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

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri) **File No. EO-2026-0129**
West for Approval of an Amendment to)
Nucor Steel Sedalia, LLC Agreement)

STAFF’S REPLY BRIEF

Respectfully Submitted,

Paul Graham

Senior Counsel

Missouri Bar No. 30416

Travis J. Pringle

Chief Deputy Counsel

Missouri Bar No. 71128

Ray Cunneen

Legal Counsel

Missouri Bar No. 77925

Attorneys for Staff of the

Missouri Public Service Commission

July 9, 2026

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STAFF'S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through its attorneys and tenders its Reply Brief.

Introduction

Staff’s Reply Brief will focus on Issues A.1.a, A.2, and A.2.b. Having presented and argued its positions in its Initial Brief, Staff is limiting its replies to those matters which Staff believes will most aid the Commission. Accordingly, unless expressly stated below, the Commission should not infer from Staff’s silence herein on a point raised by Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW” or “Company”), Nucor Steel Sedalia, LLC (“Nucor”), or the Office of the Public Counsel (“OPC”) in its initial brief that Staff agrees with that party’s statement or argument. In addition, Staff would caution the Commission to not simply accept at face value the statements or arguments made by EMW or Nucor in their respective initial briefs, but make sure that such statements are supported by accurate citations to the evidence.

Issue A.1.a is as follows: If the Commission approves Nucor’s participation in the MEEIA BDR program, what, if any, conditions should Nucor’s participation in the MEEIA BDR program be subject to?

Issue A.2 is as follows: Would Nucor's participation in EMW's MEEIA BDR program produce benefits to all EMW customers?

Issue A.2.b is as follows: Does EMW's MEEIA BDR program have a sufficient verification process for curtailments?

Executive Summary

Issue A.1.a --- If the Commission approves Nucor's participation in the MEEIA BDR program, what, if any, conditions should Nucor's participation in the MEEIA BDR program be subject to?

If the Commission decides that Nucor's demand-response participation should occur through EMW's MEEIA BDR program, the Commission should only approve that participation subject to Staff's recommended conditions. Those conditions do not punish Nucor for failing to curtail. They make participation lawful, measurable, verifiable, and protective of non-participating customers under § 393.1075.

EMW's answer is that Staff's conditions exceed those imposed on other MEEIA BDR participants. That is true, but it is not a defect in Staff's position. Nucor is not an ordinary MEEIA BDR participant. EMW's own witness recognized that Nucor is a unique and very large customer. Nucor operates under a special SIL arrangement, was not eligible to participate in MEEIA when the Cycle 4 order was issued, has a volatile load unlike ordinary BDR customers, and occupies a class of one for purposes relevant to cost recovery. A unique customer requires a customer-protective set of conditions.

The most important condition is the firm cap or firm service level. The ordinary 9-of-10 day-averaging method does not resolve the volatile-baseline problem for Nucor. Without an objective cap, EMW and Nucor may receive credit for reductions that cannot be competently verified as customer-realized benefits. The firm cap supplies the enforceable condition missing from the Non-Unanimous Stipulation.

The remaining conditions implement the same principle. Verified SPP resource-adequacy credit ensures that claimed benefits are real. All-cost net-benefit accounting ensures that incentives, administrative costs, EM&V costs, earnings opportunity, and other program costs are counted before customers are charged. Ratepayer-realization and hold-harmless conditions protect non-participating customers from subsidizing a class-of-one customer that does not pay the DSIM charge funding MEEIA. Clawback or status-quo-ante protection restores customers if promised benefits do not materialize. Payment only for verified performance prevents incentives from being paid without proof. Winter curtailment capability and future peak-demand accounting ensure that Nucor's participation remains aligned with SPP resource-adequacy needs.

Staff's primary position remains that Nucor's demand-response participation should occur outside MEEIA. But if the Commission chooses MEEIA BDR, Staff's conditions are the minimum safeguards necessary to make Nucor's participation practical, enforceable, and protective of EMW's other customers.

Issue A.2 — Would Nucor's participation in EMW's MEEIA BDR program produce benefits to all EMW customers?

Staff is not asking the Commission to reject demand response. Staff is asking the Commission to require EMW to show that Nucor's participation in EMW's MEEIA BDR program will produce measurable benefits for all EMW customers before non-participating customers are required to fund Nucor's incentives.

EMW and Nucor have not made that showing. Their principal support rests on avoided-cost assumptions developed for MEEIA Cycle 3, based on data from a 2017 request for proposals. That prior avoided-cost determination belonged to a different MEEIA cycle, which has ended. The current MEEIA cycle was approved without ordered avoided costs. Stale avoided-cost assumptions from a prior cycle do not establish that paying Nucor approximately \$1.14 million in customer-funded incentives now will produce present, measurable benefits for all EMW customers.

