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

Reply 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
- "Nucor" means Nucor Steel Sedalia, LLC
- "OPC" means the Missouri Office of the Public Counsel
- "SIL" means Special Rate for Incremental Load Service
- "SPP" means Southwest Power Pool
- "Staff" means the Staff of the Missouri Public Service Commission
- "the Company" means Evergy Missouri West, Inc. d/b/a Evergy Missouri West

Introduction

Three other parties filed an initial brief in this case: the Staff of the Commission ("Staff"), Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy" or "the Company"), and Nucor Steel Sedalia, LLC ("Nucor"). Because the OPC's position and initial brief is largely aligned with the initial brief filed by Staff, the OPC will refrain from responding to Staff's brief. The other two parties who filed initial briefs, Evergy and Nucor, also happen to be closely aligned with each other. This is unsurprising given that Evergy and Nucor are effectively operating as dual applicants and further filed a stipulation between themselves. The OPC will therefore respond to their briefs together, focusing primarily on the brief of Evergy.

In choosing how to respond, the OPC will continue the approach adopted in its initial brief. This means the OPC's reply will address the primary argument of this case outside of the strict structure of the list of issues. The OPC has adopted this approach as it simplifies reading and understanding the argument in its entirety.

Through this reply, the OPC will address and respond to the large number of misstatements, inaccuracies, and occasional outright falsehoods offered by Evergy and Nucor. However, the sheer volume of erroneous material contained in their briefs makes responding to everything impractical. The OPC will therefore keep its response as short as possible and focus only on correcting the points most germane to the core issues of this case. To the extent that the OPC does not reply to any one statement, fact alleged, or legal position taken in the brief of any other party, this is not to be understood as an agreement, acceptance, or admittance to the accuracy of the same. Again, to properly explain the errors running rampant through the briefs filed by Evergy and Nucor would cause the OPC's own brief to become bloated and unwieldy. The OPC therefore elects to respond only to the most salient issues that must be addressed.

<u>**The Illusion of Benefits**</u>

The one issue that is the most important to this case is the singular question of whether the benefits arising from Nucor's participation in Evergy's BDR program will exceed the cost of Nucor's participation. This is reflected in Issue A.2.a of the official List of Issues and is also the first point addressed in the main argument of the OPC's initial brief. The relative position of the parties on this issue is quite simple:

- Evergy and Nucor claim that Nucor's participation in the BDR program will result in benefits exceeding costs and rely on outdated data to which no party ever agreed – and upon which the Commission never opined – to prove that point.

- The OPC argues that Nucor's participation in the BDR program will <u>not</u> result in benefits exceeding costs because there are <u>no</u> costs being avoided if Nucor participates in the BDR program and relies on the undisputable fact that Evergy already has excess capacity to prove that point.

The first part of this reply brief will respond to the Company and Nucor's briefs regarding this major issue.

<u>The Total Lack of Avoided Costs</u>

On page 7 of its initial brief, Evergy does a good job of accurately laying out the basis on which benefits <u>could</u> arise due to Nucor's participation in the BDR program:

> SPP credits Nucor's tested summer reductions against [Evergy]'s [resource adequacy] obligation, reducing the quantity of capacity [Evergy] must account for in its [resource adequacy] position. <u>**To the extent [Evergy] would otherwise procure that capacity through contracts or new generation**</u>, either of these alternatives would cost more than Nucor's participation.

[Evergy Brief, pg. 7]. As already indicated, this statement is accurate. <u>If</u> Evergy requires additional capacity, then providing that capacity through a demand response program that is cheaper than buying it off the market (or building new

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generation) would be a benefit to customers. There is, however, a massive caveat to this entire proposition and it is the segment in the above excerpt highlighted by the OPC. This benefit exists only if the Company would otherwise need to procure capacity. If Evergy does not need to procure additional capacity, then the "reductions against [Evergy]'s [resource adequacy] obligation" that would be generated by Nucor's participation in the BDR program no longer provides any value. As Staff witness Mark Kiesling testified:

> Unless [Evergy] can avoid additional capacity purchases or reduces the amount of new generation needed to serve [Evergy] customers, non-Nucor ratepayers will not benefit from Nucor participation in BDR in 2026.

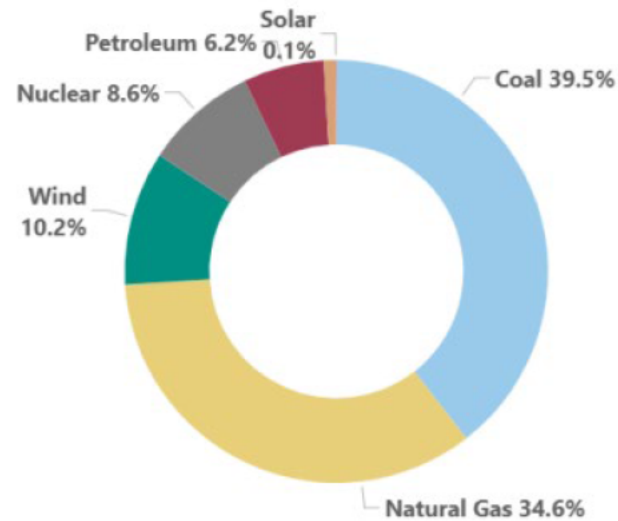
[Ex. 101, *Rebuttal Testimony of Mark Kiesling*, pg. 5 lns. 9 – 11]. To reiterate, a utility gains no benefit from further reductions to an RTO's resource adequacy obligations if that utility already has capacity that exceeds the obligation.

