

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF ENTERGY	)	
ARKANSAS, LLC.'S APPLICATION FOR	)	DOCKET NO. 25-055-P
APPROVAL TO ENTER INTO A SPECIAL	)	ORDER NO. 9
RATE CUSTOMER CONTRACT AND FOR	)	
OTHER RELATED APPROVALS	)	

ORDER

By this Order, the Arkansas Public Service Commission (Commission) approves, without modification, as being consistent with the public interest, the Agreement for Electric Service (Agreement or SRC) between Entergy Arkansas, LLC (EAL or the Company), and Attitude Capital, LLC (for purposes of this filing, Google) in EAL's *Application for Approval to Enter into a Special Rate Contract and For All Other Related Approvals* (Application).

The Commission notes that the entire Agreement and vast portions of the record in this Docket have been redacted by EAL under an Interim Protection Order pursuant to Order No. 1 of this Docket. Accordingly, much of this Order includes information and specific language designated as Confidential Information or Highly Sensitive Protected Information (HSPI) by EAL and not available to the public at this time; nonetheless, the Commission endeavors in this Order to provide as much information and transparency into its decision as possible.

The Commission sets forth in greater detail below its findings and ruling and addresses the additional relief sought by EAL in its Application.

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I. PROCEDURAL HISTORY

EAL filed its Application for approval of its SRC on September 5, 2025.¹ Pursuant to Commission's *Rules of Practice and Procedure* (RPPs) 4.08,² EAL supported its Amended Application with the Direct Testimonies and Exhibits of J. David Palmer, Kristin Dalrymple, Crystal K. Elbe, David E. Hunt, and Patrick Stack.³

The Attorney General of Arkansas (AG) filed a *Notice of Intent* to participate in this Docket on September 16, 2025.

Order No. 4 filed by the Commission on October 3, 2025, suspended the proposed SRC pending a final order.

On October 9, 2025, the General Staff (Staff) of the Commission filed the *Direct Testimony of Regina Butler*.⁴ The AG did not file testimony.

¹ EAL filed an Errata to its Application on September 9, 2025.

² 23 CAR § 462-408.

³ Mr. Stack filed an Errata to his Testimony on September 9, 2025.

⁴ Ms. Butler filed an Errata to her Testimony on October 27, 2025.

Also, on October 9, 2025, EAL and Staff filed a *Joint Motion to Submit for Approval* requesting that the Commission suspend the remainder of the procedural schedule, cancel the Public Evidentiary Hearing set for November 17, 2025, and accept their Joint Stipulation.⁵ The Commission declined to grant the Motion and instead issued Order No. 6 propounding questions to the Parties on November 5, 2025.

On November 10, 2025, EAL filed the Supplemental Testimonies of Ms. Elbe and Mr. Hunt, and Staff filed the Supplemental Testimony of Ms. Butler.

The Motion to cancel the Public Evidentiary Hearing was denied on November 12, 2025, and a Public Evidentiary Hearing was held on this matter on November 17, 2025.

In Order No. 8 filed on November 18, 2025, the Commission directed EAL to file supplemental testimony and revised Rate Impact Measurement (RIM) test scenarios based on the Modified Balance Sheet Approach (MBSA) and directed Staff to file responsive testimony.

EAL witness Elbe filed her Second Supplemental Testimony on November 21, 2025, and Staff witness Butler filed her Second Supplemental Testimony on November 28, 2025.

II. EAL'S APPLICATION

In its Application, EAL requests Commission approval of a long-term SRC with Google under the Commission's *Rules and Regulations Governing Promotional Practices of Electric and Gas Public Utilities* (PPRs)⁶ to supply Google's electric energy

⁵ The Motion stated that the AG did not oppose the Motion. Motion at 1, fn. 1 (Doc. #53).

⁶ 23 CAR pt. 460, *et seq.*

for a new hyperscale data center (the Project), which will be located in West Memphis, Arkansas. The Application states that the Project has \$1.1 billion in net benefits subject to the achievement of certain milestones, one of which is the Commission's approval of the Agreement. Amended Application at 1-2 (Doc. #27).

EAL requests in its Application the following relief:

1. Approval of the agreement as being consistent with the public interest; fully justified on the bases set forth in the Agreement, the accompanying testimony, and exhibits; in satisfaction of the pertinent Commission test for promotional practices; and reasonable with respect to the sharing of costs as between Google and other EAL customers regarding costs, if any, above Google's thresholds set forth in the Agreement;
2. Approval to defer [REDACTED] in accelerated payments and [REDACTED] in minimum demand contributions to a regulatory liability and amortize these revenues over the term of the Agreement as specified in paragraph 4 below;
3. Approval to exclude the regulatory liability established for the deferral of revenues from CAOL in the benchmark rate of return on rate base and any associated ADIT may be excluded from ADIT in its WACC as zero-cost capital until the Cypress Solar facility goes into service;
4. Approval to begin amortizing the regulatory liability established for the deferral of revenues [REDACTED] (with the amortization being initially based on Ms. Elbe's HSPI EAL Direct Exhibit CKE-4 (Doc. #23) and with EAL having the ability to propose in each annual formula rate plan filing annual adjustments to the amortization schedule to mitigate rate impacts in a manner that

provides comparable benefits for other customers over the life of the strategic investments);

5. Approval to amortize the net benefits of the federal Investment Tax Credits (ITCs) over the useful lives of the Cypress Solar facility's assets;
6. Approval to flow through to customers the net benefit of the ITCs generated by the Cypress Solar facility's assets over the lives of same as an offset to the revenue requirement through EAL's proposed Rate Schedule No. 73, Strategic Investment Recovery Rider (now GAJA Rider);⁷
7. Approval to reflect the unamortized ITC liability balance recorded in Federal Energy Regulatory Commission (FERC) account 255 in EAL's calculation of its weighted average cost of capital WACC as zero-cost capital;
8. Approval to include the [REDACTED] paid by Google under the Agreement within EAL's Rate Schedule No. 38, Energy Cost Recovery Rider (Rider ECR);
9. Approval to include the [REDACTED] paid by Google under the Agreement in EAL's Rate Schedule No. 47, Capacity Cost Recovery Rider (Rider CCR); and
10. An award of all other necessary and appropriate relief to which EAL may be entitled.

Amended Application at 4-6 (Docs. # 27 and 28).

III. SUMMARY OF THE PARTIES' POSITIONS

⁷ Pursuant to the Commission's Order No. 11 in Docket No. 25-049-TF, the name of EAL's Rate Schedule No. 73 will be changed from Strategic Investment Recovery Rider to Generating Arkansas Jobs Act Rider.

A. Direct Testimony of EALDirect Testimony of J. David Palmer

EAL witness Palmer testifies that the Agreement is crucial for EAL to provide electricity supply to support Google's establishment of a new, hyperscale data center in the City of West Memphis in Crittenden County, Arkansas, the presence of which will significantly revitalize the local economy and demonstrate that Arkansas stands ready to welcome new business. The testimony emphasizes the importance of the Agreement in providing the framework and carbon-free energy resources for Google to choose Arkansas for this project, which will bring a significant [REDACTED] to the State. Palmer Direct at 2 (Doc. #16).

Mr. Palmer states that EAL's filing demonstrates that the SRC between Google and EAL ensures reliable service to all customers and produces net benefits to all EAL's customers through Google's financial contributions and rates as well as supporting the addition of an economic solar and battery storage resource. This fact is bolstered with the results of the RIM test performed by EAL pursuant to the Commission's rules applicable to an SRC. *Id.*

Mr. Palmer discusses topics identified in Sections 5(a-3), 5(g-i), and 5(m) of the Commission's PPRs. He submits that the topics in PPR Sections 5(f) and 5(l) are not applicable to this proceeding. *Id.* at 4-5.

Mr. Palmer testifies that the Google data center will be interconnected to EAL's high voltage 500 kV grid, ensuring reliable electric service to Google and all other EAL ratepayers. Further, he states during the initial contract period, Google is incorporating demand flexibility in its operation to assist during times when the grid is constrained,

which can help mitigate higher energy prices during those times for the benefit of all ratepayers. Finally, he states, the Agreement aligns with Act 373 by supporting power delivery and economic growth and the GAJA Rider will facilitate the incremental renewable resources needed to serve Google under the SRC consistent with the PPRs and any other applicable Commission rules and Ark. Code Ann. § 23-4-1309. *Id.*

Mr. Palmer describes his role in helping lead EAL's negotiating team that explored available options for serving the new load under terms that not only would satisfy Google's needs but also ensure that the benefits associated with Google's Project would flow to all of EAL's customers. He describes the Project as having significant capacity and energy requirements and explains that EAL and Google negotiated the SRC to ensure Google receives the power it needs at rates that support the development and ongoing operations of incremental resources. He further states that Google's participation will provide system-wide benefits to all EAL ratepayers. *Id.* at 7.

To serve Google's anticipated load, meet its desire for renewable resources, and continue reliably serving existing ratepayers, Mr. Palmer states that EAL will require, among other things, incremental generation from renewable resources and associated transmission assets and upgrades. He explains that the SRC's rates ensure that Google pays for both the incremental cost required to serve it during the term of the SRC as well as its proportionate share of EAL's embedded costs used to provide that service. *Id.* at 7-8.

