**BEFORE THE PUBLIC SERVICE COMMISSION**
**OF THE STATE OF MISSOURI**

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| 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 | ) ) ) ) | File No. EO-2026-0129 |

**EVERGY MISSOURI WEST'S POST-HEARING REPLY BRIEF**

**COMES NOW**, Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("EMW" or the "Company") and, for its *Post-Hearing Reply Brief* ("Brief"), respectfully submits the following to the Missouri Public Service Commission ("Commission" or "PSC"):

## I. INTRODUCTION

Staff of the Commission ("Staff") and the Office of the Public Counsel ("OPC") agree on the two key propositions that decide this case. Nucor Steel Sedalia, LLC ("Nucor") should curtail load when needed to ensure the reliability and stability of the grid, and EMW should receive verified resource-adequacy ("RA") value when Nucor does. Staff says so directly, opening its brief with "yes to Nucor providing real demand-response value" and "yes to Evergy Missouri West receiving verified resource-adequacy value."[1] OPC similarly concedes that Nucor may provide demand response ("DR"), asking the Commission to "allow, but not require, an amendment" permitting Nucor to participate in programs outside the framework of the Missouri Energy Efficiency Investment Act ("MEEIA").[2]

Despite these core acknowledgements, Staff and OPC advance misguided arguments about MEEIA vs. non-MEEIA mechanisms for delivering the RA value both Staff and OPC admit EMW

[1] Staff's Initial Brief at 2 (Executive Summary); see also id. at 46 (Conclusion).
[2] OPC Initial Brief at 16 (Issue A); see also Ex. 200, Payne Surrebuttal at 8 ("I am not against demand response programs in general nor am I against Nucor's participation in such programs generally.").

should have. Every non-MEEIA route they prefer yields no RA credit to EMW: direct participation by Nucor in the Southwest Power Pool ("SPP") does not; a third-party aggregator of retail customers ("ARC") who has not contracted with EMW does not; and EMW's Market-Based Demand Response ("MBDR") tariff alone does not. EMW's MEEIA Business Demand Response ("BDR") program is the only available avenue today that delivers the RA benefit that all parties agree EMW needs. And the Commission already found this program "meets the . . . MEEIA standards" just fifteen months ago.[3]

Indeed, Staff's and OPC's generalized opposition to MEEIA is not supported by the statute itself, case law, or this case's record. First, Staff and OPC each improperly attempt to contrive "tests" for Nucor's BDR participation proposed in the May 18, 2026 Non-Unanimous Stipulation & Agreement (the "Stipulation"), which this Commission has never before adopted or applied, such as: (1) OPC's avoided-new-generation requirement,[4] (2) Staff's four-part RA test,[5] (3) Staff's firm load cap,[6] (4) Staff's by-class realization showing,[7] and (5) Staff's all-cost test that books EMW's earnings opportunity ("EO") as a program cost.[8] As discussed herein, none of these "tests" appears anywhere in Section 393.1075 and each is therefore inappropriate. Second, Staff and OPC each rest its own and shared benefit and cost conclusions on mere opinion unsupported by any expert analysis. OPC's Dr. Marke admitted to only a "cursory" review of the Stipulation but tied

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[3] Report & Order, In re Evergy Metro, Inc. & Evergy Mo. 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; see Tr. 251:8–13, 18–21 (judicial notice of the Cycle 4 Order taken at Staff counsel's request).
[4] See OPC Initial Brief at 8 ("the critical question this Commission needs to consider is whether allowing Nucor to participate in the existing BDR program will result in the Company avoiding hav[ing] [*sic*] to build additional generation").
[5] See Staff Suggestions in Opposition, § 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"); see also Staff's Initial Brief at 14 (Issue A.2) ("EMW has not shown . . . that Nucor's participation will produce verified demand savings, verified avoided capacity costs, benefits realized by all affected customers or customer classes, and benefits exceeding all costs.").
[6] See Staff's Initial Brief at 45 (Condition 1).
[7] See id. at 46 (Condition 5).
[8] See id. at 46 (Condition 4).

"no benefits . . . zero" to approval "today" even though participation does not begin until 2027.[9] Likewise, Staff's Mr. Kiesling "didn't use an avoided cost," never contacted the third-party evaluator, and identified no tested methodological error.[10] Under Missouri law, an expert conclusion joined to its result only by the *ipse dixit* of the expert, across too great an analytical gap (or none at all), is not competent and substantial evidence and is thus entitled to no weight.[11] Third, Staff's and OPC's "hold-harmless" theory misreads the Special Rate for Incremental Load Service ("Schedule SIL") tariff and misdescribes a Commission-approved, third-party-run, SPP-validated process. Similarly, OPC's emphasis on pro-competition policy is irrelevant.