As the OPC explained in its initial brief, Evergy is already long on capacity, meaning that the Company has "more generation than [it] will be able to utilize." [Tr. Vol. 1 pg. 248 lns. 15 – 25, pg. 256 lns. 21- 25]. In particular, Evergy Missouri has exceeded resource adequacy requirements imposed on it by SPP by more than 100 MW according to SPP's own resource adequacy reports . [*Id.* at pg. 257 lns. 1 – 24]. That number, which comes from the 2025 Summer Season Resource Adequacy Report, was offered by Dr. Marke on the stand during the evidentiary hearing. [*Id.*]. Less than a month after that testimony was given, SPP issued its 2026 SPP Summer Season Resource Adequacy Report, which is currently available on SPP's webpage.[1] Here is an excerpt from the new, 2026 summer report:

[1] The Commission is at liberty to take administrative notice of the SPP 2026 Summer Resource Adequacy Report pursuant to Mo. Rev. Stat. § 536.070(6). It is proper to take administrative notice of this report as it is a primary source document developed and published by SPP (the regional transmission organization to which Evergy is a member) and has been made publicly available on SPP's own webpage. Given that Evergy itself has argued strenuously that the inclusion of Nucor in Evergy's MEEIA BDR program will produce benefits for non-Nucor customers specifically because it will reduce the resource adequacy requirements imposed on Evergy by SPP, the primary source documentation showing what those resource adequacy requirements are and the degree to which they

KANSAS CITY POWER & LIGHT (EVERGY METRO) INCLUDES GREATER MISSOURI OPERATIONS COMPANY

Capacity Summary	
Capacity Resources (MW)	5,478.06
Firm Capacity Purchases (MW)	1,086.70
Deliverable Capacity Purchases (MW)	14.75
Firm Capacity Sales (MW)	321.70
Deliverable Capacity Sales (MW)	0.00
External Firm Power Purchases (MW)	0.00
External Firm Power Sales (MW)	0.00
Confirmed Retirements (MW)	0.00
Total Capacity (MW)	6,257.81
Demand Summary	
Forecasted Peak Demand (MW)	5,816.40
Internal Firm Power Sales (MW)	0.00
Internal Firm Power Purchases (MW)	0.00
Controllable and Dispatchable DR (MW)	283.29
Net Peak Demand (MW)	5,533.11
Requirements Summary	
Resource Adequacy Requirement (MW)	5,923.75
Excess Capacity (MW)	334.07
Deficient Capacity (MW)	0.00
LRE planning reserve margin (%)	13.10
Planning Reserve Margin (%)	7.06



[Southwest Power Pool, *Resource Adequacy Report East Balancing Authority Area 2026 Summer Season*, (hereinafter *SPP Summer 2026 Report*), pg. 29 (June 15, 2026), https://www.spp.org/documents/76932/2026%20spp%20summer%20resource%20adequacy%20report.pdf (emphasis added)]. As shown with the red box the OPC supplied, the amount of excess capacity that Evergy Missouri currently possesses has <u>increased</u> from the more than 100 MW the company had for summer season 2025 to over 300 MW of excess capacity for summer season 2026.[2]

There can be absolutely no dispute that, for SPP resource adequacy purposes, Evergy already has more capacity than is required to meet the imposed requirements

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are already being met is not only a technical fact that is clearly within the Commission's competence to ascertain, but is also unquestionably highly relevant to this case. While the OPC believes that this Commission can and should take administrative notice of these facts of its own volition, the OPC will further formally request the Commission take administrative notice of the SPP's Resource Adequacy Report for the East Balancing Authority Area 2026 Summer Season for the reasons set forth in this brief.

[2] Just in case this is not completely clear, that 334 MW value is the difference between the existing total capacity for Evergy (West and Metro), which is listed as 6,257 MW and the Resource adequacy requirement for Evergy (West and Metro), which is listed as 5,923 MW. (6,257 – 5,923 = 334).

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without Nucor participating in the BDR program. [Tr. Vol. 1 pg. 257 lns. 1 – 24; *Id*.]. Because Evergy already has more capacity than is required, Evergy has no need to "procure [additional] capacity through contracts or new generation" if Nucor continues to not participate in the BDR program. [Evergy Brief, pg. 7]. Because there is no need to procure additional capacity, there is absolutely no avoided costs created by Nucor's participation in the BDR program and hence no benefits created for Evergy's non-Nucor customers. [Ex. 101, *Rebuttal Testimony of Mark Kiesling*, pg. 5 lns. 9 – 11].

Now Evergy's brief naturally responds to these points, so it becomes necessary to address those responses. To begin, Evergy claims Dr. Marke "never quantified the [resource adequacy] value" associated with Nucor's participation. [Evergy Brief, pg. 9]. This is simply false. Dr. Marke *did* quantify the resource adequacy value. Specifically, he quantified it as zero:

> There are <u>**no benefits**</u> for ratepayers if the Commission approves this today, <u>**zero**</u>. 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.

[Tr. Vol. 1 pg.248 lns. 2 – 7 (emphasis added)]. As explained by Dr. Marke in that excerpt, and as shown above, when a utility already has excess capacity, then the value attributable to any <u>further</u> reduction to the utility's RTO imposed capacity requirement is <u>zero</u>. No further mathematical analysis is necessary.

Evergy next claims that Dr. Marke's statement that Evergy is long on capacity "lacks foundation." [Evergy Brief, pg. 9]. As already shown, Dr. Marke's statement is <u>extremely</u> well founded.[see *SPP Summer 2026 Report*, pg. 29]. SPP publicly publishes both Evergy's resource adequacy requirement and its total capacity. It was these reports that Dr. Marke relied on when he identified that Evergy was already long on capacity by more than 100 MW for summer season 2025. [Tr. Vol. 1 pg. 257 lns. 1 – 24]. That number has since grown to more than 300 MW. [*SPP Summer 2026*

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Report, pg. 29]. The numbers are what they are. Evergy has more capacity than is required by SPP, according to SPP. [Tr. Vol. 1 pg. 257 lns. 1 – 24; *Id.*].

