LOUISIANA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE HEARINGS DIVISION

DOCKET NUMBER U-37425

ENTERGY LOUISIANA, LLC, EX PARTE

In re: Application for approval of generation and transmission resources in connection with service to a single customer for a project in North Louisiana.

REFERRAL OF INTERLOCUTORY RULING TO COMMISSIONERS FOR IMMEDIATE REVIEW PURSUANT TO RULE 57

(On Peremptory Exception of Nonjoinder)

In this proceeding, Entergy Louisiana, LLC ("ELL") seeks certification from the Louisiana Public Service Commission ("LPSC" or "Commission") of three Combined Cycle Combustion Turbine ("CCCT") generators, totaling 2,262 megawatts ("MW") of new baseload generation, a new 500kV transmission line, new substations, and certain equipment upgrades at an existing 500kV substation ("Application"). According to the Application, these additions and upgrades are necessary to serve a proposed hyperscale data center owned by Laidley LLC ("Laidley"), a subsidiary of Meta Platforms, Inc. ("Meta"). The data center is being developed in Richland Parish, Louisiana, and will require significant, firm, around-the-clock power ("the Project").

The Application was published in the Commission's Official Bulletin No. 1336 dated November 8, 2024, for an intervention period of 10 days. The following parties intervened: Louisiana Energy Users Group, Southern Renewable Energy Association ("SREA"), Union of Concerned Scientists and Alliance for Affordable Energy (collectively, "NPOs"), Sierra Club, Northeast Louisiana Power Cooperative, Inc., 1803 Electric Cooperative, Inc., Housing Louisiana, Walmart Inc., and Occidental Chemical Corporation. Pointe Coupee Electric Membership Corporation, Cleco Power LLC, Southwest Louisiana Electric Membership Corporation, Retail

Energy Supply Association, Southwestern Electric Power Company, the Association of Louisiana Electric Cooperatives, Inc., and EP2 Consulting, LLC requested interested party status.

On March 5, 2025, the NPOs filed a *Peremptory Exception and Motion to Declare Laidley, LLC and Meta Platforms, LLC as Parties Necessary for Just Adjudication in this Proceeding and Supporting Memorandum* ("Peremptory Exception of Nonjoinder") urging the Commission to find Laidley and Meta are parties necessary for the just adjudication of this proceeding or to dismiss the proceeding if Laidley and Meta do not intervene. SREA filed a memorandum in support of the Peremptory Exception of Nonjoinder, and ELL and Commission Staff filed memoranda in opposition. The NPOs filed a reply brief on March 21, 2025. Thereafter, the NPOs, ELL, and Commission Staff appeared and argued their respective positions at an oral argument held on March 25, 2025. On April 4, 2025, the presiding administrative law judge ("ALJ") denied the Peremptory Exception of Nonjoinder, concluding that the Commission can accord complete relief to the parties in the proceeding without the joinder of Laidley and Meta, and further, that the NPOs' arguments regarding a lack of evidentiary support for the Project and need for additional information are insufficient justification for compulsory joinder.

Motion for Immediate Review

On April 14, 2025, the NPOs filed a motion for immediate review pursuant to Rule 57 of the Commission's Rules of Practice and Procedure, arguing that Laidley and Meta should be joined to address gaps in the evidentiary record; that the lack of Commission precedent for compulsory joinder does not indicate that it is unnecessary; that federal cases holding that discovery is an insufficient justification for compulsory joinder are not persuasive; that the joinder of Laidley and Meta is necessary to protect the substantial rights of the NPOs; that the NPOs cannot obtain the

discovery that they seek without the joinder od Meta; and that the NPOs will suffer irreparable harm if the Commission does not immediately review the interlocutory ruling.

On April 24, 2025, ELL and Staff filed memoranda in opposition to the motion for immediate review. In its memorandum in opposition, ELL argues that legal precedent is clear that joinder is only absolutely necessary where some vital property or personal interest is at stake and the ruling correctly found that the NPOs fell short of demonstrating that Laidley and Meta were "absolutely necessary"; that the ALJ properly looked to federal case law as persuasive authority; that the NPOs failed to pursue less drastic remedies than joinder; and that the NPOs cannot establish irreparable harm. In Staff's memorandum in opposition, it argues that the NPOs cannot show irreparable harm; that the ALJ reasonably relied on well-established federal jurisprudence, in addition to many other factors, in rejecting the NPOs' motion; that the NPOs' argument regarding their inability to obtain discovery are without merit; that the NPOs misunderstood the ruling with regard to the rarity in which the issue of joinder arises at the Commission; and that the Commission is in a unique position to accord "complete relief" in almost all of its cases.

Review of Interlocutory Rulings

Rule 57 provides in pertinent part:

> *Any party may apply for immediate review of an interlocutory ruling, which may be obtained only upon a showing of irreparable injury, as defined in Louisiana jurisprudence. The procedure for such a request is as follows:*
>
> *(1) Within ten (10) days of the issuance of the interlocutory ruling, a party may file with the Administrative Hearings Division a motion for immediate review of the ruling. The motion must be accompanied by a legal memorandum which specifies the alleged errors in the ruling, with supporting legal authority, and sets out the grounds and authority for the moving party's claim that the interlocutory ruling will result in irreparable injury.*

(2) Any party opposing the motion for immediate review shall have ten (10) days from the date on which the motion was filed to file an opposition memorandum.

(3) At the conclusion of the deadline for filing opposition memoranda, the Administrative Hearings Division shall forward to the Commissioners the motion for immediate review, any memoranda filed in support of or in opposition to the motion, a copy or transcript of the interlocutory ruling being questioned, and any written comment offered by the administrative law judge, and shall forward the motion for immediate review to the Secretary for placement on the Commission meeting agenda.

Pursuant to Rule 57(3), above, the ALJ hereby refers to the Commissioners for immediate review the following:

(1) The *Ruling on Peremptory Exception of Nonjoinder*;

(2) The *Motion for Immediate Review of Interlocutory Order and Memorandum in Support filed Pursuant to Rule 57*;

(3) *Entergy Louisiana, LLC's Memorandum in Opposition to "Motion for Immediate Review of Interlocutory Order";* and

(4) The *Memorandum in Opposition of the Louisiana Public Service Commission Staff to the Motion for Immediate Review of Interlocutory Order and Memorandum in Support filed Pursuant to Rule 57.*

Baton Rouge, Louisiana, this 30th day of April, 2025.

Melanie Verzwyvelt
Chief Administrative Law Judge

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LOUISIANA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE HEARINGS DIVISION

DOCKET NUMBER U-37425

ENTERGY LOUISIANA, LLC, EX PARTE

In re: Application for approval of generation and transmission resources in connection with service to a single customer for a project in North Louisiana.

RULING ON PEREMPTORY EXCEPTION OF NONJOINDER

On March 5, 2025, the Alliance for Affordable Energy and the Union of Concerned Scientists ("NPOs") filed a *Peremptory Exception and Motion to Declare Laidley, LLC and Meta Platforms, LLC as Parties Necessary for Just Adjudication in this Proceeding and Supporting Memorandum* ("Peremptory Exception of Nonjoinder") with the Louisiana Public Service Commission ("LPSC" or "Commission") urging the Commission to find that Laidley LLC ("Laidley") and Meta Platforms, LLC ("Meta")[1] are parties necessary for the just adjudication of the approvals sought by Entergy Louisiana, LLC ("ELL") in this proceeding. In the Peremptory Exception of Nonjoinder, the NPOs urge the Commission to dismiss the proceeding if Laidley and Meta do not intervene. Per the briefing schedule set by the Tribunal, on March 17, 2025, Southern Renewable Energy Association ("SREA") filed a memorandum in support of the Peremptory Exception of Nonjoinder and ELL and Commission Staff filed memoranda in opposition. The

[1] The attachments to the Peremptory Exception of Nonjoinder indicate that the corporate entities registered with the Louisiana Secretary of State are Meta Platforms Technologies, LLC, and Laidley LLC (comma omitted). Meta Platforms Technologies, LLC lists as a corporate officer, Meta Platforms, Inc., which is listed in Mr. May's testimony as the parent of Laidley (Although no updated version of Mr. May's testimony was filed, it is assumed that this information is public, since it was mentioned in the Exception of Nonjoinder as well as in Attachments 6 and 12 thereto, albeit without the "s" at the end of Platforms in Attachment 6, and without the period at the end of Inc. in Attachment 12). There is no apparent mention of Meta Platforms, LLC, the party identified by the NPOs as necessary to this adjudication. The Tribunal did not conduct an independent review of the Louisiana Secretary of State Business Filings for the entities herein, and only made this observation after the oral argument on this matter. Although it is inconsequential to this *Ruling on Peremptory Exception of Nonjoinder*, we point out these inconsistencies to help avoid confusion at the hearing on the merits.

NPOs filed a reply brief on March 21, 2025. Thereafter, the NPOs, ELL, and Commission Staff appeared and argued their respective positions at an oral argument held on March 25, 2025. Additional appearances were made by the Louisiana Energy Users Group and Occidental Chemical Corporation.

HAVING CONSIDERED all pleadings, supporting and opposing memoranda, the arguments presented, and for the reasons described in further detail below, the NPO's Peremptory Exception of Nonjoinder is **DENIED**.

Reasons

A. Background and Procedural History

In this proceeding, ELL seeks Commission certification of three Combined Cycle Combustion Turbine ("CCCT") generators, totaling 2,262 megawatts ("MW") of new baseload generation, a new 500kV transmission line, new substations, and certain equipment upgrades at an existing 500kV substation ("Application"). According to the Application, these additions and upgrades are necessary to serve Laidley's proposed hyperscale data center, which will be developed near Holly Ridge, in Richland Parish, Louisiana. The data center will require significant, firm, around-the-clock power ("the Project").[2] Laidley is expected to invest at least $5 billion in capital.[3] In addition, through the customer-specific Corporate Sustainability Rider ("CSR"), Laidley has committed to paying for 1,500 MW of designated solar and/or storage resources, which will assist with ELL's long-term planning needs.

[2] Even after the certification of the CCCT generators, ELL will need to procure and seek certification of 1,500 MW of solar and/or solar and storage resources to serve the Project.
[3] In its memorandum in opposition, ELL suggests this number may be as high as $10 billion.

ELL and various state leaders have touted that the Project will have "enormous" and "transformative" effects on the economies of Richland Parish and the surrounding communities in North Louisiana, resulting in 300 to 500 permanent high-paying jobs, and an influx of capital investment that will "elevate the quality of life of the citizens" of this "economically disadvantaged region of the state." According to ELL, the anticipated financial contributions and the Customer's urgent need for power constitute sufficient good cause to excuse ELL from complying with the Commission's Market-Based Mechanisms General Order (the "MBM Order").[4]

At its November 2024 Business and Executive Session ("B and E"), the Commission directed that a final recommendation on the Application be placed on the agenda for its October 2025 B and E. The Tribunal held an initial status conference on December 3, 2024, and set a procedural schedule to meet the directive, as follows: Commission Staff and Intervenor testimonies are due on April 11, 2025, cross-answering testimony is due on May 9, 2025, ELL's rebuttal testimony is due on May 30, 2025, there is a discovery deadline of June 30, 2025, and the parties will brief the contested issues on July 3, 2025. A two-week hearing on the merits is scheduled for July 14 through July 25, 2025. On February 27, 2025, the Tribunal issued a notice declining to rule on a previous motion to dismiss filed by the NPOs, finding that it was premature.

B. Positions of the Parties

i. NPOs

In their Peremptory Exception of Nonjoinder, the NPOs refer to a series of data responses that ostensibly demonstrate ELL's lack of an evidentiary basis for many of the aforementioned

[4] According to the testimony of Mr. May, it was necessary to begin engineering, long-lead material acquisition, establishing construction power, and securing a position in the Midcontinent System Operator, Inc. ("MISO") queue in 2024 to meet the Customer's timeline.

assertions regarding the benefits of the Project. For example, the NPOs point out that ELL lacks independent knowledge of the jobs that will result from the Project. In ELL's response to data requests from the Sierra Club and the NPOs, which reference the job-related Direct Testimony of Entergy Chief Executive Officer Phillip R. May, ELL provided a link to a Meta website, stating that the commitment was made by the "Customer". ELL also included a link to an article by Economist Loren C. Scott, providing an estimate of the number of jobs and associated salaries anticipated by the Project.

The NPOs point out ELL's lack of production of documents in response to data requests seeking analyses or studies supporting Laidley's need for a specific amount of power, the lack of production of any studies or analysis supporting an "urgent" need for power, and the lack of production in response to data requests from the NPOs regarding Laidley's sustainability goals. Moreover, the NPOs argue, ELL refused to provide certain contact information in response to data requests from the NPOs and LEUG. Finally, the NPOs take issue with the fact that ELL is not seeking Commission approval of the Electric Service Agreement with Laidley.

The NPOs argue that ELL's lack of evidentiary support and its reliance on hearsay to prove the claimed benefits in the Application necessitate dismissal of the Application unless a party capable of substantiating the allegations at the crux of ELL's case for being excused from the requirements of the Commission MBM Order intervenes. That party, according to the NPOs, should be Laidley, since it is the customer; however, the NPOs doubt Laidley's ability to supply the necessary information given that it is a special-purpose vehicle created recently, and lacks experience and expertise as a data center owner/operator. In several instances, ELL directed the party seeking discovery to Meta, rather than Laidley, for additional information regarding Project

commitments. Therefore, the NPOs are also seeking the intervention of Meta. Ultimately, the NPOs argue that because ELL cannot resolve important questions raised by the Application, Laidley and Meta must participate as parties, or, in the alternative, the proceeding must be dismissed.