Nor have EMW and Nucor shown that MEEIA BDR is the only practical way to obtain any demand-response value Nucor may provide. The record shows that other approaches remain available, including a tariff or other structure outside MEEIA directed more precisely to SPP resource-adequacy value. EMW's witnesses did not establish that SPP rules prevent such an approach.

Timing confirms that the Commission need not approve Nucor's MEEIA participation now. Nucor's participation would not assist EMW's SPP resource-adequacy position until summer 2027. EMW therefore has time to design a more appropriate mechanism that captures any genuine resource-adequacy benefit without shifting unsupported MEEIA costs to customers.

For these reasons, the Commission should reject Nucor's participation in EMW's MEEIA BDR program under Issue A.2.

Issue A.2.b — Does EMW's MEEIA BDR program have a sufficient verification process for curtailments?

If the Commission permits Nucor to participate in EMW's MEEIA BDR program, it should require a firm, objective, and enforceable cap as a condition of credit. Staff is not asking the Commission to reject demand response. Staff is asking the Commission to ensure that non-participating customers do not pay for demand-response credits that cannot be measured or verified.

EMW and Nucor argue that no separate firm cap is needed because the 9-of-10 averaging method already supplies a baseline. Staff disagrees. The 9-of-10 method

averages quantities from past time periods. But due to the variable and volatile nature of Nucor's operation, no average drawn from past time can predict the load level Nucor would have reached in a future demand-response interval absent the call.

Evergy's defense of the 9-of-10 method is pedigree, not proof. Evergy shows that ADM & Associates used the method, that Evergreen Economics oversaw the work, that the method was not flagged in prior years, that participants were paid only after measured reductions, and that SPP separately validated MWs for resource-adequacy purposes. But that evidence shows only that the method passed through recognized hands. It does not show that anyone tested whether the method reliably predicts Nucor's event-period but-for load.

That distinction matters. Evergy identifies no testimony showing that ADM, Evergreen, SPP, or any other reviewer considered whether Nucor's highly volatile load makes a 9-of-10 past-period average non-predictive for this customer. Nor does Evergy identify testimony showing that those reviewers accounted for the nature of Nucor's operation: a steel manufacturing and electric-arc-furnace load materially different from ordinary BDR customers, large enough and volatile enough to require a special SIL contract. Evergy's proof in the case actually now before this Commission therefore stops at institutional pedigree. It does not cross the evidentiary bridge to predictive validity.

So the problem is not merely mathematical. It is evidentiary. Historical averages measure what happened before. Demand-response credit requires a reliable basis for determining what would have happened during the event. If the record does not show a stable relationship between Nucor's past load and its event-period load, then rearranging past numbers by averaging, weighting, or multiplying them does not create the missing proof.

That is why a firm cap is necessary. The firm cap should not be confused with the baseline. A baseline estimates the counterfactual: what Nucor would have used absent the demand-response call. A firm cap establishes a condition for credit: Nucor must keep its actual event-period load at or below a Commission-approved level. If Nucor exceeds that cap during the event, EMW and Nucor receive no credit for that event.

The firm cap therefore protects customers by assigning the risk of uncertainty to the parties seeking the credit and receiving the benefit. When Nucor's event-period counterfactual cannot be reliably constructed, non-participating customers should not bear the risk of paying for an unverifiable reduction. That risk should fall on EMW and Nucor.

For these reasons, if the Commission permits Nucor to participate in MEEIA BDR, it should require a firm cap as an objective, enforceable condition for any demand-response credit or incentive payment.

Argument

Issue A.1.a

If the Commission decides that Nucor's participation in demand response is best served by EMW's MEEIA BDR program, it is imperative that the Commission subject participation to Staff's recommended conditions.¹ As put forward by Staff, these conditions do not punish Nucor for not curtailing; instead, they ensure that Nucor is meeting the minimum threshold set under § 393.1075 for participation in MEEIA, ensuring that MEEIA-funded participation produces competently measurable, verifiable, customer-realized net benefits and that non-participating customers are protected if the benefits fail to materialize. As argued in more detail in Staff's Initial Brief, these conditions are the terms that make participation in the MEEIA BDR program lawful and practical.²

EMW argues that no conditions beyond those agreed to in the Non-Unanimous Stipulation between it and Nucor are necessary.³ EMW argues that these conditions exceed what any other MEEIA BDR participant must satisfy.⁴ The short answer to that is yes, these do exceed the conditions that other MEEIA BDR participants must meet, because Nucor is not like other MEEIA BDR participants; EMW witness Brian File recognized this difference on the stand, agreeing that Nucor is a "unique"⁵ and "very large"⁶ customer. Because of Nucor's unique nature, a unique solution is necessary if the Commission determines that EMW's MEEIA BDR program is the best option. While Staff's primary position is that the better option is for Nucor

¹ Exhibit 105, Memorandum Attached to Staff's Suggestions in Opposition, pg. 7, lines 13-38 and pg. 8, lines 1-21.

