CC: MV/LE

EARTHJUSTICE

July 3, 2025

VIA Overnight Mail

Ms. Kris Abel
Records and Recording Division
Louisiana Public Service Commission
Galvez Building, 12th Floor
602 North Fifth Street
Baton Rouge, Louisiana 70802

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**

Dear Ms. Abel:

Please find enclosed for filing in the above-captioned docket the original and two copies of the Pre-Hearing Brief of the Alliance for Affordable Energy and Union of Concerned Scientists (collectively, "NPOs").

In addition, I have also enclosed the original and two copies of the **Confidential** Version of the NPOs' Pre-Hearing Brief. The confidential version contains information that Entergy has designated as Highly Sensitive Protected Material and/or Attorney's Eyes Only, and is being provided to you under seal, in a separate envelope, pursuant to the provisions of the LPSC General Order dated August 31, 1992, and Rules 12.1 and 26 of the Commission's Rules of Practices and Procedure.

Thank you in advance for your assistance and please do not hesitate to contact me should you have any questions or concerns.

Respectfully submitted,

Susan Stevens Miller

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cc: official service list Docket No. U-37425 (via email)

Fedex

STATE OF LOUISIANA

BEFORE THE

LOUISIANA PUBLIC SERVICE COMMISSION

APPLICATION OF ENTERGY LOUISIANA, LLC 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	)	**DOCKET NO. U-37425**

PRE-HEARING BRIEF
OF THE ALLIANCE FOR AFFORDABLE ENERGY and UNION OF CONCERNED SCIENTISTS

Public Redacted Version

Dated: July 3, 2025

In this case, Entergy Louisiana, LLC ("ELL" or "the Company") has asked the Louisiana Public Service Commission ("Commission" or "LPSC") to approve three combined cycle gas plants (the "Planned Generators") and various transmission facilities in order to serve an estimated [[ ]] MW of load from a data center to be constructed by Laidley LLC ("Laidley" or "the Customer"), a subsidiary of Meta Platforms, Inc.[1] Among many other requests, ELL's Application seeks certification that the public convenience and necessity would be served by construction and use of the Planned Generators. Despite the enormous cost of these facilities, and the grid reliability risks posed by serving a massive data center with a rapidly shifting load, ELL claims that its proposals are in the public interest. But as witnesses for the NPOs and other parties have explained, the costs and risks of this Application far outweigh its purported benefits. Compounding things, many of the "benefits" cited in ELL's filing are illusory and unsupported. In other words, many of the benefits claimed by ELL likely will never materialize. For these reasons, and as further explained below, the Commission should deny this Application.

ARGUMENT

I. THE APPLICATION SHOULD BE DISMISSED ON PROCEDURAL GROUNDS.

A. The Application should be dismissed because ELL has not met the requirements for a waiver of the MBM Order.[2]

In its Application, ELL requests an exemption from (i) the request for proposals ("RFP") process in the Commission's Market-Based Mechanisms ("MBM") Order, (ii) the MBM Order's stated prohibition against alternative mechanisms being "limited to self-build or utility-owned resources," and (iii) any other requirements of the MBM Order. As discussed below, the

[1] Throughout its Application and testimony, ELL refers to Laidley as "the Customer," and the proposed data center as "the Project."

[2] On February 13, 2025, the NPOs filed a Motion requesting that the Tribunal deny ELL's request for waiver of the MBM Order's requirements. On February 27, 2025, the Tribunal deferred ruling on the Motion.

Commission should deny ELL's request for exemptions from the MBM Order because the Company has failed to provide the required support for such exemptions, improperly limited its procurement process to self-build resources, and failed to show that it would be in the public interest to forgo the Commission's process for identifying lowest-cost resources.

Since its issuance in 2022, the MBM Order has required utilities to use an RFP competitive solicitation process to evaluate proposals for specified generating capacity.[3] The Order "provides the structure within which utilities market test supply options to determine which is the lowest reasonable cost solution for the provision of reliable electric service."[4] Complying with the MBM Order demonstrates that a utility carefully considered comparable supply alternatives before selecting its preferred option.[5] Ultimately, the market test of an RFP is meant to "get the best deal for ratepayers."[6] In its most recent iteration, the Order requires RFPs to be "constructed as broadly as possible to allow for the review of all available options to add generating capacity."[7] This broad examination of alternatives must evaluate power purchase agreements ("PPAs") and all available types of resources, including intermittent resources and storage.[8]

Utilities only may forgo the standard RFP process if granted an exemption by the Commission. These exemptions are only granted if certain requirements are met. First, the utility must demonstrate through "sworn support from a Company representative that sufficient circumstances exist such that a RFP competitive process subject to the [MBM Order] would not

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[3] General Order 10-14-2024 (R-34247) at 1.

