

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

In the Matter of the Application of Evergy                    )  
Missouri Metro, Inc. d/b/a Evergy Missouri                )     File No. EO-2023-0022  
Metro For Approval of a Special High Load                )  
Factor Market Rate Tariff                                        )

**MOTION FOR PROTECTIVE ORDER**

Pursuant to 20 CSR 4240-2.135(3) and -(4), Google LLC (“Google”) hereby files this Motion for Protective Order:

**I. Background**

1. On November 10, 2022, Evergy Missouri Metro (“EMM”) filed its Application requesting authority from the Missouri Public Service Commission (“Commission”) for a Special High Load Factor Market rate tariff.

2. Google filed its Application to Intervene on November 14, 2022, which was granted on November 21, 2022.

3. Other parties that have been granted intervention include Velvet Tech Services, LLC (“Velvet”) and the Midwest Energy Consumers Group (“Midwest Energy Consumers Group”).

4. Google has received data requests from Office of Public Counsel (“OPC”) that may require it to produce and disclose confidential and proprietary information relating to data center infrastructure, competitively sensitive contracts, resource usage in other states, and other proprietary information relating to selection of data center locations and operation of data centers. *See* Public Counsel Data Requests Nos. 2001-2010, attached as Exhibit A. Google anticipates that intervenors will seek this same information and other similarly sensitive information from Google and potentially Velvet.

5. Some of the information requested contains highly sensitive, competitive market data, financial information, and other proprietary transactional data that is outside the scope of this proceeding or of *de minimis* bearing to the proceeding.

## **II. Statement of Law**

6. Missouri Supreme Court Rule 56.01(c) provides that protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including . . . that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.”

7. Commission Rule 20 CSR 4240-2.135(2) provides that parties may designate certain materials, including trade secrets and competitively sensitive information, as “Confidential.” Pursuant to Commission Rule 20 CSR 4240-2.135(6), “Confidential” information shall be disclosed to attorneys of record for a party, to employees of a party who are working as subject-matter experts for the party’s counsel, to employees of a party who intend to file testimony in the case, and to designated outside experts of a party.

8. The Commission has previously noted that, “[c]ommission rules provide for the issuance of protective orders when necessary to protect information from discovery more rigorously than would be provided from a confidential designation.”<sup>1</sup> The Commission has further explained that, “The Commission may order such greater protection by a party explaining what information must be protected, the harm to the disclosing party that might result from disclosure

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<sup>1</sup> “Order Granting Motion to Compel, in Part, and Granting Motion for Protective Order, in Part,” File No. EA-2016-0358 (issued December 13, 2018) at 4 *citing* Commission Rule 4 CSR 240-2.135(3) (now 20 CSR 4240-2.135(3)).

of the information, and how the information may be disclosed while protecting the interests of the disclosing party.”<sup>2</sup>

### **III. Argument**

9. The data center market is an extremely competitive forum where information regarding customer pricing, supply costs, business relationships, market data, and other proprietary data are closely guarded trade secrets. This information, as well as terms and details relating to business contracts and other information relating to data center infrastructure are sensitive information that impact Google’s competitive advantage with respect to its competitors and with parties with whom it negotiates. Many of Google’s contracts also contain confidentiality provisions and may implicate the rights of private third parties. While elements of these contracts may be shared using the Confidential designation provided by 20 CSR 4240-2.135(2), others may reveal details that have a *de minimis* bearing on the matter for the Commission and the scope of the Commission’s investigation in this docket and would have serious consequence to Google if disclosed.

10. The “Confidential” designation under 20 CSR 4240-2.135 will not provide adequate protection for these categories of information (“Highly Confidential Information”) because it would require Google to produce Highly Confidential Information to non-expert representatives of non-state-agency parties who intend to file testimony in the case and may have competitive relationships with Google now or in the future. In this context, potentially competitive parties include Velvet and MECG, with whom Google is competitive with or who Google may need to negotiation against. The mere disclosure of Highly Confidential Information to these

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<sup>2</sup> Order Granting Motion to Compel, in Part, and Granting Motion for Protective Order, in Part,” File No. EA-2016-0358 (issued December 13, 2018) at 4 *citing* Commission Rule 4 CSR 240-2.135(4) (now 20 CSR 4240-2.135(4)).

parties and their employees and representatives would irreparably harm Google because it would give these parties knowledge of Highly Confidential Information that would affect their relative bargaining positions.

11. While the Commission could stand to benefit from inhouse and outside expert witness review of Highly Confidential Information, the same cannot be said for representatives who merely intend to file testimony but who cannot otherwise offer an expert opinion on the Highly Confidential Information. So, for this class of representative (i.e., the non-expert party representative), the Commission and the public could not benefit from their review of this Highly Confidential Information, but Google would be negatively impacted.

12. A fair tradeoff for all parties is to limit disclosure of Highly Confidential Information to attorneys of record, state agencies and their employees, and to inhouse and outside expert representatives of parties, but to prohibit other employees and representatives from accessing this limited set of information.

13. The requested relief listed below is substantially similar to the relief granted in protective orders issued by this Commission in the past, including the one granted recently in EA-2023-0017.<sup>3</sup>

14. Google therefore requests the Commission issue of Protective Order as follows:

a. Confidential information may be designated in one of two categories: (1) a “Confidential” category of information encompassing the usual scope of protected information in Commission proceedings<sup>4</sup> and (2) a “Highly Confidential” category of information limited to information that is sensitive 1) confidential information relating to

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<sup>3</sup> See “Order Establishing Protective Order,” File No. EA-2023-0017 (issued October 20, 2022).

<sup>4</sup> Including information covered under Commission Rule 20 CSR 4240-2.135(2).

the data center market, including customer pricing, supply costs, business relationships, market data, other proprietary data and protected trade secrets; and 2) information relating to confidential contracts entered into by Google (or Velvet) relating to data centers.

b. Information designated as “Confidential” would be subject to the standard protocols included in Commission Rule 20 CSR 4240-2.135.

c. For information designated as Highly Confidential, Google shall disclose such information only to attorneys of record for all parties, state agency parties and their employees covered by statutory confidentiality requirements, and to designated outside and inhouse experts for any non-state-agency party.

d. Outside counsel and inhouse and outside experts may receive and review Highly Confidential information after executing a certification meeting the requirements of Commission Rule 20 CSR 4240-2.135(7) or a similar Commission nondisclosure agreement. No Highly Confidential information shall be provided directly or indirectly to any non-state agency party or representative thereof, except as expressed above.

e. Persons afforded access to materials or information designated Highly Confidential shall neither use nor disclose such materials or information for purposes of business or competition or any other purpose other than in regard to the case referenced above, and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of the Protective Order.

f. All material and information designated as “Highly Confidential,” as well as any notes pertaining to such information, shall be returned to the disclosing party or destroyed upon the conclusion of the referenced case, with certification of same to the disclosing party.

g. If any party disagrees with the Highly Confidential designation of any information, that party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If these dispute resolution procedures are exhausted without resolution, the party may file a motion challenging the designation.

#### **IV. Conclusion**

WHEREFORE, Google respectfully requests the Commission grant this Motion for a Protective Order and take such other actions as the Commission deems necessary to protect this information.

Respectfully submitted,

POLSINELLI PC

By: /s/ Frank A. Caro

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ATTORNEYS FOR GOOGLE LLC

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been emailed to all parties of record this 16th day of December, 2022.

/s/ Frank A. Caro