Mr. Palmer testifies that the Google's [REDACTED]
[REDACTED]. He states that to support Google's timeline and ramp-up schedule, EAL must begin project advancement activities

now. Those activities include engineering, ordering long-lead time materials, establishing construction power and securing certification of the incremental renewable resource. *Id.* at 8.

Mr. Palmer states that once a prospective large load consumer like Google makes the decision to locate a new facility in Arkansas, the addition of that load will benefit all ratepayers in the State and may improve the opportunity for future expansions, which mean additional jobs and economic growth. He notes that the ability to attract new, large load consumers provides additional sales across which to spread the cost of new capital investment needed to support the provision of safe, reliable, and affordable service to all ratepayers. *Id.*

Mr. Palmer asserts that attracting the new data center as a development is possible only because the SRC provides terms adequate to support Google's highly energy-intensive operations. He asserts that these terms are essential to both parties and operate cumulatively and interdependently to realize the value of the large incremental load addition. In addition, he notes, there are substantial economic development benefits for the region and the State, in addition to the benefits to EAL's ratepayers from the SRC, such as direct and indirect jobs and associated payroll, tax revenue, and all of the investment by Google in its data center development. He states that many of these figures are being finalized and EAL will keep the Commission apprised of these ancillary benefits as they are identified. *Id.* at 9-10.

Mr. Palmer states that the terms of the Agreement provide for the development of a new large solar and battery generation resource – Arkansas Cypress Solar– a planned 600 MW solar photovoltaic array with a 350 MW battery energy storage system and

associated transmission facilities in Jefferson County. He states that the Cypress Solar facility will employ between 700 and 800 construction workers during construction and could generate approximately \$46 million in state sales and use tax contributions during the construction phase. He asserts that Cypress Solar will also provide energy and capacity cost savings to all ratepayers throughout its useful life and that the property taxes during the first year of operation of Cypress Solar are estimated at approximately \$9.6 million. *Id.* at 10.

Mr. Palmer describes how the Agreement came about, noting that Google began discussions with EAL about potentially choosing West Memphis as the location for a new hyperscale data center in May 2024. He states that [REDACTED], EAL developed rates to cover the incremental cost to serve that load and a share of EAL's embedded cost that would be used to serve Google. He states that [REDACTED]. *Id.* at 11.

According to Mr. Palmer, the SRC plays a critical role in achieving the requirements needed for an entity such as Google to select Arkansas, and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 10-11

Given the size of the electrical requirements for the Project, Mr. Palmer testifies that EAL does not have sufficient capacity to serve Google. He says that it is for this reason that the SRC commits EAL to develop, and Google to financially support through the rates

included in the SRC, the Cypress Solar facility to add generation to EAL's resource portfolio. He states that the [REDACTED]

[REDACTED].

Mr. Palmer states that under the terms of the SRC, [REDACTED]

[REDACTED]. *Id.* at

12.

Mr. Palmer states that the ability to attract Google's new load was made possible by the fact that Cypress Solar could be developed to serve the system, including Google's load. He notes that Google prefers that the provision of its service be supported by renewable resources and that Google be able to obtain the environmental attributes from renewable resources. He notes that EAL is able to develop Cypress Solar to follow the in-service date of the Project as closely as feasible to meet Google's needs. He states that the development of Cypress Solar both from a timing perspective and Google's agreement to rates set at a level to financially support the development and on-going operation of EAL's Cypress Solar is a critical consideration in the SRC. He states that as discussed in Docket No. 25-054-U, once in service, Cypress Solar will provide energy and capacity to support service to a significant portion of Google's incremental load. *Id.* at 12-13.

Mr. Palmer denies that the development of Cypress Solar is only for Google's benefit, asserting that it is a system resource that will be used to serve all EAL ratepayers. He contends that the development of Cypress Solar will be a "win-win" for Google and EAL's broader ratepayer base. He cites to EAL witness Fielder's explanation in the certification proceeding in Docket No. 25-054-U that Cypress Solar will yield benefits to EAL's broader ratepayer base through lower energy costs, contribute toward EAL's

reserve requirements, and further risk mitigation through supply diversification. He adds that EAL's broader ratepayer base will, over the term of the SRC, obtain these benefits at a much lower cost than would be possible without Google's rate support. *Id.* at 13.

Mr. Palmer cites EAL witness Fielder's testimony in Docket No. 25-054-U projecting that Cypress Solar will yield net benefits of at least [REDACTED]. He states that because Google's rates are set at a level to financially support the development and on-going operation of this resource, the benefits to other customers will be greater because their contributions to the cost of the resource are much lower than its full cost. He states that all EAL ratepayers will benefit from the incremental energy, capacity, and supply diversification that Cypress Solar will add to EAL's resource portfolio. He asserts that Cypress Solar will lower EAL's market energy prices and contribute to satisfaction of EAL's Midcontinent Independent System Operator, Inc.'s (MISO) resource adequacy requirements, which benefits all EAL ratepayers. Effectively, he says, EAL's consumers will enjoy an economic resource at a meaningful reduced cost after taking into consideration Google's rates and other financial contributions under the SRC. Moreover, Mr. Palmer states, the useful life of Cypress Solar is expected to extend beyond the initial term of the SRC, meaning all ratepayers have the opportunity to continue enjoying the benefits of low-cost energy and capacity from Cypress Solar thereafter if Google chooses not to renew the SRC. *Id.* at 13-14.

Mr. Palmer testifies that the Agreement will become effective upon Commission approval without material modification. *Id.* at 15.

Mr. Palmer states that EAL and Google have taken steps to mitigate the potential for any increased costs to ratepayers arising from the new load and the resources needed

to serve it. He concludes by stating that EAL has provided substantial evidence demonstrating that the SRC, which is required for the Project to be located in Arkansas, is in the public interest and that the Commission should approve it and “recognize the regulatory liability described herein.” He asserts that the RIM test confirms that EAL’s service of the new load under the terms of the SRC will not adversely affect EAL’s broader customer base. *Id.* at 17-18.

Direct Testimony Kristin Dalrymple

EAL witness Dalrymple summarizes the general terms of the Agreement, including the rate design of the SRC and EAL’s proposal to recover the costs of Cypress Solar through inclusion of its costs in the GAJA Rider. Dalrymple Direct at 4-6 (Doc. #17). She states that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 6.

Ms. Dalrymple testifies that the SRC offers various financial benefits to EAL’s broader consumer base, including the requirement in the Agreement for:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];

- CIAC for 100 percent of the costs of the incremental transmission facilities needed to serve the Project;

- [REDACTED]
[REDACTED]
- [REDACTED];
- Minimum monthly billing;
- Application of certain other riders to the provision of service to ensure Google is paying its reasonable share of those costs;
- Deposit and billing requirements with credit support; and
- A termination fee with credit support.

Ms. Dalrymple references the Agreement at 32-35, ¶ 22 regarding a commitment to identify further options to deliver clean energy attributes to Google. *Id.* at 6-7 and Agreement at 6-25.

Ms. Dalrymple explains how the Agreement provides for Google's support regarding the development of Cypress Solar [REDACTED]
[REDACTED] and to pay additional rates set to a level to financially support the development and on-going operation of Cypress Solar, with a December 2028 expected in-service date. She states that the accelerated contributions toward the construction of EAL's Cypress Solar facility [REDACTED]
[REDACTED]. She testifies that the minimum bill demand charge, together with the accelerated payments of EAL's Cypress Solar facility are set at a level to financially support the development cost of Cypress Solar in the amount of [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. She states that the Agreement includes detailed provisions allocating the environmental attributes from Cypress Solar to Google, with those attributes retired on its behalf in proportion to its contributions. Agreement at 32-35, ¶ 22. She asserts that Google's commitment [REDACTED]

[REDACTED].

Id. at 8-9 and Agreement at 4-6, ¶ 6, *Id.* at 13-18, ¶¶ 15- 16, and *Id.* at 25-28, ¶ 19.B.

Ms. Dalrymple testifies that the Agreement assumes that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 9 and

Agreement at 23-25, ¶ 18.D.

Ms. Dalrymple states that the Agreement recognizes and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 10 and Agreement at 23-25 ¶ 18.D.

Ms. Dalrymple testifies that EAL proposes to recover the costs of Cypress Solar through its GAJA Rider, in order to maintain EAL's financial health during the development of Cypress Solar for the protection of both EAL and its ratepayers. She states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 11 and Agreement at 21-25. ¶ 18.

Ms. Dalrymple describes the incremental transmission facilities at West Memphis that are supported by the Agreement, including the new Galet Substation and other related transmission system upgrades. She states that Google will financially support the development and operation of these transmission system upgrades with periodic CIAC payments in advance of EAL's provision of service to Google. She states that these payments totaling over [REDACTED], including a gross-up for taxes, will be accounted for as a CIAC that will serve to reduce the revenue requirement associated with these incremental transmission facilities. She notes that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 12 and Agreement at 13-15, ¶ 15 and *Id.* at 27-28, ¶ 19.C.

Regarding the Agreement's requirements for minimum monthly billing, market purchases, and other rates and riders, Ms. Dalrymple testifies that Google's minimum monthly bill obligation begins before the provision of service. She explains that for the period October 2025 through January 2027, Google's minimum bill is an agreed ratable contribution toward the payments discussed previously. She states that Google will continue to make monthly contributions to the [REDACTED]

[REDACTED]

	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 13 and Agreement at 16-18. ¶ 16, *Id.* at 21-25, ¶ 18.