² Staff's Initial Brief, pg. 44-46.

³ Evergy Missouri West's Initial Post-Hearing Brief, pg. 21.

⁴ *Id.*

⁵ Transcript Vol. I, pg. 106, lines 21-25 and pg. 107, lines 1-4.

⁶ *Id.*, pg. 107, lines 2-4.

to participate in demand response outside of MEEIA, the conditions put forward by Staff would, at least, be a step in the right direction regarding MEEIA and unique, very large customers such as Nucor.

Condition 1: Firm Cap/Firm service level or account for load variation. EMW opposes this condition on the basis that it is vague, no other BDR participant is subject to such a condition, and no other customer is being barred from MEEIA for volatility.⁷ However, as has been explained in Exhibit 105 and extensively in Staff's Initial Brief and this Reply Brief, the firm cap/ firm service level idea is embraced by SPP. The Commission should order this condition for Nucor's participation in the MEEIA BDR program because Nucor is not like any other customer, was not permitted to participate in MEEIA at the time of the Commission's MEEIA Cycle 4 order because of the SIL agreement, and the volatile baseline problem is left unresolved in the Non-Unanimous Stipulation, which relies on ordinary day-averaging that overstates savings when used for a volatile customer such as Nucor.

Condition 2: Verified SPP Resource Adequacy Credit. EMW argues that this is already its practice.⁸ The Commission should thus order this condition.

Condition 3: All-Cost Net-Benefit Calculation. EMW argues that this singles Nucor out because the earnings opportunity is treated as a program cost, pointing out that the Cycle 4 order does not apply different, demanding standards to individual customers.⁹ Again, Nucor was not eligible for participation in MEEIA at all when the Cycle 4 order was issued due to the SIL agreement. And again, due to the unique nature of Nucor, a unique approach would be warranted if Nucor were to now participate in the MEEIA BDR program.

⁷ Every Missouri West's Initial Post-Hearing Brief, pg. 22.

⁸ *Id.*

⁹ *Id.*, pg. 22-23.

Condition 4: Ratepayer Realization by Class. EMW argues that this condition is untenable because nothing new is being created, and a new cost-effectiveness test is not warranted for a single customer. Again, Nucor is a unique customer that could not participate in MEEIA when the Commission issued its Cycle 4 order. Further, Nucor operates in a class of one under the SIL tariff, and because it is an opt-out customer as permitted under § 393.1075.7 and Commission Rules 20 CSR 4240-20.094 (7)(A)-(M), Nucor does not pay a Demand Side Investment Mechanism (“DSIM”) rate. The DSIM charge funds EMW’s MEEIA program, including the BDR program. As Staff witness Mark Kiesling explained in his rebuttal testimony:

Nucor currently is the only customer in it’s [sic] rate class, so if the Commission would allow Nucor to participate in EMW’s BDR program and Nucor is not subject to the DSIM charge, there would be no other SIL customers to pay for the costs of Nucor participating in the BDR program. Staff is unaware at this time how these costs would be redistributed to other customers, and could potentially cause additional costs to EMW ratepayers.¹⁰

EMW has not provided an answer to how these costs would be redistributed, simply noting that the statute and rules allow for opt-out customers to participate in MEEIA demand response programs.¹¹ Staff does not dispute that fact, but because Nucor is a unique customer operating within a class of one, with no other class members paying the DSIM charge that funds the MEEIA BDR program, a unique approach is warranted, and the Commission should order this condition if it permits Nucor to participate in the MEEIA BDR program.

Condition 5: Hold-Harmless Inclusion. EMW opposes this condition for the same reasoning as it opposes Condition 4.¹² EMW further points back to the testimony of Linda Nunn, who states that Nucor’s participation in MEEIA should not be seen as a cost of

¹⁰ Exhibit 101, Rebuttal Testimony of Mark Kiesling, pg. 6, lines 8-13.

¹¹ Exhibit 4, Surrebuttal Testimony of Brian A. File, pg. 4, lines 12-21.