[4] *Sw. Louisiana Elec. Membership Corp., NextEra Energy Mktg., LLC, & Beauregard Solar, LLC, Ex Parte*, Docket No. U-36516, Order No. U-36516 at 11 (Nov. 7, 2023).

[5] *Dixie Elec. Membership Corp., d/b/a Demco, Ex Parte*, No. U-36133, Order at 14 (Nov. 10, 2022).

[6] https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=n9GmBZHffzI%3D – Original 2002 MBM Order at 3.

[7] MBM Order at ¶ 3.

[8] MBM Order at ¶ 3.

be in the public interest."[9] Second, the utility's alternative process can limit the types of resources under consideration only if the limitation is supported by both a fully vetted Integrated Resource Plan ("IRP") and by sworn support.[10] Finally, the Order specifies that "[i]n no event" shall a utility propose an alternative that is "limited to self-build or utility-owned resources."[11]

ELL requests an exemption from the MBM Order's RFP process, the Order's prohibition on alternative mechanisms being "limited to self-build or utility-owned resources," and any other requirements in the MBM Order that the Company has not met.[12] ELL claims that an exemption is warranted because expedited action is necessary to secure the Customer's investment in Louisiana.[13] The Company requests the exemption despite the fact that ELL did not test the market for alternatives to the Planned Generators.[14] Nor did it consider generation options that were not utility-owned,[15] or submit competent sworn testimony to support assertions that the Customer's timeline and load request is incompatible with conducting an RFP.

The Commission should find that ELL has not met the requirements for an exemption from the RFP requirement. Specifically, ELL failed to (i) support the exemption request with sworn testimony, (ii) ground its proposed limitation on the scope of the procurement process in the Company's IRP, and (iii) consider or even request competitors' offerings. Further, ELL's requested exemption is not in the public interest because its "process" for selecting the Planned Generators is less suited to identifying reasonably priced resources than an RFP. ELL has failed

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[9] MBM Order at ¶ 3.

[10] *Id.*

[11] *Id.*

[12] Application at 26.

[13] Application at 26.

[14] Direct Testimony of Joshua B. Thomas ("Thomas Direct Testimony") at 25 ("the Planned Generators were not directly market-tested against other alternatives by ELL").

[15] Direct Testimony of Laura K. Beauchamp ("Beauchamp Direct Testimony") at 43 (listing alternatives considered by the planning team).

to satisfy the MBM Order's requirements and flouted the Commission's determination that a resource procurement process should always consider competitive market options.

The MBM Order requires that a utility proposing an alternative to the RFP procedure "demonstrate to the Commission with *sworn support* from a Company representative that sufficient circumstances exist" that it would be in the public interest to deviate from the normal RFP process.[16] Here, the circumstances that purportedly justify an exemption from the RFP procedure are that the Customer's load needs and timeline are incompatible with the RFP requirement, and that the economic benefits of the project support approval of the Application.

ELL fails to meet this sworn testimony requirement, because the Company's testimony simply parrots unsubstantiated assertions from the Customer – a non-party in this proceeding. Far from providing "sworn support," ELL's exemption request is based on a series of a factual claims that are nothing more than hearsay.[17] Virtually all of ELL's support for the specific aspects of this project (i.e. load, job creation, timeline) is based on hearsay statements from the Customer – who is not a party in this case. ELL's recitation of the Customer's hearsay statements go to the heart of its exemption request, as the Customer's timetable and allegedly excessive large load needs are what purportedly makes an RFP impossible.[18] Under the MBM Order, however, ELL cannot support its request for an exemption with hearsay about the Customer's requirements. ELL's failure to properly support its request for an exemption is sufficient reason to deny its request.

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[16] MBM Order at ¶ 3 (emphasis added).

[17] Hearsay is defined as a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted. Louisiana Code of Evidence, Art. 801. Hearsay evidence is not competent evidence, and it is competent evidence that proves the case. *Mouton v. State Dept. of Social Services, Office of Social Services*, 808 So.2d 485 (La.App. 1st Cir. 2001) (citation omitted).