The Commission should therefore approve the amendment to the Schedule SIL agreement (the "Amendment") consistent with the May 18, 2026, Non-Unanimous Stipulation and Agreement (the "Stipulation") and decline to impose any of Staff's and OPC's suggested conditions that improperly single Nucor out from every other customer participant.[12]

## II. ARGUMENT

### *A. The resource-adequacy benefit is the statutory benefit, yet Staff and OPC rely on invented tests and unsupported opinion.*

The opposition's lead argument is that the benefit of Nucor's participation is somehow unproven. Again, inconsistent with Staff's and OPC's agreement that EMW needs the RA value from Nucor's DR participation, OPC frames the benefit as turning on whether participation lets EMW avoid building new generation, so that absent an avoided build the program is "nothing but a subsidy."[13] Staff frames the identified benefits as "possible" rather than "proven, customer-

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[9] Tr. 248:2–7 (Marke); Tr. 253:2–3 (Marke).
[10] Tr. 181:8–182:1 (Kiesling).
[11] See State Bd. of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146, 155–56 (Mo. banc 2003) (§ 490.065 supplies the standard for expert testimony in contested administrative cases); Mueller v. Bauer, 54 S.W.3d 652, 657 (Mo. App. E.D. 2001) (opinion resting on "mere conjecture and speculation" lacks evidentiary value).
[12] See Ex. 8, Non-Unanimous Stipulation & Agreement (filed May 18, 2026); EMW Initial Brief at 1–2.
[13] OPC Initial Brief at 8–9; see also Tr. 248:2–7 (Marke).

realized net benefits."[14] Both arguments substitute a manufactured standard for the Legislature's words. MEEIA says nothing about either avoiding new generation or about "proven, customer-realized net benefits." Moreover, the benefit that MEEIA *does* require is not an open question here but was instead foreclosed when the Commission approved the BDR program.[15]

The statute supplies the test, and the record satisfies it. Section 393.1075.4 asks whether a demand-side program is "approved by the commission, results in energy or demand savings," and is "beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers."[16] Section 393.1075.4 contains no avoided-new-generation gate, no four-part RA test, and no by-class realization requirement. More to the point, the SPP RA-accreditation reduction *is* the very benefit the statute contemplates. SPP credits Nucor's tested reductions against EMW's RA obligation, reducing the capacity EMW must otherwise carry in its seasonal RA workbooks, and that verified reduction is a system-wide avoided utility cost shared across the classes.[17] Mr. Meitner explained that once SPP confirms the reduction, "that value is brought to the customer through the workbook," and he also explained that BDR is the only existing Evergy tariff through which Nucor's tested curtailment earns SPP capacity accreditation and reaches EMW's resource-adequacy position.[18]

OPC's peaker-plant comparison answers an entirely different question than the one before the Commission. Dr. Marke describes the energy margin EMW forgoes by calling a curtailment event instead of dispatching a peaker into the SPP energy market.[19] But that margin has nothing to do with the capacity obligation at issue. The RA obligation is a capacity obligation, and in SPP

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[14] Staff's Initial Brief at 3 (Executive Summary), see also id. at 12–14 (Issue A.2).
[15] Cycle 4 Order at 6, ordered ¶ 1.
[16] § 393.1075.4, RSMo. Unless otherwise noted, all statutory citations are to the Revised Statutes of Missouri (2016), as amended.
[17] See Tr. 85:6–11 (Meitner); Tr. 227:12–19 (Meitner).
[18] Id.
[19] OPC Initial Brief at 7–8; see Tr. 256:6–20 (Marke).

a capacity obligation reaches a utility's workbook only through the load-responsible entity's own programs, because SPP "is a capacity *obligation* but not a capacity *market*."[20] Whether Evergy would rather run a peaker for energy margin says nothing about whether Nucor's accredited curtailment reduces EMW's capacity obligation. Dr. Marke's analogy is therefore an energy-market reference with no relevance to Nucor's contribution to capacity.

Neither Staff nor OPC measured the value of the benefits or costs of Nucor's participation. Dr. Marke admitted he reviewed the Stipulation only cursorily, never calculated the RA value, and grounded his "no benefits . . . zero" opinion on conditions as of summer 2026, even though participation does not begin until 2027.[21] Similarly, Mr. Kiesling "didn't use an avoided cost," never contacted ADM & Associates ("ADM") before filing, does not know whether ADM's or Staff's review consultant ever flagged the methodology (they did not), and performed no quantitative analysis of his own.[22] Each opinion is *ipse dixit* attempting to cover an analytical gap, and thus each merits no weight.[23] That failure of proof is especially striking because the Commission has already validated EMW's MEEIA offerings. In approving the Cycle 4 portfolio, the Commission specifically found the BDR program "meets the . . . MEEIA standards" and incorporated that cycle's stipulation by reference,[24] yet Staff now improperly asks the Commission to reach the opposite conclusion about the same program fifteen months later.