Ms. Dalrymple testifies that the Agreement recognizes that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. She states that the Agreement, therefore, includes

[REDACTED]

[REDACTED]. *Id.* at 13 and Agreement at 21-22,

¶ 18.A.

Ms. Dalrymple testifies that the following rates and riders are identified in the Agreement as being applicable to Google's service:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED].

EAL witness Dalrymple states that for amounts [REDACTED]

[REDACTED]

[REDACTED]. Dalrymple Direct at 14, fn. 25.

In addition, [REDACTED]

[REDACTED]. Finally, she says, pursuant to the Agreement at 21-25, ¶ 18, future rates and riders approved by the Commission and applicable to the LGS rate class also would be included in Google's rates. *Id.* at 14 and Agreement at 6-25.

Regarding billing deposits, termination, and security, Ms. Dalrymple testifies that

[REDACTED]

[REDACTED]. She states that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 15 and Agreement at 18-21, ¶ 17.

Ms. Dalrymple testifies that if Google is in breach of the Agreement, which gives

[REDACTED]
[REDACTED]
[REDACTED] termination fee, [REDACTED]. She states that the Agreement includes a Termination Fee [REDACTED] termination fee [REDACTED]

[REDACTED]. She states that EAL and Google agreed that the Termination Fee [REDACTED]

[REDACTED]. Importantly, she states the Termination Fee [REDACTED]

[REDACTED]. She states that under the terms of the Agreement, the only instances in which [REDACTED]

[REDACTED] Termination Fee [REDACTED]

[REDACTED]. *Id.* at 15; Agreement at 36-37, ¶ 25 and Exhibit C.

Ms. Dalrymple states that the termination fee protects other EAL ratepayers by making Google commit to setting rates at a level that financially supports EAL's development and ongoing operation of Cypress Solar. She notes that if Google does not renew the Agreement [REDACTED]

[REDACTED]. She adds that this estimate does not account for any of the benefits produced by Cypress Solar prior to this time. *Id.* at 16.

Ms. Dalrymple testifies that the Agreement also calls for a parent guaranty of the transmission milestone payments. *Id.* and Agreement at 13-15, ¶ 15.

Ms. Dalrymple states that the Agreement includes provisions requiring Google to comply with the power quality standards set forth in a Flicker and Harmonics Operational Agreement, whose terms she describes. *Id.* at 17 and Agreement at 9-10, ¶10 and Exhibit D.

Regarding operational benefits that stem from the Agreement, Ms. Dalrymple testifies that with respect to Cypress Solar, that incremental resource will contribute to EAL's energy and capacity needs and to further supply diversification in EAL's resource portfolio. In addition, she states, for a specified period before EAL completes construction of planned resources, the Agreement affords flexibility to treat a portion of the load of the Project as curtailable before other firm load is curtailed. She states that the Agreement provides the terms for this priority curtailment. She asserts that this flexibility benefits EAL's broader ratepayer base by offering another option to manage system stability under constrained operating conditions. *Id.* 18 and Agreement at 18-21, ¶ 17.

Ms. Dalrymple asserts that the Agreement terms are reasonable in the context of existing EAL ratepayers because the minimum bill charges cover the incremental cost of serving Google's load. Additionally, she states, because Google will be subject to all other rate riders assessed to other customers within the LGS rate class, Google will contribute

revenue to support a proportionate share of EAL's cost of service. Further, she says, existing customers will benefit by having EAL spread its current and future costs recovered over more usage, and this greater spreading will result in existing customers bearing less costs than they would have borne if Google had not become a customer of EAL. *Id.* at 18.

Ms. Dalrymple asserts that the Agreement terms reasonably maintain EAL's financial condition so that existing customers are not unduly burdened by costs related to Google's service, noting that the accelerated payments and the CIAC payments that will be made under the Agreement, combined with the minimum monthly charges, help support EAL's financial integrity while it develops the incremental facilities needed to serve the new load. *Id.* at 19.

Ms. Dalrymple concludes by stating that the Agreement terms are the product of extensive arms-length negotiations between Google and EAL. *Id.*

Direct Testimony of Crystal Elbe

EAL witness Elbe testifies that the SRC rates were designed around the concept of a minimum monthly bill set to recover the incremental costs of the transmission and generation infrastructure necessary to serve the Project. She explains the different components of the minimum bill, how that bill is calculated, and Google's demand charges. She states that if Google's actual usage is higher than the minimum bill demands, Google's monthly bill would be based on actual usage. Elbe Direct 5-7 (Doc. # 18).

Ms. Elbe further explains how bills are calculated after a certain period, and how revenues would be recognized during that period, noting that a portion of the minimum bills representing costs for resources that are not yet available to meet Google's demand

will be recorded as a regulatory liability. She states that the amortizations discussed in Mr. Hunt's testimony are attached to her testimony in Direct Exhibits CKE-2 and CKE-4. She states that the ongoing expenses associated with the transmission investments are included in the development of SRC fixed demand charge. *Id.* at 8-9.

Ms. Elbe introduces the RIM tests used in this Docket, stating that the RIM test accounts for the benefits of the program or contract and the costs associated with providing the program's services or supplying the load addition. She explains that if benefits exceed costs, there is a positive contribution to the utility's overall rate requirements, resulting in a lower rate requirement from all other customers and that the RIM test is typically expressed as a ratio of benefits to costs with a positive RIM test having a value of greater than 1.0. She reviews the language from the Commission's PPRs and prior Commission dockets, noting that the Commission established that the California Manual and its various tests, including the RIM test, are helpful guides. She states that other tests described the California Manual, the Participant test, the Total Resource Cost test, and the Utility test are not applicable to the Commission's requirements for approval of the Agreement. *Id.* at 10-11.

Ms. Elbe discusses the benefits considered in the RIM test as applied to the Agreement, including the three streams of benefits. She states that the benefit streams are calculated in her Direct Exhibit CKE-2. She lists the three cost categories incorporated into the RIM test: Energy Supply Costs; Capacity Supply Costs; and Cypress Solar Costs (Solar and BESS Costs) and explains how each one was estimated. She testifies that Transmission Operation and Maintenance (O&M) Costs were not included in the calculation because only annual O&M expenses associated with the transmission

interconnection upgrades are included because Google will fully fund the investment costs for the transmission interconnection through a CIAC. *Id.* at 12 – 14.

Ms. Elbe provides the results of the RIM test analysis which showed a RIM benefit cost ratio of 1.31. She adds that there were two sensitivities performed on the RIM analysis: changing the energy supply cost calculation to Locational Marginal Prices (LMPs) instead of the change in variable supply costs; and changing the SRC Base Revenues to the Minimum Bill Demand; she explains how the sensitivities were conducted. She states that using the first sensitivity, the resulting RIM test analysis benefit-cost ratio was 1.22. She offers that EAL ran this sensitivity to demonstrate what the results would be under the LMP method that has been used in prior SRC RIM tests when a change in variable supply costs analysis was not performed. She testified that using the second sensitivity, the resulting RIM analysis benefit-cost ratio was 1.07. She states that this sensitivity demonstrates that the Agreement provides positive net benefits to other customers assuming a Minimum Bill Demand level of expected revenues. She concludes that under either of these sensitivities, the RIM test results show positive net benefits for all customers. *Id.* at 15-17.

Direct Testimony of David Hunt

EAL witness Hunt describes the payment terms under the Agreement and discusses in detail the revenues and compliance with Ark. Code Ann. § 23-4-1304(x)(2)(B). First, he explains how the revenues received from Google will impact EAL's Formula Rate Plan (FRP), stating that EAL will include revenues from Google in EAL's FRP consistent with how other special rate contract revenues are treated and the projected revenue from Google, excluding the amounts deferred as discussed later in his

Testimony, will be reflected in the Projected Year calculation on Line 15 of Attachment B-3. He adds that the Company is proposing to defer the recognition of a portion of the revenues received during Google's ramp period consistent with Ark. Code Ann. § 23-4-1304(x)(2)(B). Mr. Hunt then discusses the two categories of payment under Ark. Code Ann. § 23-4-1304(x)(2)(B) and offers that these payments are not CIAC but are other payments for electric service that, per negotiations, exceed the rates Google would otherwise pay under the LGS rate schedule during its ramp period. Hunt Direct at 3 – 6 (Docs. # 19 and 24).

Mr. Hunt describes EAL's request for revenue deferrals. He testifies that the requested deferrals and ratemaking adjustments are necessary to manage the effects on rates because of the timing issues between revenues and revenue requirements. He adds that the goal is to better match the projected payments with the projected revenue requirements to keep rates stable for other customers and that EAL's proposed ratemaking deferrals and amortizations are intended to manage these swings in EAL's rates and effectively stabilize the recognition in rates of Agreement revenues and properly align those Agreement revenues to the correct time periods. He requests that the Commission allow for any deferred revenues that the Company records be amortized once Google has reached its full ramp based on EAL witness Elbe's Direct Exhibit CKE-4. He states that EAL could include adjustments to that amortization to manage rate impacts in a manner that provides comparable benefits for other customers over the lives of the strategic investments in each annual FRP filing. *Id.* at 6 – 8.