[18] *See, e.g.*, Thomas Direct Testimony at 21.

While the MBM Order allows utilities to seek exemptions from the requirement to conduct an all-source RFP under certain circumstances, it places one uncompromising limit on a utility's alternative approach: "In no event, . . . shall such a proposed alternative market-based mechanism be limited to self-build or utility-owned resources."[19] ELL did not follow this requirement. Instead, the Company selected the Planned Generators without giving non-utility resources a chance to compete.[20] As the Commission previously recognized, the MBM Order devotes significant attention to ensuring utility proposals do not receive preferential treatment.[21] Because ELL failed to present a valid alternative market-based mechanism, the Company is not entitled to an exemption.

In its testimony, ELL tries to circumvent the MBM Order by claiming that its decision to self-build the Planned Generators was necessary and cost-effective. But ELL fails to fulfill the basic purpose of the MBM Order's RFP process, which is to demonstrate which new resources are the best deal for ratepayers.[22] The RFP process has multiple consumer protections that ELL's proposal does not even attempt to replicate. ELL's arguments are unpersuasive because they fail to show that the Company would have selected the Planned Generators if it had conducted a meaningful test of the market for alternatives.

The most fundamental benefit of the MBM Order's RFP process is that independent power producers and infrastructure developers can propose lower-cost means of meeting customer needs than options the utility might identify on its own. The MBM Order takes

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[19] MBM Order at ¶ 3.

[20] Beauchamp Direct Testimony at 43 (the alternative options that were considered for meeting the Customer's needs were building different configurations of gas-fired generation, serving the Customer with transmission alone, and serving the Customer's load with renewables only).

[21] *1803 Elec. Coop., Inc., Ex Parte*, No. U-35927, 2022 WL 294416, at *10 (Jan. 28, 2022).

[22] La. P.S.C., Docket No. R-26172, General Order (2002) at 3, https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=n9GmBZHffzI%3D.

advantage of these market opportunities by ensuring "utilities market test supply options to determine which is the lowest reasonable cost solution for the provision of reliable electric service."[23] The RFP process provides an opportunity for market actors to offer a wide variety of resources (e.g., complementary combinations of solar, storage, and other options), and the competitive pressure creates a strong incentive to offer those alternatives at low cost.

ELL's decision not to follow the MBM Order's RFP process is premised on the unsupported, self-serving assumption that no other generation could be constructed and available within the Customer's timeline. However, the MBM process is designed to independently and *objectively* test the generation market. ELL's unfounded assumptions regarding other types of generation defeats the very purpose of the MBM RFP process.[24] ELL did not market test the Planned Generators.[25] By failing to test the market, ELL put on blinders that prevented it from discovering lower-cost options. ELL compounded this problem by considering only a few narrow combinations of utility-owned generation resources.[26] These oversights are precisely why the MBM Order prohibits utilities from considering only self-build resources, even in situations where they can justify deviating from the standard RFP process.[27]

ELL tries to justify its failure its failure to issue an RFP by citing Company witness Owens's claim that "the only practical option to serve the Customer's Project is for ELL to build

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[23] *Sw. Louisiana Elec. Membership Corp., Nextera Energy Mktg., LLC, & Beauregard Solar, LLC, Ex Parte*, No. U-36516, 2023 WL 7487730, at *11 (Nov. 7, 2023).

[24] ELL also ignores the fact that RFPs can and should be drafted in such a way so as to ensure that all the objectives of the project are met. Thus, the RFP could have stated the requirement that the generation had to be constructed and available by a date certain. This would result in only those proposals being submitted that could meet the Customer's timeline.

[25] Thomas Direct Testimony at 25.

[26] Beauchamp Direct Testimony at 43:8-18; Direct Testimony of Nicholas W. Owens ("Owens Direct Testimony") at 4-6.