No contrary quantification exists in the record, because neither Staff nor OPC offered any independent benefit-cost analysis of Nucor's participation. Even Staff's measurement witness, Mr. Tevie, agreed that the benefits of participation extend past Nucor's discounted bill to a reduced

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[20] Tr. 82:11–17 (Meitner) (emphasis added); see also Ex. 5, Meitner Surrebuttal at 3.
[21] Tr. 248:2–7 (Marke); Tr. 253:2–3 (Marke).
[22] Tr. 181:3–7 (Kiesling); Tr. 181:8–11 (Kiesling); Tr. 181:14–20 (Kiesling); Tr. 181:21–182:1 (Kiesling).
[23] See McDonagh, 123 S.W.3d at 155–56; Mueller, 54 S.W.3d at 657.
[24] Cycle 4 Order at 6, ordered ¶ 1.

capacity obligation and reliability value, including reduction of the system peak.[25] As to potential costs, Staff and OPC likewise offered no quantitative analysis, reciting figures that are gross rather than net. The recited incentive and earnings-opportunity numbers are full-commitment figures that do not reflect the Stipulation's 30% contribution cap and 65% vesting carve-out, while the incentive is earned only on verified curtailment, because 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."[26]

### *B. The RA benefit reaches EMW only through MEEIA, as every "alternative" delivers zero resource-adequacy value and still requires the same amendment.*

Both Staff and OPC claim Nucor can deliver curtailment value outside MEEIA through SPP block demand response, an ARC, or EMW's MBDR tariff, and that those routes apply more "rigorous" verification and avoid ratepayer-funded incentives.[27] But this premise fails because none of those routes delivers RA credit to EMW. For instance, Mr. Hull agreed that ARCs participate in SPP's energy and ancillary-services market and that "Evergy would not get credit for that in the resource adequacy," and that he knew of no ARC contract delivering RA credit to EMW today.[28] Similarly, EMW's MBDR tariff lets customers already taking BDR service bid into SPP's energy and ancillary-services markets, which yields energy-market revenue but no resource-adequacy accreditation credit to EMW.[29] BDR is the tariff that carries Nucor's accredited reduction into EMW's RA position, and routing that value through BDR alone is what keeps the same curtailment from being counted twice.[30]

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[25] See Tr. 160:17–161:25 (Tevie) (agreeing that participation could produce these benefits beyond a discounted bill to Nucor).
[26] Ex. 8, Non-Unanimous Stipulation & Agreement ¶¶ 4, 6–7; see also Tr. 184:25–185:4 (Kiesling).
[27] See Staff's Initial Brief at 18–22 (Issue A.2.c); OPC Initial Brief at 11–13.
[28] Tr. 204:18–205:17; Tr. 207:6–208:19 (Hull).
[29] Tr. 77:22–78:5.
[30] See Ex. 3, File Surrebuttal at 13–14; Ex. 5, Meitner Surrebuttal at 4.

Nor can the alternatives borrow viability from SPP Revision Request 703 ("RR 703"), which remains pending before the Federal Energy Regulatory Commission ("FERC"). Mr. Hull agreed with Chair Hahn that demand response for resource adequacy "can only be claimed as a load reduction against the [LRE's] peak demand forecast," and that it cannot count toward capacity "until FERC litigates revision request 703."[31] This does not suggest, however, that RR 703 would let an ARC or any other third party deliver RA value around EMW. OPC's own framing shows why, as it stresses that SPP has "no capacity market."[32] Because there is no capacity market, accredited capacity reaches a utility's RA position only through the load-responsible entity's own workbook, which is exactly why EMW alone captures the credit, and an ARC or wholesale route delivers none.[33] At bottom, RR 703 concerns how demand response is counted toward capacity, not whose resource-adequacy position it serves. Thus, regardless of the outcome on RR 703, RA value must flow through EMW as the load-responsible entity.

Every alternative also requires a Commission-approved amendment to Nucor's Schedule SIL agreement before Nucor could pursue it. There are no current MBDR participants, and an ARC must still be paid for its aggregation.[34] OPC's claim that ARCs operate at "no direct cost to ratepayers"[35] relabels the cost rather than eliminating it, because the aggregator is still "looking to be paid for . . . that aggregation of demand response,"[36] and that payment will ultimately come at ratepayers' expense. The opposition never closed the gap between its preferred routes and the RA value it agrees EMW should receive, and the record shows no alternative to the MEEIA BDR that delivers that value today.

