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CC:MV/LE

April 24, 2025

Via Fax 225-342-0877 & UPS Delivery
Ms. Krys (Kris) Abel
Business Technology Supervisor
Louisiana Public Service Commission
Galvez Building, 12th Floor
602 North Fifth Street
Baton Rouge, Louisiana 70802

Re: ***Application of Entergy Louisiana, LLC for Approval of Generation and Transmission Resources in Connection with Service to a Single Customer for a Project in North Louisiana*** **(LPSC Docket No. U-37425)**

Dear Ms. Abel:

Enclosed for your further handling please find an original and three copies of the Entergy Louisiana, LLC ("ELL") Memorandum in Opposition to "Motion for Immediate Review of Interlocutory Order". A check for $25.00 is enclosed to cover the fax filing fee. Please retain the original and two copies for your file and return a date stamped copy to me in the enclosed, self-addressed envelope.

Thank you for your courtesy in this matter and please do not hesitate to contact me with any questions.

Sincerely,

D. Skylar Rosenbloom

DSR/rih
cc: Official Service List U-37425 (*via electronic mail*)

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

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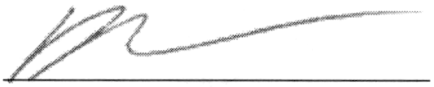
[8] The only case cited by the NPOs on irreparable harm is the *Eastin* case, which, as noted, dealt with a class certification ruling. Recognizing the unique harm that results to a litigant from an unreviewed interlocutory class certification ruling, the Louisiana Legislature has codified a litigant's *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,

By: 

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CERTIFICATE OF SERVICE
LPSC Docket No. U-37425

I, the undersigned counsel, hereby certify that a copy of the above and foregoing has been served on the persons listed below by facsimile, by hand delivery, by electronic mail, or by depositing a copy of same with the United States Postal Service, postage prepaid, addressed as follows:

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