BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of New and Modified Tariffs for Service to Large Load Customers.	)))))	File No. EO-2025-0154

REPLY BRIEF

Pursuant to the May 13, 2025, Order Setting Procedural Schedule, the October 2, 2025, Briefing Schedule Order, and the October 16, 2025, Order Granting Extension of Time to File Briefs, Google LLC ("Google"), hereby files its Reply Brief. It is Google's position that the Commission should approve the Non-Unanimous Global Stipulation and Agreement ("Stipulation and Agreement") in its entirety without any modifications or changes and find that the Stipulation and Agreement is just and reasonable and in the public interest.

Table of Contents

I. <u>Introduction</u>

1. Google's Reply Brief addresses the principal arguments and the most significant concerns raised in the Initial Post-Hearing Briefs filed by the Office of the Public Counsel ("OPC") and Staff of the Public Service Commission of the State of Missouri ("Staff"). To the extent any issue is not specifically addressed herein, such omission should not be construed as agreement with or acquiescence to OPC or Staff's position.

2. OPC paints a dire picture regarding the impact of artificial intelligence ("AI") on the electric system, suggesting that data centers and AI-driven loads pose unprecedented risks to system reliability, affordability, and equity.[1] OPC's narrative relies on alarmism and worst-case scenarios, urging the Commission to take and adopt measures that would harm Missouri's competitiveness and discourage investment, grid modernization, and new sources of revenue that benefit all ratepayers.

3. The Missouri Public Service Commission ("MPSC" or "Commission") and Missouri regulated utilities have proven tools to address emerging load. Existing regulatory frameworks—including the integrated resource planning ("IRP") processes, cost allocation, and rate design—are well-equipped to address evolving load patterns. Here, the cost allocation and rate design provided for in the Stipulation and Agreement includes provisions that ensure LLPS customers contribute their representative share of system costs and that the utility can recover costs associated with new load. The Commission should reject OPC's alarmist narrative regarding AI and instead base its decision on the evidentiary record, established regulatory principles, and the demonstrated ability of utilities and regulators to manage change.

4. Against this backdrop, Google now turns to the specific arguments advanced by OPC and Staff. The following sections, in turn, address (1) OPC's legally flawed interpretation of Section 393.130.7; (2) Staff's discriminatory proposal to cap large load customers at 33% of

[1] OPC Initial Brief, pp. 10–14.

jurisdictional load; (3) OPC's unsupported dismissal of other parties' positions in this proceeding; and (4) OPC's framing of this proceeding.

II. <u>OPC's Legal Analysis is Flawed, Lacks Support, and is Contrary to the Missouri Legislature's Statutory Intent</u>

5. Staff does not provide any substantive interpretation of "representative share" but rather makes conclusory statements that its proposal is the best means to implement Senate Bill ("SB") 4.[2] Further, OPC's legal analysis is flawed and lacks support.

6. While Google agrees with OPC's statement that Section 393.130.7 is "really nothing more than the codification of a long-standing principle of regulatory ratemaking"[3]—*i.e.*, the "cost causation principle"—OPC's approach to "the cost causation principle" is overbroad, impractical, and inconsistent with relevant precedent. The cost causation principle does not and cannot require perfect one-to-one causality.

7. Notably, OPC's "legal analysis" does not cite to any order of the Commission or decision of a court. Rather, it merely cites OPC's counsel's friendly cross-examination of Staff witness J Luebbert.[4] Moreover, OPC's Initial Brief misstates the record—the question and answer from the transcript reveal that OPC and Staff believe that the cost causation principle means "*to the highest degree possible* costs should be allocated to those who cause the cost to be incurred."[5] This is clearly contrary to the legal precedent. As explained in Google's Initial Brief, "allocation

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[2] Staff Initial Brief, pp. 5–11.

[3] OPC Initial Brief, p. 5.

[4] OPC Initial Brief, p. 5; Tr. Vol. 3, p. 32, ln. 23 through p. 33, ln. 8 ("Q [from OPC Counsel] Just the sake of record [sic], if I were to say the principle of cost causation states to the highest degree possible cost should be allocated to those who cause the cost to be incurred. Would you agree that's a reasonably workable definition of the principle of cost causation? A [from J Luebbert] I think so, but to the highest degree possible, I think you should also -- I would think you also would want to account for what it costs to achieve that information, so there are limitations, but I think for the most part --").