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[31] Tr. 219:6–21; Tr. 220:20–25; Tr. 218:17–22 (Hull).
[32] OPC Initial Brief at 9 n.5.
[33] See Tr. 82:11–17 (Meitner); Tr. 76:13–77:16 (Meitner); Ex. 5, Meitner Surrebuttal at 3.
[34] See Tr. 214:19–215:1 (Hull); Tr. 86:18–21 (Meitner); Tr. 137:12–138–25 (File); Tr. 76:13–77:16 (Meitner).
[35] Ex. 201, Marke Surrebuttal at 6.
[36] Tr. 76:13–77:16 (Meitner).

### *C. The hold-harmless theory is based on an incorrect premise and is refuted by EMW's actual results. (Issue B)*

Nucor takes service under Schedule SIL, which provides that "[n]on-participating customers shall be held harmless from any deficit in revenues provided by any customer served under this tariff."[37] OPC and Staff build their hold-harmless argument on a single inference: a BDR incentive gives Nucor a "discounted bill," a discounted bill reduces the revenue Nucor provides, and a reduced revenue therefore creates the very deficit Sheet 157.2 forbids.[38] But this chain breaks at its first link, as there is no "discounted bill" to speak of.

The BDR incentive is not, as the opposition contends, a discount on Nucor's electric-service bill. It is a performance-based payment for a curtailment resource, recovered through the Demand-Side Investment Mechanism ("DSIM") Rider in the same way as every other BDR participant's incentive. Nucor pays the Schedule SIL rate for electric service and separately earns a DSIM-recovered incentive for curtailing.[39] Sheet 157.2 protects against a shortfall in Schedule SIL service revenue, and a DSIM incentive does not reduce that revenue. Reading "revenues provided by [Nucor]" to mean EMW's net position after a DSIM incentive is netted against SIL service revenue finds no support in the tariff's text.

DSIM recovery is the Commission's own design, operating exactly as intended. In Case No. EO-2019-0132, the Commission determined that opt-out customers may participate in BDR while program DSIM costs flow to other customers through the DSIM charge.[40] Nucor sits in the same posture as any other opt-out customer. OPC's contrary reading would bar any Schedule SIL customer from ever participating in MEEIA — effectively a customer-specific nullification of

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[37] Schedule SIL Sheet No. 157.2.

[38] See OPC Initial Brief at 10; Ex. 102, Tevie Rebuttal at 3; Staff's Initial Brief at 22–26 (Issue B).

[39] See Ex. 6, Nunn Surrebuttal at 3–4; Order, No. EO-2019-0132 (Mar. 11, 2020), ordered ¶¶ 1, 3.

[40] Order, No. EO-2019-0132 (Mar. 11, 2020), ordered ¶¶ 1, 3; see Staff's Initial Brief at 24 (quoting ordered ¶¶ 1, 3 and the DSIM charge tariff).

MEEIA eligibility that appears nowhere in the statute or the Cycle 4 Order. As Ms. Nunn explained, the administrative and incentive costs of participation are "not a cost of . . . serving electricity to Nucor." Routing them through the hold-harmless provision would produce the "unbalance[d]" result of shareholders being "completely responsible for all the costs" while "[a]ll other customers" received the benefit.[41] Mr. File confirmed the same point from the cost side: MEEIA administrative costs are allocated at the program level rather than charged to any one customer's service, so they cannot create the Nucor-specific Schedule SIL revenue deficit the opposition imagines.[42]

The opposition's categorical "higher rates" claim is also false, and any allocation dispute belongs in a later rate proceeding, not in this one. Indeed, Paragraph 11 of the EO-2019-0244 Stipulation reserves cost-allocation disputes for a future fuel-adjustment-clause ("FAC") or rate proceeding.[43] The protections against any cost shift are multilayered, including Schedule SIL-specific FAC subaccounts, rate-case revenue imputation, and deviation tracking.[44] And Staff's own remedy theory confirms that the protection already exists. Mr. Kiesling described a rate-case true-up in which the amount flows back to customers if the benefits do not materialize, which is precisely what the Stipulation's conditional 2027 approval already accomplishes.[45] Moreover, Staff's two hold-harmless conditions add nothing to this analysis. Condition 6 simply restates the DSIM-and-hold-harmless conflation already refuted above, and Condition 7 restates a protection that already exists, because the earnings opportunity is not a Total Resource Cost ("TRC") program