The legal basis for the NPO's Peremptory Exception of Nonjoinder is Louisiana Code of Civil Procedure article 641(1), which provides, in part: *A person shall be joined as a party in the action when [] In his absence complete relief cannot be accorded among those already parties.* The NPOs argue that since article 641 is compulsory, any adjudication made without a necessary party is an absolute nullity. The NPOs argue that Laidley and Meta are necessary for the just adjudication because ELL cannot provide the necessary evidentiary support for the customer's commitments and energy needs. In fact, the NPOs argue, ELL cannot even provide basic information on aspects of the Application that are vital to finding it in the public interest.

At oral argument, the NPOs were asked whether or not they had exhausted all available discovery vehicles in their attempt to obtain additional information in this matter. While it was the NPOs belief that they had exhausted all discovery vehicles, they admitted that they had not issued any subpoenas or requests for deposition to Laidley or Meta because they did not believe it would be possible to obtain the necessary discovery without the interventions of Laidley and Meta in this proceeding. Further, they did not see any value in filing a motion to compel against ELL because they "took ELL at its word"[5] that it did not have the information sought in discovery.

The NPOs argue that Louisiana has not adopted the position taken by the federal courts that it is inappropriate for compulsory joinder to be used when the reason for the joinder is for

[5] Oral Argument Tr. March 25, 2025, 20:23.

discovery purposes. According to the NPOs, neither Louisiana nor any state has adopted the federal position despite the federal rule being in place for decades.

ii. SREA

SREA did not appear at the oral argument. In its supporting memorandum, SREA agrees with the NPOs that ELL cannot provide the necessary evidentiary support for Laidley's commitments and energy needs, and therefore Laidley and Meta are necessary for the just adjudication of the proceeding. SREA agrees that the standard for drawing a third party into a regulatory matter is whether the party is "absolutely necessary", and SREA believes that standard has been met. Similar to the NPOs, SREA argues that the instant proceeding is unusual and "perhaps unprecedented", and while the Commission should apply joinder with caution it is warranted in this proceeding because of the magnitude of the certification ELL is seeking and the fact that the large amount of gas-fired generation for which certification is sought was not contemplated in or supported by ELL's most recent integrated resource plan ("IRP"), and further because the generation will be considered system resources for the benefit of all ELL customers. SREA points to rules that the Arkansas Public Service Commission previously required customers to participate in APSC proceedings for approval of much smaller renewable energy projects.

iii. ELL

In its opposition to the Exception of Nonjoinder, ELL first argues that the Commission does not have jurisdiction to force participation in a Commission proceeding by non-regulated entities such as Laidley and Meta. At the oral argument, ELL reminded the Tribunal that the Commission is not tasked with the approval of Laidley's data center, but with the approval of the acquisition by ELL, a regulated utility, of significant generation and transmission assets necessary

to serve a new customer. ELL argues that neither Laidley nor Meta could have brought the Application in the first instance as they are not public utilities and do not charge rates or perform the services of a public utility. It is ELL's burden to prove the allegations in its Application, and if it fails to do so, the remedy is for the Commission to deny ELL's request.

With regard to the question of whether or not the Commission can grant complete relief without the joinder of Laidley and Meta, ELL argues that the Commission unequivocally can. In fact, ELL is the only party necessary to resolve ELL's request in its entirety. ELL argues that dismissal of the proceeding on the basis of nonjoinder would be "extreme and draconian". Moreover, it would set an untenable precedent if the criteria for compulsory joinder is whether or not a customer will benefit from the relief sought in the Application. Arguably, all 1.1 million of ELL's customers benefit from its investments. Instead, the remedy for a party that believes ELL has failed to support its Application is to point out to the Commission the deficiencies in testimony and at the hearing on the merits.

In response to the NPO's assertion that ELL has provided insufficient information, ELL argues that it has been more than forthcoming with information in its Application and in discovery and additional evidence would be unnecessary and cumulative. ELL asserts that it has provided sufficient evidence to support its Application, which, inclusive of testimony from 11 witnesses is over 800 pages in length. In addition, it has responded to over 1,000 discovery requests including 14 sets with multiple parts and/or sub-parts from the NPOs. ELL has provided hundreds of pages of documents and native workbooks in its responses. Moreover, ELL argues, La. C.C.P. Article 641 cannot be used to involuntarily join parties for the purpose of conducting discovery, which is exactly what the NPOs are attempting to do here. While ELL disputes the inadequacy of the

evidence provided, they concede that the NPOs may provide legal argument on the sufficiency of the evidence and the merits of the Application at the appropriate time. ELL asserts that the NPOs are merely attempting to derail the Application and delay the Project. ELL reiterates the support of the Project by State leaders, arguing that this is the NPO's second attempt to have this matter decided prematurely, before a hearing on the merits.

iv. Commission Staff

Commission Staff opposes the Peremptory Exception of Nonjoinder, arguing that NPOs have made no showing that any of the criteria for nonjoinder apply. The NPOs have argued that ELL's application has evidentiary deficiencies and that discovery is hindered in the absence of the joinder of Liadley and Meta to the proceeding. The proper time for considering evidentiary deficiencies, however, is when the merits of the proceeding are considered. Further, the alleged discovery obstacles can be resolved through other discovery vehicles allowed by the Commission which do not require compulsory joinder of a non-party.

According to Commission Staff, the Commission will resolve the issues presented by ELL in this proceeding - whether to grant each of ELL's requests, and it can do this without the interventions of Laidley and Meta. In fact, the Commission has a constitutional duty to protect retail ratepayers from unjust, unreasonable, and discriminatory rates. And finally, the NPOs could not point to any Commission precedent for forcing a utility customer or potential utility customer to intervene to protect another party's interest.

Commission Staff points out that retail customers in Louisiana "are protected through the function and duties of the Louisiana Public Service Commission". The Commission, made up of five Commissioners elected by the citizens of Louisiana to represent their interests, is the

constitutionally created body with jurisdiction over common carriers and public utilities, and, as such, has a duty to protect the customers of regulated Louisiana entities. Commission Staff is "looking closely" at ELL's Application, and will address any evidentiary deficiencies in testimony.

C. Discussion

Louisiana's compulsory joinder rules are found in article 641 of the Louisiana Code of Civil Procedure. There is no counterpart in the Commission's Rules of Practice and Procedure. While the Commission looks to the Code of Civil Procedure when its rules are silent on a procedural issue, the parties have pointed to only one instance in which the Commission considered applying La. C.C.P. Article 641 to a Commission proceeding, and in that proceeding it was determined that La. C.C.P. Article 641 did not require the joinder of the Complainant as a necessary party. In Docket No. T-34231 - *Dynamic Environmental Services, LLC vs. Steve Kent Trucking, Inc. and Kent & Smith Holdings, LLC, in re: Complaint against Steve Kent Trucking Inc. and Ken & Smith Holdings, LLC and petition to rescind LPSC Order No. T-33737, and cancel Common Carrier Certificate Nos. 5662-G and 5662-H*, the Complainant, Dynamic, argued that the adoption of LPSC Order No. T-33737, which approved the transfer of a common carrier certificate in which Dynamic had an alleged interest, without the participation of Dynamic, should be rescinded. The Commission ultimately determined that without prior Commission approval of Dynamic's interest in the certificate at issue, Dynamic's rights were insufficient to require compulsory joinder or rescission of Order No. T-33737, even though, as pointed out by ELL, Dynamic argued it was intentionally excluded as an attempt to prevent it from exercising its rights in that proceeding, circumstances much different than those presented here.

The lack of Commission precedent for compulsory joinder is a result of the Commission's ability to fully resolve matters over which it has jurisdiction - namely, the regulation of common carriers and public utilities. Pursuant to Rule 3(e) of the Commission's Rules of Practice and Procedure the Commission is a party to every docketed proceeding. To assist the Commission in this role, La. R.S. 45:1180, *et seq.*, authorizes the Commission to hire engineers, consultants, accountants, and other personnel necessary to examine the affairs of the public utilities it regulates. And it routinely does so. Through its Staff and consultants, the Commission conducts discovery, files testimony, and performs investigations that it deems necessary. Here, in response to ELL's Application, the Commission hired outside counsel and consultants who, along with the Intervenors are examining the issues raised in ELL's Application.

Even assuming La. C.C.P. Art. 641 is applicable, cases thereunder provide that a party should be deemed indispensable only when that result is absolutely necessary to protect substantial rights." *State Department of Highways v. Lamar Advertising Co. of La., Inc.*, 279 So.2d 671 (La. 1973). The Peremptory Exception of Nonjoinder alleges that without Laidley and Meta complete relief cannot be "accorded among those already parties." La. C.C.P Article 641(A)(1). The question then is whether there is relief that the Commission is unable to accord the parties to this proceeding in the absence of Laidley and Meta. Setting aside the specific regulatory approvals and accounting treatments sought by ELL, its Application is essentially a request for certification of new system resources and the associated rate recovery. The Commission reviews such requests pursuant to its constitutional grant of plenary regulatory authority over public utilities in Louisiana. In accordance with Louisiana Constitution article IV Section 21(B)[6], the Commission has required regulated

[6] See also La. R.S. 45:1163 and La. R.S. 45:1176.

electric utilities to obtain "certification that the public convenience and necessity would be served through completion of such project or confection of such contract prior to the construction [] of new generating resources" since 1983.[7] In determining whether to grant such certification the Commission asks whether the utility's decision-making process was reasonable, logical, and based upon available information and planning techniques.[8]

In reviewing an application under the 1983 General Order, the Commission first determines whether there is a need for the additional generation, and only if that need is sufficiently demonstrated, does the Commission make the ancillary determination of whether the process used to meet that need was reasonable and in the public interest.[9] One of the concerns raised by the NPOs in the Peremptory Exception of Nonjoinder is ELL's lack of data underlying Laidley's generation needs. If, as the NPOs argue, ELL cannot meet its burden of proving the need associated with the data center, then the Application as presented by ELL, may be denied.

Any element that ELL deems essential to its Application will have to be proven at the hearing on the merits. The Commission will assign the evidence presented with the appropriate weight after considering the parties' arguments, and determine the appropriate actions to take on the Application. The Tribunal will consider all "needful and proper" evidence in accordance with Rule 32 of the Commission's Rules of Practice and Procedure. To that end, all parties, including

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[7] LPSC General Order dated September 20, 1983 (*In re: In the Matter of the Expansion of Utility Power Plant: Proposed Certification of New Plant by the LPSC*), as amended by LPSC General Order (Corrected) dated May 27, 2009 (*In re: Possible Modifications to the September 20, 1983 General Order to allow (1) for more expeditious certifications of limited-term resource procurements and (2) an exception for annual and seasonal liquidated damages block energy purchases*) [hereinafter 1983 General Order].

[8] LPSC Order No. U-35927, 1803 Electric Cooperative, Inc. ex parte. *In re: Application for Approval of Power Purchase Agreements and for Cost Recovery.*

[9] LPSC Order No. U-33770, Entergy Louisiana, LLC, Entergy Gulf States Louisiana, L.L.C. *In re: Joint Application for Approval to Construct St. Charles Power Station, and for Cost Recovery.*

the NPOs, will have an opportunity to provide testimony and evidence, cross-examine the other parties' witnesses, and argue their respective positions at the hearing of the matter, as well as in pre- and post-hearing briefs.

In *Miller v. Larre*, 19-208 (La. App. 5 Cir. 12/11/19) 284 So. 2d 3d 1284, 1287, cited by the NPOs, the Louisiana Fifth Circuit Court of Appeal held that the failure to join Louisiana State University to a malpractice suit involving an employee physician was a fatal flaw that rendered the resulting default judgment an absolute nullity. While the NPOs are correct that *Miller v. Larre* stands for the proposition that an adjudication made in the absence of a necessary party is an absolute nullity, that case is distinguishable given that the State was a statutorily required party under the Louisiana Medical Malpractice Act. Similarly, in *Olano v. Karno*, 2020-0396 (La.App. 4 Cir. 4/7/21) 315 So. 2d 952 (where co-owners disputed validity of lease), and *Two Canal Street Investors, Inc. v. New Orleans Building Corporation*, 2016-0825 (La. App. 4 Cir. 9/23/16) 202 So. 3d 1003 (2016) (where successful bidder should have been added as a party-defendant in unsuccessful bidder's suit to block lease), also cited by the NPOs, the Louisiana Fourth Circuit Court of Appeal pointed out that La. C.C.P. Article 1880, under the specific provisions related to declaratory judgment actions, requires "parties who have or claim any interest which would be affected by the declaration" to be joined in the declaratory judgment action.[10]

Aside from instances involving statutorily required parties, Louisiana courts have taken a conservative approach in applying compulsory joinder. That is, compulsory joinder has been

[10] See also *Fewell v. City of Monroe*, 43,281 (La. App. 2 Cir. 6/11/08) 987 So. 2d 323 (2008) (where the Department of Health and Hospitals ("DHH") was a party with an interest in a declaratory judgment action regarding who is liable for paying the costs of transportation of a mental health patient where DHH was specifically mentioned as a liable party in the statute governing transportation cost allocation).

applied only when there is some vital property or personal interest, such as a legatee in a will dispute (See *Succession of Panepinto*, 21-709 (La. App. 5 Cir. 9/13/22), 349 So. 3d 1014), or a biological father in a child support dispute (See *Dept. of Children & Family Servs. Ex rel. A.L. v. Lowrie*. 2014-1025 (La. 2015), 167 So. 3d 573).