Mr. Hunt testifies that based on the RIM test presented by Ms. Elbe, the new base rate revenues produced through the Agreement will offset the incremental investment

necessary to serve Google over the term of the Agreement. He states that EAL is proposing to flow the revenues from the Agreement through the FRP, and that including revenues from any new customer in the FRP is a standard practice. He argues that including Google revenues in the GAJA Rider would be inconsistent with that standard practice and frustrate the purpose of the GAJA Rider. He states that EAL expects the regulatory liability for the deferred revenues will be excluded from CAOL used in calculating the benchmark rate of return on rate base in the formula rate plan until Cypress Solar goes into service, explaining that this treatment synchronizes the timing of recognition of the regulatory liability in the FRP with other Agreement-related formula rate plan effects on the benchmark rate of return on rate base, including Cypress Solar-related ADIT and monetized ITC proceeds, while also providing additional credit metric support for EAL during a short and intensive investment period. *Id.* at 9 – 11.

He explains that pursuant to the Agreement, Google will make CIAC payments for 100 percent of the transmission construction costs for the Project, which will directly offset the capital investment, and as result, the net book value of the transmission assets will be zero as consistent with Ark. Code Ann. § 23-4-1304(x)(2)(A). Accordingly, he states, EAL will not include the transmission investment needed to serve Google in any of its retail recovery tariffs. He addresses the ratemaking treatment of market energy and capacity revenues and states that certain other revenues received from Google will be included in EAL's Rider ECR or Rider CCR. *Id.* at 12–14.

Direct Testimony of Patrick Stack

EAL witness Stack briefly describes the payment terms under the Agreement. In describing the accounting for revenues that EAL will receive from Google, he states that

EAL will bill Google based upon the terms set forth in the Agreement and as the Company receives these revenues, they will be booked to FERC accounts, including account 442, Commercial and Industrial Sales, and account 456, Other Electric Revenues. He cautions that EAL's view that the Agreement presents reasonable terms assumes that a portion of these revenues will be deferred during Google's load ramp period and that those deferrals will be amortized, as described by EAL witness Hunt. He reiterates the accounting treatment that Mr. Hunt described, and states that EAL will recognize the previously deferred revenue and reverse the associated regulatory liability once Google has reached its full ramp with the amortization based on Ms. Elbe's Direct Exhibit CKE-X. Stack Direct at 4- 6 (Doc. # 29).

Mr. Stack states that EAL will be electing ITCs for Cypress Solar, and the net benefits from ITCs would be amortized over the lives of any Cypress Solar assets that realized them; specifically, EAL would flow through to customers the amortization of the net benefits of the ITCs as annual reductions in the revenue requirement associated with Cypress Solar. He testifies that the ITCs for Cypress Solar would initially be recorded as a deferred tax asset in FERC account 190, Accumulated Deferred Income Taxes, once the asset is placed in service under federal income tax rules. He explains that this deferred tax asset is expected to be monetized through the sale of ITCs to a third party for cash soon after recognition and that a liability would be recorded in FERC account 255, Accumulated Deferred Investment Tax Credits, to reflect the deferral of the income statement recognition of the ITCs. He adds that this liability would be amortized over the useful life of the relevant Cypress Solar assets, as the net benefits of the ITCs were provided to customers and that EAL would reflect the unamortized liability balance in

EAL's calculation of its weighted average cost of capital (WACC) as zero-cost capital, lowering its WACC rate and, therefore, the revenue requirement. He testifies that the benefits of the ITCs would be flowed back to customers as an offset to the revenue requirement for Cypress Solar through EAL's GAJA Rider. *Id.* 7- 8.

B. Direct Testimony of Staff

Direct Testimony of Regina Butler

Staff witness Butler summarizes EAL's Application and supporting testimony. Butler Direct at 4-9 (Doc. # 43)⁸. She testifies that EAL's proposed SRC is a promotional practice pursuant to 23 CAR § 460-102(5)(A)(x) of the Commission's PPRs and offers how EAL has complied with the requirements of those rules. She states that in accordance with 23 CAR § 460-104(1)(B) of the PPRs, EAL developed estimates of the cost-effectiveness and rate impact using the RIM test for various scenarios to determine if the program is in the public interest, guided by the California Standard Practice Model to select the appropriate tests. She testifies that in accordance with Section 460-104(2) of the PPRs, there is no evidence of discrimination in the offer of this contract by EAL to Google, given the highly unique circumstances of the planned new facilities and operations and that the proposed Agreement was designed based on the unique operating characteristics of Google. She states that EAL complied with the filing requirements in Section 460-105 of the PPRs and Exhibit B of the Application. She outlines where each

⁸ Errata Direct Testimony of Regina Butler was filed on October 27, 2025 (Doc #51).

of the filing requirements in the PPRs is addressed in the Direct Testimonies of EAL's witnesses. *Id.* at 9-10.

Ms. Butler testifies that EAL conducted the appropriate cost-effectiveness test in accordance with 23 CAR § 460-105(K) of the PPRs and the California Manual and describes the RIM test. She summarizes EAL's RIM test results. *Id.* at 11-13.

Ms. Butler concludes that based on Staff's evaluation of the Application and the EAL-conducted RIM tests, Staff supports that the proposed SRC meets the requirements set forth in the Commission's PPRs and is therefore in the public interest. She adds that the SRC includes significant protections for ratepayers other than the Customer and that the proposed accounting treatments for the regulatory liability and ITCs, including the opportunity to monitor and adjust the amortization period of the regulatory liability, will provide rate stability for other customers when Cypress Solar is completed and included in the revenue requirement. She states that given that the instant ratemaking treatment consistent with EAL's RIM analysis which supports that the Agreement provides benefits to all customers, Staff agrees that the SRC is in the public interest. *Id.* at 13-14.

C. Supplemental Testimony of EAL

Supplemental Testimony of David Hunt

EAL witness Hunt testifies that payments received from Google under the Agreement prior to completion of Google's facilities are appropriately considered as "for electric service" because they are revenues from minimum bill charges under the terms of the Agreement. Hunt Supplemental at 3-4 (Doc. #60). He explains that the purpose of the minimum bill charge is to offset the incremental cost of new system resources necessary to serve Google's load. *Id.* at 4. He states that the minimum bill charges provide

cash flow sufficient to maintain the Company's credit and financial integrity during the process of constructing Cypress Solar, which is needed, in part, to serve Google. *Id.* He states that this structure is permitted under FERC accounting rules and would normally be booked to Accounts 442 and 456 and reflected as revenues in the formula rate plan. *Id.* He states that the intended structure here is to defer a portion of those revenues in Account 254 as a regulatory liability and amortize them later. *Id.* He testifies that it was a critical component of the Agreement to have a payment stream whereby Google pays for electric service prior to completion of its facilities and Cypress Solar, thereby supplying cash to the Company so that the Company's financial condition is maintained during this capital-intensive period, which benefits all customers. *Id.* He testifies that absent a structure like the one utilized here, EAL could not generate sufficient cash flows to be capable of undertaking this level of new investment. *Id.* at 5. He explains that this structure benefits all customers through lowering the amount of debt issuances and lowering customer rates by maintaining the credit metrics necessary to continue to support access to the capital markets on reasonable terms. *Id.* He states that a lower cost of capital, which still affords investors a reasonable return on their investment, benefits all customers through lower rates and better access to the capital markets on reasonable terms. *Id.* He discusses how the credit ratings for the utility directly affect the cost of capital need for investments that benefit customers and drive overall customer rates. *Id.* at 5-6.

Mr. Hunt explains that credit metrics measure the degree of financial risk experienced by a company by comparing its cash flow to the level of debt the company requires to sustain its operating and capital investment activities. *Id.* at 6. He states that

by obtaining significant cash flow through the payment of minimum bill charges from Google, EAL is able to delay issuing debt to support the development of Cypress Solar and other capital expenditures and put beneficial upward pressure on these cash flow to debt metrics. *Id.* He states that maintaining these cash flow to debt metrics means that EAL can construct not just Cypress Solar but also continue other capital project plans to benefit EAL's existing customers without compromising EAL's financial condition. *Id.* at 6-7. Mr. Hunt discusses the June 2024 Moody's report and states that it was negotiating with Google in this credit environment and working with stakeholders on passage of legislation supportive of projects like Google, both of which were actions directed at avoiding deterioration of EAL's credit metrics and credit rating, which would lead to higher debt costs for all customers. *Id.* at 7. He discusses that these efforts can be seen by EAL's A-rating and stable outlook maintained in a more recent credit rating report issued by S&P Global Rating in September 2025. *Id.* The report was issued after Act 373 was passed and the announcement of a substantial increase in projected capital spending. He states that EAL's agreement with Google is explicitly designed to address the concerns of these credit rating agencies. *Id.* at 8. He testifies that it is appropriate to consider the revenues from the payment of minimum bill charges that EAL will receive from Google during the facility's construction and ramp period as payments for electric service. *Id.* He testifies that upending the comprehensive package of negotiated terms and consideration under the contract severely risks EAL's ability to complete the investments needed to serve Google. *Id.*

Mr. Hunt testifies that the payments could be deducted from the cost of strategic investments capitalized and recovered through the GAJA Rider pursuant to Ark. Code