[41] Tr. 144:4–13 (Nunn); Tr. 146:17–147:11 (Nunn).
[42] See Tr. 114:6–9 (File).
[43] Non-Unanimous Stipulation & Agreement, File No. EO-2019-0244, ¶ 11.
[44] See Ex. 6, Nunn Surrebuttal at 3–7; Ex. 1, File Direct at 10–12; Schedule SIL Sheet No. 157.2.
[45] Tr. 182:14–183:8 (Kiesling).

cost.[46] In any event, the unrefuted record demonstrates that the most recent accumulation period produced a net *decrease* to non-Nucor customers.[47]

### ***D. Staff misdescribes an approved, third-party-run, SPP-validated process, and Staff's firm load cap has no MEEIA anchor. (Issue A.2.b)***

Staff contends that EMW's nine-of-ten baseline-load, day-averaging method cannot reliably measure Nucor's volatile load,[48] and that without a firm load cap the order will lack an ascertainable standard and invite reversal under Sections 386.420 and 536.090.[49] But the record describes a far more robust process than Staff's characterization implies. The system pairs independent third-party evaluation, measurement, and verification ("EM&V") with SPP accreditation. ADM sets and runs the baseline, Evergreen Economics (Staff's own consultant) oversees it, and neither of these flagged Nucor's baseline or method in either 2021 or 2022.[50] SPP then independently validates the RA credit EMW receives, and participants are paid only for measured reductions after each event.[51]

Instead, Staff now attempts to measure MEEIA BDR against requirements that do not govern it. SPP's heightened metering and settlement attach to the SPP energy and ancillary-services market, not to capacity accreditation, and Mr. Hull confirmed that the MEEIA BDR program is not registered as a market participant in that market.[52] Importing wholesale-market standards onto a single retail MEEIA customer is disparate treatment with no basis in MEEIA or the Cycle 4 Order. The FERC measurement report Staff invokes[53] endorses the method used here, because it catalogs accepted M&V methodologies, including the default method applied by the

[46] See § 393.1075.4; 20 CSR 4240-20.092(1)(WW); Staff's Initial Brief at 45–46 (Conditions 6 and 7).
[47] See Ex. 6, Nunn Surrebuttal at 3–7; Sched. BF-4; Sched. BF-6 [CONFIDENTIAL].
[48] See Staff's Initial Brief at 36–41 (Sections VI–VII).
[49] See id. at 47; see also Ex. 102, Tevie Rebuttal at 8–11.
[50] Tr. 181:3–20 (Kiesling).
[51] Tr. 216:21–217:8 (Hull); Tr. 184:25–185:4 (Kiesling).
[52] Tr. 212:9–213:17 (Hull).
[53] See Staff's Initial Brief at 38–39.

third-party evaluator.[54] Nucor has already curtailed to a defined level, and there was no called event at which Nucor failed to perform.[55]

Staff's firm load cap is a term drawn from SPP planning practice. It is a wholesale-market construct with no MEEIA or Schedule SIL anchor. No opposition witness tied a firm cap to any MEEIA requirement or to Schedule SIL, and no witness identified any other BDR participant to which it applies. Staff's own Condition 1 accepts a variability-adjusted baseline as an alternative,[56] thus implicitly conceding that a firm cap is not necessary. And the "variable baseline" on which Staff's critique turns is a term that appears nowhere in the record. Indeed, Mr. Tevie testified that he addressed only the baseline method, deferred the program and its benefits to Mr. Kiesling and Mr. Hull, and knew of no customer barred from MEEIA for load volatility.[57]

For its last argument, Staff contends that without a firm load cap the Commission's order will lack an ascertainable standard and invite reversal on appeal. But the Stipulation supplies an objective and already-used standard: the approved Cycle 4 terms, third-party EM&V overseen by Staff's consultant, SPP accreditation, and payment only for "the final EM&V kW achieved values that align with [SPP] accreditation," all under a conditional 2027 approval that expires by its terms.[58] Each of the cases Staff cites for its reviewability argument involved either a Commission order devoid of factual findings or a court order so indefinite that compliance could not be determined without a further evidentiary hearing.[59] None involved what is at issue here: namely,

