

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

In the Matter of the Application of	)	
KCP&L Greater Missouri Operations	)	
Company for Approval of a Special	)	Case No. EO-2019-0244
Incremental Load Rate for a Steel	)	
Production Facility In Sedalia, Missouri	)	

**RESPONSE OF NUCOR STEEL SEDALIA, LLC  
TO THE APPLICATION FOR REHEARING OF MECG**

COMES NOW, Nucor Steel Sedalia, LLC, a Division of Nucor Corporation (“Nucor”), and respectfully submits this response to the Application for Rehearing (“Application”) filed by the Midwest Energy Consumers Group (“MECG”). Nucor respectfully requests that the Commission deny the Application.

**I. ARGUMENT**

On October 28, 2019, MECG withdrew its objection to the Stipulation recommending approval of the ten-year power supply contract between Nucor and Evergy Missouri West, Inc., (f/k/a/ KCP&L Greater Missouri Operations Company) (“Evergy”). On November 13, 2019, the Commission issued its Report and Order (“Report and Order”) approving the Stipulation and the Nucor Contract, justifiably treating the Stipulation as unanimous.<sup>1</sup> Now, despite the fact that the Commission approved a Stipulation to which MECG does not object,<sup>2</sup> MECG contradicts itself yet again by requesting rehearing of the Commission’s order, absurdly claiming that the “non-unanimous stipulation . . . is contrary to economic development interest.”<sup>3</sup> MECG alleges its

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<sup>1</sup> Report and Order at 14; *see also* 20 CSR 4240-2.115(2)(C) (“If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.”).

<sup>2</sup> MECG’s withdrawal of its objection constitutes a full waiver of its right to a hearing. *See* 20 CSR 4240-2.115(2)(B).

<sup>3</sup> Application at 2.

reason for requesting rehearing is that the Report and Order goes beyond the Stipulation, but this claim is false.

Whether due to animus toward Evergy and/or Nucor, or some other ulterior motive on the part of MECG, MECG seems intent on unnecessarily prolonging this case. In Nucor's view, MECG's actions have caused all parties, and the Commission, to spend more time and resources on this case than would otherwise have been necessary under the Commission's rules. While the ongoing uncertainty regarding Nucor's power supply arrangements caused by MECG's inconsistent and contradictory behavior is a cause of frustration for Nucor, the difficulty in getting a power supply arrangement approved for a major new project like the Sedalia plant (due to road blocks thrown up by a party that claims to represent the interests of industrial and large commercial customers) could also hinder Missouri's larger ongoing economic development efforts.

While MECG's arguments are inexplicable and without merit, they are also unsupported by evidence or law. For the reasons set forth below, Nucor respectfully requests that the Commission quickly and firmly deny MECG's Application.

**A. MECG's Application Conflicts with MECG's Non-Objection to the Stipulation**

The features that MECG appears to challenge in its Application, including the ten-year term of the Nucor Contract, the establishment of the contract and rate through the SIL Tariff rather than through Section 393.355, RSMo, and the omission of the Section 393.355 tracker mechanism, are all reflected in the structure of the Stipulation. MECG surely knew and understood (or should have known and understood) all these elements when it withdrew its objection to the Stipulation on October 28, 2019. MECG should not be heard to complain about these elements now that the Commission has approved the Stipulation. By withdrawing its

objection, MECG waived its right to challenge the provisions of the Stipulation.<sup>4</sup> MECG's arguments opposing the approval of a ten-year contract outside of Section 393.355 contradict MECG's stated non-opposition to the Stipulation and should be rejected.

**B. MECG's Claims About the Impact of the Nucor Contract on Other Customers are Unsupported and Inaccurate**

The claims MECG makes about the effect of the Nucor rate on other Evergy customers are inaccurate and unsupported by evidence in the record. MECG asserts that "unlike the MECG position which seeks to ensure that net income benefits are used to help address affordability concerns of hundreds of thousands of Evergy customers, the non-unanimous stipulation instead seeks to transfer those net income benefits directly to Evergy."<sup>5</sup> This claim is not supported by any record evidence. In fact, the unrebutted evidence leads to exactly the opposite conclusion.<sup>6</sup> The rate under the Nucor Contract is expected to recover more than Nucor's incremental cost, and those additional revenues will be used to make a contribution to the fixed costs of Evergy's system, thereby reducing rates for Evergy's other customers.<sup>7</sup> And, if the rate does not cover Nucor's costs, Evergy's other customers will be held harmless.<sup>8</sup>

By contrast, under the mechanism MECG has indicated it prefers, the Commission would be required to allocate the revenue difference between Nucor's rate and Evergy's otherwise applicable standard rate to all other customers.<sup>9</sup> In the event that Nucor's rate does not cover Nucor's incremental costs, other customers would have to make up the difference.<sup>10</sup> MECG

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<sup>4</sup> MECG's failure to object to the Stipulation constitutes a waiver of its right to hearing in the first instance. *See* 20 CSR 4240-2.115(2)(B).