Ann. § 23-4-1304(x)(2), but to do so would be detrimental to EAL's cash flows that are necessary for the capital investment necessary to serve this and other projects. *Id.* at 9. He states that the advanced electric payments would, in the early years, exceed the construction work in progress expense, causing potentially dramatic rate swings. He claims that to ensure that utilities can bring large economic development projects such as this one to Arkansas, the legislature specifically provided flexibility with respect to non-CIAC payments in subsection (x)(2)(B), as long as the proposed ratemaking treatment provides "comparable benefits" to the CIAC approach. *Id.* at 9-10. He testifies that it is critical that EAL be permitted to utilize the flexibility included in subsection (x)(2)(B) to maintain cash flows necessary to bring this project to fruition. *Id.* at 10. Mr. Hunt maintains that without this flexibility, and if all the advanced electric services payments were flowed immediately to customers through reduced rates or bill credits, EAL would be without the cash needed to build the strategic investments, which leads to more debt and strained financial metrics. *Id.* He testifies that it could also create rate shock over the term of the Agreement when strategic investment assets are placed in service and the full revenue requirement is implemented. *Id.*

Mr. Hunt testifies that potential benefits of offsetting the GAJA Rider revenue requirements are not necessarily more immediate and certain given the mechanics of Rider FRP and the four percent cap. *Id.* at 10-11. He states that deferring a portion of those revenues to be recovered in later periods stabilizes rates for all customers. *Id.* at 11. He contends that this is consistent with Act 373 roll-over provision and that EAL will apply these amounts to strategic investments through the GAJA Rider. *Id.*

Mr. Hunt explains why the transmission capital investments should be considered a CIAC and why the generation capital investment should not be considered a CIAC. *Id.* at 11-12. He testifies that the transmission capital investments needed to serve Google to interconnect and receive electric service and are only caused by and will be used by Google. *Id.* at 12. He states that Cypress Solar is a resource that will serve all customers, not just Google. *Id.* He asserts that EAL negotiated a level of rates in the Agreement, as opposed to a CIAC, that help support the construction of Cypress Solar by providing the necessary cash flows to maintain EAL's credit metrics, which will benefit all customers. In exchange for the level of rates in the Agreement, Google receives the clean energy attributes of Cypress Solar. *Id.* He claims that the General Assembly provided flexibility with respect to the treatment of non-CIAC payments relative to recovery in the GAJA Rider. *Id.* He states that a CIAC payment is a charge to the customer designed to cover the customer-specific investment costs solely needed to serve that customer, including any associated tax consequences. *Id.* at 12-13. He states that by the completion of the investment, Google would have made its final payment under a CIAC, and no further charges or payments related to those investments would be made. *Id.* at 13. He testifies that Cypress Solar, on the other hand, is a system resource that benefits all customers through its beneficial economics, creation of resource diversity, and reduction of fuel reliance. He reiterates that EAL negotiated a level of rates in the Agreement that help support the construction of Cypress Solar, but they are not intended to be and should not be treated as a CIAC. He contends that Google is financially supporting the development of Cypress Solar, but it is not funding a facility that will solely benefit Google. *Id.*

He disagrees that the appropriate ratemaking treatment, if the payments are a CIAC, is to deduct these payments from the costs of Cypress Solar to be recovered through the GAJA Rider, consistent with Ark. Code Ann. § 23-4-1304(x)(2)(A). *Id.* at 13-14. He states that the minimum bill payments from Google are advance payments for electric service and should not be categorized as CIAC. *Id.* at 14. He acknowledges that EAL agrees that any payments from Google to EAL that are determined by the Commission to be a CIAC would be deducted from the cost of Cypress Solar in the GAJA Rider under Ark. Code Ann. § 23-4-1304. *Id.* He testifies that that result conflicts with the purpose of the legislation and would severely risk EAL's ability to complete the investments needed to serve Google. *Id.*

Mr. Hunt states that EAL is requesting that the initial customer payments by Google be deferred as a regulatory liability, which satisfies the "recorded for ratemaking purposes" provision of the statute and proposes to amortize those deferred payments over a certain period of time, which satisfies the "period not to exceed the life of the strategic investment" provision of the statute because Cypress Solar has an expected 30-year life. *Id.* at 15. He asserts that the creation of a regulatory liability by Commission order is a long-recognized ratemaking construct. *Id.*

Supplemental Testimony of Crystal Elbe

EAL witness Elbe testifies that EAL and its counterparties are taking necessary steps to qualify Arkansas Cypress Solar for ITCs. Elbe Supplemental at 3-4 (Docs. #59). She states that the results of the RIM test under the various sensitivities range from 1.01 through 1.30, demonstrating that the SRC is positive from a rate impact standpoint and that the Project is expected to provide benefits to all other EAL customers. *Id.* She notes

that a positive RIM test is only one metric and does not necessarily indicate a contract that will result in a healthy utility. *Id.* She refers to the testimony of Mr. Hunt wherein he discusses the fact that the terms of the Agreement were negotiated comprehensively and carefully designed to balance the risks of EAL, EAL's other customers, and Google. *Id.* at 5. She contends that a material change to the terms of the SRC may negatively affect EAL's ability or Google's willingness to move forward with the project. *Id.* She explains certain adjustments and states that they are necessary because the Fixed Demand Charge rate in the SRC and the resulting revenues reflected in the RIM test were developed based on the inclusion of these adjustments in the calculation of rate base. Also, she states, they were intended to reflect the SRC terms in the event Cypress Solar is not eligible for ITCs. *Id.* at 6.

Ms. Elbe explains that the termination fee covers commitments made by Google in agreeing to a level of rates that financially supports the development and operation of Cypress Solar. She states that as a result, in the event the termination fee becomes applicable, EAL expects to receive sufficient funds to ensure that all other EAL customers are protected, which would be expected to produce positive RIM test results. *Id.* at 7.

Ms. Elbe testifies that a multi-year seasonal analysis was conducted that compares Google's anticipated maximum capacity obligation on EAL's system, inclusive of MISO's seasonal reserve margins, to the expected capacity accredited to the Cypress Solar assets. *Id.* at 8. She states that the ratio of the Cypress Solar assets' capacity accreditation to Google's maximum capacity obligation is expressed as a percentage of capacity coverage of the Google demand and then computed into an annual percentage by taking a simple average of that year's seasonal capacity coverage percentages. *Id.* She states that the

forecasted time period begins in the 2026 summer season and ends in the 2039 spring season, and the annual percentages are calculated beginning in the first full year of Cypress operations in the 2029/2030 planning year. *Id.*

D. Supplemental Testimony of Staff

Supplemental Testimony of Regina Butler

Staff witness Butler testifies that the payments in question are prepayments for electric service pursuant to a SRC and are not characterized as CIAC, and therefore the payments are rather under the category of “other forms of payment” and must comply with Ark. Code Ann. § 23-4-1304(x)(2)(B), rather than Ark. Code Ann. § 23-4-1304(x)(2)(A). Butler Supplemental at 3-4 (Doc. #63). She notes that the term Contribution In Aid of Construction is not defined in Act 373. *Id.* at 4. She states that under the terms of the SRC, the payments are considered prepayment for service that the customer is contracted to receive. *Id.* She agrees that an acceleration of revenue recognition would generally inure to the benefit of EAL’s current customers. *Id.* at 5. She agrees that the potential customer benefits of offsetting the GAJA Rider revenue requirements would be expected to be more immediate. *Id.* She states that if these payments/revenues are included in the formula rate plan rather than the GAJA rider, it raises a consideration of potentially putting customers in jeopardy of not realizing the benefit of amortized payments and that EAL should be required to make adjustments to avoid such a result. *Id.* at 5-6. She proposes that this be done as part of EAL’s proposal that it have the ability to propose in each annual formula rate plan filing annual adjustments to the amortization schedule to mitigate rate impacts in a manner that provides comparable benefits for other customers over the life of the strategic

investments. *Id.* at 6. She states otherwise the benefits should be flowed to customers using a mechanism that provides certainty that the customers will receive the benefits. *Id.*

Ms. Butler testifies that a CIAC is traditionally an amount paid by a customer to fund distribution- or transmission-level facilities needed to connect or serve the new load of that customer. *Id.* She states that payments for generation facilities could be characterized as CIAC. *Id.* She states that in this case, the SRC clearly defines the payments for transmission costs as CIAC and the other payments as non-CIAC prepayments. She testifies that the prepayments will support an EAL system resource that will be used to serve all EAL customers and will yield significant benefits to EAL's broader customer base as set forth in the Application. *Id.* at 6-7. She states that a utility may characterize certain forms of payment that are intended to provide support for the development of a strategic investment, such as the prepayments at issue in this case, as something other than a CIAC. *Id.* at 7. Ms. Butler agrees that if the payments were CIAC the appropriate ratemaking treatment is to deduct these payments from the costs of Cypress Solar to be recovered through EAL's GAJA Rider, consistent with Ark. Code Ann. § 23-4-1304(x)(2)(A). *Id.* She testifies that the statute does not specify when amortization should begin, it only states the maximum length of the amortization period. *Id.* at 8.

D. Second Supplemental Testimony of EAL

Second Supplemental Testimony of Crystal Elbe

EAL witness Elbe testifies that the results of the RIM test under the various sensitivities using the MBSA range is from 1.03 through 1.34, which are slightly better than those filed under traditional rate base methodology. Elbe Second Supp. at 3 (Doc.