[27] MBM Order at ¶ 3.

gas-fired capacity."[28] But Mr. Owens did not conduct any studies or analyses specific to this project to reach that conclusion.[29] For example, in accessing other resources, ELL did not independently evaluate offers for storage and the alternative options for gas-fired capacity.[30] Mr. Owens's testimony only provides an "illustrative analysis" of the cost to provide the Customer with firm renewable power around the clock using a combination of solar and storage.[31] Despite this lack of actual analysis, ELL concludes that the cost of self-build generation will be comparable to the cost of new build generation constructed by a third party.[32] More importantly, Mr. Owens reaches this perfunctory conclusion without providing any evidence that it would be impractical to procure gas-fired capacity from an independent supplier.[33] While Mr. Owens addresses why he believes CCCTs are the appropriate resources for meeting the Customer's needs, he does not explain why procuring these resources on the competitive market would not be feasible.[34]

Mr. Owens's conclusion about the necessity of building gas-fired generation is also unreliable because – due to ELL's failure to issue an RFP – there was no opportunity to compare ELL's Planned Generators to competitive alternatives. RFP bids could have included numerous combinations of different resource types, giving ELL options for meeting its needs with a mix of solar, storage, and/or thermal resources. Mr. Owens did not have any of that real-world information. Instead, he only considers three hypothetical alternatives to ELL's Planned Generators—one that relies solely on renewables, another that relies on solar generation

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[28] Thomas Direct Testimony at 22 (citing Owens Direct Testimony at 7).
[29] ELL Response to NPO DR 3-25.
[30] ELL Response to NPO DR 4-1. With regard to storage, Mr. Owens relies on the past "normal business practice" of ELL to conclude that a storage-only alternative would be too costly. Owens Direct Testimony at 6.
[31] ELL Response to NPO DR 2-8, discussing Owens Direct Testimony at 4-5.
[32] ELL Response to NPO DR 3-27.
[33] Owens Direct Testimony at 7.
[34] Owens Direct Testimony at 7.

resources and 18-hour batteries to meet 100% of the projected need, and one that relies solely on storage.[35] Mr. Owens does not explain why he failed to consider renewable generation in combination with 4-hour batteries, a far more mature technology.[36] Nor does he explain why he failed to consider a combination of thermal and renewable resources – e.g., two gas plants (instead of three), coupled with solar and storage. Without access to the innovative creativity of the market, Mr. Owens is left to attack strawmen of his own invention.

The Commission should find that ELL's remaining justifications for its MBM exemption request are similarly unpersuasive. First, Company witness Thomas points to ELL's plans to "use competitive elements to procure major components" of the Planned Generators and use a competitive process to select a contractor for one of them.[37] These "competitive elements" do not allow ratepayers to reap the potential savings from procuring solar, storage, or independently owned resources.

Second, Mr. Thomas states that the sophisticated Customer had the opportunity to compare the Planned Generators to market alternatives and still agreed to use the generators under terms that protect existing customers from bearing their full cost.[38] ELL's assertion that regarding the Customer's ability to compare alternative turns the MBM Order on its head, placing the obligation to find the least cost alternative on the customer rather than use the actual market testing solution required by the MBM. Mr. Thomas's speculation is not evidence that these generators could pass a market test. The Application and its supporting documents contain no evidence regarding the Customer's examination—if any—of alternatives. And ELL admits

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[35] Owens Direct Testimony at 4-6.

[36] Owens Direct Testimony at 4-5; Direct Testimony of Matthew Bulpitt ("Bulpitt Direct Testimony") at 10 (untitled figure).

[37] Thomas Direct Testimony at 24-25.

[38] Thomas Direct Testimony at 25.

that it has no information about "what comparison the Customer may or may not have performed."[39]

Finally, Mr. Thomas argues that the Commission's 2008 Unsolicited Offer General Order indicates a recognition that the MBM Order should not apply in unanticipated circumstances where compliance is impractical.[40] However, the Commission recently considered the precise question of how utilities should be allowed to show that extraordinary circumstances warrant an exemption of the MBM Order's RFP requirement.[41] The Commission's careful consideration of this issue culminated in its October 2024 amendments to Paragraph 3 of the Order.[42] Thus, while the MBM Order provides utilities with some limited flexibility, the Order expressly places clear limits on a utility's ability to avoid the RFP process and exclude consideration of potential opportunities for cost savings.

B. The Application should be dismissed because Meta, an indispensable party, has not been joined as a party in the proceeding.[43]

Throughout the Application and accompanying testimony, ELL points to various aspects of its proposal as demonstrating that expedited approval of the Application is necessary and that approval would be in the public interest. Among the factors ELL relies upon include 1) the creation of 300 to 500 jobs; 2) an anticipated economic boom; 3) anticipated need for a substantial amount of reliable power; 4) the Customer is making investments in sustainability;

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[39] ELL Response to NPO DR 3-20.