<sup>5</sup> Application at 2.

<sup>6</sup> MECG had a full and fair opportunity to present evidence in this case. MECG did not file any rebuttal testimony. MECG did not file any surrebuttal testimony. MECG did not sponsor any witnesses at the hearing.

<sup>7</sup> Ex. 2, Ives Direct at 15.

<sup>8</sup> *Id.* At 15-16.

<sup>9</sup> Report and Order at 11.

<sup>10</sup> Section 393.355.2(2).

cites no evidence demonstrating that this approach would somehow be better for Evergy's other customers.

**C. The Report and Order is Clear that the Commission is Not Approving the Nucor Contract Under Section 393.355**

In order to justify its request for rehearing of an order approving a Stipulation to which MECG did not object, MECG claims that “the Commission goes significantly beyond the terms of the non-unanimous stipulation that MECG did not oppose.”<sup>11</sup> To support this claim, MECG asserts that it is “unclear from the Report and Order whether the Commission sought to approve the stipulation pursuant to the terms of Section 393.355 or whether approval was granted pursuant to other statutory authority.”<sup>12</sup> Contrary to this assertion, the Report and Order is unambiguous -- the Commission approved the Stipulation under its general ratemaking authority, and not under Section 393.355. In approving the Stipulation, the Commission held that “a rate for Nucor that is less than its fully allocated cost, but more than its incremental cost, is just and reasonable within the meaning of Section 393.130, RSMo 2016, and is not unduly or unreasonably preferential.”<sup>13</sup>

As if that holding is not clear enough, the Commission continued to explain why it is not approving the stipulation under Section 393.355:

Questions have been raised about why EMW chose not to seek a special rate under the provisions of section 393.355, RSMo. That statute seems to have been designed to address the conflict between Noranda and Ameren Missouri, and consequently contains provisions that do not fit well with the cordial and cooperative relationship between EMW and Nucor. If the Commission is to approve a special rate under the authority granted by Section 393.355, the statute requires that it must allocate the revenue difference between the special rate and the utility's applicable standard rate to all other customers. EMW does not want that benefit, and such an allocation would not be in the best interest of EMW's other customers.

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<sup>11</sup> MECG Application at 4.

<sup>12</sup> *Id.* at 4, n.3, 6.

<sup>13</sup> Report and Order at 13.

Further, section 393.355, would require the implementation of a tracker designed to prevent EMW from increasing its net income between rate cases as a result of serving Nucor under the special rate. Such a provision is unnecessary and would be unfair to EMW, as it will incur substantial costs to construct new infrastructure to enable it to serve Nucor.<sup>14</sup>

The Report and Order plainly states that the Commission approved the Stipulation in this case under its traditional ratemaking authority, not under Section 393.355. As such, MCEG's claim that the authority by which the Commission is approving the Stipulation is unclear is meritless on its face.

#### **D. The Commission Can Approve a 10-Year Contract**

MCEG pleads two alternative points on rehearing. First, MCEG argues that if the Commission approved the Nucor Contract pursuant to Section 393.355, the Commission erred by not implementing a net income tracker.<sup>15</sup> As discussed above, the Commission did not approve the Nucor Contract under Section 393.355, so this point is without merit and should be denied.

MCEG's alternative claim on rehearing is that if the Commission approved the Nucor Contract pursuant to other statutory authority, the Commission erred by making the special contract rate binding on future commissions.<sup>16</sup> This argument is a strawman that MCEG has repeatedly propped up throughout this case. In approving the ten-year term of the Nucor contract, the Commission said nothing about binding future commissions. Additionally, the Commission found in the Report and Order that Section 393.355 does not prevent the Commission from approving the ten-year term of the Nucor Contract as proposed in this case.<sup>17</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> Application at 6.

<sup>16</sup> *Id.*

<sup>17</sup> Report and Order at 13-14.

As Nucor explained in its reply brief, there is nothing inconsistent with: (i) the Commission having the authority to approve a special contract or rate of any particular term, so long as that rate is just and reasonable and in the public interest, and (ii) the general proposition that a Commission may not bind future Commissions.<sup>18</sup> In fact, as the parties have demonstrated, the Commission has approved many contracts of varying terms over the years, without the need for Section 393.355.<sup>19</sup> Accordingly, the Commission is on firm legal footing in having approved the Stipulation and Nucor Contract under the Commission's traditional ratemaking authority.

## II. CONCLUSION

For the reasons discussed above, the Commission should deny MECG's application for rehearing.

Respectfully Submitted,

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<sup>18</sup> Reply Brief of Nucor Steel Sedalia, LLC at 5.

<sup>19</sup> Every Missouri West's Initial Post-Hearing Brief at 8-10; Staff's Brief at 4-5; Post Hearing Brief of Nucor Steel Sedalia, LLC at 12-15.

Attorneys for Nucor Steel Sedalia, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission on December 4, 2019.

*/s/ Stephanie S. Bell*  
Stephanie S. Bell