The NPOs have pointed to no instance where a Louisiana court required joinder of a party due to the plaintiff's inability to prove essential elements of its case or to respond to discovery. The NPOs are transparent about the fact that these are their reasons for seeking compulsory joinder, and even attempt to make the argument that discovery is a valid reason for compulsory joinder. The primary arguments the NPOs and SREA make for why Laidley and Meta are necessary parties are the lack of evidentiary support for the Application and the need for additional information. Neither of these is sufficient justification to make a case for compulsory joinder. As of the time of the oral argument, the NPOs had not even attempted to obtain information directly from Laidley or Meta or other third parties whose statements are referred to as unsupported. The Louisiana Code of Civil Procedure allows discovery on nonparties, therefore, it is possible that the NPOs could obtain the information they seek without joining Laidley and Meta in the proceeding.

The federal courts have held that knowledge of relevant information does not render an individual a necessary party pursuant to Federal Rule of Civil Procedure 19(a), a rule substantially similar to La. C.C.P. Article 641. *et seq.* In *Klecher v. Metropolitan Life Ins. Co.*, 331 F. Supp. 2d 279 (2004), the Federal Court of Appeals for the Second Circuit held, "[K]nowledge of relevant information does not render an individual a necessary party." In short, whether a movant seeks discovery from a party does not bear on whether that party should be joined in an amended complaint, citing *Costello Publ'g Co. v. Rotelle*, 670 F.2d 1035, 1044 (D.C.Cir. 1981) wherein it

previously stated, "[T]he question of whether an entity or individual should be a party is quite different from the questions and problems associated with obtaining evidence from such an entity or individual and the need to obtain evidence from an entity or individual is not a factor bearing on whether a party is "necessary" or "indispensable" to a just adjudication and thus required to be joined or the action dismissed for failure of joinder." *Costello*, at 1044.

Finally, the NPOs and SREA fail to acknowledge that given the ongoing regulatory relationship between ELL and the Commission, Commission Orders are unlike court decrees which may be the final adjudication between the parties to the proceeding. The Commission can and often does place conditions on its regulatory approvals. It remains to be seen whether or not the Commission Staff will recommend approval of the Application in this matter, and if they do, whether they will recommend conditions and safeguards that may address some of the concerns raised by the NPOs in the Peremptory Exception of Joinder. It is for these reasons that we believe it would be short-sighted and premature to dismiss the Application or to require joinder under the guise of doing so before the receipt of testimony and arguments of the parties to the proceeding.

The Louisiana Supreme Court, in *Lamar, supra.* focused on the perils of elevating absent parties whose interest may only be tangential to the issue before the court, particularly when the court could tailor "its decree [] to avoid any possibility of prejudice to the rights of an absent party and still do justice to the parties before the court." *Lamar*, at 676, 677. As previously stated, the Commission has multiple regulatory remedies at its disposal, and since we believe that the Commission has the tools necessary to take whatever action it deems appropriate under the circumstances, Laidley and Meta are not necessary parties to this proceeding.

D. Conclusion

We disagree with the arguments of the NPOs and SREA that complete relief cannot be accorded to the parties in this proceeding without the joinder of Laidley and Meta. Further, we find the NPOs argument that discovery would be futile is speculative and insufficient to require the extreme remedy of compulsory joinder. Therefore, the Peremptory Exception of Nonjoinder is denied.

Baton Rouge, Louisiana, this 4th day of April, 2025.

Melanie Verzwyvelt
Chief Administrative Law Judge

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BEFORE THE LOUISIANA PUBLIC SERVICE COMMISSION

ENTERGY LOUISIANA LLC, ex parte

***IN RE*: APPLICATION FOR APPROVAL OF GENERATION AND TRANSMISSION RESOURCES IN CONNECTION WITH SERVICE TO A SINGLE CUSTOMER FOR A PROJECT IN NORTH LOUISIANA**	**DOCKET NO. U-37425**

MOTION FOR IMMEDIATE REVIEW OF INTERLOCUTORY ORDER AND MEMORANDUM IN SUPPORT FILED PURSUANT TO RULE 57

NOW BEFORE THE COMMISSION, through undersigned counsel, comes the Alliance for Affordable Energy and the Union of Concerned Scientists (collectively, "Non-Profit Organizations" or "NPOs") seeking immediate review and the reversal of the Administrative Law Judge's ("ALJ") ruling denying the Motion for Joinder of Laidley LLC ("Laidley" or "Customer") and Meta Platforms, Inc. ("Meta") pursuant to Rule 57 of the Commission's Rules of Practice and Procedure.

Louisiana Code of Civil Procedure Art. 641(1) is central to the Commission's consideration of this motion. The Commission has recognized that Art. 641 is applicable to Commission proceedings.[1] This provision provides:

> Art. 641. Joinder of parties needed for just adjudication
>
> A person shall be joined as a party in the action when either:
>
> (1) In his absence complete relief cannot be accorded among those already parties.[2]

[1] See, e.g., *In re: Complaint against Steve Kent Trucking, Inc. and Kent & Smith Holdings, LLC and petition to rescind LPSC Order No. T-33737, and cancel Common Carrier Certificate Nos. 5662-G and 5662-H*, Docket No. T-34241, Order No. T-34241-A (November 16, 2018). *See, also, TransLouisiana Gas Company (A Division of Atmos Energy Corporation) (Dallas, Texas), ex parte*, Docket No. U-19631, Order No. U-19631-(A) (September 3, 1992).

[2] The NPOs sought joinder solely under Art. 641 (1).

(2) He claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may either:

(a) As a practical matter, impair or impede his ability to protect that interest.

(b) Leave any of the persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations.

In the ruling submitted for review, the ALJ denied a request that the Tribunal issue a declaratory order finding that, pursuant to Art. 641 (1), Laidley and Meta are parties necessary for the just adjudication of whether approval of Entergy Louisiana's ("ELL" or "Company") Application[3] is in the public interest.[4] The ALJ disagreed with the arguments of the NPOs that complete relief cannot be accorded to the parties in this proceeding without the joinder of Laidley and Meta. Further, the ALJ rejected the NPOs argument that discovery would be futile as speculative. The NPOs submit that these findings are incorrect and thus seek immediate review and reversal of the ruling.

Rule 57 of the Commission's Rules of Practice and Procedure provides two options for the Commission to allow review of an interlocutory ruling: (1) by its own motion at its discretion, or (2) upon application and a showing of irreparable injury by a party. Under either standard, the Commission should review the ALJ's denial of the NPO's Motion to declare Laidley LLC and Meta Platforms, LLC as necessary parties for just adjudication in this proceeding, reverse the ALJ's ruling and grant the motion.

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[3]Application of ELL for Approval of Generation and Transmission Resources Proposed in Connection with Service to a Significant Customer Project in North Louisiana, Including Proposed Rider, and Request for Timely Treatment ("Application"), Docket No. U-37425.

[4] *In re: Application for approval of generation and transmission resources in connection with service to a single customer for a project in North Louisiana*, Docket No. U-37425, Ruling on Peremptory Exception of Nonjoinder (April 4, 2025) ("Ruling").

Rule 57 provides that immediate review of an interlocutory ruling "may be obtained only upon a showing of irreparable injury, as defined in Louisiana jurisprudence." Irreparable injury occurs in those cases where the error in the ruling cannot, as a practical matter, be corrected on appeal after a trial on the merits. *Eastin v. Entergy Corp*, 710 So. 2d 835 (La. App. 5th Cir. 1998) ("*Eastin*"). In *Eastin*, the Court reviewed and reversed an interlocutory judgment certifying a class action. In explaining why an erroneous certification could not, as a practical matter, be corrected on appeal following a trial on the merits, the Court noted that "immeasurable expense and innumerable wasted court days will have resulted" if it is determined after hearing that the case should not have been tried as a class action. *Eastin*, 710 So. 2d at 838 (internal quotation omitted).

Similarly, in this proceeding immeasurable expense and innumerable wasted hearing days will result if it is determined *after* hearing and the ALJ decision on the merits that Meta and Laidley should have been deemed necessary parties for a just adjudication. The Court has already determined that this risk constitutes irreparable harm and the Commission should do so as well. Moreover, an adjudication made without making a person who is necessary for just adjudication a party to the litigation is an absolute nullity.[5] Thus, there is no question regarding the fact that resolving this issue at this junction in necessary to avoid irreparable harm.

Included below, in accordance with Rule 57, is a legal memorandum which specifies the alleged errors in the Ruling. However, to summarize, the ALJ ruling contains the following errors of law:

[5] *Miller v. Larre*, 19-208 (La. App. 5 Cir 12/11/19. 284 So.3d 1284, 1287 (La. App. 5 Cir. Dec. 11, 2019).

1) the ALJ seems to assume that simply because the issue of joinder arises infrequently, that this "fact" in and of itself warrants denial of the joinder motion.[6] This erroneous conclusion renders the decision arbitrary and capricious. First, the fact that an issue is rare is no basis for a merits determination regarding that issue in a specific case. Moreover, the Commission has previously recognized that an entity should be deemed to be an indispensable party.[7] Thus, the "lack of Commission precedent for compulsory joinder" is not a result of the Commission's ability to fully resolve matters over which it has jurisdiction, it is simply the result of the issue rarely needing to be raised by a party.

2) Both ELL and Commission Staff relied in their oppositions upon the federal limitation that provides that joinder of a non-party is rejected as a remedy for discovery issues. However, even though this limitation has been applied at the federal level since at least the early 1980s, not only have the Louisiana courts not expressly adopted the limitation, apparently no state court has adopted the federal limitation. Despite this dearth of legal support for the limitation, the ALJ not only apparently adopted the federal limitation but provided no rationale for adopting this rule.[8] This failure to provide a rationale for adopting the federal limitation, particularly in light of the fact that the limitation is an issue of first impression at the Commission is arbitrary and capricious.

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[6] Ruling at 10.

[7] TransLouisiana Gas Company (A Division of Atmos Energy Corporation) (Dallas, Texas), ex parte Docket No. U-19631, Order No. U-19631-(A) (September 3, 1992). The NPOs note that ELL has raised the claim that another entity, Valero Refining, was an indispensable party in *Ex Parte Energy America*. However, that motion was denied and apparently not appealed to the Commission. *Ex Parte Energy America*, Docket No. U-28513, Order No. U-28513-C (January 15, 2009).

[8] Ruling at 13-14.

3) The ALJ faults the NPOs for not even attempting to obtain information directly from Laidley or Meta or other third parties whose statements are referred to as unsupported.[9] However, the Commission Rules of Practice and Procedure Rule 40 provides that subpoenas for the attendance of witnesses *from any place in the State of Louisiana…* may be issued by the Commission (emphasis added). Since nether Laidley nor Meta is in Louisiana, the Commission would have no authority to enforce a subpoena against either non-party.

In the alternative, the Commission should exercise its authority under Rule 57 to review on its own motion the Ruling of the ALJ. In addition to the reasons stated above, the issue of whether the federal limitation on the joinder of non-parties should be applied in Commission proceedings is a decision of first impression and should be supported by a rationale that sets forth the reasons for adopting this limitation.

WHEREFORE, for the reasons set forth above and in the accompanying memorandum in support, the Alliance for Affordable Energy and the Union of Concerned Scientists respectfully request, pursuant to Rule 57 of the Commission's Rules of Practice and Procedure, that:

1) the ALJ forward this motion and supporting memorandum to the Commission for immediate review in accordance with Rule 57;
2) the Commission immediately review the ALJ' s Ruling on Peremptory Exception of Nonjoinder pursuant to Rule 57; and
3) the Commission reverse the ALJ's ruling and grant the motion for joinder;

CONTINUED FOR SIGNATURE

[9] Ruling at 13.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan Stevens Miller, hereby certify that I have this 14th day of April, 2025, served copies of the foregoing Motion on all other known parties on the Official Service List for Docket No. U-37425 via electronic mail.

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BEFORE THE LOUISIANA PUBLIC SERVICE COMMISSION

ENTERGY LOUISIANA LLC, ex parte ***IN RE*: APPLICATION FOR APPROVAL OF GENERATION AND TRANSMISSION RESOURCES IN CONNECTION WITH SERVICE TO A SINGLE CUSTOMER FOR A PROJECT IN NORTH LOUISIANA**	**DOCKET NO. U-37425**

MEMORANDUM IN SUPPORT OF THE MOTION FOR IMMEDIATE REVIEW OF INTERLOCUTORY ORDER FILED PURSUANT TO RULE 57

I. INTRODUCTION

At the outset, it is important to recognize the unique nature of this proceeding when compared to other proceedings in which Article. 641 is usually considered. In most cases, the issues to be resolved are the rights or obligations of individual entities who are themselves requesting to intervene in a proceeding addressing the rights of an individual entity. In this instance, rather than assessing any individual claim, the Commission will address whether ELL's request is in the public interest. It is within this framework that Laidley and its parent company, Meta, should be declared parties necessary for the just adjudication of this issue.

In arguing that its Application is in the public interest, ELL describes actions that will purportedly be taken by the Customer. ELL relies upon a variety of Customer "commitments" to support its Application, but when asked for the basis of those commitments, ELL's response is invariably that the Company doesn't know. Similarly, ELL also makes assertions regarding the Customer's overall energy needs. However, when asked for information regarding how those needs were developed, ELL once again cannot provide any information. ELL's testimony simply parrots unsubstantiated assertions from the Customer – currently a non-party in this proceeding.

Specifically, ELL raises two contentions that the Company claims establish that its Application is in the public interest. First, ELL asserts that the Customer's Project (i.e., the data center) will provide significant economic benefits to the region. With regard to this issue, ELL claims that the Project will create 300-500 permanent jobs for the Richland area.[10] Second, ELL asserts that the Customer's strong desire to achieve its sustainability goals will result in the successful negotiation of significant benefits such as the construction of more renewables in Louisiana.[11] However, ELL concedes in the Company's discovery responses that it has *no supporting evidence* for either of these claims. ELL then suggests that parties rely on Meta websites, not even Laidley-provided information.