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[54] Ex. 103 at x–xii, 19–28.
[55] Tr. 122:15–18 (File); Ex. 3, File Surrebuttal at 8, Fig. 1 [CONFIDENTIAL].
[56] See Staff's Initial Brief at 44 (Condition 1).
[57] Tr. 157:15–158:7 (Tevie); Tr. 162:6–24 (Tevie); Tr. 164:5–15 (Tevie).
[58] Ex. 8, Non-Unanimous Stipulation & Agreement ¶¶ 2–5.
[59] See State ex rel. Monsanto Co. v. Pub. Serv. Comm'n, 716 S.W.2d 791 (Mo. banc 1986) (remanding where the Commission adopted a nonunanimous stipulation on rate design without any affirmative findings of fact, substituting criticism of the opposing party's evidence for findings supporting its own conclusion); State ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Comm'n, 24 S.W.3d 243 (Mo. App. W.D. 2000) (remanding where the Commission's findings consisted of a general discussion of the parties' positions and a declaration of which side prevailed, with no nonconclusory facts from which the reviewing court could determine the basis of the decision); State ex rel. Laclede

an order incorporating an existing, independently administered measurement protocol under which compliance is determined from metered data.[60] The implication is telling: if this metered, accredited, third-party-verified program lacked an ascertainable standard, then the very Cycle 4 BDR program the Commission already approved would be equally unreviewable, and surely Staff does not intend such an incorrect result.

Staff's remaining measurement conditions add nothing, as Conditions 2, 3, and 8 largely restate the existing program. As to condition 8, the Stipulation already pays only for verified performance, but again the undefined "firm cap" concept of both Conditions 1 and 8 should be rejected.[61]

### *E. OPC's anti-competition policy argument is a collateral attack on a preapproved program with zero quantified harm.*

OPC argues that the Commission recently lifted the ARC ban, that the Commission's mission statement favors competition, and that allowing a subsidized utility "middleman" gives ARCs "little reason to operate in Missouri."[62] None of these sweeping contentions, however, is a statutory criterion under Section 393.1075.4. The Commission already found MEEIA BDR just, reasonable, and in the public interest when it approved the Cycle 4 portfolio,[63] and OPC's competition theory is a collateral attack on that approved program smuggled into an opposition to a single customer's amendment.

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Gas Co. v. Pub. Serv. Comm'n, 103 S.W.3d 813 (Mo. App. W.D. 2003) (remanding where the Commission's findings on a depreciation method were conclusory and failed to explain the rationale for adopting one calculation over another, leaving the reviewing court to speculate).

[60] See City of Portage Des Sioux v. Lambert, 323 S.W.3d 462 (Mo. App. E.D. 2010) (dismissing appeal of a contempt order conditioned on future compliance because enforcement required an additional evidentiary hearing on whether the property owners had performed); Fulton v. Adams, 924 S.W.2d 548, 552–53 (Mo. App. W.D. 1996) (holding a child-support order requiring payment of college costs unenforceable because it contained no limiting criteria and left the amount owed to speculation rather than ministerial computation).

[61] See Staff's Initial Brief at 45–46 (Conditions 2, 3, 8); Ex. 8, Non-Unanimous Stipulation & Agreement ¶ 4.

[62] OPC Initial Brief at 11–15; Ex. 201, Marke Surrebuttal at 3 (ARC ban lifted "effective January 1st of 2024"); id. at 6 (mission statement).

[63] See Cycle 4 Order at 6.

Regardless of Nucor, ARCs remain free to compete in the State, so favoring a policy of competition and approving this Amendment are not in tension. Rather, OPC quantified no competitive harm whatsoever. Its witnesses offered no market sizing and no but-for analysis of what Nucor's participation would do to ARC entry, which leaves Dr. Marke's opinions resting on advocacy rather than evidence.[64] And once more, the ARC pathway OPC prefers delivers no RA value today,[65] while the MEEIA program it attacks is accredited and producing value now. OPC thus asks the Commission to forgo a benefit that exists today in order to protect a general economic principle that OPC has not established is in any way at risk.

### *F. The Cycle 4 "implied approval" and "improper participation" objections miss the numbers EMW actually uses and are resolved by the tariff text.*

Invoking the tariff-as-statute, merger, and *expressio unius* interpretation canons, Staff argues that EMW's avoided-cost case depends on an "implied" Cycle 4 approval that the text does not support.[66] But the text resolves Staff's interpretive objection in EMW's favor. Sheet No. 157 bars Schedule SIL demand-response and MEEIA participation "unless otherwise ordered by the Commission when approving a contract for service under this tariff," which invites exactly the order the Amendment requests.[67] EMW does not contend that the bar was already lifted. EMW asks the Commission to lift it now. Staff's merger and *expressio unius* arguments attempt to answer a question EMW is not asking, and a present order moots the EMW–OPC dispute over what Cycle 4 "contemplated."[68]

Staff and OPC also treat Nucor's 2021–2022 participation as "illegal" and use it as a cost proxy.[69] But the historical benefit-cost ratio rests on the Commission-ordered Cycle 3 avoided