Evergy next states that the fact that Evergy is long on capacity is "misdirected" because it "describes Evergy, Inc., the holding company" and not Evergy West. [Evergy Brief, pg. 9]. This is categorically false. The entire discussion regarding the benefits of the BDR program concerns the resource adequacy requirements imposed on Evergy by SPP. For purposes of meeting that SPP imposed resource adequacy requirement, Evergy is only considered on a combined basis along with its sister utility Evergy Metro. [Tr. Vol. 1 pg. 229 lns. 1 – 7; pg. 248 lns. 15 – 19; EA-2022-0328, *Report and Order*, EFIS Item No. 104, pg. 10 ¶ 29 ("[Evergy Missouri West] meets the SPP resource adequacy requirements on a combined basis with Evergy Missouri Metro.")]. Because SPP considers Evergy only on a combined basis when determining whether the Company has met its SPP imposed resource adequacy requirements, there is categorically no reason to consider Evergy 's existing capacity except on a combined basis in the exact same manner. Evergy knows this to be true and counsel for the Company has no business attempting to mislead the Commission with a blatantly false assertion that contradicts the reality of how Evergy's SPP resource adequacy requirements are determined. The same is true for the next statement in Evergy's brief which reads: "[m]oreover, even if SPP were to view the combined Evergy entities as long on capacity, [Evergy West] would still need to transact for any shortfall in its own resource-adequacy position." [Evergy Brief, pg. 9]. This is also nothing but a blatant falsehood for the very same reason. Because Evergy West and Evergy Metro are treated as a single entity when considering resource adequacy for SPP purposes, there is no requirement for Evergy West "to transact for any shortfall in its own resource-adequacy position" when considering SPP resource adequacy obligations in the manner that Evergy's brief claims. [Tr. Vol. 1 pg. 229 lns. 1 – 7; pg. 248 lns. 15 – 19; EA-2022-0328, *Report and Order*, EFIS Item No. 104, pg. 10 ¶ 29 ("[Evergy Missouri West] meets the SPP resource adequacy requirements on a combined basis with Evergy Missouri Metro.")]. These statements are simply false.

Evergy's brief next seeks to argue that the undisputable fact that Evergy is currently long on capacity is "refuted" by Evergy's IRP that "projects [capacity] needs and describes a plan to seek CCN(s) for substantial new generation." [Evergy Brief, pg. 9]. First, it should be noted that the IRP is a 20-year planning horizon while, at the same time, Evergy's brief is quite insistent that the current BDR program will naturally terminate in 2027. [Evergy Brief, pg. 6 ("If no post-2027 MEEIA demand response program exists, there is no MEEIA BDR program for Nucor to participate in[.]"). It thus seems rather nonsensical that Evergy is arguing that Nucor must be allowed to participate in the BDR program *immediately* simply because Evergy will need more capacity at some point in the far-flung future. Even more problematic than that, though, is the simple fact that Evergy is already <u>building</u> to meet that capacity demand.

Remember that Evergy's own brief stated that the BDR program only provides benefits "To the extent [Evergy] would <u>**otherwise**</u> procure that capacity through contracts <u>**or new generation**</u>." [Evergy Brief, pg. 7 (emphasis added)]. This means that, if the Company does <u>not</u> avoid building new generation due to the BDR program participation, that participation provided no benefit. [Ex. 101, Rebuttal Testimony of Mark Kiesling, pg. 5 lns. 9 – 11 ("Unless [Evergy] can avoid additional capacity purchases <u>**or reduces the amount of new generation needed to serve [Evergy] customers**</u>, non-Nucor ratepayers will not benefit from Nucor participation in BDR in 2026") (emphasis added)]. Right now, it is absolutely true that Evergy's parent company (Evergy, Inc.) has additional demand expected on its system due to the arrival of several large data centers:

> [Evergy, Inc.] announced on February 19, 2026 that it recently signed electric service agreements with two new large customer projects and that it is expanding two existing projects. These projects are designed to serve data centers, with a projected peak steady state load of approximately 1,900 MWs.

[EA-2026-0154, *Application for CCN*, (EFIS Item no. 2), pg. 12]. This is why a request to build new generation to serve these extremely large customers <u>has already been</u>

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submitted for Commission approval. [*Id.* at pg. 1]. Once again, the fact that Evergy, Inc. is actively pursuing construction of additional generation proves there are no avoided costs associated with Nucor's participation in the BDR program, 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 (emphasis added)]. While on the subject of data centers, it is also worthwhile to address the impact they are going to have on the entire BDR framework moving forward.

Dr. Marke explained on the stand during the evidentiary hearing that, moving forward, the big "X factor" to the continued demand response programs would be the addition of large load data centers. [Tr. Vol. 1 pg. 249 lns. 1 – 4]. This is because when the BDR program was first developed, customers the size of Nucor were unique. [*Id.* at pg. 254 lns. 20 – 23]. However, as larger and larger customers are added to Evergy's system, the impact that an individual customer like Nucor will have is going to be diminished as a result. [*Id.* at pg. 254 ln. 23 – pg. 255 ln. 3]. This only further exacerbates the problem with Evergy's attempt to rebut Dr. Marke's assertion. Not only is Evergy already building to meet the increased capacity demand that will be created to serve these data center customers (thus eliminating any demand response benefits that might be gained from Nucor), the impact that Nucor's participation *could otherwise have had* will be greatly diminished due to the scale of the new demand being added. No matter how its viewed, the existence of these future large load customers does not "refute" the undisputed truth that Nucor's participation in Evergy's BDR program will not result in any deferred investment.