¹² Evergy Missouri West’s Initial Post-Hearing Brief, pg. 23.

serving Nucor for the purposes of the hold harmless provision with the SIL agreement.¹³ However, as correctly pointed out by Staff witness Justin Tevie and the OPC in its initial brief, allowing Nucor to participate in the BDR would result in a discounted bill, which other ratepayers would not receive.¹⁴ This discounted bill will result in EMW receiving less revenue from Nucor and thus result in a “deficit in revenues provided by any customer served under this tariff.”¹⁵ Ms. Nunn’s statement that Nucor’s participation in the MEEIA BDR program is not a cost of serving Nucor is wrong, and thus the costs associated with Nucor’s participation must be included in the hold harmless provision. Per EMW witness Brian File, EMW knows exactly how much incentive would be paid back to Nucor under the MEEIA BDR program, and that amount can be separated from incentive money spent on other participants.¹⁶ Implementation of this condition would not force any extra work on the Company, while maintaining the protections for other ratepayers predicated within the SIL agreement.

Condition 6: Clawback/status-quo-ante protection. EMW opposes this condition and argues that ratepayers are already protected by the Non-Unanimous Stipulation’s conditional approval and the MEEIA prudence reviews.¹⁷ Again, due to the unique nature of Nucor and its service, a unique solution is necessary to ensure that the hold harmless provision of the SIL agreement is honored. If verified, customer-realized benefits do not exceed all costs, ratepayers should be credited or refunded all amounts necessary to restore non-participating customers to the status quo ante.¹⁸

¹³ *Id.*

¹⁴ Exhibit 102, Rebuttal Testimony of Justin Tevie, pg. 3, lines 2-4 and OPC Initial Brief, pg. 10.

¹⁵ OPC Initial Brief, pg. 10; *see also* EMW Tariff P.S.C. Mo. No. 1 1st Revised Sheet No. 157.2.

¹⁶ Transcript Vol. 1, pg. 135, lines 1-7.

¹⁷ Evergy Missouri West’s Initial Post-Hearing Brief, pg. 23-24.

¹⁸ Ex. 105, pg. 8, lines 4-6.

Condition 7: Payment only for verified performance. In practice, EMW agrees with the verified performance principle.¹⁹ However, the Company opposes tying performance to the firm cap/firm service level that is the focus of Staff Condition 1.²⁰ Were the Commission to order Staff's Condition 1, the Commission should also order this condition, to ensure payment only occurs for verified performance under the firm cap/firm service level.

Condition 8: Demonstrate winter curtailment capability. EMW points out all current MEEIA BDR customers are eligible to be called in winter, and Nucor would be treated the same.²¹ Currently, Nucor's SIL agreement prohibits it from participation in any demand response events, including winter. This condition will ensure that Nucor's ability to curtail is consistent with future SPP resource-adequacy periods,²² thus ensuring that EMW is able to receive the necessary resource adequacy accreditation in the future. The Commission should order this condition if it believes Nucor's participation in the MEEIA BDR program is the best demand response option.

Condition 9: Full peak-demand capacity accounting in future tracking report. EMW opposes this condition as framed, alleging it is "impermissibly vague."²³ EMW further argues that this is work already being performed by the Company.²⁴ Since this is work already being performed by the Company, the Commission should order this condition if it decides that Nucor's participation in the MEEIA BDR program is the best demand response option.

¹⁹ Evergy Missouri West's Initial Post-Hearing Brief, pg. 24.

²⁰ *Id.*

²¹ *Id.*

²² Ex. 105, pg. 8, lines 11-13.

²³ Evergy Missouri West's Initial Post-Hearing Brief, pg. 24.

²⁴ *Id.*, citing Exhibit 6, Surrebuttal Testimony of Linda Nunn, pg. 5-7.

Issue A.2

As detailed extensively in Staff's Initial Brief, EMW has not demonstrated that Nucor's participation in EMW's MEEIA BDR program would produce benefits to all EMW customers.²⁵ The clearest argument in favor of the lack of benefits is EMW and Nucor's misplaced reliance on avoided costs used during Nucor's improper participation in EMW's MEEIA Cycle 3.²⁶ Avoided costs from a Commission order ("MEEIA Cycle 3 Order") issued six years ago,²⁷ in a previous MEEIA Cycle that ended in 2024.

Avoided costs are the cost savings obtained by substituting demand side programs for existing and new supply side resources.²⁸ Avoided costs are important because they are used to calculate whether a demand side program is cost-effective as part of the Total Resource Cost Test ("TRC").²⁹ The MEEIA Cycle 3 Order explicitly laid out how to calculate the avoided costs that were to be used for the purposes of the TRC. This calculation was based on the average costs of seven bids received by EMW in response to a Request for Proposals for generating capacity, and was seen as a market based equivalency for avoided costs.³⁰ This calculation differed from the avoided costs calculation proposed by EMW in its direct testimony, which was originally the levelized cost of a hypothetical Combustion Turbine ("CT").³¹

²⁵ Initial Brief of Staff, pg. 12-14.

²⁶ Initial Brief of Nucor Steel Sedalia, LLC, pg. 5-7; *see also* Evergy Missouri West's Initial Post-Hearing Brief, pg. 10.