Similarly, ELL justifies the Project based upon the significant electric load (ie number of MW) required by the Customer to operate the data center.[12] However, once again ELL concedes that it has no information regarding how the load allegedly needed to operate the data center was calculated or determined. Thus, only Laidley and Meta know how the necessary load was determined.

ELL has repeatedly conceded that it has no information about the number of jobs that actually will be created once the data center is operating or how the load Laidley is requesting was actually calculated. Furthermore, ELL acknowledges that it does not know the sustainability

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[10] Application at 1, 3; *see also* Direct Testimony of Phillip May at 17:15-16 ("May Direct") ("The Customer will hire *at least* 300 to 500 full-time employees with an average salary of $82,000") (emphasis added).

[11] For example, ELL asserts that the Corporate Sustainability Rider ("CSR") is an agreement designed specifically for (and open only to) the Customer that (1) identifies customer-specific commitments for clean resources, including solar, hybrid, CCS, and, potentially, wind and nuclear resources. Application at 17. According to ELL, the CSR supports the sustainability commitments of the Customer. Beauchamp Direct at 61:15-18.

[12] ELL asserts that it needs 2,262 MW of new baseload generation to serve the new Customer and existing customers. May Direct at 4:16-17.

goals of the Customer and how those sustainability goals actually support ELL's assertion that the Customer will provide benefits to the residents of Louisiana. Accordingly, the gaps in this record should be addressed by joining the parties that possess the information on which ELL's Application depends.

II. ELL's APPLICATION

ELL seeks approval of new generation and transmission resources to serve new load from a data center Laidley LLC[13] is planning to develop near Holly Ridge, Louisiana.[14] Specifically, ELL proposes to construct two combined cycle combustion turbine ("CCCT") generators near the Customer's data center and a third CCCT in its Southeast Louisiana Planning Region (collectively, the "Planned Generators").[15] On February 12, 2025, ELL informed the Commission and the parties that the third CCCT would be constructed on the grounds of the Company's Waterford site in Killona, Louisiana.[16]

Throughout the Application and accompanying testimony, ELL makes assertions that various aspects of the proposal demonstrate that expedited approval of the Application is necessary and that approval would be in the public interest. Some of the factors ELL relies upon include:

1. Laidley is expected to employ 300 to 500 full-time employees;[17]

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[13] Laidley is a subsidiary of Meta Platforms, Inc (Direct Testimony of Phillip May at 4:3). Laidley is the only entity listed as the "Customer."
[14] Application at 1, 3.
[15] Application at 12.
[16] Supplemental Direct Testimony of Laura K. Beauchamp at 2:24 – 3:1. ("Beauchamp Supplemental").
[17] Application at 1, 3; Direct Testimony of Phillip May at 17:15-16. ("May Direct"). The Customer will hire *at least* 300 to 500 full-time employees with an average salary of $82,000. (emphasis added).

2. The Project is anticipated to require a substantial amount of reliable power[18] and ELL will require 2,262 MW of new baseload generation;[19]
3. The Customer is making investments in sustainability.[20] According to ELL, the Customer has publicly stated its intent to reduce the carbon intensity of its operations.[21] ELL also asserts that the Customer is dedicated to minimizing its environmental impact and promoting sustainability in all aspects of its business.[22]
4. The Corporate Sustainability Rider ("CSR") is an agreement designed specifically for (and open only to) the Customer that (1) identifies customer-specific commitments for clean resources, including solar, hybrid, CCS, and, potentially, wind and nuclear resources;[23] The CSR supports the sustainability commitments of the Customer[24]
5. The CSR was a relevant factor for the Customer in deciding to move forward with building the Project in Louisiana.[25]
6. Commitments from the Customer provide a path to offset or "clean" approximately sixty percent (60%) of the gas megawatt-hours from the Planned Generators by 2031.[26]

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[18] Application at 4.
[19] May Direct at 4:16-17.
[20] Application at 5. It should be noted that ELL does not even have information regarding the Customer's sustainability principles.
[21] Beauchamp Direct at 23:20-22.
[22] May Direct at 32:12-14.
[23] Application at 17.
[24] Beauchamp Direct at 61:15-18.
[25] Application at 18; May Direct at 32:14-16
[26] May Direct at 5:5-7.

III. ARGUMENT

Louisiana Code of Civil Procedure Art. 641(1) is central to the Commission's consideration of this motion. The Commission has recognized that Art. 641 is applicable to Commission proceedings. This provision provides:

> Art. 641. Joinder of parties needed for just adjudication.
>
> A person shall be joined as a party in the action when either:
>
> (1) In his absence complete relief cannot be accorded among those already parties.
>
> (2) He claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may either:
>
> (a) As a practical matter, impair or impede his ability to protect that interest.
>
> (b) Leave any of the persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations.

In this instance, the NPOs argued that Art. 641(1) required the joinder of both Laidley and Meta as parties in this proceeding.

A. The ALJ's Reliance on the Lack of Commission Precedent to Justify Denial of the NPO's Motion Constitutes Reversal Error

In the Ruling, the ALJ notes the lack of Commission decisions addressing the joinder issue and then leaps to the unsubstantiated conclusion that the issue does not arise because the Commission has the "ability to fully resolve matters over which it has jurisdiction." [27]

The ALJ seems to assume that simply because this issue arises infrequently, this "fact" in and of itself warrants denial of the motion. This erroneous conclusion renders the decision

[27] Ruling at 10.

arbitrary and capricious.[28] First, the fact that an issue is rare is no basis for a merits determination regarding that issue in a specific case. Moreover, the Commission has previously recognized that an entity should be deemed to be an indispensable party.[29] Thus, the "lack of Commission precedent for compulsory joinder" is not a result of the Commission's ability to fully resolve matters over which it has jurisdiction, it is simply the result of the issue rarely needing to be raised by a party. The ALJ's unreasonable inference, that the small number of Commission decisions addressing the joinder issue means that joinder is not necessary, warrants a reversal of the Ruling.[30]

B. The ALJ's Adoption of the Federal Limitation Rejecting Discovery as A Valid Reason for Joinder is Arbitrary and Capricious.

The ALJ notes in the Ruling that the federal courts have held that knowledge of relevant information does not render an individual a necessary party pursuant to Federal Rule of Civil Procedure 19(a), a rule similar to La. C.C.P. Article 641, et seq. However, even though this limitation has been applied at the federal level since at least the early 1980s,[31] not only have the Louisiana courts not adopted the limitation, apparently no state court has adopted the federal limitation. It is difficult to conclude that the federal cases are persuasive authority when no other jurisdiction has adopted their limitation. Despite this dearth of legal support for the limitation,

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[28] A Commission order is arbitrary and capricious only if based upon an error of law or not reasonably derived from the record evidence. *See, e.g., Herman Brothers, Inc. v. Louisiana Public Service Commission*, 564 So.2d 294, 297 La. 1990).

[29] TransLouisiana Gas Company (A Division of Atmos Energy Corporation) (Dallas, Texas), ex parte Docket No. U-19631, Order No. U-19631-(A) (September 3, 1992).

[30] On April 3, 2025, ELL filed correspondence which included a letter from Meta. *See,* Correspondence for Entergy Louisiana, LLC (April 3, 2025). To the extent Meta's letter is an attempt to weigh in on the joinder issue, the letter should be rejected. As Meta notes in the letter, the NPOs serve the joinder motion on Meta. Thus, Meta could have responded to the joinder motion in a timely matter prior to oral argument. Meta should not be permitted to circumvent due process and just respond at any time.

[31] *See, e.g., Costello Pub. Co. v. Rotelle*, 670F.2d 1035, 1044 (D.C.Cir. 1981)).

the ALJ not only apparently adopted the federal limitation but provided no rationale for adopting a federal limitation[32] which has such little acceptance among other jurisdictions. This failure to provide a rationale for adopting the federal limitation, particularly in light of the fact that the limitation is an issue of first impression at the Commission is arbitrary and capricious.

C. Contrary to the ALJ's Determination, Joinder of Laidley and Meta is Necessary to Protect the NPOs Substantial Rights

In the Ruling, the ALJ has apparently determined that the NPOS have no substantial rights that would be protected by granting the motion.[33] However, complete relief cannot be accorded among parties to this proceeding. To reiterate, ELL has conceded that the Company does not have job creation information, information about the load determination for the data center or information about the Customer's sustainability principles and goals. In the absence of this information, the NPOs cannot obtain the relief they may seek during this proceeding. This relief could include stronger requirements to help ensure that the promised jobs are actually created, ratepayer protections for ratepayers should the data center's estimated load turn out to be incorrect and stronger safeguards to ensure that the benefits ELL is claiming will accrue from the Customer to the residents of Louisiana actually occur. ELL does not have the information which the NPOs need to assess these risks to ratepayers.

More importantly, a complete and equitable adjudication of the controversy cannot be made unless Laidley and Meta are joined in the action. It is clear from ELL's Application, testimony, and reliance on extra-record press releases and statements that the economic benefits

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[32] Ruling at 13-14.

[33] The ALJ's conclusion that joinder is absolutely necessary to protect substantial rights only where property or personal interest is at stake has no basis in Louisiana law. While many joinder motions brought pursuant to Art 641 (2) concern property or personal rights, the Courts have never limited the substantial rights protected by joinder to only property or personal interests.

of the Project are the cornerstone of ELL's public interest argument. If the Project does not actually produce 300 to 500 permanent jobs, that would significantly undercut ELL's public interest argument. And despite repeatedly asserting that the Project will create 300-500 jobs, ELL admits that it has no evidence to support this claim – but claims that Meta does.

The gaps in this record should be addressed by joining the parties that possess the information on which ELL's Application depends. To reiterate, ELL concedes it cannot substantiate 1) the job creation assertions; 2) the amount of load the data center actually will need; or 3) the Customers sustainability goals. Thus, ELL has provided no facts which the other parties can dispute. ELL has conceded that the Company has no information on these issues. Presumably, when questioned on these points at the evidentiary hearing, ELL's witnesses will mirror the Company's discovery responses. Thus, an evidentiary hearing on these specific issues would be an exercise in futility.

No number of ELL expert witnesses or days of hearing will provide this vital information because ELL simply does not have the information to provide. A ruling excluding the entities that actually possess this information is tantamount to a decision that evidence supporting the jobs to be created, load needed and the sustainability principles is unnecessary. It is an evidentiary ruling disguised as a denial of a motion.

D. The NPO's Cannot Obtain Discovery from Out of State Parties

The ALJ faults the NPOs for not attempting to obtain information directly from Laidley or Meta or other third parties whose statements are referred to as unsupported. The ALJ asserts that the Louisiana Code of Civil Procedure allows discovery on nonparties, therefore, it is possible that the NPOs could obtain the information they seek without joining Laidley and Meta in the proceeding.

However, with regard to Laidley and Meta, under both the Commission's Rules of Practice and Procedure and Louisiana statutes these entities are not subject to the Commission's subpoena jurisdiction. Commission Rule 40 (a) provides:

> Subpoenas for the attendance of witnesses *from any place in the State of Louisiana*, or for the production of books, papers, accounts or documents at a hearing in a pending proceeding, may be issued by the Commission upon its own motion, or upon the written motion of a party showing that there is good cause for the issuance of same. (emphasis added).

Thus, by its very terms the subpoena power of the Commission only applies to in state witnesses. Similarly, the Louisiana Rules of Civil Procedure provide that:

> A witness, whether a party or not, who resides or is employed in this state may be subpoenaed to attend a trial or hearing wherever held in this state.[34]

The Commission's authority to summon and compel the attendance of witnesses and to compel the production of books and papers is equal to that of the district courts. This restriction is in keeping with Louisiana law which provides:

> A. Witnesses in civil cases who reside or who are employed in this state may be subpoenaed and compelled to attend trials or hearings wherever held in this state.[35]

Moreover, under LSA- C.C. P. Art. 1354, as explained in comment (b), the production of documents pursuant to a subpoena is intended solely as an adjunct to the testimony of a witness. Thus, seeking a subpoena to obtain documents or depose Meta or Laidley employees would have been a fruitless endeavor.[36] Even assuming that joinder can be avoided due to a failure to seek

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[34] LSA-C.C.P. Art. 1352.
[35] LSA-R.S. 13:3661 A.
[36] The Commission should note that the letter filed by Meta after oral argument on the NPOs' joinder motion does not resolve these issues or provide the necessary *evidentiary* information.

discovery, certainly not requesting a subpoena when the Commission lacks the jurisdiction to grant or enforce that specific subpoena should not be given any weight in the ALJ's decision whether to grant the motion for joinder.

With regard to the NPOs alleged failure to seek discovery from other third parties whose statements are referred to as unsupported, it is unclear who the ALJ is referring to. The NPOs did serve discovery on ELL and the response to the discovery repeatedly was that ELL does not have *any* information on the job numbers, load calculation, or sustainability principles. Unless ELL is lying, and the NPOs absolutely believe that ELL has not misrepresented what information the Company has, repeatedly asking the same questions would be an exercise in futility.

E. The NPOs Will Suffer Irreparable Harm If The Interlocutory Motion Is Not Granted

Rule 57 provides that immediate review of an interlocutory ruling "may be obtained only upon a showing of irreparable injury, as defined in Louisiana jurisprudence." Irreparable injury occurs in those cases where the error in the ruling cannot, as a practical matter, be corrected on appeal after a trial on the merits. *Eastin v. Entergy Corp*, 710 So. 2d 835 (La. App. 5th Cir. 1998) ("*Eastin*"). In *Eastin*, the Court reviewed and reversed an interlocutory judgment certifying a class action. In explaining why an erroneous certification could not, as a practical matter, be corrected on appeal following a trial on the merits, the court noted that "immeasurable expense and innumerable wasted court days will have resulted" if it is determined after hearing that the case should not have been tried as a class action. *Eastin*, 710 So. 2d at 838.