Evergy currently has excess capacity above its SPP resource adequacy requirement. [Tr. Vol. 1 pg. 257 lns. 1 – 24; *SPP Summer 2026 Report*, pg. 29]. No amount of feigned ignorance, outright lies, or nonsensical claims about the future made by Evergy can deny that point. As stated before, the numbers are simply what they are. Moreover, because Evergy already has capacity in excess of the SPP resource adequacy obligation, the "reductions against [Evergy]'s [resource adequacy] obligation" that would come with Nucor's participation in the BDR program offers absolutely no benefit. [Tr. Vol. 1 pg.248 lns. 2 – 7; Ex. 101, *Rebuttal Testimony of Mark Kiesling*, pg. 5 lns. 9 – 11]. As a final *coup de grace*, it is important to note that, for purpose of meeting resource adequacy as required by SPP, it is too late for Nucor to effect the summer of 2026. [Tr. Vol. 1 pg. 131 lns. 7 – 14]. So, nothing this Commission will do in this case will allow Nucor to provide benefits for customers in 2026. And, as stated before, the current BDR program lapses in 2027. [Evergy Brief, pg. 6 ("If no post-2027 MEEIA demand response program exists, there is no MEEIA BDR program for Nucor to participate in[.]"). That means this whole case only concerns one summer season for 2027. Evergy is already long by more than 100 MW for summer season 2025 and that has only expanded to 300 MW for the summer season 2026. [Tr. Vol. 1 pg. 257 lns. 1 – 24; *SPP Summer 2026 Report*, pg. 29]. The Company is not going to suddenly "need" Nucor to meet resource adequacy next year. Consequently, there is simply no costs being avoided by – and hence no benefit to be gained from – allowing Nucor to participate in the BDR program. [Tr. Vol. 1 pg.248 lns. 2 – 7].

<u>Evergy and Nucor Rely on Bad Data to Reach a Nonsensical Result</u>

Given how obvious it should be that there would be no avoided costs (and hence no benefits for non-Nucor customers) if Nucor is permitted to participate in Evergy's BDR program, one must naturally wonder how Evergy and Nucor can argue so strenuously to the contrary. The answer is that both entities rely entirely on analysis performed using outdated calculations, most of which were never agreed upon by either the parties to this case or the Commission itself. Specially, Evergy and Nucor are relying on "Commission-approved Cycle 3 avoided capacity costs" and "the Cycle 4 application avoided costs." [Evergy Brief, pg. 10; Nucor Brief, pg. 5]. The application of this incredibly out-of-date and inherently flawed data is grounds enough to dismiss these arguments as irrelevant.

As Evergy's own brief admits, "the [MEEIA] Cycle 3 values were set in the March 2020 order in Case No. EO-2019-0132[.]" [Evergy Brief, pg. 10]. That would be well over six years from the date this reply brief is filed. So what has changed in that time? The short answer is everything, as Dr. Marke explained:

> Now, what's changed between now and when that MEEIA was approved is -- I mean heaven and earth has changed. We weren't talking about data centers during that first MEEIA. We weren't talking about the [] amount of generation that the company is building moving forward here. So when [] we sit here and [] the company is trying to shoehorn a[] cost estimate that's four, five years old that was premised on shaky data at best, and trying to put that as a forward proxy for what we're actually avoiding [] it doesn't reflect reality.

[Tr. Vol. 1 pg. 247 lns. 5 – 19]. Given Dr. Marke's characterization, it should come as no surprise that when MEEIA Cycle 3 ended in 2024, the Commission did not order <u>any</u> of the avoided cost metrics that were included to be carried over into MEEIA cycle 4. [Tr. Vol. 1 pg. 185 lns. 5 – 16]. Consequently, the arguments presented by Evergy and Nucor that rely on these obsolete metrics are practically meaningless and should be afforded no weight by this Commission.

That covers MEEIA Cycle 3, but what of MEEIA Cycle 4? Here things become more interesting. MEEIA Cycle 4 was resolved via a stipulation between Evergy, the OPC, and Renew Missouri. [Ex 400, *Commission's Order Approving Agreement and Tariffs issued on December 11, 2024, in Cases EO-2023-0369 and EO-2023-0370* (hereinafter *MEEIA Cycle 4 Order*), pgs. 1 - 2]. The stipulation contained 15 separate sub paragraphs labeled A through O. [*Id.* at pgs. 9 – 14]. Despite the extensive number of provisions, there is <u>not a single word</u> anywhere in the stipulation – or the Commission's order approving it – that says <u>anything</u> regarding avoided cost metrics. [*Id.*] The stipulation did, however, contain general provisions that included:

1. A provision that the stipulation embodied <u>the entirety</u> of the agreement between the parties

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2. A provision that, except as specified in the agreement itself, signatories to the agreement <u>shall not</u> be prejudiced, bound by, <u>or in any way affected by the terms of the agreement</u> in <u>any</u> future proceeding.

3. A Provision that none of the signatories shall be prejudiced <u>or bound in any manner</u> by the terms of the agreement in <u>any other proceeding</u> except as <u>explicitly</u> provided in the agreement itself.

[*Id*. at pgs. 14 – 15]. Because the agreement made absolutely no mention of avoided cost metrics and further contained multiple provisions that expressly forbade <u>any</u> attempt to bind parties to anything other than the narrow terms of the agreement itself, there is absolutely no legal basis *whatsoever* for arguing the Commission implicitly adopted the Company's avoided cost metrics as they were filed in the MEEIA Cycle 4 case.[3] This does not, however, stop Evergy from seeking to do so anyways.

On page 10 of its initial brief, the Company begins laying out its argument for why the Commission should rely on MEEIA Cycle 4 avoided cost metrics by first addressing the arguments to the contrary as presented by Staff witness Kiesling:

> 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."

[Evergy Brief, pg. 10]. Evergy then goes on to blithely state "None of this withstands scrutiny." [*Id*.]. This is a somewhat impressive claim, given the stipulation language

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[3] It is important to note that the omission of avoided cost metrics in the MEEIA cycle 4 stipulation was not an accident. Neither the OPC nor Staff agreed with the metrics proposed by Evergy. This is a primary reason why the Commission's Staff filed a response to the stipulation, as referenced in the Commission's order. [Ex. 400, *MEEIA Cycle 4 Order*), pg. 2]. However, the OPC was willing to sign the stipulation (and Staff was willing to not object) precisely because the lack of any defined avoided cost metrics plus the cited general provisions would ensure that the metrics proposed by Evergy carried no precedential value. Again, the OPC <u>never</u> agreed with the avoided cost metrics Evergy proposed, but this office was willing to seek compromise in order to "move things in the right direction" as Staff put it. [*Id*.]. Evergy is now seeking to violate not only the direct terms of our agreement, but the underlying spirit of the agreement as well.

and commission *Order* discussed above completely validates Mr. Kiesling's assertion that the avoided cost metrics were neither referenced nor approved.[4] But Evergy feels confident to make that bold claim because of its own argument, which just boils down to an idea that the Commission implicitly approved the avoided cost metrics the Company filed with its MEEIA Cycle 4 application when it approved the stipulation. This argument is easily seen in the testimony of Evergy Witness Mr. Brian File:

> While not explicit in the way MEEIA Cycle 3 was outlined in the Order, **implicitly** the MPSC approved the avoided costs by approving the Cycle 4 Stipulation and Agreement that was based on Evergy's initial filing for MEEIA Cycle 4 which included a set of avoided costs to calculate cost benefit tests.