[5] Tr. Vol. 3, p. 32, ln. 23 through p. 33, ln. 8 (emphasis added).

of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."[6]

8. OPC's interpretation of "representative share" emphasizes portions of the statutory language that result in a misreading of the statutory text, leading to the conclusion that there must be absolute segregation of LLPS Customer costs. However, the statute does not require absolute segregation or cost isolation. Rather, the statute requires large load tariffs *reasonably ensure* rates reflect LLPS customers' *representative* share of the costs incurred to serve them. In other words, the statutory language supports proportionality and fairness, not rigid separation.

9. OPC's flawed legal analysis and Staff's proposed implementation of SB 4 would result in disparate and discriminatory treatment of large load customers. For example, OPC and Staff argue for a separate Fuel Adjustment Clause ("FAC") and commercial pricing nodes to effectuate its interpretation of the statute. Yet, the record contains substantial competent evidence that OPC's FAC approach fails to account for the revenue produced by LLPS customers to lower fixed costs,[7] that separate FACs are only feasible if an LLPS customer is registered to a separate pricing node (separate pricing nodes being both discriminatory and not clearly permitted by the

[6] Google Initial Brief, p. 11 (citing *State Corp. Com'n of Kan. v. Fed. Power Com'n*, 206 F.2d 690, 708 (8th Cir. 1953); *Colorado Interstate Gas Co. v. Fed. Power Com'n*, 324 U.S. 581, 589 (1945); *El Paso Elec. Co. v. Fed. Energy Reg. Com'n*, 76 F.4th 352, 357 (5th Cir. 2023) (noting that utility regulators "need not … allocate costs with exacting precision")).

[7] *See* Tr. Vol. 3, p. 217, ln. 5–11 through p. 232, ln. 6 (Ms. Mantle hearing testimony that her analysis did not account for fixed costs); Ex. 100, Direct Testimony of Kevin Gunn, at pp. 24–25 (explaining that revenues collected from LLPS customers subscribing to renewable energy and carbon free riders in the LLPS Rate Plan will be credited through the FAC, thus lowering all customers' fuel costs); Ameren Initial Brief, pp. 28–34.

Southwest Power Pool ("SPP")),[8] and that isolating expenses attributable to LLPS customers for FAC purposes is difficult.[9]

10. And while "OPC can conceive of no justifiable reason for why the utilities and the LLPS customers who signed the Stipulation would be so adamant against providing transparent SPP cost information,"[10] it fails to recognize that separate commercial pricing nodes are (1) discriminatory,[11] (2) subject LLPS customers to highly volatile pricing unassociated with their use,[12] and (3) are not cost-based.[13]

11. The concern with establishing separate pricing nodes for each individual LLPS customer is exacerbated by Staff's recommendation to assess LLPS customers *energy charges* based on wholesale LMPs at separate pricing nodes.[14] This recommendation ignores how Evergy

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[8] Ex. 551, Surrebuttal Testimony of Dr. Carolyn Berry, p. 12 ("Ex. 551, Berry Surrebuttal Testimony") (stating that she is not aware of any other utility that has created a separate PNode and assigned Regional Transmission Organization-level charges based on that note to each large load customer in a large load tariff); Ex. 103, Surrebuttal Testimony of Derek Brown, at pp. 9–10 ("Ex. 103, Brown Surrebuttal Testimony") (explaining that SPP's Integrated Marketplace Protocols nor Tariff include the term "commercial pricing node," that Evergy is not aware of any instance in SPP where a customer is registered to separate and specific Price Node, and noting several other operational and strategic concerns); Ex. 105, Surrebuttal Testimony of Brad Lutz, at p. 34 ("Ex. 105, Lutz Surrebuttal Testimony") (expressing concern that the commercial pricing node requirement is based on unvetted judgment, risks significant complexity and disputes in billing, and may not even be technically feasible).

[9] Ex. 551, Berry Surrebuttal Testimony, p. 12; Staff Recommendation, p. 22, ln. 14–16; Ex. 103, Brown Surrebuttal Testimony, at pp. 9–14.