See, Correspondence for Entergy Louisiana, LLC (April 3, 2025) which included an attached letter from Meta. The Meta letter simply restates the same bald assertions regrading the benefits of the data center and then provides a number of platitudes regarding how Meta is a great corporate citizen. The Meta letter fails to resolve the concerns surrounding ELL and Meta's promises, promises which go to whether the Application is in the public interest.

Similarly, in this proceeding immeasurable expense and innumerable wasted hearing days will result if it is determined after hearing and the ALJ decision on the merits that Meta and Laidley should have been deemed necessary parties for a just adjudication. The courts have already determined that this risk constitutes irreparable harm and the Commission should do so as well. Moreover, in this instance, an adjudication made without making a person who is necessary for just adjudication a party to the litigation is an absolute nullity. Thus, there is no question regarding the fact resolving this issue at this junction in necessary to avoid irreparable harm.

IV. CONCLUSION

Pursuant to Article 641(1), a person shall be joined as a party in the action when in his absence complete relief cannot be accorded among those already parties. The standard to be applied is whether the party is needed for a just adjudication. In this instance, regrettably, the ALJ made errors of law and the Ruling must be deemed to be arbitrary and capricious.

WHEREFORE, for the reasons set forth in the Motion and Memorandum, the NPOs respectfully request that:

1) the ALJ forward this motion and supporting memorandum to the Commission for immediate review in accordance with Rule 57;
2) the Commission immediately review the ALJ' s Ruling on Peremptory Exception of Nonjoinder pursuant to Rule 57; and
3) the Commission reverse the ALJ's ruling and grant the motion for joinder;

CONTINUED FOR SIGNATURE:

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan Stevens Miller, hereby certify that I have this 14th day of April, 2025, served copies of the foregoing memorandum were served on all other known parties on the Official Service List for Docket No. U-37425 via electronic mail.

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BEFORE THE

LOUISIANA PUBLIC SERVICE COMMISSION

APPLICATION FOR APPROVAL OF GENERATION AND TRANSMISSION RESOURCES IN CONNECTION WITH SERVICE TO A SINGLE CUSTOMER IN NORTH LOUISIANA	)))))	**DOCKET NO. U-37425**

ENTERGY LOUISIANA, LLC'S MEMORANDUM IN OPPOSITION TO "MOTION FOR IMMEDIATE REVIEW OF INTERLOCUTORY ORDER"

Entergy Louisiana, LLC ("ELL" or the "Company") submits this opposition to the Motion for Immediate Review of Interlocutory Order ("Motion") filed by the Alliance for Affordable Energy and Union of Concerned Scientists (collectively the "NPOs").

SUMMARY OF ARGUMENT

In the pending motion, the NPOs seek the Commission's immediate review of an interlocutory ruling, in which the Administrative Law Judge ("ALJ") held that Meta and its wholly owned subsidiary Laidley LLC ("Laidley") were not necessary parties to this proceeding. In denying the motion, the ALJ meticulously explained why joining Meta and Laidley as parties would be unprecedented and contrary to law.[1] This ruling should not be disturbed. No Commission rule or policy requires new customers to submit to the jurisdiction of the Commission to obtain service from a Louisiana utility. Indeed, such a requirement would be unheard of and create a disincentive for new industry to invest in Louisiana. Moreover, the NPOs are not, as a matter of law, entitled to interlocutory relief in the absence of a showing of irreparable harm. They cannot

[1] The ALJ ruling at issue is the ALJ's April 4, 2025 "Ruling on Peremptory Exception of Nonjoinder" in this proceeding ("Ruling").

meet this standard. As the ALJ found, the NPOs are seeking to add Meta and Laidley as parties solely for purposes of facilitating the issuance of discovery to Meta and Laidley. At the same time, the NPOs have admitted that they could have pursued less drastic means for resolving their discovery concerns but failed to do so. Under these circumstances, the NPOs cannot reasonably complain that the ruling by the ALJ denying their motion to join Meta and Laidley as parties caused them irreparable harm. In short, there is *no authority* to support granting interlocutory relief. ELL requests that the Commission deny the NPOs' Motion.

PROCEDURAL BACKGROUND

As the Commission knows, Meta Platforms, Inc. ("Meta") is developing a data center in Richland Parish. Developments like Meta and other recently announced projects in Louisiana are only made possible by the affordable and stable electric rates that exist in Louisiana under the Commission's jurisdiction. In this docket, ELL proposed several infrastructure investments required to support the Meta project as well as ELL's other customers and supported its application with an electric service agreement, which sets forth, among other things, the power requirements for the Meta data center and required in-service dates. ELL also submitted extensive witness testimony, responded to scores of data requests, and filed in the record an April 2, 2025 letter by Meta that describes its support for the application (including the power needs of the Project), the critical importance of meeting its energy timelines, and the economic benefits that Meta expects its investment to bring to Richland Parish and Louisiana. [2]

[2] The initial filing by ELL consisted of 795 pages and featured testimony from 11 different witnesses. ELL subsequently submitted 10 pages of supplemental witness testimony. In addition to these disclosures, ELL has responded to a massive and ever-increasing number of discovery requests. For example, no fewer than 1,012 data requests (inclusive of sub-parts) have been propounded on ELL. For their part, the NPOs have propounded an exceptional 15 sets of data requests, each with multiple parts and/or sub-parts. No one has established (nor could they) that ELL has been anything but diligent and forthcoming in responding to these requests. Any

Nonetheless, on March 5, 2025, the NPOs filed a "Peremptory Exception and Motion to Declare Laidley, LLC and Meta Platforms, LLC as Parties Necessary for Just Adjudication in this Proceeding" ("Exception"). In their Exception, the NPOs argued that ELL had failed to provide sufficient information about the project itself, the jobs and other economic opportunities that will be generated, and the customer's energy needs, project timeline, and sustainability commitments. The NPOs argued that the Commission, under the authority of La. Code Civ. Pro. art. 641(1), should join Meta and Laidley so the NPOs would be able to propound data requests on them directly. Alternatively, the NPOs asked the Commission to dismiss ELL's Application outright.

ELL and the Commission staff both filed oppositions to the Exception. The ALJ held oral argument on the Exception on March 25, 2025, and then issued its ruling on April 4, 2025. In its decision, the ALJ found that La. Code Civ. Proc. art. 641(1) did not support joinder. Article 641(1), the ALJ explained based on the clear case law, only required joinder when "absolutely necessary" in order to protect a party's "vital property or personal interest." Article 641(1), according to the ALJ, is not an appropriate vehicle for compelling non-parties to participate in these proceedings simply to make it more convenient for the NPOs to propound discovery on them. Furthermore, and in the alternative, the ALJ found that the NPOs had fallen far short of demonstrating a need for joinder when they (by their own admission) had not pursued other less drastic options for obtaining the information they sought. On April 14, 2025, the NPOs filed the pending motion in which they seek the Commission's immediate review of the ALJ's interlocutory Ruling.

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additional information sought by the NPOs would be cumulative of the existing record and is totally unnecessary.

LAW AND ARGUMENT

Rule 57 of the Commission's Rules of Practice and Procedure provides, in relevant part, that "[a]ny party may apply for immediate review of an interlocutory ruling, which may be obtained on a showing of irreparable injury, as defined by Louisiana jurisprudence." The NPO's have not come close to making this showing. First, they have failed to establish that the ALJ erred as a matter of law. As such, the NPOs could not have suffered any injury. Second, even if the ALJ were incorrect, any harm suffered by the NPOs can be corrected by the Commission at the October 2025 Business and Executive Session when the Commission will be able to consider the ALJ's recommendation after a hearing on the merits and vote on ELL's application.

I. THE ALJ DID NOT ERR AS A MATTER OF LAW.

The NPOs assert that the ALJ erred in her application of Article 641(1) in three respects: (1) the ALJ allegedly found Article 641(1) inapplicable because of the "lack of Commission precedent' in applying the Article; (2) the ALJ should not have relied on federal jurisprudence in rejecting the NPOs' Article 641(1) joinder motion; and (3) the ALJ was wrong to conclude that the NPOs had made no effort to pursue less draconian efforts to obtain information than joinder under Article 641(1). Motion at 4-5, 11-16. None of these arguments have any merit.

A. The ALJ Correctly Found Joinder Was Not Absolutely Necessary

Article 641(1) provides: "A person shall be joined as a party in the action when . . . [i]n his absence complete relief cannot be accorded among those already parties." The Louisiana Supreme Court has made very clear that **"[a] person should be deemed needed for just adjudication only when absolutely necessary to protect substantial rights."** *Indus. Cos., Inc. v. Durbin*, 2002-0665 (La. 2003), 837 So. 2d 1207, 1217 (emphasis added); *see also Halpern v. Jonathan Ferrara Gallery, Inc.*, 2019-1066 (La. App. 4 Cir. 12/30/20), 365 So. 3d 568, 575 (same). *Evangeline*

Shrine Club Holding Corp. v. Hebert, 24-136 (La. App. 3 Cir. 11/20/24), 2024 La. App. LEXIS 1962, *11. Mere "[i]nterest in the result of a litigation does not make a party indispensable." *Id.* at *12. Rather, joinder is "absolutely necessary to protect substantial rights" only where some vital property or personal interest is at stake. *See, e.g., Olano v. Karno,* 2020-0396 (La. App. 4 Cir. 4/7/21), 315 So. 3d 952 (lessor in a lease dispute); *Dept. of Children & Family Servs. ex rel. A.L. v. Lowrie,* 2014-1025 (La. 2015), 167 So. 3d 573 (biological father in a child support dispute).

There is no contrary line of authority to the decisions cited above, and the NPOs offered no cogent argument for the ALJ to ignore this precedent. As the ALJ explained:

> Even assuming La. C.C.P. art. 641 is applicable, cases thereunder provide that a party should be deemed indispensable only when that result is absolutely necessary to protect substantial rights. *State Department of Highways v. Lamar Advertising Co. of La., Inc.*, 279 So.2d 671 (La. 1973).

Ruling at 10. The ALJ emphasized that Louisiana courts order joinder only in very limited circumstances, and even then, very cautiously:

> Aside from instances involving statutorily required parties, Louisiana courts have taken a conservative approach in applying compulsory joinder. That is, compulsory joinder has been applied only when there is some vital property or personal interest, such as a legatee in a will dispute (*See Succession of Panepinto*, 21-709 (La. App. 5 Cir. 9/13/22), 349 So. 3d 1014), or a biological father in a child support dispute (*See Dept. of Children & Family Servs. Ex rel A.L. v. Lowrie,* 2014-1025 (La. 2015), 167 So. 3d 573).
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> * * *
>
> The Louisiana Supreme Court, in *Lamar, supra,* focused on the perils of elevating absent parties whose interest may only be tangential to the issue before the court, particularly when the court could tailor "its decree[] to avoid any possibility of prejudice to the rights of an absent party and still do justice to the parties before the court." *Lamar*, at 676, 677. As previously stated, the Commission has multiple regulatory remedies at its disposal, and since we believe that the Commission has the tools necessary to take

> whatever action it deems appropriate under the circumstances, Laidley and Meta are not necessary parties to this proceeding.

Ruling at 12-13, 14.

Based on these legal principles, the ALJ found that the NPOs had fallen far short of demonstrating that joining Laidley and Meta was "absolutely necessary." Indeed, the ALJ pointed out that the NPOs are not seeking to join Laidley and Meta to protect a fundamental property or personal right, which is the only legitimate purpose of Article 641(1) under the foregoing caselaw. Rather, the NPOs conceded that they only sought to join Meta and Laidley because Meta and Laidley allegedly had "information" that ELL does not have.[3] Article 641 is not a fact-gathering or discovery device. It is a last resort legal mechanism for making sure that tribunals can provide "complete relief" to protect the substantive rights of the interested parties. As the ALJ noted:

> The NPOs have pointed to no instance where a Louisiana court required joinder of a party due to the plaintiff's inability to prove essential elements of its case or to respond to discovery. The NPOs are transparent about the fact that these are their reasons for seeking compulsory joinder, and even attempt to make the argument that discovery is a valid reason for compulsory joinder . . . [This is not] sufficient justification to make a case for compulsory joinder.

Ruling at 13.

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[3] *See, e.g.*, Exception, p. 7 ("The Commission should find that the participation of Laidley and Meta in this proceeding is necessary for the just adjudication of the issues in this proceeding because ELL is unable to provide even basic information on aspects of the Application"); *id.*, p. 12 ("Since the information necessary to evaluate ELL's public interest argument resides with Meta, . . . the Commission should determine that Laidley and Meta are necessary for the just adjudication of the issues in this proceeding"); *id.*, p. 13 ("As explained above, the Commission should find that the participation of Laidley and Meta in this proceeding is necessary for the just adjudication of the issues in this proceeding because ELL is unable to provide even basic information on aspects of the Application").

The NPOs argue that the ALJ wrongly "assumed that simply because the [joinder] issue arises infrequently, this 'fact' in and of itself warrants denial" of the Exception. Motion at 11. The argument misstates the ALJ's decision. The ALJ correctly recognized that there is a lack of Commission precedent on whether compulsory joinder under Article 641(1) is appropriate. Ruling at 10 ("The lack of Commission precedent for compulsory joinder is a result of the Commission's ability to fully resolve matters over which it has jurisdiction—namely the regulation of common carriers and public utilities."). But the ALJ clearly did not stop there, or as the NPOs assert, "assume" that "this 'fact' in and of itself warrants denial." Rather, as discussed above, the ALJ proceeded to outline over multiple pages of the Ruling why—under uniform Louisiana legal decisions—Article 641(1) did not provide a legal remedy for the NPOs. Ruling at 10-14.