[Ex. 4, Surrebuttal Testimony of Brian A. File, pg. 3 lns. 13 – 17 (emphasis added)]. This is a clear and unambiguous violation of the stipulation terms highlighted above. [Ex. 400, *MEEIA Cycle 4 Order*, pgs. 14 – 15]. The Commission did not "implicitly" find anything because it could not "implicitly" find anything because the stipulation expressly forbade any implicit finding.[5] [*Id.*].

It is necessary to stress that the Company's entire argument regarding the MEEIA Cycle 4 avoided costs is premised and dependent on violating the multiple general provisions found in the MEEIA Cycle 4 stipulation that expressly denied any form of implicit finding beyond the strict terms of that stipulation. In fact, for Evergy to even make this claim now is arguably *itself* a violation of the Commission's order approving the stipulation in case EO-2023-0370 because the Company is now trying

[4] There really is no disputing the truth of Mr. Kiesling's statement that neither the Cycle 4 *Stipulation* nor the Cycle 4 *Order* references the Cycle 4 avoided cost metrics. The words "avoided cost" do not appear anywhere in the Commission's *Order* or the attached *Stipulation*. [Ex 400, *MEEIA Cycle 4 Order*]. Nor is there anything in either the *Order* or *Stipulation* that can be charitably read as referencing those values. [*Id.*]. Apart from the obvious truth of that fact that can be discerned from simply reading the *Order* and *Stipulation*, there is the equally pressing point the Evergy makes no effort to cite to any language included in either document to argue to the contrary.

[5] This is and always has been the OPC's understanding. [Tr. Vol. 1 pg. 243 lns. 7 – 10, 15 – 18] (Cross Examination of Dr. Geoff Marke: "Q. Now, was the OPC a signatory to the non-unanimous stipulation and agreement resolving Evergy's MEEIA Cycle 4? A. We were. . . . Q. As a signatory to the stipulation, is It OPC's understanding that those avoided costs were implicitly approved? A. No.")].

to violate the general provisions of the stipulation by which they were ordered to abide. [*Id.* at pg. 6]. On the other hand, if the Commission were to instead now contradict its prior *Order* in case EO-2023-0370 and conclude that avoided cost metrics were approved for MEEIA Cycle 4 despite the clear and obvious language of the stipulation to the contrary, it would be committing reversible error.[6]

While it is not actually necessary for resolving this issue, the OPC also finds it important to take one moment to address the other half of Staff witness Kiesling's statement to which Evergy was responding in the above excerpt. As a reminder, this would be Mr. Kiesling's assertion that Nucor "improperly participated" in MEEIA Cycle 3. The only reason it is important is because Evergy responds to that particular statement with an almost breath-taking level of hypocrisy. Evergy argues that "Mr. Kiesling's 'improper participation' argument should be afforded no weight" because:

> [T]he prior Cycle 3 participation issues were resolved by a Commission-approved unanimous stipulation with no finding of wrongdoing, and no Commission order has ever declared Nucor's 2021 or 2022 participation unauthorized or unlawful.

[Evergy Brief, pg. 11]. Despite arguing that the Commission made an "implicit" finding approving the MEEIA Cycle 4 avoided cost metrics not more than one paragraph prior in its brief, the Company now immediately contradicts its position by arguing that Nucor participating in MEEIA Cycle 3 was not "improper" solely because neither the stipulation settling that case nor the Commission decision approving that stipulation <u>expressly</u> found any wrongdoing on the part of Nucor. So, to summarize, Evergy's position appears to be that findings should be "implicitly" drawn from stipulations whenever it benefits the Company's position but the exact

[6] It would also create significant impediments to the ability of parties to settle cases in the future. The OPC, like nearly all parties that appear before the Commission regularly, relies on the idea that stipulation terms will be fairly upheld by the Commission when engaging in settlement. This includes the kind of general provisions found in the MEEIA Cycle 4 stipulation, which are terms that, as the name implies, are found in almost all settlement documents. If the Commission determines that these general settlement provisions will no longer be enforced, the ramification will be wide-reaching and significantly hinder the ability of parties to settle cases appearing before the Commission.

opposite becomes true whenever it would be detrimental to the Company's position. Again, this is a ridiculously hypocritical position for Evergy to take and further demonstrates why the Company's position on the MEEIA Cycle 4 case should be disregarded[7]

As has now been shown, Evergy and Nucor have both rested their entire argument that non-Nucor customer will benefit from Nucor's participation in Evergy's BDR program either on ridiculously out-of-date MEEIA Cycle 3 data or wholly unproven and highly contentious MEEIA Cycle 4 data that this Commission never considered, vetted, or approved. That is it. That is all the evidence either party has to show non-Nucor customer benefits. Moreover, that is the evidence that has to be stacked against the uncontestable fact that Evergy currently has excess capacity over what is required by SPP, as published by SPP itself. [Tr. Vol. 1 pg. 257 lns. 1 – 24; *SPP Summer 2026 Report*, pg. 29]. Given the comparative weight of the evidence, no logical and reasonable person could reach any conclusion other than determining that Nucor's continued non-participation in Evergy's BDR program will not result in the Company needing to acquire additional capacity. This means there are no costs associated with acquiring additional capacity being avoided by Nucor's participation in the BDR program, which in turn means there are no avoided cost benefits accruing to non-Nucor customers. And with that, the Commission is returned to the conclusion drawn by the OPC's Dr. Goeff Marke:

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

[Tr. Vol. 1 pg.248 lns. 2 – 7].