#70). She notes that the results under both the MBSA and traditional methodologies demonstrate that the SRC is expected to provide benefits to all other EAL customers. *Id.* She states that the revenue requirement presented in Docket No. 25-054-U, EAL Direct Exhibit ALM-1, does not include the full impact of the Google SRC and Cypress Solar. *Id.* at 3-4. She states that it is isolated to Cypress Solar. *Id.* at 4. She explains that additional impacts are needed in the RIM test with respect to the Google SRC. *Id.* She identifies the deferred revenues from advanced payments for electric service and an estimate for the requested deferrals of billed revenues that exceed the underlying revenue requirement during Google's load ramp, the monetized ITC liability, and ADIT are the additional impacts that need to be considered. *Id.* She states that when using the MBSA, both deferred revenues from the SRC and the monetized ITC liability are reflected in CAOL in the cost of capital, both at zero-cost capital. *Id.* at 4-5. She testifies that this treats Google's advanced payments as deferred revenues resulting in long-term benefit for EAL customers because these deferrals lower EAL's rate of return that is applied to all rate base. *Id.* at 5. She describes how the MBSA is different from the traditional rate base methodology. *Id.* She elaborates that the MBSA, rather than lowering the rate base for the deferrals, is included in the cost of capital calculation. *Id.* at 6. She explains the differences in the MBSA and the traditional rate base calculation approach and determines that the results are similar because including the deferral in the rate of return under the MBSA produces a similar net impact as compared to reducing rate base with a traditional methodology. *Id.* She testifies that the traditional rate base methodology when calculating incremental costs for a RIM test does not conflict with the MBSA for ratemaking. *Id.* She states that EAL will continue to use the MBSA methodology and

reflect the requested deferred revenues, the monetized ITC liability, and ADIT in the cost of capital calculation as a zero-cost source of capital in ratemaking proceedings. *Id.* at 6-7. She states that the traditional rate base methodology is useful in isolating the associated incremental revenue requirements impacts of an investment as compared to the impacts being embedded in EAL's rate of return. *Id.* at 7. She states that the resulting RIM tests provide similar results. *Id.*

E. Second Supplemental Testimony of Staff

Second Supplemental Testimony of Regina Butler

Staff witness Butler explains the MBSA and states that it is appropriate to include all liabilities in the capital structure because of the fungibility principle. Butler Second Supp. at 3 (Doc. # 73). She describes the principle and that it has been repeatedly recognized by the Commission as reasonable and proper for ratemaking. *Id.* at 3-4. She explains how the original RIM tests for the SRC in this case did not contemplate the MBSA treatment and then how the supplemental RIM test did. *Id.* at 4. Ms. Butler describes the RIM test sensitivities EAL performed pursuant to Order No. 8 and states that they were consistent with the MBSA methodology. *Id.* at 5. She states that the results for the RIM tests for the twelve sensitivities range from low of 1.03 to a high of 1.34. *Id.* at 5-6. She discusses how the RIM test is used to evaluate the cost effectiveness of a given project. *Id.* at 6. She testifies that Staff independently verified the results of the supplemental RIM tests and found that all scenarios resulted in a positive cost/benefit for ratepayers under the proposed SRC. *Id.* She agrees that the supplemental RIM analyses produced similar results to the original RIM tests for the proposed SRC. *Id.*

IV. PUBLIC EVIDENTIARY HEARING

On November 17, 2025, the Commission held a Public Evidentiary Hearing at which witnesses for EAL and Staff were questioned by the Commission.⁹ When asked by the Commission during the hearing whether there is anything in the Agreement or any of the specifics related to EAL's request in this Docket or the Cypress Solar resource pending in Docket No. 25-054-U that is tied to the Agreement that could be made public, including what customers are going to be asked to pay and what that resource will cost, the lead attorney for EAL responded that she had no authorization from EAL's counterparty Google to agree to anything beyond what EAL has "already pushed to have public in the document." Without violating the agreement with the customer, she stated, EAL could not make public any additional information to give the public a better idea of what the Commission is considering, noting that a large majority of the HSPI redactions are driven by the customer sensitivities that relate to pricing whose release may impair Google's negotiation ability across the country. She offered to go back on behalf of EAL and ask Google to take a fresh look to see if there is anything else that can be made public. The Commission responded that it would have been more helpful if that had been done before the hearing. T. 42-45. No additional information was provided in unredacted form during the hearing and consequently the majority of the hearing was conducted *in-camera*, with the public being excluded from participation. The Commission notes that Google is not a Party to this Docket.

Prior to closing the hearing to the public, the Commission questioned EAL witness Hunt regarding Google's purpose in making a CIAC to Cypress Solar. Mr. Hunt responded that a defined part of the Agreement contains a provision that a portion of the

revenues Google will pay are dedicated to helping accelerate the construction of Cypress Solar. He stated that Google has its own energy policy preferences and needs. Asked at what point did EAL decide that Google's contribution should not be used to mitigate ratepayer bills, Mr. Hunt responded that he disagreed with that characterization, noting that EAL requested a special treatment of the contribution, regarding the timing of when the contribution, not whether it does or not. T. 36-37.

When asked whether EAL and Google are the sole parties that get to determine what is characterized as a CIAC, Mr. Hunt responded that that yes, Google and EAL are the two parties in the contract as it is now written that determine what is treated as a CIAC, and that was negotiated between those parties. T. 37-38.

When asked whether the characterization of the contribution and contract was done with the intent to avoid Google's contribution being treated as a CIAC, Mr. Hunt deferred to EAL witnesses Palmer and Dalrymple regarding the direct negotiations with Google, but noted that the characterization as a CIAC has implications for things on the utility side as well as the customer side and that Google had some preferences. He noted that there are different tax and accounting treatments when one actually pays a CIAC versus paying for electric service. He added that the accelerated payments in the contract for which EAL has asked for specific treatment as a deferred revenue to be amortized are not a rate base reduction. T. 38-39.

Mr. Hunt testified that once the Google starts being served, the deferred revenues lower the WACC that is applicable to the FRP. Thus, he stated, it is not a rate base offset

⁹ Transcript (T.) (Doc. #72).

but a lowering of the average cost of capital and a lowering of the revenue requirement through an amortization of those deferred revenues. T. 39.

When asked about an October 2, 2025 EAL press release stating that Google will cover “the full energy cost” associated with powering the data center, Mr. Hunt responded that the term means that the rates charged to Google are to cover all the generation, transmission, customer service, and administrative and general costs that are applicable to it as the customer. He opined that he did not think it was either intentionally or accidentally misleading to the average Arkansas ratepayer. He acknowledged that the Agreement includes certain Google payments to cover development of the Cypress Solar facility, which costs are a part of the pricing to Google. T. 40-41.

Mr. Hunt was also asked by the Commission to discuss the assertion in the same press release that new projects like the one before the Commission “help drive down electricity prices for everyone.” More specifically, the Commission asked Mr. Hunt to explain how much the bill impact to the average customer would change if the Google contribution was determined to be a CIAC. He responded that he did not have that figure and was not sure if anyone with Entergy did but deferred to Ms. Elbe or Mr. Palmer on the question. Regarding how customers such as Google could help lower costs to all customers, Mr. Hunt said that a broader customer base including customers like Google could absorb costs that EAL incurs, which beneficially impacts all customers. More

particularly, he suggested that if Google shared in costs included in a rider such as the EECR Rider, that would lower costs for all.¹⁰ T. 42.

Upon the request of the Commission, the proceeding then moved into an *in-camera* session, in which individuals who had not signed an affidavit of confidentiality were asked to leave the hearing room. [REDACTED]

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¹⁰ The Commission notes, and the Agreement provides, pursuant to Ark. Code Ann. § 23-3-405 that large customers such as Google are eligible for exemption from paying the EECR Rider costs if they provide notice to the Commission of their intent to self-direct their own energy efficiency programs.

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The Commission ended the *in-camera* session and resumed questioning of Mr. Palmer, who provided additional unprotected information regarding the number of direct jobs estimated to be supported by Cypress Solar. He stated that there would be 10 to 15 permanent onsite solar and battery technician positions, cleaning and maintaining solar panels and inverter equipment and wiring. Likewise, he said there is some maintenance of batteries; the positions would look a lot like an electrician. He said the annual salary ranges for these positions are between \$70,000 and \$95,000 for each position. T. 90-91.

When asked if EAL balances its duty to its ratepayers versus its duty to Google with regard to Google's preference that its contribution not be treated as a CIAC, Mr. Palmer stated that he thinks EAL did that. He stated that if EAL were to take it in the form of a CIAC, there would be a timing as to when Google would owe that CIAC. He added that they would potentially come in before the plant is operational, but when that occurs, one would just reduce the amount of rate base by that amount. However, he stated, here EAL is collecting funds to support construction activities not just for Cypress Solar. What EAL is proposing is to construct a liability, meaning EAL owes customers money and is

proposing a threshold, as opposed to doing a one-time reduction because this contract generates a lot of revenue. He stated that EAL sees ways that it can drive rates down and practically amortize it over the contract period, but EAL is asking for the flexibility to expedite that amortization if it sees there is a need to smooth out rate changes in the future. T. 91-92.