The NPOs' Motion does not respond directly to the ALJ's analysis.[4] In the end, the Commission should conclude that the answer for addressing any gaps that may exist in the evidentiary record now or at the merits hearing certainly is not to depart from the well-established procedures of this Commission by joining customers whenever an intervenor wants additional project information and that the relief sought by the NPOs would be contrary to Article 641(1) and bad policy. Any other outcome would deter future economic development projects and significantly complicate, delay, and burden proceedings before the Commission.

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[4] The NPOs' statement in their Motion that "[t]he Commission has recognized that Art. 641 is applicable to Commission proceedings" has no support. Motion at 1, 1 n.1. They first refer to *In re: Complaint against Steve Kent Trucking, Inc. and Kent & Smith Holdings, LLC and petition to rescind LPSC Order No. T-33737*, Docket No. T-34241, Order No. T-34241-A (November 16, 2018). But, as the ALJ noted, the Commission rejected the application of Article 641 there. Ruling at 9. They also refer to *TransLouisiana Gas Company (A Division of Atmos Energy Corporation) (Dallas, Texas), ex parte*, Docket No. U-19631, Order No. U-19631-(A) (September 3, 1992), which is even less relevant. The Order in that case did not mention Article 641 at all, and Article 641 in its current form was not even enacted until three years later in 1995.

B. The ALJ Properly Looked to Federal Case Law as Persuasive Authority

The NPOs also criticize the ALJ for citing federal case law rejecting the argument that knowledge of relevant information does not render an individual a necessary party for joinder purposes. Motion at 12. The NPOs acknowledge that federal case law unanimously rejects their position in this case, but they claim that the ALJ should not have "adopted" the federal position.

First of all, nothing in the ALJ decision suggests that the ALJ "adopted" the federal position. Rather, the ALJ merely noted that the federal joinder rules were "substantially similar" to those under Louisiana law, and federal courts had considered and rejected the NPOs' position:

> The federal courts have held that knowledge of relevant information does not render an individual a necessary party pursuant to Federal Rule of Civil Procedure 19(a), a rule substantially similar to La. C.C.P. art. 641, *et seq.* In *Klecher v. Metropolitan Life Ins. Co.*, 331 F. Supp. 2d 279 (2004), the Federal Court of Appeals for the Second Circuit held, "[K]nowledge of relevant information does not render an individual a necessary party." In short, whether a movant seeks discovery from a party does not bear on whether that party should be joined in an amended complaint, citing *Costello Publ'g Co. v. Rotelle*, 670 F.2d 1035, 1044 (D.C. Cir. 1981) . . . "[T]he question of whether an entity or individual should be a party is quite different from the questions and the problem associated with obtaining evidence from such an entity or individual and the need to obtain evidence from an entity or individual is not a factor bearing on whether a party is 'necessary' or 'indispensable' to a just adjudication and thus required to be joined or the action dismissed for failure of joinder." *Costello*, at 1044.

Ruling at 14-15. In other words, the ALJ looked to federal case law because it was one more data point supporting the conclusion that joinder rules should not be used as discovery devices.

Furthermore, the NPOs' argument—that the federal caselaw is not "persuasive" because Louisiana courts have not expressly adopted the same position—makes no sense. Louisiana courts have not previously adopted the federal rulings because they have not had the need to address the question (one way or the other) in a published decision. Nothing in the ALJ decisions suggests that

the ALJ treated the federal decisions as binding precedent. To the contrary, the ALJ explained why the NPOs' position was inconsistent with Louisiana's well entrenched application of Article 641(1). The NPOs cannot reasonably argue that the ALJ should not have considered the federal cases simply because the NPOs did not have any contrary authority to support their arguments.

C. The NPOs Failed To Pursue Less Drastic Remedies Than Joinder

The NPOs also argue that the ALJ should not have faulted them for not making efforts to obtain additional discovery through other less drastic means. The NPOs' argument falters from the outset because it incorrectly assumes that a non-party having relevant information justifies joining non-parties under Article 641(1). The argument also fails because the NPOs failed to demonstrate an actual need to obtain information from Laidley and Meta. The NPOs claim that they allegedly need discovery from Meta and Laidley on three issues: "job creation;" "the amount of load;" and the "sustainability goals." Motion at 14. ELL's disclosures provide extensive information about the customer and the project itself and fully address the questions raised by the NPOs.

With respect to the power needs and sustainability commitments, the NPOs need look no further than to the Electric Service Agreement ("ESA") which is attached as an exhibit to the direct testimony of Laura Beauchamp.[5] ELL witnesses Ms. Beauchamp and Phillip May discuss the terms of the ESA and its related agreements at length as do other ELL witnesses. Moreover, the

[5] Article I sets forth the Original Term of the agreement and provisions concerning renewals. Article II sets forth the number of kilowatts to be made available to the Customer as well as the voltage and points of delivery. Article III provides that the Customer is taking service under Rate Schedule LLHLFPS-L and also lists certain rate and rider schedules to which the Customer has agreed to be bound. Article IV provides that the Rider to the ESA is incorporated into the ESA, and Article V incorporates ELL's standard terms and conditions. The Rider and the Standard Terms and Conditions are attached to the ESA, together with two contracts titled Contribution in Aid of Procurement and Engineering, and the CIAC Agreement.

relief ELL requests here relates to the certification of new generation and transmission resources, not approval of the ESA (which per the Commission's rules does not require such approval).

The NPOs also can look at other witness testimony if they want more information about the project's sustainability commitments. An expert in this case has testified, for example, that: "Simply put, to address climate change, there is an urgent need to demonstrate the viability of CCS applied to a CCCT. The customer has agreed to fund such a demonstration at a large, advanced stage, project in Louisiana. By doing so, the customer could help ELL pave the way for broader deployment of a technology application that is absolutely essential to decarbonization, especially in Louisiana. It would be hard to conceive of a more impactful clean energy funding commitment than this." Direct Testimony of Nicholas Owens at 13:1-14:4; *see also* Direct Testimony of Elizabeth C. Ingram at 1:2-32:3 (discussing customer sustainability commitments).

If the NPOs are seeking information about the anticipated economic impacts on Richland Parish, Mr. May addressed this issue directly as did other witnesses.[6] *See, e.g.*, Direct Testimony of Daniel Kline at 4:17-8:10 (discussing transmission needs in North Louisiana); Direct Testimony of Ryan D. Jones at 2:15-8:6 (explaining why the proposed transmission system projects are in the public interest).; Direct Testimony of Ryan E. O'Malley at 2:10-11:5 (explaining why customer rates will not be unreasonably affected by the proposed generation and transmission additions);

[6] In addition, on April 3, 2025, ELL provided the Commission with a letter from Meta in which Meta "confirms that ELL's representations in this proceeding regarding the Project's timeline, energy requirements, and economic development commitments are accurate, including Meta's commitment to continue matching 100% of our data centers' electricity use with clean and renewable energy." Meta also reaffirmed that the Project "represents an investment of over $10 billion and will support 500 operational jobs, along with 5,000 skilled trade workers on site at peak construction, and Meta is making a concerted effort to hire locally. Meta is also investing over $200 million in local infrastructure improvements including roads and water infrastructure."

Direct Testimony of Samrat Datta at 16:16-19:21 (providing an economic analysis of the project generation and transmission resources and costs and benefits of those resources, net of the Customer's contributions to the costs of the resources, as well as other customer benefits). The NPOs also can look to other sources, such as public statements by Louisiana state officials.[7]

The main complaint that the NPOs appear to have is that they view certain parts of the direct testimony offered by ELL as unreliable. Specifically, despite the Commission having wide discretion to apply evidentiary rules liberally and to take administrative notice of matters outside the record that are relevant to the public interest, the NPOs argued below that the testimony is based on information provided to ELL by Laidley or Meta and is inadmissible. *See, e.g.*, Exception at 3-4. The NPOs' argument incorrectly assumes that the customer must confirm its commercial requirements and intentions firsthand and that such confirmation cannot be made unless the customer and its parent are joined as parties. That premise is wrong. The ESA provides a detailed account of the commercial requirements and intention of the customer and its parent.

Moreover, the Commission is not constrained by formal rules of evidence. For example, Rule 32 of the Commission's Rules of Practices and Procedures provides:

> Any evidence which would be admissible under the general statutes of the State of Louisiana, or under the rules of evidence governing proceedings in matters not involving a trial by jury in the Courts of

[7] Both Governor Jeff Landry and the Louisiana Department of Economic Development ("LED") have endorsed the project. In explaining the reasons for his support, Governor Landry said that "Meta's investment establishes the region as an anchor in Louisiana's rapidly expanding tech sector, revitalizes one of our state's beautiful rural areas, and creates opportunities for Louisiana workers to fill high-paying jobs of the future. I thank Meta for their commitment to our state, and to the State Legislature for positioning Louisiana to win this project by passing new tax reform legislation that attracts capital investment and improves Louisiana's business tax climate." *See* "Landry Announces Meta Selects North Louisiana as Site of $10 Billion Artificial Intelligence Optimized Data Center," Louisiana Office of the Governor, December 4, 2024 Press Release (https://gov.louisiana.gov/news/4697). LED Secretary Susan Bourgeois echoed Governor Landry, noting that "[t]his project is an example of what Louisiana can accomplish when economic development partners play offense rather than waiting for good projects to come to them...." *Id.*

> the State of Louisiana, shall be admissible before the Louisiana Public Service Commission. Other evidence may be admitted by the Commission if it is at all probative and relevant provided the substantive rights of all parties are protected. The rules of evidence shall be applied liberally in any proceeding to the end that all needful and proper evidence shall be conveniently, inexpensive, and speedily heard while preserving the substantive rights of the parties to the proceeding.

LPSC Rules of Practices and Procedures, Rule 32. Thus, as is true in most administrative proceedings in Louisiana, evidentiary rules are liberally applied before the Commission. Consequently, joining Meta and Laidley involuntarily is unnecessary and would disrupt the orderly progress of these proceedings with overly aggressive evidentiary objections.

II. THE NPOs CANNOT ESTABLISH IRREPARABLE HARM.

Traditionally, "irreparable injury" has been defined as a "loss sustained by an injury which cannot be adequately compensated in money damages or for which such damages cannot be measured by a pecuniary standard." *Shaw v. Hingle*, 94-1579, p. 9 (La. 1995), 648 So.2d 903, 905; *Terrebonne Parish Police Jury v. Matherne*, 405 So.2d 314, 319 (La. 1981). In the context of Louisiana appeals and writ applications, the Louisiana Supreme Court has noted that "irreparable injury occurs if any ruling cannot, as a practical matter, be corrected on appeal." *Herlitz Construction Co. Inc. v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 878, 878 (La. 1981).

To be sure, not every interlocutory ruling can cause irreparable harm. Instead, those situations are limited to certain narrowly defined situations, such as a trial court ruling which denies an exception of improper venue, improperly certifies a large class of plaintiffs, or denies an exception of lack of personal jurisdiction. *See Patterson v. Alexander & Hamilton, Inc.*, 2002-1230 (La. App. 1 Cir. 04/02/03), 844 So.2d 412 (denial of venue exception); *Carr v. GAF, Inc.*, 1997-2325 (La. 1997), 702 So.2d 1384 and *Eastin v. Entergy Corp*, 97-1094 (La. App. 5 Cir.

04/15/1998) (improper certification of class actions)[8], *Frederic v. Zodiak Development*, 2002-1178, p. 5 (La. App. 1 Cir. 02/14/03), 839 So.2d 448, 452 (denial of personal jurisdiction exception). None of these unique circumstances are present in these proceedings.

Instead, the NPOs argue that "immeasurable expense and innumerable wasted hearing days will result if it is determined after hearing that the ALJ decision on the merits that Meta and Laidley should have been deemed necessary parties for a just adjudication." *Motion*, p. 3. This does not constitute the type of irreparable injury which Louisiana courts have required to review an interlocutory ruling. At best, the NPO's complaint is that all the parties and the Commission *might* experience a longer process, which *might* cause additional expense, and *might* result in more hearing dates if it is later determined that Meta and Laidley should be joined. This speculative and non-specific harm does not constitute "irreparable injury" as defined by Louisiana law.

In addition, the NPO's have not alleged (and, in fact, have no basis to allege) that their *individual* rights will be harmed if the Ruling is not reversed. They will not. The NPO's non-joinder arguments go the merits of ELL's application and whether it can gain the Commission's approval. The NPOs and other intervenors have the ability to participate in the proceedings, and argue that the Commission should deny ELL's Application on the merits.

Finally, the NPOs do not cite any cases in which a Louisiana appellate court has found irreparable injury when a trial court denied an exception of non-joinder under La. Code Civ. Proc. art. 641. This is telling because, as noted above, Louisiana's appellate court only find irreparable

[8] The only case cited by the NPOs on irreparable harm is the *Eastin* case, which, as noted, dealt with a class certification ruling. Recognizing the unique harm that results to a litigant from an unreviewed interlocutory class certification ruling, the Louisiana Legislature has codified a litigant's *automatic* right to appeal a class certification ruling. *See* La. Code Civ. Proc. 592(A)(3)(c). *Eastin* offers no support for the NPOs' argument that they were irreparably harmed.

injury in very limited circumstances. Given the lack of Louisiana cases finding irreparable injury related to non-joinder exceptions, ELL respectfully suggests that Commission should not extend the irreparable injury doctrine into that territory, and deny the NPOs' motion.

CONCLUSION

For the foregoing reasons, ELL asks that the Commission deny the NPOs' Motion. The NPOs cannot demonstrate that the ALJ's Ruling is subjecting them to irreparable harm. Moreover, the ALJ's ruling is correct as a matter of law, and there is no law to the contrary.