[7] It is also, as previously indicated, a completely unnecessary argument for Evergy to have made. The question of whether Nucor's prior participation in MEEIA Cycle 3 was legal and/or proper has no bearing on this case. That was never presented as a basis for denying the Company's request. Evergy apparently just felt it necessary to bring up the issue and then present its hypocritical defense entirely of its own volition.

The Hold Harmless Provision

The second main point to discuss in this reply brief is the impact of Evergy's request on the hold harmless provision found in the current SIL tariff. This was the second portion of the OPC's main argument and corresponds to issue B of the official List of Issues. The OPC's argument regarding the hold harmless provision can be found on page 10 of its initial brief. [OPC Brief, pg. 10]. The short and simple version is this: the SIL tariff requires that "Non-participating customers **<u>shall</u>** be held harmless from **<u>any</u>** deficit in revenues provided by any customer served under this tariff" and allowing Nucor to participate will result in a deficit of revenues provided by Nucor, so that participation will violate the provision. [*see Id.* for citations and support]. Having reviewed the issue, we turn to rebutting the erroneous arguments raised in Evergy and Nucor's briefs.

Evergy's brief begins by arguing that the issue with the hold harmless provision just explained "conflates two distinct mechanisms" because "MEEIA program costs and incentives flow through the DSIM Rider, not through base rates or the Schedule SIL hold-harmless term." [Evergy brief, pg. 17]. This is an absurd position. The MEEIA "incentives" Evergy is referring to are the bill discounts to the <u>base rates</u> that Nucor will be charged because of its participation in the BDR program. [Ex. 102, *Rebuttal Testimony of Justin Tevie*, pg. 3 lns. 2 – 4 ("By participating in the [MEEIA BDR], Nucor will get a **<u>discounted bill</u>**, while other ratepayers do not.")(emphasis added)]. That is essential to understand so the OPC will repeat it: the MEEIA "incentives" come in the form of a reduction to <u>base rates</u> Nucor will be charged. [*Id.*]. It is true that the DSIM Rider allows Evergy to then recover those bill reductions, but that <u>demonstrates</u> the problem, not solve it. This is because the DSIM rider will be charged to <u>non-Nucor</u> customers, as explained by Staff witness Justin Tevie:

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> Q. What is Nucor expected to receive as a bill discount based upon EMW's current proposal?
>
> A. Approximately, ** ____________ ** annually, **<u>which would be paid directly by non-Nucor ratepayers, directly contradicting the hold-harmless provision</u>**.

[*Id*. at pg. 4 lsn. 9 – 12]. Because the MEEIA discount reduces the base rates that Nucor is charged under the SIL tariff, the Company will receive less revenues from Nucor than they would otherwise receive.[8] If this revenue deficit is recovered from non-Nucor customers through the DSIM, as Evergy proposes, then the hold harmless provision has been violated. [*Id*.]. The fact that the DSIM is a separate rider does nothing to remedy this outcome.

Evergy's next major argument consists of several repetitions on some variation of the idea that MEEIA participation is just "not a cost of serving electricity to Nucor." [Evergy brief pg, 18 – 19]. This idea is offered multiple times without any real analysis to support it. Evergy instead appears to be seeking to harness the idea that a falsehood repeated often enough will become the truth. This is not so, however, and the sentiment that MEEIA incentive payments made to Nucor are "not a cost of serving electricity to Nucor" can be easily repudiated by applying just a bit of simple logic. Specifically, one need only ask and answer two questions:

1. Would Evergy <u>only</u> incur the cost of the MEEIA incentive payments made to Nucor by serving electricity to Nucor?

2. Would the MEEIA incentive payments made to Nucor be a cost Evergy would <u>stop</u> incurring if it were to <u>stop</u> serving electricity to Nucor?

If the answer to both of these questions is yes, then the MEEIA incentive payments made to Nucor must logically be a cost of serving electricity to Nucor. Afterall, if a

[8] It is important to note that Nucor's participation would <u>not</u> substantially reduce the purchased power expense of serving Nucor. [Ex. 102, *Rebuttal Testimony of Justin Tevie*, pg. 4 lns. 4 – 8]. If the cost to serve Nucor does not decline with BDR participation, then the bill reduction would necessarily result in a reduction of revenue.

cost is incurred only because Evergy is serving electricity to Nucor and stops being incurred as soon as Evergy is not serving electricity to Nucor then how is it possible to contend that said cost is dependent on, and therefore part of, serving electricity to Nucor?[9]

It should be no surprise that the answer to the two questions posed above are yes. Let us take a moment to consider them each. To begin, we must again remember that the BDR program is designed to "compensate[] commercial customers who reduce, or curtail, their electrical load during high-demand days." [Ex. 100, *Rebuttal Testimony of Jordan T. Hull*, pg. 3 lns. 2 – 4]. Yet, it is only possible for an entity to "reduce, or curtail, their electrical load" if it is actively receiving electrical service.[10] Therefore, the only possible way for Evergy to make an incentive payment to a BDR participant is if Evergy is also serving that customer with electricity. Stated another way, there is no option whatsoever for non-Evergy customers to participate in Evergy's BDR program. Thus, we can say with unquestionable certainty that any MEEIA incentive payments Evergy would make to Nucor would be a cost Evergy could incur only if the Company is also serving electricity to Nucor.

The second question can easily be answered for the same reasons as the first. If Nucor stopped receiving electrical service from Evergy, then its "electrical load during high-demand days" would be zero. In fact, its electrical load during all days would be zero. And that means there could be no reductions that Nucor could make to its load and hence no MEEIA BDR incentive payments that would generate a cost for Evergy. Thus, we can again confirm with absolute certainty that Evergy would stop incurring the cost of MEEIA incentive payments made to Nucor if the Company were to stop serving electricity to Nucor.