[10] OPC Initial Brief, p. 59 ("The OPC can conceive of no justifiable reason for why the utilities and the LLPS customers who signed the Stipulation would be so adamant against providing transparent SPP cost information other than to ensure the subsidization of LLPS customers by non-LLPS customers through the FAC.").

[11] Google Initial Brief, pp. 21, 26; Ex. 551, Berry Surrebuttal Testimony, at pp. 10, 13.

[12] Ex. 551, Berry Surrebuttal Testimony, at pp. 10–11, 19–20; *see also* Ex. 103, Brown Surrebuttal Testimony, at pp. 9–14 (describing the risks of price fluctuation, errors, and other challenges and risks associated with separate commercial pricing nodes).

[13] Ex. 551, Berry Surrebuttal Testimony, at p. 20 (explaining that commercial nodal prices for energy consumption do not reflect the actual cost of service).

[14] Staff Recommendation, p. 51, ln. 16–17 ("In the future, the LLPS energy charges should be calculated using the nodal prices at LLPS interconnections").

incurs costs to serve its customers, it is discriminatory, and it would expose LLPS customers to significant rate instability.[15]

12. OPC's incorrect application of the statute is reflected in its "five-friends pizza" analogy, which it adopted from Staff.[16] The analogy oversimplifies utility ratemaking and ignores the practical realities of regulated monopolies, system operations, and cost allocation. Utility systems involve shared infrastructure, diverse usage patterns, and complex cost drivers. Unlike splitting a pizza, where each person's "share" is easily measured by slices, utility costs are not so easily or neatly divided among customers. Costs are incurred for system-wide reliability, capacity, and regulatory compliance, which benefit and are used by *all* customers in varying degrees.

13. The analogy ignores "embedded" costs that do not arise solely from the actions of a single customer or class. For example, transmission and generation capacity benefit all users, and it is neither practical nor accurate to assign these costs as if each customer ordered their own separate pizza. Further, utility customers benefit from economies of scale and system reliability that come from shared infrastructure. The pizza analogy ignores these benefits and the reality that sharing costs often leads to greater efficiency and lower rates for all customers.

14. Applying the logic of the pizza analogy would require utilities to create rigid, stand-alone cost and rate structures for every unique customer or service, resulting in administrative complexity, higher costs, and regulatory inefficiency.

III. Staff's Proposal to Artificially Cap Large Load Customers at 33% of the Annual Missouri Jurisdictional Load is Arbitrary, Discriminatory, and Contrary to SB 4.

15. Staff does not provide any analysis or legal authority for its recommendation to cap large load customers at 33% of the annual Missouri jurisdictional load. The cap concept is arbitrary, discriminatory toward large load customers, inconsistent with electric utilities statutory

[15] Ameren Initial Brief, pp. 28–34.
[16] *See* OPC Initial Brief, p. 53.

obligation to serve, and contrary to the Missouri Legislature's intent to attract large load customers, as reflected in SB 4.

IV. OPC's Dismissal of Parties' Participation in the Stipulation & Agreement Disregards the Public Interest Benefits of Collaborative, Consensus-Based Outcomes and the Commission's Preference for Settlement

A. The Stipulation Complies with Section 393.130.7 and Is Supported by Expert Testimony and Data

16. OPC seeks to cast the proposals of certain parties as motivated by self-interest, suggesting that their proposals are inconsistent with cost causation principles and regulatory fairness.[17] However, it is entirely customary in regulatory proceedings for parties to advocate positions that reflect their legitimate interests. In this case, the Stipulation and Agreement is firmly grounded in compliance with Section 393.130.7 and established cost allocation principles, and it is transparently supported by expert testimony and data, not by improper or undisclosed motives.

17. The central inquiry for the Commission is whether the proposed tariff is just, reasonable, and consistent with applicable law. The evidentiary record demonstrates that the framework set forth in the Stipulation and Agreement satisfies these standards. Accordingly, the Commission should reject OPC's unfounded assertion of improper subsidy motives and instead evaluate the tariff proposals on their legal and evidentiary merits. The record confirms that the Stipulation and Agreement's approach is consistent with statutory requirements, advances regulatory fairness, and reasonably ensures LLPS customers' rates reflect their representative share of costs.