[64] See OPC Initial Brief at 11–15; Ex. 201, Marke Surrebuttal at 3–7.
[65] See Tr. 204:18–205:17 (Hull).
[66] See Staff's Initial Brief at 32–36 (Section V).
[67] Schedule SIL Sheet No. 157.
[68] See Staff's Initial Brief at 33–35.
[69] See Staff's Initial Brief at 13–14, 16; OPC Initial Brief at 6.

costs and on third-party-verified reductions.[70] The forward figure uses the Cycle 4 application values and will be tested in the Staff-supervised 2027 EM&V, and the Cycle 4 Order incorporated the corresponding stipulation by reference and found that it "meets the . . . MEEIA standards."[71] Staff's companion "improper participation" charge fares no better. No order ever declared the 2021–2022 participation unlawful, the Cycle 3 participation issues were resolved by a Commission-approved unanimous stipulation with no finding of wrongdoing,[72] the reductions were third-party verified, and the burden to prove illegality rests with the party asserting it.

### *G. The remaining conditions are redundant or unlawful add-ons, and the earnings-opportunity point is conceded. (Conditions; Issue C)*

Staff casts its ten conditions as the terms that "make approval lawful," argues that EMW should receive no earnings opportunity absent proven savings, and dismisses the Stipulation's 30% and 65% provisions as ringing "hollow."[73] Conditions 4 and 5 import standards found nowhere in the law. The TRC test, which is MEEIA's preferred cost-effectiveness test, does not treat the earnings opportunity as a program cost, so Condition 4's all-cost calculation is contrary to the governing standard.[74] Condition 5's by-class realization criterion appears in neither the statute nor the rules, and the Commission has already held that "[n]owhere does the MEEIA statute say that a supply-side resource must be avoided or deferred."[75]

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[70] See Amended Report & Order, File No. EO-2019-0132 (Mar. 11, 2020), § K, at 22; Ex. 1, File Direct at 7–11; Ex. 3, File Surrebuttal at 2–3.
[71] Cycle 4 Order at 6.
[72] See Ex. 200, Payne Surrebuttal at 3 (Cycle 3 participation issues resolved by unanimous stipulation in Case Nos. EO-2023-0407/0408); Tr. 125:25–126:4 (Seyer, J.).
[73] Staff's Initial Brief at 43–46 (Sections IX–X); id. at 29–30.
[74] § 393.1075.4 ("The commission shall consider the total resource cost test a preferred cost-effectiveness test."); 20 CSR 4240-20.092(1)(WW); cf. Staff's Initial Brief at 45 (Condition 4).
[75] Amended Report & Order, File No. EO-2019-0132 (Mar. 11, 2020), § K, at 22; cf. Staff's Initial Brief at 45 (Condition 5).

Conditions 9 and 10 rest on no record evidence and/or seek to duplicate work the Company already performs.[76] Regarding Condition 9, every current BDR customer is eligible to be called during winter peak events, Nucor would be treated no differently from any of them, and no Staff witness offered any testimony questioning Nucor's ability to perform in winter. Condition 10 fares no better. Its demand for full peak-demand capacity accounting raises a Schedule SIL mechanics question that is both vague and duplicative of existing tracking and revenue imputation, including the incremental wind-PPA capacity that the Stipulation already prices into the next rate case's hold-harmless analysis.[77]

On Issue C, the carve-out keeps Nucor's kW out of the 65% vesting threshold, which resolves any concern about target arbitrage.[78] Vesting and earning are distinct. Excluding Nucor's kW from the 65% threshold does not waive EMW's eligibility for the standard EO on verified savings under Section 393.1075.3(3).[79] Staff's observation that EMW reaches the 65% threshold without Nucor proves that there is no arbitrage risk, not that the standard EO on third-party-verified savings should be denied.[80] OPC, for its part, agrees that Issue C "is, generally speaking, no longer an actual issue in this case."[81]

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[76] See Staff's Initial Brief at 46 (Conditions 9 and 10); EMW Initial Brief at 24–25.
[77] See Non-Unanimous Stipulation & Agreement, File No. EO-2019-0244, ¶ 7; Ex. 6, Nunn Surrebuttal at 5–7.
[78] Ex. 3, File Surrebuttal at 9; Ex. 8, Non-Unanimous Stipulation & Agreement ¶ 7.
[79] § 393.1075.3(3); see Cycle 4 Order at 6; Ex. 3, File Surrebuttal at 6–12.
[80] See Staff's Initial Brief at 29; Tr. 127:17–128:17 (File).
[81] OPC Initial Brief at 19–20.