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[9] Consider the logic applied in other circumstances as well. The cost of automobile insurance is part of the cost of owning a car. A reasonable and prudent person only buys automobile insurance if they have a car to insure and would stop buying automobile insurance if they no longe had a car to insure. A person does not have to incur the cost (they can own a car and not insure it), but if they choose to incur the cost it is incurred only as part of the larger cost of owning the automobile.

[10] One cannot reduce load that does not exist.

It does not matter how many human beings Evergy can stand up to state an obvious falsehood; when a cost is incurred only because Evergy is serving electricity to Nucor and would stop being incurred if Evergy stopped serving electricity to Nucor then that cost is "a cost of serving electricity to Nucor." And this, of course, is exactly what the Commission's independent Staff concluded. [Ex. 102, *Rebuttal Testimony of Justin Tevie*, pg. 3 lns. 18 – 20 ("Nucor's participation in the MEEIA is a cost of serving them if they are allowed to participate.")]. All attempts by Evergy and Nucor to bifurcate the MEEIA incentive payments from the general provision of electricity service, whether it be from Evergy's argument that the costs are "allocated" through different programs or Nucor's argument that the MEEIA incentives are "payments for a service provided," are irrelevant. We are discussing costs that are only incurred because (and while) Evergy is serving electricity to Nucor and hence are costs of serving electricity to Nucor.

The next point to address is an issue that is made more generally throughout Evergy's brief but which can be best addressed in regard to this particular issue. Evergy's Brief seeks at multiple points to stress the idea that Nucor is being treated differently than other potential BDR program participants. [*see* Evergy Brief, pg. 2 ("[T]he conditions urged by Staff and the [OPC] would single Nucor out . . .")]. The Company is clearly doing this to illicit some complaint of discrimination or similar concern. However, this line of thinking is absurd.

Nucor is the only customer taking service under the SIL tariff. [Ex. 101, *Rebuttal Testimony of Mark Kiesling*, pg. 6 lns. 8 – 9 ("Nucor currently is the only customer in it's rate class[.]");JE-2020-0046, *Evergy Missouri West Tariff* P.S.C. Mo. No. 1 1st Revised Sheet no. 157.3 (showing Nucor is the only SIL contract in place)]. The purpose of the SIL tariff is to allow a special rate that recovers "no less than the incremental costs of serving" a customer. [Ex. 200, *Surrebuttal Testimony of Manzell Payne*, pg. 4 lns. 22 – 27]. Because the SIL tariff only recovers the "incremental cost" of serving Nucor, it results in a reduced charge compared to the costs that would normally be recovered from a customer of that size. This is reflected and explained in the SIL tariff sheet itself:

> This rate schedule is designed to provide certain Customers with new or incremental increases in load, access to a special rate **<u>that is not based on the Company's cost of service like generally available tariff rates</u>** but is designed to recover no less than the incremental costs of serving the new load.

[JE-2020-0046, *Evergy Missouri West Tariff* P.S.C. Mo. No. 1 1st Revised Sheet no. 157]. In fact, it was this restriction to recovering only the incremental cost that caused Evergy itself to originally oppose allowing Nucor to participate in BDR programs. [Ex. 200, *Surrebuttal Testimony of Manzell Payne*, pg. 4 lns. 24 – 27]. But the real point is that the entire SIL tariff framework is <u>designed</u> to give Nucor a reduced bill. That was the reason why, in addition to not being able to participate in Evergy's MEEIA BDR program, an SIL participant also cannot utilize Evergy's economic development rider, economic redevelopment rider, and community solar program or receive service through a Special Contract. [JE-2020-0046, *Evergy Missouri West Tariff* P.S.C. Mo. No. 1 1st Revised Sheet no. 157]. But Evergy and Nucor are now asking the Commission to reverse the *quid pro quo* exchange which permitted Nucor to utilize the lower SIL rate without offering any real benefits to non-Nucor customers in return. This is just unfair.

Nucor <u>is</u> being singled out by Staff and the OPC in this case because Nucor <u>voluntarily sought to be singled out</u> when it requested a substantial rate discount in the form of the SIL tariff. Now Evergy and Nucor are conspiring to shift even more ratepayer dollars to both Evergy and Nucor for no reason other than to line their respective pockets. [Tr. Vol. 1 pg.248 lns. 2 – 7]. That is what makes maintaining the hold harmless provision so important to this case. Nucor already pays less than other customers of the same size. If allowed to participate in the BDR program it will not pay any part of the program incentive costs through the DSIM, because of the statutory opt-out provision, and customers will not see any benefit for the reasons outlined in the previous section of this brief. In short, it will just become a flat subsidy

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to Nucor and a nice bonus to Evergy's earning opportunity. [*Id.*]. And that brings us to the last point to address on the hold harmless provision: the hypocrisy of Evergy and Nucor.

Both Evergy and Nucor rely heavily on the existence of the SIL hold harmless provision as justification for why the Commission should not care whether Nucor participates in the BDR program. [Evergy's Brief, pg. 6 (arguing that no conditions should be imposed because the existence of the hold harmless provision "suffices" to protect customers.); Nucor Brief, pg. 11 ("[T]o the extent that Nucor's participation results in a revenue shortfall . . .Evergy's customers will continue to be protected through the hold harmless provision . . .")]. It is ridiculous that these two parties can argue that the existence of the hold harmless provision is a justification for why Nucor should be allowed to participate in the BDR program while simultaneously arguing that Nucor's participation in the BDR program should not even be *considered* when calculating if the hold harmless provision was violated. It is downright hypocritical to use the provision as shield against criticism even as they work to hollow it out and render it useless. For this, and all the reasons that have preceded it in both this brief and the OPC's initial brief, the arguments offered by Evergy and Nucor on this point should be disregarded.