Respectfully submitted,

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New Orleans, Louisiana, this 24th day of April, 2025.

D. Skylar Rosenbloom

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

DOCKET NUMBER U-37425

ENTERGY LOUISIANA, LLC, EX PARTE

In re: Application for approval of generation and transmission resources in connection with service to a single customer for a project in North Louisiana.

MEMORANDUM IN OPPOSITION OF THE LOUISIANA PUBLIC SERVICE COMMISSION STAFF TO THE MOTION FOR IMMEDIATE REVIEW OF INTERLOCUTORY ORDER AND MEMORANDUM IN SUPPORT FILED PURSUANT OT RULE 57

In accordance with the Rules of Practice and Procedure of the Louisiana Public Service Commission ("Commission"), the Staff of the Louisiana Public Service Commission ("Staff") submits this Memorandum in Opposition to the Motion for Immediate Review of Interlocutory Order and Memorandum in Support Filed Pursuant to Rule 57, filed by the Alliance for Affordable Energy and the Union of Concerned Scientists ("NPOs") on April 14, 2025.

The Staff opposes the motion because the NPOs have failed to show an irreparable injury from the ruling of the Administrative Law Judge ("ALJ"), the threshold requirement for obtaining Commission review of this interlocutory ruling. Rule 57 of the Commission's Rules of Practice and Procedure only allows for the immediate review of an interlocutory ruling "upon a showing of irreparable injury, as defined in Louisiana jurisprudence" or upon the Commission's own motion. The Commission has not moved to

review the ALJ's ruling *sua sponte* and the only injury alleged by the NPOs does not fit the definition of an "irreparable injury."

The NPOs' irreparable harm contention is that "immeasurable expense and innumerable wasted hearing days will result if it is determined *after* hearing . . . that Meta and Laidley should have been deemed necessary parties for a just adjudication." [Motion at 3]. But the costs of litigation are not considered irreparable harm as the NPOs allege. *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974). This deficiency alone is sufficient for the Commission to deny the NPOs' request for immediate Commission review.

The Staff also opposes the merits of the peremptory exception underlying the NPOs' motion because they fail to satisfy the requirements for a peremptory exception of nonjoinder of parties under the Louisiana Code of Civil Procedure article 641. The NPOs primarily allege that the application of Entergy Louisiana, LLC ("ELL") contains evidentiary deficiencies that cannot be cured in the absence of the proposed new customers, Laidley, LLC ("Laidley") and Meta Platforms, Inc. ("Meta"), and that discovery is hindered without joining those entities as parties to this proceeding. But regardless of whether those allegations are true, they do not require Laidley and Meta to be joined.

None of the requirements for the compulsory joinder of a nonparty are present here. The potential evidentiary deficiencies raised by the NPOs are properly addressed when the merits of the filing are considered; they are not grounds for a peremptory exception of nonjoinder of parties or dismissal. Similarly, the alleged discovery obstacles identified by the NPOs could have been resolved through other

discovery vehicles that the NPOs did not attempt to use. The NPOs should not now be allowed to use the extraordinary remedy of compulsory joinder of a non-party to cure alleged discovery defects, a remedy that appears to be designed more to disrupt and derail this proceeding, than to enhance the record.

The NPOs claim that there are three errors in the ALJ's ruling, but that claim is meritless. First, the NPOs' contention that the ALJ "seems to assume" that the rarity of nonjoinder exceptions "in and of itself warrants denial of the joinder motion" is based on a misunderstanding of the ruling. [Motion at 4]. The ALJ did not state or even suggest that she relied on the rarity of nonjoinder exceptions as a stand-alone basis for denying the NPOs' motion. [Ruling at 10]. Second, the NPOs' claim that the ALJ's reliance on persuasive federal authority was erroneous is incorrect. [*Id.*]. The ALJ correctly relied on federal precedent as additional support for her denial of the NPOs' motion in the absence of controlling state court authority. The fact that there is no Louisiana state court precedent that expressly adopted or rejected the federal limitation does not mean that Louisiana courts have rejected the federal standard, or that it was improper to rely on federal cases interpreting a similar procedural rule, as the NPOs argue.

Lastly, the NPOs incorrectly claim that the ALJ erred by concluding that the NPOs failed to "even attempt[] to obtain information directly from Laidley or Meta or other third parties." [Motion at 5]. But that conclusion was correct. There are other discovery vehicles that the NPOs could have attempted but did not, instead choosing to pursue the extraordinary remedy of a peremptory exception of nonjoinder. Thus, the NPOs failed to show that it was "absolutely necessary" to join Meta and Laidley in this proceeding, as

required for this extraordinary remedy. *State Department of Highways v. Lamar Advertising Co. of La., Inc.*, 279 So. 2d 671 (La. 1973) (stating that a party should be deemed indispensable "only when that result **is absolutely necessary** to protect substantial rights").

The NPOs' motion and peremptory exception should be denied.

LAW AND ARGUMENT

Rule 57 of the LPSC's Rules of Practice and Procedure only allow for immediate Commission review of an interlocutory ruling in two instances. First, the Commission, upon its own motion, can review any question or issue pending before an Administrative Law Judge. Second, any party can file a motion requesting the immediate review of an interlocutory ruling of an ALJ. A party moving for immediate review must show that irreparable harm will result absent review of the interlocutory ruling. Rule 57 states, in relevant part:

> Every ruling of an administrative law judge shall be subject to review by the Commission upon its own motion. The Commission may also, upon its own motion, assert its original and primary jurisdiction and consider any question or issue pending before an Administrative Law Judge.
>
> Any party may apply for immediate review of an interlocutory ruling, which may be obtained **only upon a showing of irreparable injury**, as defined in Louisiana jurisprudence.

LPSC Rule of Practice and Procedure 57 (emphasis added).

Pursuant to Louisiana jurisprudence, irreparable injury exists "only where the error sought to be corrected on an appeal from the interlocutory judgment cannot, as a practical matter, be corrected on an appeal following a determination of the merits."

Collins v. Prudential Ins. Co. of America, 99–1423, p. 6 (La. 1/19/00), 752 So. 2d 825, 829. Numerous jurisdictions, including the United States Supreme Court and Louisiana courts, have found that wasted time and litigation costs do not constitute "irreparable injury." *E.g.*, *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974) ("Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."), *Clark v. Legion Ins. Co.*, 2002-2487, p. 8 (La. App. 4 Cir. 7/23/03), 853 So. 2d 684, 688-89; *Amaranth Advisors, LLC*, 121 F.E.R.C. ¶ 61,238, ¶ 5 (2007).

In regard to the merits of the NPOs' exception, pursuant to Louisiana Code of Civil Procedure article 641, a peremptory exception for nonjoinder can only be granted if one of two circumstances exists. To determine whether a party is needed for just adjudication, and therefore, a peremptory exception of nonjoinder should be granted, the movant must establish one of the following:

1. Absent the nonparty's presence, "complete relief cannot be accorded among those already parties."

2. The nonparty "claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may either:

    (a) As a practical matter, impair or impede his ability to protect that interest"; or

    (b) "Leave any of the persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations."

La. Code Civ. Proc. art. 641.

The comments to Code of Civil Procedure article 641 explain that the Louisiana legislature amended article 641 in 1995 to "codify the holding of the Louisiana

Supreme Court in *State Department of Highways v. Lamar Advertising Co. of La., Inc.*, 279 So. 2d 671 (La. 1973)." In *Lamar*, the Louisiana Supreme Court concluded that a party should be deemed indispensable "only when that result **is absolutely necessary** to protect substantial rights" and that "very few absent parties are absolutely indispensable to the litigation before the court." *Id.* at 677 (emphasis added). The court found that whether a party is needed for the just adjudication of a proceeding should only be made after a "close factual analysis" of all interests involved. *Id.*

In *Industrial Companies, Inc. v. Durbin*, the Louisiana Supreme Court explained that article 641 provides the **only** two circumstances whereby a party can be considered as "needed for just adjudication." *Indus. Companies, Inc. v. Durbin*, 2002-0665 (La. 1/28/03); 837 So. 2d 1207, 1217. It stated:

> A person may be considered indispensable **only if one of the two circumstances listed [in article 641] exists.** First, under La. Code of Civ. Proc. Art. 641(1), a person may be considered a party needed for just adjudication if, absent his presence, "complete relief cannot be accorded among those already parties." Second, under La. Code of Civ. Proc. art. 641(2), a person may be considered a party needed for just adjudication if that person claims an interest relating to the subject matter of the suit and if the other conditions specified in that subpart are present.

Id. (emphasis added). The circumstances described in Article 641 do not exist in this proceeding. The ALJ properly denied the NPOs' exception and the present motion for interlocutory review should be denied.

I. THE NPOS FAIL TO SHOW IRREPARABLE HARM THAT JUSTIFIES COMMISSION CONSIDERATION OF THEIR PEREMPTORY EXCEPTION.

As an initial matter, the NPOs have failed to satisfy the requirements for immediate Commission review of an ALJ order as provided in Rule of Practice and Procedure 57. That rule requires a party to show that it will suffer irreparable injury, as defined by Louisiana jurisprudence, in order to obtain immediate review of an interlocutory ruling. The NPOs have not made that showing here.

The NPOs claim only one irreparable injury if the ALJ's ruling is not immediately reviewed: "in this proceeding immeasurable expense and innumerable wasted hearing days will result if it is determined *after* hearing and the ALJ decision on the merits that Meta and Laidley should have been deemed necessary parties for a just adjudication." [Motion at 3]. But even if true, that alleged injury does not meet the definition of "irreparable injury" under Louisiana jurisprudence.

As explained above, Louisiana jurisprudence defines irreparable injury as an injury that cannot, as a practical matter, be corrected on appeal following a determination of the merits. *Collins v. Prudential Ins. Co. of America,* 99–1423, p. 6 (La. 1/19/00), 752 So. 2d 825, 829. The Louisiana Supreme Court has found that "[g]enerally, requiring a party to go to trial does not constitute irreparable injury." *Id.* at 830 (finding that an order compelling arbitration did not give rise to irreparable harm); *Clark v. Legion Ins. Co.*, 2002-2487, p. 8 (La. App. 4 Cir. 7/23/03), 853 So. 2d 684, 688-89 (declining to review an interlocutory ruling denying a motion for summary judgment because "[o]ther than

requiring that it go to trial, there has been no showing of how the denial of its motion for summary judgment will result in irreparable harm").

Further, "proof that the interlocutory judgment will delay final disposition of the litigation or cause the parties to incur added expense [is not] sufficient to show irreparable injury for purposes of appealability." *Young v. City of Plaquemine*, 2004-2305, pp. 5-6 (La. App. 1 Cir. 11/4/05), 927 So. 2d 408, 411-12 (dismissing an appeal of interlocutory judgments because defendants did not allege any irreparable injury other than an assertion that the litigation would end if the appellate court found the trial court erred); *Anderson v. Anderson*, 513 So. 2d 399, 403 (La. App. 4 Cir. 1987) (finding that denial of an exception of *res judicata* was not appealable because there was no potential for irreparable injury).

Other courts and agencies have similarly held that the time and expense of litigation does not constitute irreparable injury. In *Renegotiation Board v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974), the United States Supreme Court explained that "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury." Similarly, the Federal Energy Regulatory Commission ("FERC") has explained on numerous occasions that "wasted time and litigation costs" do not constitute irreparable injury. *E.g.*, *Amaranth Advisors, LLC*, 121 F.E.R.C. ¶ 61,238, ¶ 5 (2007) ("[D]efense effort and litigation costs do not meet the standard of irreparable harm."); *S. Cal. Edison Co.*, 124 F.E.R.C. ¶ 61,157, ¶ 14 ("Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."); *El Paso Nat. Gas Co.*, 145

F.E.R.C. ¶ 63,017, ¶ 3 (2013) ("[A]llegations of wasted time and litigation costs, even if demonstrated, would not constitute irreparable injury.").

The NPOs cite a class action case, *Eastin v. Entergy Corp.*, 710 So. 2d 835 (La. App. 5 Cir. 1998), as their only support for the proposition that wasted time and expense constitutes irreparable injury; however, class actions represent a unique type of case with facts and economic concerns that distinguish them from the present matter. Because class actions involve a large number of plaintiffs and claims, the "fundamental objective of the class action . . . is the achievement of economies of time, effort, and expense." *Brantley v. City of Gretna*, 21-574, p. 7 (La. App. 5 Cir. 8/5/22), 347 So. 3d 1147, 1157.

In *Eastin*, the court denied the plaintiffs' motion to dismiss the defendants' appeal of a ruling granting class certification. *Id.* at 838. The court recognized that because the case involved more than 100 potential plaintiffs, if the class action erroneously moved forward, there would be a risk of immeasurable expense and innumerable wasted court days that included delays in other litigation. *Id.* at 837. In contrast, there is no risk here of immeasurable expense or innumerable wasted days because there is only one utility applicant, and there is no other litigation that may be delayed. Therefore, the NPOs did not meet their burden of showing irreparable injury.

II. THE NPOS FAIL TO SATISFY ANY OF THE CRITERIA FOR GRANTING A PEREMPTORY EXCEPTION OF NONJOINDER OF PARTIES.

Turning to the merits, the NPOs fail to establish any circumstance that requires or warrants the compulsory joinder of Meta or Laidley. The NPOs' allegations of

evidentiary deficiencies in ELL's application and discovery difficulties do not meet the requirements for compulsory joinder as set forth in Code of Civil Procedure article 641. Furthermore, joinder of a non-party has been rejected as a remedy for discovery issues by federal courts that have considered it. *See, e.g., Perkins School v. Maxi-Aids*, 274 F. Supp. 2d 319, 329 (E.D.N.Y. 2003); *Costello Pub. Co. v. Rotelle*, 670 F.2d 1035, 1044 (D.C. Cir. 1981); *Edgenet, Inc. v. GS1 AIBSL*, No. 09-CV-65, 2010 WL 55843, at *5 (E.D. Wis. Jan. 5, 2010). Although the NPOs correctly cite article 641(1) as the statute that is "central to the Commission's consideration of this motion," the NPOs fail to meaningfully address the standard provided in that statute. [*See* Motion at 1].