[17] OPC Initial Brief, p. 77 ("Once those three are removed from the equation, the remainder of the signatories fall into exactly two groups. The prospective large load customers (Google, Velvet, and the Data Center Coalition) and the utilities themselves (Evergy, Ameren, and Liberty) . . . . This is a major problem as both these groups have strong monetary interest in having non-LLPS customers subsidize LLPS customers. For the LLPS customers, that interest is self-evident. No utility customer could ever be blamed for wanting to pay less for their utility bill and having other customers pay for costs that customer caused to be incurred is one way of accomplishing this. For the utility companies the monetary interest is less obvious, but still just as strong.").

B. The Stipulation's Broad Support Advances Regulatory Certainty and Reduces Administrative Burden

18. OPC contends that the participation or support of Renew Missouri, Nucor, and Sierra Club in the Stipulation is irrelevant or should be given little weight, implying that their agreement does not meaningfully advance the case for adoption of the Stipulation and Agreement.[18] This view is inconsistent with Commission precedent, which has consistently approved stipulations and agreements with broad, diverse party support.[19] Such support is a strong indicator that a proposal is balanced, reasonable, and responsive to a wide range of stakeholders.

19. Renew Missouri (an environmental and clean energy advocacy group), Nucor (an industrial customer), and Sierra Club (public interest environmental advocacy group), each represent distinct and at times competing interests. These parties chose to affirmatively support the Stipulation and Agreement, rather than simply not objecting. Their affirmative support demonstrates that the Stipulation and Agreement is not merely the product of utility or large customer interests but reflects compromise and consensus among a cross-section of stakeholders. This diversity enhances the legitimacy and durability of the settlement, and reduces the likelihood of future disputes, relitigation, or appeals.

20. The participation of these parties in negotiations, their contributions to the final terms, and their affirmative support underscore that their participation is substantive, not merely symbolic.

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[18] OPC Initial Brief, p. 77 ("And so, again, it is obvious that the interests of the Sierra Club and Renew Missouri do not lie with preventing subsidization, or any of the other rate design components that made up the remaining 95% of this case, for which they did not offer any testimony, cross any witness, or even state a specific position.").

[19] Missouri law explicitly permits stipulations in regulatory proceedings before the Commission. RSMo 536.060 ("Contested cases and other matters involving licensees and licensing agencies described in section 621.045 may be informally resolved by consent agreement or agreed settlement or may be resolved by stipulation, consent order, or default, or by agreed settlement where such settlement is permitted by law."); 20 CSR 4240-2.115 (the Commission rule that provides the procedural process for non-unanimous stipulations and agreements).

V. Adoption of the Stipulation Demonstrates Fairness and Balance and Ensures Public Confidence and Regulatory Legitimacy

21. OPC suggests that if the Commission adopts the Stipulation and Agreement, despite Staff's recommendation and OPC's objections, it will create a negative perception among observers regarding the Commission's independence, fairness, or process integrity.[20] However, while Staff and OPC play vital roles, their positions are not determinative.

22. Moreover, stipulations without Staff and OPC's support can be just, reasonable, and in the public interest when supported by the record. That is the case here, where the Commission has conducted a transparent process in accordance with Missouri law.

23. Adoption of the Stipulation will not undermine confidence in the Commission. On the contrary, it is the Commission's transparent process, rigorous review of the record, and reasoned decision-making that are the best safeguards for public confidence. Legitimacy and accountability are ensured by the integrity of the process itself—not by the alignment with or opposition to any particular parties.

VI. Conclusion & Requested Relief

24. WHEREFORE, Google LLC respectfully requests the Commission approve the Non-Unanimous Global Stipulation and Agreement in its entirety. Approval of the Stipulation and Agreement will promote regulatory certainty, advance the public interest, and facilitate continued investment in the state. Google remains committed to working collaboratively with all stakeholders and the Commission to address the issues in this proceeding and to ensure Missouri is well-positioned among states competing for large-scale data center and AI investment, while benefiting existing electric consumers and the public interest.

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[20] OPC Initial Brief, pp. 79–80 ("When it comes to the question of who among the respective parties should be believed, there is only one reasonable outcome. Moreover, there is a clear implication that will be drawn by all those who witness this case should the Commission simply decide to adopt an agreement between the utilities and the LLPS customers over and against the recommendation of its own Staff and the objections of the public advocate.").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed on the official service list by email, this 5th day of November 2025.

/s/ Frank A. Caro
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