Alternative, Competitive Options

The third issue to address is the question of available alternatives to the MEEIA BDR program. This represents Issue A.2.c of the official list of issues and was the third point addressed in the OPC's main argument. Compared to the other two points, there is relative little that needs to be said here. The OPC's initial brief offered Aggregators of Retail Customers or "ARCs" to be viable alternative for Nucor to participate in a BDR program outside of Evergy's MEEIA. Both Evergy and Nucor responded that ARCs were not viable primarily because Evergy would not be able to account for demand response provided through an ARC in the Company's SPP

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resource adequacy workbook. [Evergy Brief, pgs. 15 – 16; Nucor Brief, pgs. 8 – 9]. To quote Evergy's brief:

> SPP imposes a capacity obligation but operates no capacity market, so accredited capacity reaches EMW's resource-adequacy workbook only through a bilateral transaction—**<u>and no ARC has one with EMW</u>**.

[Evergy Brief, pgs. 15 – 16 (emphasis added)]. However, this is really a very senseless argument when examined closely because the response is quite simple: if Evergy needs a bilateral transaction with an ARC to receive resource adequacy, *then just enter into one*.

The so called "problems" that Evergy and Nucor claim to exist for all the alternatives offered by Staff and OPC are solely problems to the extent that Evergy has made no attempt to utilize those alternatives. A great example of that can be found in Evergy witness Meitner's testimony:

> Q: Staff witness Hull states at p. 6 that SPP recognizes Dispatchable Demand Response Resources and Block Demand Response Resources, and that SPP demand response can bid into energy and ancillary-services markets and can count toward a utility's resource-adequacy obligation and capacity accreditation. Would these options help Evergy achieve its resource adequacy requirement needs?
>
> A: Yes, per Evergy's discussions with SPP, Evergy, as the Load Responsible Entity ("LRE"), can utilize Evergy market registered DR (such as Dispatchable Demand Response Resource or Block Demand Resource) programs in our Resource Adequacy ("RA") workbooks to reduce our net peak demand. Evergy does not **<u>currently</u>** have any market registered programs for Block Demand Response or Dispatchable Demand Response.

[Ex. 5, *Surrebuttal Testimony of James (JP) Meitner*, pg. 2 ln. 16 – pg. 3 ln. 2 (emphasis added).] As that excerpt shows, Evergy acknowledges there <u>are</u> alternative ways for a customer like Nucor to participate in a non-MEEIA BDR and have that participation count toward Evergy's resource adequacy requirement; the only "problem" is that the Company just does not <u>currently</u> have one of those alternatives in place. Yet, that "problem" can be readily resolved if the Company chooses to resolve

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it by creating a registered program for Block Demand Response or Dispatchable Demand Response. This is the exact same solution just discussed regarding ARCs in the preceding paragraph. Again, these are not real problems, it is just Evergy choosing not to utilize existing solutions.

Given that the response by both Evergy and Nucor relies entirely on these self-created problems driven by Evergy choosing not to take the actions necessary to allow non-MEEIA alternatives, one must wonder why those parties have taken such a position. The answer is quite obvious: Evergy does not want competition for its MEEIA BDR program. Because of the earning opportunity component of MEEIA, Evergy stands to earn a profit if customers use its MEEIA based demand response programs instead of third-party alternatives. [Ex. 201, *Surrebuttal Testimony of Geoff Marke*, pg. 6 lns. 5 – 7]. Evergy wants that income and has therefore made no effort to open the doors for alternative options because it knows that if it "continues to practice as the *de facto* middleman with the financial backing of captive ratepayers, then ARCs have little reason to operate in Missouri" [*Id.* at pg. 7 lns. 14 – 18]. And that is exactly the reason the Commission should deny what Evergy has requested in this case.

The Commission has an opportunity here to promote real, honest competition in this state by denying Evergy the ability to include Nucor in its MEEIA BDR program. If that occurs, the Company's only option for achieving any theoretical demand response benefits for Nucor (which the OPC continues to deny exists regardless) will be to open the door to non-MEEIA options. This could include entering into bilateral transactions with an ARC (as Every's brief suggested), creating a registered program for Block Demand Response or Dispatchable Demand Response (as Evergy witness Meitner described), or perhaps yet other options. Moreover, these alternatives will "minimize cost and maximize convenience" for Evergy's customers by removing "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 pg. 6 lns. 5 – 7; pg. 7 lns. 2 – 4]. The Commission therefore has every reason to pursue this outcome.

Conclusion

As indicated in the introduction to this reply brief, there is a great deal more that could be rebutted in the briefs filed by Evergy and Nucor. But ultimately, those points are merely static; unnecessary distortions that obfuscate the real crux of this case. In order for a demand response program to achieve real, meaningful benefits for non-participating customers, a utility has to be genuinely avoiding some cost that would otherwise be incurred. That cost may be the purchase of additional capacity or the cost of constructing new generation, but *something* has to be actually avoided. And, at the end of the day, Nucor's participation in Evergy's MEEIA BDR program will not result in any avoided costs. Evergy cannot point to a single transaction, purchase power agreement, or new generation build that it will cease or avoid if Nucor is allowed to participate. And it is only by ignoring these simple, unavoidable truths that the Commission can reach an alternative conclusion. Yet, even then, one might be tempted to say, "so what if there is no benefit? What is the cost of just allowing Nucor to participate?" And here it is important to understand that what is being lost are opportunities. The Commission is losing, for example, an opportunity to save customers money by eliminating the unnecessary subsidies that Nucor will receive if it is allowed to participate. It is losing the opportunity to demonstrate to parties its commitment to upholding stipulation language and ensuring accurate calculation of MEEIA values moving forward. And it is losing the opportunity to promote real competition in this state that serves to provide nothing but benefit for all regulated utility customers.

The OPC has presented more than sufficient facts in its initial brief for the Commission to determine that the requested variance to the SIL tariff should be denied. The OPC has now demonstrated that the arguments to the contrary presented in the briefs of both Evergy and Nucor can be safely unheeded as they are either illogical or outright fabrications. It is solely now a question of whether the Commission intends to order the remainder of Evergy's non-Nucor customers to further subsidize Nucor, or if the Commission will instead heed the counsel of the OPC and its own Staff and deny this request. For all the reasons laid out in both its initial and reply briefs, the OPC respectfully requests the latter.

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 ninth day of July, 2026.

/s/ John Clizer

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