In other words, Mr. Palmer testified, EAL generates a lot of revenue from a new customer contract, and it drives other customers' rates down this year, but now those revenues are reflected in rates, and EAL has a new cost. Next year, he said, maybe other customers' rates need to increase, so having that flexibility on the back end means EAL can change that amortization period or propose to change it to address that swing, which customers do not prefer as some already have difficulties paying their bills. He added that EAL is giving customers a benefit not different than CIAC, but in a way that provides the Company some flexibility to manage the way bills change after that resource is online as opposed to just a one-time reduction, but it's still a liability and it still goes to other customers' benefit. T. 91-92.

Mr. Palmer responded to an earlier question regarding Google's position on CIAC, stating that there are real implications to the Customer in how one collects money from them, and they were looking for a particular financial treatment. He stated that it is always a balancing act with the customer, so you try to do it in a way that satisfies them because you want to get the contract. For EAL, he said, customers are going to get the benefit out of it regardless, so if EAL can do that in a way that gets this contract done, that is how EAL is going to propose to do it. T. 93.

The Commission asked Mr. Palmer whether under the statute it is possible to have the flow-back amortization flexibility that EAL suggests -- even if it makes sense -- but if it's not CIAC but is treated as another form of payment, don't the benefits have to flow equally over the life of the unit? Mr. Palmer responded that he believes it would be the opposite: if it were a CIAC, then there would not be any flexibility with how it goes back, because it doesn't go back -- it just changes the amount when the plant is closed. He added his recollection that the statute limits how long those benefits of the "other form of payment" can be at the life of the plant, but it does not prohibit it being something shorter. T. 94-96.

When asked how the shorter period of amortization provides comparable benefits for other customers over the life of the investment, which is beyond what EAL is proposing and is thus restricted under the Act, Mr. Palmer responded that the restriction is being "not to exceed." When asked to explain the other restriction being flowing the benefits back in a manner that requires them be flowed equally or comparably, Mr. Palmer responded that another view of that is that relative to a CIAC, which is a one-time change, the other form of payment with some period of amortization -- whatever that period is -- is spreading those benefits out over something that looks like the life of the plant as opposed to just a one-time adjustment. Mr. Palmer added that it is completely within the limit -- it is not exceeding the life of the plant but it's actually spreading out to get those benefits more comparable to the life as opposed to one time. He stated that it is just an alternative way of reading it. He concluded that he does not see that it is inconsistent with the statute. T. 96-97.

The Commission next questioned EAL witness Elbe concerning the RIM test. Ms. Elbe testified that the RIM test is designed to evaluate the customer's incremental revenue compared to the incremental cost to serve them; it only measures the electric revenues and the incremental electric cost, as opposed to the larger economic benefits outside the jurisdiction of the Commission. She stated that from the cost side, the test does include an estimate for property taxes that the customer will pay, which are not regulated by the Commission. T. 101-102.

In response to Commission questioning, Ms. Elbe stated that when developing the pricing for Google, to simplify the modeling, EAL used an MBSA approach, including those direct impacts that show up in cost of capital and rate base because they get equivalently to the same place, and it makes a long-term model a little easier to manage and see the changes. However, she added, it does not suggest that EAL would have precluded anything different than what the Commission has authorized. She stated that EAL assumes that it would have come to the same result as what the Commission has used since the 1980s. T. 103,

When asked to define "traditional resource certification revenue requirement methodology," Ms. Elbe testified that traditionally in a certification proceeding, the impact of a Google-type contract and specifically to deferrals that are big piece of the overall contract and whose amortization helps to manage rates for all other customers. She noted that she did not mean that those deferrals, and the way EAL is treating them, wouldn't show up for customers. T. 103-104.

When asked at what point in her analysis she determined that she would not use the MBSA in her calculation of the RIM test, she testified that she did not understand at

that time that the RIM inputs violated over 40 years of Commission precedent. She stated that the intention was to show the same reduction to rate base and reduction to returns as flowing through the cost of capital, which would affect only the rate of return. She said she used a different system because it was a simplified modeling assumption, and she did not mean to change any of the underlying ratemaking in Arkansas. T. 104-105.

Ms. Elbe next testified that, in the RIM modeling, she excluded the deferral of revenues, the monetization of the ITCs, the other ADIT for the solar, and the batteries. She acknowledged being aware that this is not how the Commission sets rates in Arkansas since it is not in accordance with the MBSA, and that she did that because it was simpler. She responded that she didn't understand the Commission's request to do the models based on the MBSA or she would have run the calculation differently. She expressed a willingness to correct that following the hearing. She opined that she did not think this would change the outcome of the RIM test. T. 105-106.

The Commission asked Ms. Elbe why she used a simple cycle combustion turbine as the value for modeling the incremental capacity cost and a RIM test, to which she stated the Commission had seen that type of modeling before, including for other SRC contracts. She acknowledged that when she modeled those, they were not based on a calculation like the one for Google but did comply with the MBSA. T. 106-107.

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VI. COMMISSION FINDINGS AND RULING

A. Special Rate Contract

Pursuant to 23 CAR § 460-104, the following standards shall govern the utility's promotional practices:

(1)(A) A promotional practice must be in the public interest.

(B) In determining whether a practice is in the public interest, the Arkansas Public Service Commission shall consider the following:

(i) Cost efficiency of the proposed promotional practice using the:

(a) Total Resource Cost Test;

(b) Participant Test; and

(c) Utility Cost Test; and

(ii) Ratepayer impact of the proposed promotional practices using the Ratepayer Impact Measure test.

EAL witness Elbe testified to the RIM test conducted by EAL in this Docket, explaining that if benefits exceed costs, there is a positive contribution to the utility's overall rate requirements, resulting in a lower rate requirement from all other customers and that the RIM test is typically expressed as a ratio of benefits to costs with a positive RIM test having a value of greater than 1.0.¹¹ She testified that the results of the RIM test analysis showed a RIM benefit cost ratio of 1.31.¹² She also testified that that there were two sensitivities performed on the RIM analysis, and that the benefit-cost ratio was for

¹¹ Elbe Direct at 10-11.

¹² *Id.* at 17.

those tests were 1.22 and 1.07, demonstrating that the Agreement provides positive net benefits to other customers.¹³

Order No. 6 issued November 5, 2025, directed EAL to provide additional sensitivities based on various scenarios, and Ms. Elbe filed Supplemental Testimony and Exhibits with the results on November 10, 2025. However, during the Public Evidentiary Hearing, the Commission noted that Ms. Elbe did not use the MBSA in her RIM test sensitivity calculations, and she was ordered to do so in post-hearing Order No. 8. On November 21, Ms. Elbe filed her Second Supplemental Testimony stating that the results of the RIM test under the various sensitivities using the MBSA range are from 1.03 to 1.34, which are slightly better than those filed under a traditional rate base methodology.¹⁴

Staff witness Butler testified that Staff independently verified the results of the supplemental RIM tests and found that all scenarios resulted in a positive cost/benefit for ratepayers under the proposed SRC.¹⁵

Based upon the testimony and exhibits of EAL and Staff and the review of the Agreement between EAL and Google, the Commission approves, without modification, the Agreement filed as EAL's Exhibit A to its Application as being consistent with the public interest. The Commission finds that the results of the RIM test, including the sensitivities initially performed by EAL and those requested by the Commission, show positive results (1.0 or above), indicating that the promotional practice embodied in the

¹³ *Id.* at 15-17.

¹⁴ Elbe Second Supplemental at 3.

¹⁵ Butler Second Supplemental at 6.

SRC with Google does not give any undue preference or advantage to any person, or subject any person to any undue prejudice or disadvantage, under 23 CAR § 460-104.

B. EAL's Cost Recovery Proposal

In its Application, EAL also included several requests for specific ratemaking treatment associated with Google's contracted payments to EAL. EAL maintains that the [REDACTED] Payments included [REDACTED] are intended to constitute "any other forms of payment" under Ark. Code Ann. § 23-4-1304(x)(2)(B) and should not be characterized as a "contribution in aid of construction" (CIAC) under Ark. Code Ann. § 23-4-1304(x)(2)(A).¹⁶ The distinction is significant because, as the statute provides, it determines the appropriate ratemaking treatment of these contribution payments, and if treated as a CIAC, the contribution payments "shall be deducted from the cost of the strategic investments capitalized and recovered through rates, i.e., via EAL's GAJA Rider, as these contribution payments are received from Google [REDACTED], during the construction of Cypress Solar and the construction and ramp-up of Google's West Memphis data center. For the reasons articulated below, the Commission denies EAL's requested ratemaking treatment for the [REDACTED] Payments as it does not comply with Act 373.

The Commission cannot approve EAL's proposed ratemaking treatment because it does not comply with Ark. Code Ann. § 23-4-1304(x)(2)(B), which requires that "any other forms of payment shall be recorded for ratemaking purposes . . . in a manner that provides comparable benefits for other customers over the life of the strategic

¹⁶ Hunt, **HSP** T. 47 and Palmer T. 95-96 (unredacted).

investments.” Here, EAL has proposed to create a regulatory liability to be amortized over a period of time significantly shorter than the life of Cypress Solar. In short, EAL’s proposed ratemaking treatment diverges from what is authorized under subsection (x) of Ark. Code Ann. § 23-4-1304.