## III. ISSUE-BY-ISSUE DISPOSITION

The arguments above resolve each contested issue. EMW addresses the filed issues individually below[82] so that the Commission has a complete record of EMW's position on the list of issues and so that no issue reads as conceded.[83]

**Issue A.** The Commission should approve the Amendment as written. It permits participation only "subject to the availability and terms of each specific program," and the sole program at issue is the approved Cycle 4 BDR program, which Sheet No. 157 expressly allows the Commission to authorize. (See Arguments A and F.)

**Issue A.1.** Yes. The Commission should permit MEEIA BDR participation, because the SPP RA-accreditation benefit is the statutory benefit and reaches EMW only through MEEIA. (See Arguments A and B.)

**Issue A.1(a).** If the Commission approves participation, it should approve it consistent with the Non-Unanimous Stipulation and decline Staff's added conditions. (See Arguments D and G.)

**Issue A.2.** Yes. Nucor's participation produces benefits to all EMW customers, because the verified SPP RA reduction is a class-wide avoided utility cost, and the opposition quantified nothing to the contrary. (See Argument A.)

**Issue A.2(a).** Yes. The quantified benefits exceed the quantified costs. The historical benefit-cost ratio rests on the Commission-ordered Cycle 3 values and third-party-verified reductions, and Staff's cost figures are gross rather than net. (See Arguments A and F.)

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[82] The Company does not agree with the wording or inclusion of all of the issues as listed. The inclusion of an issue, and EMW's statement of its position on that issue, does not mean that EMW agrees the issue is properly characterized, that the issue is actually in dispute, or that a Commission decision on the issue is proper or necessary in this case.
[83] See Order Setting Procedural Schedule, File No. EO-2026-0129, ¶ 3.D (Feb. 17, 2026); see also 20 CSR 4240-2.140.

**Issue A.2(b).** Yes. The program's verification process is sufficient, because it includes third-party EM&V by ADM, oversight by Staff's consultant Evergreen Economics, and SPP accreditation, and SPP's wholesale-market M&V requirements do not apply. (See Argument D.)

**Issue A.2(c).** Other pathways deliver no RA credit to EMW, so they are not substitutes for MEEIA BDR. (See Argument B.)

**Issue B.** Yes. The existing protections suffice, because the BDR incentive is DSIM-recovered and does not create a Schedule SIL service-revenue deficit. (See Argument C.)

**Issue C.** No reduction to EMW's earnings opportunity is warranted. The voluntary carve-out resolves vesting, and the standard earnings opportunity on third-party-verified savings stands. (See Argument G.)

## IV. CONCLUSION

Staff frames its position as completing a solution,[84] but the solution is already complete and Staff's conditions invite error. The MEEIA BDR program supplies measurement through a Commission-approved EM&V protocol run by a third party and overseen by Staff's own consultant, verification through SPP accreditation, and cost protection through DSIM recovery, the Schedule SIL hold-harmless framework, and the Stipulation's conditional 2027 approval.[85] What Staff and OPC would add — the firm load cap, the all-cost and by-class tests, and inclusion of the earnings opportunity in the hold-harmless calculation[86] — appears in no MEEIA order nor MEEIA itself, and binds no other BDR participant.

[84] Staff's Initial Brief at 46 (Conclusion) ("Staff is not asking the Commission to stop a solution. Staff is asking the Commission to complete the solution.").
[85] See Ex. 8, Non-Unanimous Stipulation & Agreement ¶¶ 2–5; Tr. 181:3–20 (Kiesling); Tr. 216:21–217:8 (Hull); Ex. 6, Nunn Surrebuttal at 3–4.
[86] See Staff's Initial Brief at 44–45 (Conditions 1, 4, 5, 6); EMW Initial Brief at 22–24.

OPC and Staff have proven EMW's case twice over. By pointing to EMW's pending certificate-of-convenience-and-necessity ("CCN") applications as proof that EMW is building generation, OPC proved the very forward capacity need that gives accredited demand response its value.[87] And, Staff's own witness conceded that every alternative Staff prefers delivers no resource-adequacy credit to EMW.[88]

**WHEREFORE,** for these 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 BDR participant and as imposing burdens beyond MEEIA; and

(5) grant any necessary rule variances supported by, or unopposed by, the Signatories.

EMW respectfully requests all such further relief as the Commission deems just and proper.

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[87] See OPC Initial Brief at 8 (citing the pending CCN application in Case No. EA-2026-0154 as evidence that EMW will build more generation); Tr. 246:13–18 (Marke) ("the CCNs that we've got in front of the Commission are evidence of that").

[88] Tr. 204:19–205:17 (Hull); Tr. 220:20–25 (Hull).

Respectfully submitted,

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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 9th day of July 2026, by EFIS filing and notification, and/or e-mail.

*/s/ Roger W. Steiner*

Roger W. Steiner