[40] Thomas Direct Testimony at 23-24.

[41] General Order 10-14-2024 (R-34247) at 2.

[42] *See generally id.* (amending ¶ 3).

[43] On March 5, 2025, the NPOs filed a Motion to Declare Laidley, LLC and Meta Platforms, LLC as Parties Necessary for Just Adjudication. On April 4, 2025, the Tribunal denied the Motion. On April 14, 2025, the NPOs filed a Motion for Immediate Review of Interlocutory Order. The Commission denied the Motion for interlocutory review on May 19, 2025.

and 5) the Customer is expected to make a contribution toward the cost of implementing Carbon Capture and Storage ("CCS") technology.

Louisiana Code of Civil Procedure Art. 641(1) provides 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." Parties needed for just adjudication in an action are those who have an interest relating to the subject matter of the action and are so situated that a complete and equitable adjudication of the controversy cannot be made unless they are joined in the action.[44] By using the word "shall," the article makes mandatory the joinder of the person described in Art. 641 as a party to the suit.[45] An adjudication made without making a person described in the article a party to the litigation is an absolute nullity.[46]

In its Application, ELL has asserted a number of facts the Company claims support a finding that approval of the Application is in the public interest. Moreover, ELL also describes actions which will be taken by the Customer which also support a public interest finding.

Specifically, ELL relies upon a variety of "commitments" from the Customer to support its Application, but when asked for details about each of those commitments, ELL's response is invariably that the Company does not know. Similarly, ELL also makes assertions regarding the Customer's energy needs[47] and business practices. However, when asked for information regarding how those needs were developed, ELL once again cannot provide any information.

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[44] *Succession of Panepinto,* 21-709, (App. 5 Cir. 9/13/22), 349 So.3d 1014; *Lowe's Home Const., LLC v. Lips*, 10-762 (La. App. 5 Cir. 1/25/11), 61 So.3d 12, 16, *writ denied*, 11-371 (La. 4/25/11), 62 So.3d 89.

[45] *Olano v. Karno*, 2020-0396 (La. App. 4 Cir. 4/7/21) 315 So.3d 952; *Two Canal Street Investors, Inc. v. New Orleans Building Corporation*, 16-825 (La. App. 4 Cir. 9/23/16), 202 So.3d 1003, 1012.

[46] *Miller v. Larre*, 19-208 (La. App. 5 Cir 12/11/19. 284 So3d 1284, 1287.

[47] According to Ms. Beauchamp, "Following the filing of the Application, the Customer approached the Company about increasing the load of the Project." Supplemental Direct Testimony of Laura K. Beauchamp ("Beauchamp Supplemental Testimony") at 4.

The Company's testimony simply parrots unsubstantiated assertions from the Customer – currently a non-party in this proceeding.

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, aspects which are vital to a finding that the Application is in the public interest. The assertions which ELL concedes it cannot substantiate include 1) the number of permanent jobs created by the data center and how many of those jobs will be local rather than remote;[48] 2) how the Customer's need for a specific amount of power energy timeline and ramp up needs were developed;[49] and 3) the Customer's sustainability goals.[50]

Thus, virtually all of ELL's support for the specific aspects of this project (i.e. load, job creation, timeline) is based on hearsay statements not even from the Customer, but from the Customer's parent – neither of which is a party in this case. ELL's recitation of the Customer's unsworn statements go to the heart of the Company's Application, as the Customer's timetable and allegedly excessive large load needs are what purportedly requires the construction of the Planned Generators and transmission lines and requires this infrastructure to be constructed on an expedited basis.

Similarly, ELL cannot provide evidentiary support for the specifics of the economic opportunity allegedly presented by the Project. Despite the level of job creation being one of the primary factors ELL relies upon to support its claim that the Project is in the public interest,[51]

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[48] *See* ELL Response to Sierra Club DR 1-5; *see also* ELL Response to NPO DR 1-5.

[49] *See* ELL Response to NPO DR 1-7.

[50] *See* ELL Response to NPO DR 1-13.

[51] "[T]he economic benefit to Northeast Louisiana is the most significant benefit from ELL serving the Customer's Project." Thomas Direct Testimony at 11.

ELL apparently has no information regarding how the number of permanent jobs was determined and whether those positions would actually benefit Louisianans.[52] The Company certainly cannot provide evidentiary support on an issue it knows nothing about.