Ark. Code Ann. § 23-4-1304(x)(2) authorizes specific ratemaking treatment for CIAC payments and for payments made by a customer through “any other form of payment.” CIAC payments are deducted from the costs of the strategic investments capitalized and recovered through rates. Ark. Code Ann. § 23-4-1304(x)(2)(A). Other forms of payment “shall be recorded for ratemaking purposes, when the strategic investments are first included in rates and shall be recognized as payment over a period not to exceed the life of the strategic investments, in a manner that provides comparable benefits for other customers over the life of the strategic investments.” Ark. Code Ann. § 23-4-1304(x)(2)(B). EAL’s proposed ratemaking treatment fails to comply with either authorized ratemaking treatment.

EAL has stated that the contract payments are not CIAC and thus Ark. Code Ann. § 23-4-1304(x)(2)(A) would not apply. Although “CIAC” is not defined in the Generating Arkansas Jobs Act, Ark. Code Ann. § 23-4-1301 *et. seq.*, or elsewhere in Title 23 of the Arkansas Code, the utility industry term “CIAC” is routinely used and recognized in state and federal regulatory proceedings. In this case, the Commission ascribes to the word its ordinary and plain meaning – contribution used in aid of construction, and despite specific assertions that these contribution payments are not a CIAC, much of the language employed by EAL witnesses in this proceeding is consistent with the ordinary and plain

meaning of a CIAC. When questioned by the Commission, Staff witness Butler admitted that if the Act wasn't in place, it would have looked very much like a CIAC at first review.¹⁷

In her Direct Testimony, EAL witness Dalrymple states that the accelerated milestone payments “contribute to the funding of the development and operation of incremental generation resources needed to provide service to the Project.”¹⁸ She describes these payments as a benefit to EAL's broader customer base, along with Google's commitment to pay a CIAC for 100 percent of the costs of the incremental transmission facilities needed to serve the Project.¹⁹ In describing how the rates for the SRC were developed, EAL witness Elbe asserts that the rates were designed to recover “the incremental costs of the transmission and generation infrastructure necessary to serve the Project,” and that the first component of the minimum bills is comprised of “accelerated payments for a portion of the **construction costs of Cypress Solar**”²⁰ (emphasis added). Ms. Elbe goes on to state the following: “During the time period in which the Project is being constructed, Google will pay minimum bills comprised solely of the accelerated payments that represent a portion of the rates set at a level to financially support the development of Cypress Solar.”²¹ Even Mr. Hunt, EAL's primary witness on the Company's preferred ratemaking treatment for the accelerated payments, reiterates

¹⁷ T. 157.

¹⁸ Dalrymple Direct at 8-9.

¹⁹ *Id.* at 6-8.

²⁰ Elbe Direct at 5.

²¹ *Id.* at 7-8.

that “the Agreement was designed in such a way that Google’s rates are set at a level to financially support the development and ongoing operation of Arkansas Cypress Solar.”²² Although EAL articulated the importance of these payments not being treated as CIAC to Google, in his Direct Testimony, Mr. Hunt concedes that without EAL’s proposed ratemaking adjustments, “[REDACTED]

[REDACTED].”²³ The Commission notes that the purposes of treating these contributions as “another form of payment” is to benefit EAL and Google, not EAL’s other customers. In an environment of rapidly accelerated load growth, infrastructure investments, and customer rate increases associated with utility requests to recover these investments, customers would benefit from having these contributions treated as a CIAC to mitigate the immediate rate impact of these investments.

Nonetheless, although these payments are difficult to distinguish from CIAC, Act 373 recognizes other contributions toward the cost of the strategic investment as another form of payment distinct from CIAC. Ark. Code Ann. § 23-4-1309(b)(2)(B). However, if these contributions are to be treated as “other forms of payments” rather than CIAC, then the payments have to “be recorded for ratemaking purposes . . . in a manner that provides

²² Hunt Direct at 5. In his Supplemental Direct Testimony, in response to the Commission’s questions in Order No. 6, Mr. Hunt attempts to draw a distinction between a customer-specific investment or resource versus investment in a “system resource” that benefits all customers, for purposes of determining whether contribution payments should be treated as a CIAC. Hunt Supplemental at 11-13. However, Mr. Hunt provides no evidence or authority that a CIAC cannot not encompass payments to support the construction of a system resource favored by the customer and needed to support a large portion of the customer’s load.

²³ Hunt **HSPI** Direct at 7.

comparable benefits for other customers over the life of the strategic investment.” Ark. Code Ann. § 23-4-1304(x)(2)(B).

For these reasons, the Commission must deny EAL’s proposed ratemaking treatment of the [REDACTED] as EAL’s proposal fails to comply with Ark. Code Ann. § 23-4-1304(x)(2)(A) or (x)(2)(B). EAL is ordered to file a proposed ratemaking treatment for [REDACTED] [REDACTED] within thirty (30) days of this Order that treats the payments as CIAC or proposes an amortization schedule that complies with Ark. Code Ann. § 23-4-1304(x)(2)(B), accompanied by testimony to support its position.

With respect to the Monthly Minimum Bill payments included in Table 4 of the SRC, which are also characterized as “any other forms of payment” pursuant to Ark. Code Ann. § 23-4-1309(b)(2)(B),²⁴ EAL is ordered to file a proposed ratemaking treatment for the Monthly Minimum Bill payments within thirty (30) days of this Order that proposes an amortization schedule that complies with Ark. Code Ann. § 23-4-1304(x)(2)(B), accompanied by testimony to support its position.²⁵ The findings above do not alter the SRC, which the Commission approves without modification. Nevertheless, the Commission remains obligated to rule on the separately requested ratemaking treatments included in EAL’s Application to ensure that such proposals are consistent with Act 373.

²⁴ Such prepayments for electric appear to be associated with, and based on, monthly minimum demand charges and other rate charges for electric service set forth in the Agreement.

²⁵ The Commission agrees to exclude this regulatory liability, if approved, from CAOL in the benchmark rate of return on rate base and any associated accumulated deferred income taxes (ADIT) in the weighted average cost of capital (WACC) as zero-cost capital until Cypress Solar goes into service, consistent with Ark. Code Ann. §23-4-1304(m)(1)(C).

C. Investment Tax Credits

EAL makes several requests for the treatment of the ITCs which will be generated by the Cypress Solar facility. In Order No. 11 in Docket No. 25-049-TF, the Commission ordered that “EAL shall include with each [GAJA Rider] Annual Update a list of all tax credits available for use during the Rider Test Period, and the Company remains subject to this directive and should be fully transparent in all GAJA Rider updates. EAL’s requests for specific ratemaking treatment related to the Cypress Solar ITCs are deferred for purposes of this Docket.

D. [REDACTED]

EAL proposes to include the [REDACTED] paid by Google under the Agreement within EAL’s Rate Schedule No. 38, Energy Cost Recovery Rider EAL’s (Rider ECR). EAL witness Elbe explained during the Hearing that under the Agreement, Google will [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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²⁶ T. 108-109.

Similarly, EAL proposes to include the [REDACTED] paid by Google under the Agreement in EAL's Rate Schedule No. 47, Capacity Cost Recovery Rider (Rider CCR). EAL witness Hunt explains that these revenues will offset capacity expenses incurred from the MISO market, and that both the ECR and CCR revenues will be removed from formula rate plan revenues consistent with other Rider ECR and CCR transactions.²⁷

Staff did not directly address either proposal in testimony, but agreed to the treatment in the filed *Joint Motion to Submit for Approval*.

The Commission finds that both proposals, for the Rider ECR and the Rider CCR are consistent with the treatment of other similar components of both riders and finds that the proposal is reasonable and in the public interest. EAL shall submit proposed tariff revisions for both the Rider ECR and Rider CCR to the extent necessary to incorporate these findings.

E Additional Comments

The Commission continues to have significant concerns over the ratepayer impact of the Agreement and the cumulative impact on the rates and charges of EAL's proposals for approval of major new generation and transmission facilities as sought and granted in Docket No. 24-072-U (Lake Catherine) and pending in Docket Nos. 25-047-U (Jefferson Power Station), and 25-054-U (Cypress Solar), as well as EAL's expressed intention to study the possible repowering of the White Bluff Generating Station. The Commission cites as illustrative of these concerns the Supplemental Hearing Testimony and Exhibits

²⁷ Hunt **HSPI** Direct at 13-14 (unredacted).

in Response to Order No. 10 of Matthew Klucher in Docket No. 25-049-TF, and more specifically, Supplemental Hearing Testimony Exhibit MSK-2 (Doc. #87) showing the five-year cumulative change in rates associated with the three new generation facilities approved or proposed for recovery through EAL's recently approved GAJA Rider.

The Google SRC contains numerous positive elements, including a very substantial Customer contribution that may serve to mitigate rate increases and cost increases to customers if properly implemented. The Commission expects and encourages EAL and Google to pursue this project to the benefit of all parties. The Commission cautions EAL, for this and future projects and applications for large load strategic investment resources, to structure its requests in accordance with this Order.

BY ORDER OF THE COMMISSION.

This 4th day of December 2025.



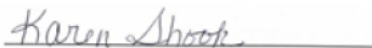
Doyle Webb, Chairman



Justin Tate, Commissioner



Katie Anderson, Commissioner



Karen Shook, Secretary of the Commission

I hereby certify that this order, issued by
the Arkansas Public Service Commission, has been
served on all parties of record on this date by the
following method:

☐ U.S. mail with postage prepaid using the mailing
address of each party as indicated in the official
docket file, or
☒ Electronic mail using the email address of each
party as indicated in the official docket file