²⁷ Amended Report and Order ("MEEIA Cycle 3 Order"), Case No. EO-2019-0132, pg. 28, ordered para. 21 (March 11, 2020). The Commission ordered "Avoided costs shall be calculated using the average cost of the seven bids to supply capacity with Evergy Missouri West received in response to a 2017 Request for proposal, as described in testimony."

²⁸ Commission Rule 20 CSR 4240-20.092(1)(C).

²⁹ Amended Report and Order, Case No. EO-2019-0132, pg. 10, para. 14.

³⁰ *Id.*, pg. 13-14, para. 35.

³¹ *Id.*, pg. 11, para. 18.

The Commission rejected the avoided costs calculation based on the hypothetical CT because those avoided costs “overstates the avoided costs of generation transmission and distribution facilities,”³² “utilize dated information from 2015,” and were “not appropriate because Evergy is not actually avoiding the cost of building a CT.”³³ Ultimately, the Commission favored the market based equivalency for avoided costs because “using capacity bids from late 2017 yields more current data to calculate avoided costs.”³⁴

For the purposes of Nucor participation in an entirely different MEEIA Cycle, which was approved by the Commission with no ordered avoided costs,³⁵ EMW and Nucor believe stale data from 2017 is the strongest support for Nucor receiving approximately \$1.14 million in incentive money,³⁶ funded by ratepayers, for participation in EMW’s MEEIA BDR program. The Commission should disregard such arguments based upon its reasoning in the MEEIA Cycle 3 Order, which embraced avoided costs calculations based on data that is now almost ten years old.

While Nucor also argues that MEEIA is the best option “to achieve MW reduction savings that support Evergy’s needs towards meeting its resource adequacy requirements for SPP,”³⁷ neither it nor EMW state that this is the only way to do it. While EMW argues that no alternative is viable at this time,³⁸ that alone does not mean that the Commission should blindly approve Nucor’s participation in EMW’s MEEIA BDR program, especially when other alternatives as put forward by Staff and the OPC are available.

³² *Id.*, para. 20.

³³ *Id.*, pg. 12, para. 24.

³⁴ *Id.*, pg. 26.

³⁵ Exhibit 4, Commission’s Order Approving Agreement and Tariffs issued on December 11, 2024, in Cases EO-2023-0369 and EO-2023-0370.

³⁶ Exhibit 101, Rebuttal Testimony of Mark Kiesling, pg. 4, line 3.

³⁷ Initial Brief of Nucor Steel Sedalia, LLC, pg. 9.

³⁸ Evergy Missouri West’s Initial Post-Hearing Brief, pg. 15.

EMW's SPP expert, JP Meitner, did not know that Nucor's load was volatile, but could still somehow speak to the requirements of SPP around the validity of such loads for resource adequacy purposes.³⁹ This despite the volatility of Nucor's load being a key component of this case, and SPP's superior process for evaluating, measuring, and verifying such load. He did not know if any Aggregators of Retail Customers, or ARCs, were operating with EMW's service area.⁴⁰ He did not know if Nucor would qualify for participation in an ARC.⁴¹ Mr. Meitner also did not know if there was anything preventing EMW from creating a tariff that would allow Nucor to participate directly in SPP's resource adequacy demand response program in a manner that would count towards EMW's resource adequacy outside of MEEIA.⁴² With Mr. Meitner being the Company's SPP expert, his statement would imply that there is nothing from SPP that would prevent such an arrangement, thus providing a better option for EMW's customers to enjoy the benefit of Nucor's participation in demand response outside of MEEIA. EMW witness Brian File confirmed that nothing was stopping EMW from designing a demand response tariff outside of MEEIA.⁴³ And since Nucor's participation in a demand response program would only help EMW with SPP resource adequacy in 2027,⁴⁴ there is plenty of time for EMW to do just that.

The best way to ensure that EMW's customers benefit from Nucor's participation in demand response is to exclude participation from the MEEIA BDR program as an option. With resource adequacy accreditation not needed until summer 2027, EMW has plenty of time to design a new tariff if necessary.

³⁹ Transcript Vol. I, pg. 74, lines 23-25 and pg. 75, line 1.

⁴⁰ *Id.*, pg. 78, line 25 and pg. 79, lines 1-3.

⁴¹ *Id.*, pg. 79, line 10-21.

⁴² *Id.*, pg. 91, lines 24-25 and pg. 92, lines 1-7.

⁴³ *Id.*, pg. 118, lines 17-25 and pg. 119, lines 1-5.

⁴⁴ *Id.*, pg. 131, lines 15-21.