ELL also lacks any evidence regarding the Customer's sustainability goals. As stated by ELL witness Ms. Ingram, "It is my understanding that the Customer is dedicated to minimizing their environmental impact and promoting sustainability in all aspects of their business."[53] ELL's "understanding" of the Customer's sustainability goals is irrelevant and not evidence, particularly where the Company is relying on statements from Meta, not the Customer. Ms. Ingram also claims that the CSR was a "relevant factor for the Customer as it decided whether to move forward with selecting Louisiana for its investment."[54] Again, ELL did not provide any basis for this assertion. Given the fact that many of the alleged benefits of the Project, particularly the benefits of the CSR, are still subject to negotiation between ELL and the Customer,[55] knowing the sustainability goals that underlie the CSR is vital for a determination by the Commission that the negotiations between the two parties are likely to result in the benefits ELL describes in the Application and testimony.

Pursuant to Art. 641, 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, the Commission should find that the participation in this proceeding by Meta is necessary for a just adjudication of ELL's

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[52] *See* ELL Response to Sierra Club DR 1-5; *see also* ELL Response to NPO DR 1-5.

[53] Direct Testimony of Elizabeth C. Ingram ("Ingram Direct Testimony") at 6.

[54] Ingram Direct Testimony at 4.

[55] *See, e.g.*, Section B.7. of the CSR which provides that the remedy for the Customer in the event that the identification or construction of the Designated Renewable Resources for the Initial Renewable Subscription Amount is delayed, if a solution is not reached under the terms of Section B.7., the Customer may terminate its obligations with respect to such Designated Renewable Resources with no termination penalty. Ingram Direct Testimony at 16-17.

Application. The participation of 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, aspects which are vital to a finding that the Application is in the public interest. Since ELL cannot substantiate either the economic benefits of the Project or the energy needs of the Customer, a party who can provide the necessary information must intervene.

II. ELL'S APPLICATION IS NOT IN THE PUBLIC INTEREST BECAUSE APPROVAL OF THE APPLICATION WOULD HARM RATEPAYERS.

As explained above, the Commission should dismiss the Application because ELL failed to follow the requirements of the MBM Order, and because Meta has not been made a party in this proceeding. But if the Commission does reach the merits, the Application should be denied because ELL's proposals are not in the public interest. As explained below, ELL's Application would expose ratepayers to unreasonable costs and risks, while threatening to create destabilize the electric grid. Meanwhile, the purported benefits of ELL's Application are illusory and unsupported. Because the Application contravenes the public interest, it should be denied.

A. Approval of the Application would expose ELL's ratepayers to unreasonable costs and risks.

As witnesses for the NPOs and other parties have explained, ELL's proposals would expose ratepayers to significant costs and risks. These costs and risks are discussed below.

As a threshold matter, it is important to recognize the enormous scale of ELL's proposals. If built, the Customer's proposed data center would represent between [[ ]]% of ELL's total forecasted energy load in the coming decades.[56] To accommodate that massive load increase, ELL proposes to build three new combined cycle ("CC") gas plants with a total nominal capacity

[56] Direct Testimony of Catherine Kunkel ("Kunkel Direct Testimony") at 5.

of 2262 MW[57] and originally projected to cost $3.2 billion[58] (stated at [[ ]]),[59] as well as over [[ ]] in transmission improvements to be paid for directly by Laidley (known as the "Customer-Specific Transmission Projects").[60] ELL also proposes to build a 500 kV Mt. Olive to Sarepta line and upgrades to the Sterlington substation (hereinafter collectively the "Mt. Olive to Sarepta facilities") at a cost of nearly $550 million.[61] As NPOs witness Kunkel observed, the estimated revenue requirement for this infrastructure "in 2030 (the first full year in which all three of the Planned Generators are in service) will be approximately [[ ]], about [[ ]]% of ELL's current revenue requirements."[62] Moreover, since ELL's initial filing, the Company has proposed an additional [[ ]] of transmission facilities to accommodate Laidley's proposal to increase the data center load to [[ ]].[63] Altogether, ELL's proposed buildout represents nearly [[ ]] of capital expenditures.

Given the massive scale of these proposed infrastructure projects, ratepayers could be saddled with significant stranded costs and unnecessary facilities. Unfortunately, ELL's Application does little to protect ratepayers from such risks.

