in winter, and Nucor would be treated the same. Staff identifies no tariff or program restriction that would prevent EMW from calling Nucor during a winter event under the existing MEEIA BDR program, and the record contains no Staff testimony addressing winter curtailment capability.

**Condition 9 — Full peak-demand capacity accounting in future tracking reports.** EMW opposes this condition as framed, as it is impermissibly vague. It relates to rate-case work

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<sup>114</sup> Tr. 182:14–183:3 (Kiesling).

<sup>115</sup> Ex. 8, Non-Unanimous Stipulation & Agreement ¶ 4.

<sup>116</sup> See Tr. 184:25–185:4 (Kiesling).

the Company already performs, not to a new Nucor-specific condition, and is covered by existing Schedule SIL tracking and revenue imputation.<sup>117</sup>

## **V. CONCLUSION**

For the foregoing reasons, EMW respectfully requests that the Commission:

- (1) Approve the May 18, 2026, Non-Unanimous Stipulation and Agreement, including the proposed Amendment, as just and reasonable and in the public interest on the record as a whole;
- (2) Find that the existing hold-harmless and cost-tracking protections are sufficient to protect non-Schedule SIL customers from any cost shift attributable to Nucor's service;
- (3) Confirm EMW's eligibility for the standard MEEIA earnings opportunity on Nucor's verified savings, subject to the voluntary carve-out;
- (4) Reject the conditions proposed by Staff and OPC as treating Nucor differently from every other customer and as imposing burdens beyond MEEIA; and
- (5) Grant any necessary rule variances supported by, or unopposed by, the Signatories.

**WHEREFORE**, EMW respectfully submits this Initial Post-Hearing Brief and requests all other relief the Commission deems just and proper.

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<sup>117</sup> See Ex. 6 at 5–7 (Nunn Surrebuttal).

Respectfully submitted,

*/s/ Roger W. Steiner*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on this 25<sup>th</sup> day of June 2026, by EFIS filing and notification, and/or e-mail.

*/s/ Roger W. Steiner*

Roger W. Steiner