Issue A.2.b

I. The Commission should Not confuse a baseline with a firm Cap

Evergy's 9-of-10 method builds a baseline by averaging kW amounts from prior non-event days. That procedure produces a number. But the legal question is not whether a number can be produced. The legal question is whether that number is even relevant: Whether it tends to prove what Nucor would have used during the particular demand-response interval if there had been no call.⁴⁵ A baseline is a claimed estimate of but-for use. It is offered to prove a counterfactual: what the customer would have used if the demand-response call had not occurred. A firm cap is different. It is not a counterfactual prediction. It is a prospective compliance condition: The customer either stays at or below the cap during the event, or the customer receives no credit for that event. Evergy's position collapses those two concepts. It argues that because its average is called a "baseline," no firm cap is needed. Staff's point is that the label—"baseline"—does not solve the proof problem. Calling an average a baseline does not make the average a "but-for" predictive.

II. Averaging Peaks and Timing Frequency Are Different Questions

The Commission should keep the two questions separate:

⁴⁵ As Evergy describes the process, a third-party evaluator builds a baseline from nine of the last ten comparable non-event days. The evaluator then compares that baseline to Nucor's metered usage during the event period. The difference is treated as the demand reduction and forms the basis for Nucor's bill credit and Evergy's Earnings Opportunity amount.

Signpost	Plain question	Axis	What it can show	What it cannot show
Averaging peaks	How much?	Quantity	The average size of prior observed loads or peaks. It may summarize historical amounts.	When the next peak would have occurred, or whether a high-load condition would have existed during the event. An average can summarize those observed amounts but SPP resource adequacy relies on the demand on peak.
Frequency / timing	When?	Time	A pattern only if the data actually show one.	A counterfactual event-period load without a predictive bridge.

Evergy treats the first question as though it answered the second. It does not. A quantity average cannot become a timing prediction unless other evidence supplies the missing connection. SPP resource adequacy and demand response performance turn on demand during the relevant peak or event period. That is a timing question. A prior average may describe the past; it does not show the demand on peak unless the missing connection is proved.

III. The Axis Point, Stated for Practical Use

Picture a simple graph of Nucor's use. Let the X-axis be quantity: how many kW. Let the Y-axis be time: when the use occurred. The labels are not important. The point is that the axes measure different things. Evergy's method works from the quantity axis. It takes prior kW amounts, adds them, and divides. That gives an average quantity. Staff's objection is on the time axis. Staff asks when the next peak or change in load would have occurred absent the demand-response call. A graph does not create facts. It only displays facts already known. To draw a function connecting X and Y, there must first be data showing that relationship.

Without that data, a number calculated on the X-axis tells the Commission nothing reliable about where the next point would fall on the Y-axis. More and more arithmetic on the same quantity data does not cure the defect. Multiplying 2 by 4, multiplying 4 by 2, or multiplying 1 by 1 by 1 by 1 by 8 rearranges X-axis numbers. It does nothing with respect to Y. The missing time-axis proof remains missing.

IV. Simple Numbers Show the Difference

The difference can be shown with simple numbers. Instead of 2 times 4, 4 times 2, or 1 times 1, times 1, etc., consider the following:

Day	Stable customer usage	Frequency-volatile customer usage
1	48	10
2	50	9
3	51	9
4	49	5
5	50	5
6	52	5
7	49	2
8	50	2
9	51	2
10	50	1
Average	50	5

For the stable customer, the average of 50 is useful because the observations cluster around 50. Most days resemble the average, so the average describes ordinary use. For the volatile customer, the average of 5 may be mathematically correct but is predictively useless. If the customer used exactly 5 only three times in ten days, and materially different amounts the other seven days, **then the average does not describe ordinary use, i.e., does not describe but-for demand call “baseline”** The values 10, 9, 2, and 1 are not mathematical clutter. They are actual operating states. The average is not wrong as arithmetic. It is wrong as relevant evidence. It is wrong as proof of the event interval because it does not tell the Commission whether the next demand-response interval would have been 10, 9, 5, 2, 1, or

something else. It summarizes past use across time; it does not identify the but-for load during the demand-response event.

V. A Timing Example Shows the Same Problem

Suppose a customer reaches a high-use condition once in each ten-day period, but the high-use day moves around. Over 100 days, the pattern might look like this:

Ten-day period	Day on which the high-use event occurs
Days 1-10	Day 3
Days 11-20	Day 17
Days 21-30	Day 21
Days 31-40	Day 40
Days 41-50	Day 44
Days 51-60	Day 58
Days 61-70	Day 62
Days 71-80	Day 76
Days 81-90	Day 89
Days 91-100	Day 95

Now Day 101 arrives, and Day 101 is the demand-call day. The prior 100 days show that a high-use event occurred once in each ten-day period. They do not show whether Day 101 would have been a high-use day. That is the time frequency point. The averaged data may show that a peak occurred *somewhere*. But the averaged data are stone silent on where the next peak would fall on the timeline. Averaging the quantities used during the prior days does not answer that placement question.