The first circumstance that can justify compulsory joinder, and the only circumstance that the NPOs rely upon here, is whether, without the joinder of the nonparty, complete relief can be accorded among those already parties in this proceeding. La. Code Civ. Proc. art. 641(1). That circumstance is not present here.

ELL's application and direct testimony state the relief that the Company is seeking. ELL witness May lists the Company's requests to the Commission in his testimony and those requests are further supported with the testimony and exhibits of ten other witnesses. [May Direct at 40-46]. The Commission ultimately will decide whether to grant each of ELL's requests, including its request to construct three new combined cycle combustion turbines. The Commission's decision will resolve all issues in this proceeding. There is no issue that cannot be adjudicated and resolved without the joinder of Meta and Laidley. No party, including the NPOs, have argued otherwise.

The ALJ correctly recognized that the NPOs failed to satisfy their burden of showing that complete relief could not be accorded among those already parties to this proceeding without the joinder of Meta and Laidley. [Ruling at 15]. The Ruling properly noted that "a party should be deemed indispensable only when that result is absolutely necessary to protect substantial rights." [*Id.* at 10]. It found that all elements of ELL's application would need to be proven at trial. [*Id.* at 11]. The Ruling explained that "all parties, including the NPOs, will have an opportunity to provide testimony and evidence, cross-examine the other parties' witnesses, and argue their respective positions at the hearing of the matter, as well as in pre- and post-hearing briefs." [*Id.* at 11-12]. The ALJ correctly found that the NPOs "had not even attempted to obtain information directly from Laidley or Meta." [*Id.* at 13]. And finally, the Ruling determined that Commission orders were unique in that they could impose conditions on the approval of a utility application. [*Id.* at 14]. Each one of these findings contributed to the ALJ's conclusion that complete relief could be accorded to all parties in this proceeding and that it was not "absolutely necessary" to join Meta or Laidley. [*Id.* at 15].

The NPOs allege that the ALJ erred: 1) by adopting the federal limitation that prohibits compulsory joinder of a nonparty to facilitate discovery; 2) finding that the NPOs failed to conduct discovery that was prohibited; and 3) assuming that the rarity of compulsory joinder motions supports the denial of the NPOs' exception. [Motion at 4-5]. As explained below, each of the NPOs' arguments are meritless.

A. The NPOs' Claim that the ALJ Erred By Considering Federal Persuasive Authority That Prohibits the Joinder of Parties for Discovery Purposes is Meritless.

The NPOs' primary argument for the compulsory joinder of Meta and Laidley is that alleged evidentiary deficiencies in ELL's filing and discovery obstacles require joinder. [*See, e.g.*, Memo. at 7 ("ELL's testimony simply parrots unsubstantiated assertions from the Customer – currently a non-party in this proceeding."); *id.* at 8 ("ELL concedes in the Company's discovery responses that it has *no supporting evidence* for either of [its] claims." (emphasis in original))]. That argument is meritless.

The LPSC Staff explained in its opposition to the NPOs' peremptory exception that the attempted use of the nonjoinder exception to join parties to facilitate discovery is improper, contrary to persuasive authority, and should be rejected. *See, e.g.*, *Perkins School v. Maxi-Aids*, 274 F. Supp. 2d 319, 329 (E.D.N.Y. 2003) (applying analogous Federal Rule of Civil Procedure 19, finding that the "need to obtain evidence from an entity or individual" is not a "factor bearing upon whether or not a party is necessary or indispensable to a just adjudication"); *see also Costello Pub. Co. v. Rotelle*, 670 F.2d 1035, 1044 (D.C. Cir. 1981); *Edgenet, Inc. v. GS1 AIBSL*, No. 09-CV-65, 2010 WL 55843, at *5 (E.D. Wis. Jan. 5, 2010). The ALJ agreed, ruling that "whether a movant seeks discovery from a party does not bear on whether that party should be joined . . . ." [Ruling at 13].

In its current motion for immediate review, the NPOs allege that the ALJ erred by following the persuasive federal authority cited by the LPSC Staff and ELL without adequate explanation. [Motion at 4]. They claim that "[d]espite [the] dearth of

legal support for the limitation, the ALJ not only apparently adopted the federal limitation but provided no rationale for adopting this rule." [*Id.* at 4; Memo. at 12-13]. The NPOs' claim is incorrect.

The ALJ did not "fail[] to provide a rationale for adopting the federal limitation" as the NPOs allege. [Motion at 4]. Instead, the ALJ used the federal precedent as persuasive authority and additional support for her conclusion that ELL's lack of knowledge regarding certain issues was not sufficient to require the joinder of outside third parties to this proceeding; she did not rely on those cases exclusively. [Ruling at 13-14]. The ALJ provided other reasons that supported her finding that the NPOs failed to satisfy the joinder requirements. She stated, for instance, that "the NPOs had not even attempted to obtain information directly from Laidley or Meta or other third parties whose statements are referred to as unsupported." [*Id.*]. She explained that "Louisiana courts have taken a conservative approach in applying compulsory joinder," applying it "only when there is some vital property or personal interest" at issue. [*Id.* at 12-13]. She further pointed out the NPOs' failure to provide any authority to support its position that discovery-related issues were sufficient to satisfy the requirements of joinder. [*Id.* at 13 ("The NPOs have pointed to no instance where a Louisiana court required joinder of a party due to the plaintiff's inability to prove essential elements of its case or to respond to discovery.")].

The NPOs further allege that the lack of state court precedent holding that "knowledge of relevant information does not render an individual a necessary party" somehow justifies ignoring the federal precedent. But the absence of a Louisiana state court case adopting the federal standard does not mean that Louisiana courts have made a

decision not to follow that rule; it means only that state appellate courts have not yet considered the issue. The NPOs gloss over the fact that Louisiana state courts have also not rejected the federal standard. In the absence of any state court authority, it was reasonable for the ALJ to look to federal cases for guidance. *See Chittenden v. State Farm Mut. Auto. Ins. Co.*, 2000-0414, p. 13 (La. 5/15/01), 788 So. 2d 1140, 1149 n.21 (stating that "the holdings of federal courts are persuasive and are entitled to much respect").

Unlike the Staff, ELL, and the ALJ, the NPOs ***provide no precedent*** to support their contention that the knowledge of a non-party can require its joinder in a proceeding. Indeed, the NPOs fail to cite a single case where a third party was forced to join a proceeding because that party had knowledge relevant to a proceeding. In the absence of relevant state court precedent, the ALJ reasonably relied on well-established federal jurisprudence, in addition to many other factors, in rejecting the NPOs' motion.

B. The NPOs' Claim that Discovery Would Have Been a "Fruitless Endeavor" is Unsupported.

The NPOs complain that there are "gaps in the record" that can only be filled by the compulsory joinder of Meta. [Memo. at 14]. But the ALJ correctly determined that the sufficiency of the record will be judged in the hearing on the merits. [Ruling at 11]. As the ALJ correctly recognized, the NPOs "have pointed to no instance where a Louisiana court required joinder of a party due to the plaintiff's inability to prove essential elements of a case or to respond to discovery." [Ruling at 13].

The NPOs' motion hinges on the claim that attempting to obtain discovery from Meta or Laidley would be futile because the Commission has no authority to enforce

a subpoena against them. [Motion at 5]. However, as the ALJ correctly stated, that argument is "speculative and insufficient to require the extreme remedy of compulsory joinder." [Ruling at 15]. The argument is speculative because the NPOs were not denied a subpoena; they did not even attempt to obtain discovery from Meta or Laidley through a subpoena for documents or witnesses, even after this was pointed out in the hearing on the peremptory exception.

The NPOs summarily claim that Commission Rule 40 does not allow the Commission to subpoena Meta or Laidley, because they are not "from any place in the State of Louisiana," as required by the rule. But Meta and Laidley likely have sufficient contacts with the state to put them within the Commission's subpoena power.

Louisiana courts have found that entities who are not citizens of Louisiana may nonetheless be considered residents of the state of Louisiana subject to the subpoena power of district courts when those entities have significant contacts with the state. *See, e.g., LaBarre v. Texas Brine Co., LLC,* 2017-0309, pp. 12-13 (La. App. 1 Cir. 2/7/18), 347 So. 3d 949, 956-57; *EXCO Operating Co., LP v. BRP, LLC*, 56,018, pp. 7-8 (La. App. 2 Cir. 12/18/24), 402 So. 3d 668, 675 (finding that out-of-state corporations were residents of Louisiana subject to the subpoena power of a district court where they had significant ties to the state, including being registered to do business, maintaining a registered business establishment, and doing business in Louisiana); *Molaison v. Cust-O-Fab Specialty Servs., LLC*, 21-585, pp. 6-7 (La. App. 5 Cir. 6/1/22), 343 So. 3d 866, 871 (holding that a nonparty corporation was a resident of Louisiana subject to the state's subpoena power because the

corporation maintained a facility in Louisiana where the accident at issue occurred and employed workers in that facility).

Meta and Laidley likely have significant contacts with the state to warrant a Commission-ordered subpoena. Both are registered to do business in the state and have a registered agent for service of process. Meta owns property in Richland Parish and is constructing a $10 billion dollar data center, the largest of Meta's 20 data centers around the world. Office of the Governor, *Landry Announces Meta Selects North Louisiana as Site of $10 Billion Artificial Intelligence Optimized Data Center* (Dec. 4, 2024) https://gov.louisiana.gov/news/4697. Meta has committed to invest more than $200 million in local infrastructure improvements in the state and is actively hiring in the state to fill the 5000 new projected jobs. *Id.* Laidley and Meta have contracted with ELL to become its biggest Louisiana customer, necessitating the instant application for three new generating units and transmission infrastructure in the state.

The Commission has previously issued subpoenas for the production of documents to nonparty entities outside the state, contradicting the NPOs assertion that it may not do so. In 2014, the Commission faxed subpoenas to AT&T's subpoena compliance office in Florida. *Louisiana Pub. Serv. Comm'n*, No. T-33443, 2015 WL 1123062 (Mar. 10, 2015). It has also issued a series of subpoenas for documents to BellSouth's Georgia office. *Louisiana Pub. Serv. Comm'n Versus S. Siding Co., Inc. (Baton Rouge, Louisiana)*, No. D-27886, 2004 WL 3683796 (Oct. 1, 2004).

The NPOs did not seek a subpoena when it had the opportunity to do so, nor did it provide an analysis of Meta or Laidley contacts with the state in support of their

summary conclusion that the Commission could not issue a subpoena to them. The NPOs also did not seek discovery from Meta or Laidley on an informal basis, so it is not known whether Meta and Laidley would have cooperated voluntarily. Finally, the NPOs did not tee up any discovery issues before the ALJ with a motion to compel, an action that may have resulted in a discovery resolution that the NPOs found acceptable. Instead, the NPOs decided to seek the extreme remedy of compulsory joinder or dismissal, which, if granted at this late date, would derail ELL's application and likely the underlying agreement ELL has to provide service to Meta. Joinder is not an appropriate remedy for alleged discovery difficulties, particularly where the moving party has done nothing to try to cure those difficulties in other ways.

C. The NPOs' Claim that the ALJ Erred by Concluding that Non-Joinder Exceptions Should be Denied Because of Their Rarity is Based on a Misunderstanding of the Ruling.

The NPOs incorrectly argue that "[t]he ALJ seems to assume that simply because the issue of joinder arises infrequently, that this 'fact' in and of itself warrants denial of the joinder motion." [Motion at 4 (citing Ruling at 10, 11)]. But the ALJ never stated or even implied that her ruling was based "in and of itself" on the fact that the issue of joinder arises infrequently. Instead, the ALJ pointed out that the Commission has little precedent on compulsory joinder issues because of "the Commission's ability to fully resolve matters over which it has jurisdiction." [Ruling at 10].

The NPOs rely specifically on subsection 1 of Louisiana Code of Civil Procedure article 641 for its joinder claim, which states that "[a] person shall be joined as a party in the action when . . . in his absence complete relief cannot be accorded among

those already parties." La. Code Civ. Proc. art. 641(1). The ALJ's ruling simply explains that "complete relief" can almost always be accorded in Commission proceedings due to the "Commission's ability to fully resolve matters over which it has jurisdiction." [Ruling at 10]. The Ruling further explains that the Commission itself "is a party to every docketed proceeding" and that the Commission hires "engineers, consultants, accountants, and other personnel necessary to examine the affairs of the public utilities it regulates." [*Id.*]. Due to these reasons, the Commission is in a unique position to accord "complete relief" in almost all of its cases.

CONCLUSION

The NPOs' motion for immediate review of interlocutory order should be denied.

Respectfully submitted,

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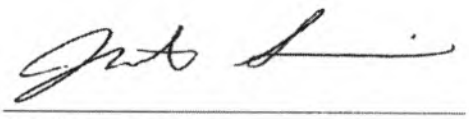
CERTIFICATE

I hereby certify that a copy of the above and foregoing "Memorandum in Opposition of the Louisiana Public Service Commission Staff to the Motion for Immediate Review of Interlocutory Order and Memorandum in Support Filed Pursuant to Rule 57" has been served upon all counsel of record by email this 24th day of April, 2025.



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