VI. More Averaging Does Not Cure the Defect

Layering more arithmetic on the same data does not create the missing connection. A weighted average, a standard-deviation adjustment, or another refinement may better describe historical quantities in the lookback period. But description is not prediction--does not even move the needle towards prediction--where the underlying data is wholly volatile. This volatility is the case-decisive point. Statistics can summarize observations. They cannot

manufacture the premise that the lookback window predicts the demand-response interval. If the underlying issue is unexplained volatility in the timing of load changes, then the 9-of-10 baseline is still an average of unexplained volatility.

For that reason, Evergy's 9-of-10 method has the appearance of precision while avoiding the question that matters. It produces a number, calls it a baseline, and then treats that arithmetic as proof of unobserved event-period load. That is not proof of curtailment. It is a calculation without the necessary predictive bridge. It is a classic example of “begging a question.”

VII. The Regulatory Answer Is a Firm Cap and Allocation of the Risk of Uncertainty

Staff does not, of course, contend that a different average can scientifically reconstruct the unknowable event-period counterfactual. It cannot. If the defect in Evergy's method is the absence of a predictive connection between prior quantities and event-period timing, that defect cannot be cured by performing more arithmetic on the same quantity data. But there is an answer on the present record, not scientific, but regulatory. The Commission may simply set a regulatory governing rule before the demand-response event occurs. That rule would tell Evergy and Nucor, in advance, what must be done to earn ratepayer-funded credit. It would also tell the Commission, and any reviewing court, what standard governed the conduct being judged.

Staff continues to favor a solution rather than rejection of the application or stipulation. Staff suggests that the Commission order Evergy and Nucor to propose: peak sensitivity adjustment; a firm cap; an evaluated reduction method; and a compensation method. Those proposals should not, however, be treated as proof that the event-period counterfactual

has been reconstructed. They should be treated as regulatory tools for allocating the risk of uncertainty.

The firm cap is the central tool. If Nucor stays at or below the cap during the demand-response event, the event may be evaluated under the Commission-approved method. If Nucor exceeds the cap, the evaluated reduction is zero. That result does not pretend to know what Nucor would have used absent the call. It allocates the risk of uncertainty to the parties who have placed the uncertainty before the Commission and are seeking a credit, rather than on the customers asked to pay for it. There follows a possible procedure.

Step	Element	Use and limit
1	Overall average	Begin with a broad historical average of relevant interval kW usage during comparable periods. This supplies a starting point, not the final rule and not proof of event-period but-for use.
2	Peak-sensitivity adjustment	Calculate the absolute value of deviations from the average demand in each hour over the last 30 non-event days. The overall average is then reduced by the deviation value. This recognizes that high peaks and low demand are not mathematical clutter if they are part of Nucor's actual operation.
3	Firm cap	The cap should be established based on Nucor's evaluation of its operations and willingness to curtail to that value. If the value is exceeded in any hour during an event, the customer receives no credit for the reduction.
4	Evaluated reduction	The final evaluated reduction in demand is calculated by subtracting the peak-sensitivity adjustment and the firm cap from the overall average in MW in each hour of called events. If the firm cap is exceeded during an event, the evaluated reduction shall be zero.
5	Compensation amount	The compensation amount is the average of the evaluated reduction amount multiplied by the BDR curtailment amount in \$/MW.

Staff reiterates: This use of averaging and weighting should not be described as scientific proof. Staff acknowledges, and indeed insists, that it is not. In one sense, it still

begins where Evergy begins (but Evergy then stops): with historical quantities. The difference is legal and regulatory. Evergy proposes the average as though it proves the event-period counterfactual. Staff proposes historical data as a starting point for a conservative compliance rule set in advance.

That distinction matters. When the counterfactual cannot be reliably reconstructed, the Commission must decide who should bear the risk of harm. Staff calls that decision the “allocation of the risk of uncertainty.” The risk should not fall on non-participating customers who fund the program. It should fall on the directly benefited parties: Evergy and Nucor. A firm cap does that. In default of a nonprovable “baseline”, it allocates the risk of uncertainty away from paying customers and onto the participant seeking ratepayer-funded credit. It does not pretend to solve unpredictable volatility scientifically. It simply eliminates the need to predict the unpredictable. The Commission need only determine whether Nucor stayed at or below a regulatory firm cap during the call. That is the difference between speculative reconstruction and administrable regulation. Where a solution meets a problem.

VIII. Nucor Is Not an Ordinary MEEIA Customer for This Purpose

Evergy argues fairness: Nucor should be treated like other MEEIA customers. But that argument assumes away the problem—begs the question. Nucor is not an ordinary customer with an ordinary load profile. Nucor is Evergy's most unique customer, and its rates are set in a materially different way, including through a long-term contractual arrangement rather than ordinary exposure to rate changes in general rate cases. The appeal to fairness therefore becomes a way of saying that volatility should be ignored. It says, in effect, that averaging is acceptable for Nucor because averaging is used for other customers, including customers whose usage is not materially volatile in the same way. That is not equal treatment. It is treating

unlike conditions—and customers—as though they were alike. For a stable customer, averaging may be a practical approximation. For a highly volatile customer, averaging is categorically non-predictive. The Commission should not let a general fairness label hide the specific fatal evidentiary defect presented by Nucor's volatility.

IX. Evergy's Defense of the 9-of-10 Method Is Pedigree, Not Proof

Evergy's defense of the 9-of-10 method is that a recognized process was followed. Evergy states that ADM & Associates sets and runs the baseline; Staff's EM&V consultant, Evergreen Economics, oversees the work; neither ADM nor Evergreen flagged Nucor's baseline or method in 2021 or 2022; participants are paid only after measured reductions; and SPP separately validates the MWs that count toward resource adequacy.⁴⁶ Evergy repeats that Staff's proposed firm cap or variability-adjusted baseline is not required by MEEIA, is not applied to other BDR participants, and is drawn from wholesale-market concepts rather than the approved retail BDR program.⁴⁷ That is a pedigree argument. It shows who used the method, who oversaw it, that it was not flagged, and that related values were accepted for resource-adequacy purposes. It does not show that the method answers Staff's baseline objection.

A review of Evergy's sponsored testimony confirms the same point. Evergy identifies no testimony that ADM, Evergreen, SPP, or any other reviewer considered whether Nucor's highly volatile load makes a 9-of-10 past-period average non-predictive of event-period but-for load. It identifies no testimony that any reviewer even knew of that problem. Nor does Evergy identify testimony showing that the reviewers knew anything material about the nature of Nucor's

⁴⁶ EMW Initial Brief at 13-14.

⁴⁷ EMW Initial Brief at 21-22.

business: that Nucor is a steel manufacturing/electric-arc-furnace operation, that its load is materially different from ordinary BDR customers, that its size and operating characteristics produced special high-demand needs, or that those needs led to a special SIL contract. Evergy's proof therefore stops at pedigree. It does not cross the bridge to predictive validity.

X. Application to Nucor and Conclusion

The Commission's ultimate question is not whether Nucor reduced load compared to a calculated number. The question is whether Nucor reduced load compared to what it would have used absent the call. If Nucor would ordinarily have been in a lower-load operating state during the event, then a lower event-period reading may not be curtailment at all. If Nucor would have been in a high-load operating state, the same reading may reflect real curtailment. Evergy's average cannot distinguish those possibilities unless the missing timing bridge is supplied.

Evergy and Nucor point to the formula, third-party review, prior use, SPP accreditation, and the fact that payments are tied to measured reductions. Those points show that a procedure exists. They do not show that the procedure predicts Nucor's but-for load during the specific demand-response interval. Staff readily acknowledges that a firm cap does not reconstruct the historical counterfactual either. But exactly that is its strength. It rejects “smoke and mirrors math” and pretending that the counterfactual can be reconstructed after the fact. It gives the Commission an objective regulatory rule and assigns the risk of uncertainty to the parties asking customers to pay.

Staff suggests that the Commission should deny approval of the stipulation and limit Nucor's participation in demand response to exclude participation in EMW's MEEIA BDR program. If the Commission were to determine that EMW's MEEIA BDR program is the best way

for Nucor to participate in demand response, then the Commission should also order Staff's recommended conditions, including having Evergy and Nucor propose an acceptable firm cap, with supporting values, an evaluated megawatt reduction method, and a compensation method with a no-credit consequence for any event-period exceedance of the firm cap.

WHEREFORE, Staff prays the Commission will accept its Reply Brief as compliant with its orders.

Respectfully Submitted,

/s/ *Paul T. Graham* #30416

Senior Staff Counsel
Missouri Public Service Commission
Travis Pringle #71128
Chief Deputy Counsel
Ray Cunneen #77925
Legal Counsel
P.O. Box 360
Jefferson City, Mo 65102-0360
(573) 522-8459
Paul.graham@psc.mo.gov

**Attorneys for the Staff of the
Missouri Public Service Commission**

CERTIFICATE OF SERVICE

The undersigned certifies by his signature below that on July 9, 2026, he filed the above captioned pleading in the EFIS file of the Missouri Public Service Commission.

/s/ *Paul T. Graham*