Witness Kunkel summarized ELL's proposals for allocating these costs:

> ELL has presented an Electric Service Agreement ("ESA") and an Agreement for Contribution in Aid of Construction and Capital Costs ("CIAC agreement"), which describe the financial agreements for Laidley to contribute to the cost of above-mentioned facilities. These agreements are attached to the direct testimony of Laura K. Beauchamp. The CIAC agreement provides that Laidley will fully

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[57] Application at 12.

[58] Direct Testimony of Phillip R. May ("May Direct Testimony") at 23.

[59] This includes [[ ]] in capital costs of each of the Planned Generators (see Exhibit E-1 to the CIAC Agreement) plus [[ ]] (Exhibit D to the CIAC Agreement). *See* HSPM Exhibit LKB-2 at 182, 184.

[60] Direct Testimony of Daniel Kline at 15 ("Kline Direct Testimony").

[61] Kline Direct Testimony at 15.

[62] Kunkel Direct Testimony at 6 (citation omitted).

[63] Beauchamp Supplemental Testimony at 4.

> fund the capital cost of the Customer-Specific Transmission Projects and [[ ]].
>
> The ESA is a 15-year agreement with up to three 5-year extensions (i.e. up to 30 years in total) that sets the terms by which the data center will receive service under ELL's Large Load High Load Factor Power Service (LLHLFPS-L) rate schedule. ELL states that the minimum monthly charges established in the ESA were designed to ensure that the payments received from Laidley are sufficient to recover the annual revenue requirements associated with the new electrical infrastructure (excluding the Mt. Olive to Sarepta facilities) during the term of the contract. The annual revenue requirements for this infrastructure include annualized capital costs of the Planned Generators, non-fuel O&M, purchased capacity, and maintenance costs associated with the Customer-Specific Transmission Projects. The ESA also establishes [ ]
>
> ELL proposes that the fuel costs associated with the Planned Generators, as well as market energy purchases required to serve the Laidley load, be rolled into the Fuel Adjustment Clause ("FAC"), which is ELL's annual mechanism for recovering fuel and purchased energy costs across all ratepayers (including Laidley).
>
> ELL proposes that its jurisdictional share ([[ ]]) of the Mt. Olive to Sarepta facilities be borne by all ELL ratepayers.[64]

At the time the Staff and intervenors filed their direct testimony, in April 2025, ELL and Laidley were negotiating changes to the ESA to accommodate Laidley's requested load increase. In May 2025, after the deadline for direct testimony, ELL submitted an amended version of the ESA and CIAC Agreement. This amendment, called "Rider 2," maintained many elements of the original ESA and CIAC, while making certain changes to accommodate Laidley's requested increase in load from [[ ]] to [[ ]].[65]

Unfortunately, these arrangements would expose ELL's ratepayers to significant cost risks. These risks are further described below.

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[64] Kunkel Direct Testimony at 7-8 (citations omitted).

[65] Rebuttal Testimony of Laura K. Beauchamp ("Beauchamp Rebuttal Testimony") at 3-4.

First, ratepayers are at risk because, under ELL's proposal, the ESA and CIAC Agreement would not be subject to Commission approval. ELL takes the position that these contracts need not be approved by the Commission: "ELL thus does not require, and is not seeking, approval of Rider 2 or the Amended CIAC Agreement and is instead providing those agreements for informational purposes."[66] In her testimony, witness Kunkel explained that the ESA is not simply the implementation of an already approved tariff, as ELL contends.[67] She further warned about the risk to ratepayers of changes to the ESA, noting that renegotiations "could result in material changes to that agreement, with as-yet-undisclosed consequences to other ratepayers. As just described, the terms of the ESA are critical to understanding the distribution of costs and financial risks between Laidley and other ratepayers. The importance of the ESA to ELL's case is reflected in the fact that the ESA is cited more than 200 times in ELL's initial filing."[68]

Although the Company has since filed amended version of the ESA and CIAC, the risk remains that ELL and Laidley could renegotiate those contracts at any time – including after the Commission's approval of the Planned Generators. And ELL has strongly opposed Staff's recommendation that non-ministerial changes to these agreements be subject to Commission approval.[69] Because ELL proposed to place these agreements beyond the Commission's jurisdiction, approving the Application would expose ratepayers to an ongoing risk that ELL and Laidley could revise these financial arrangements.

Second, ratepayers would be exposed to the risk that Laidley can back out of its data center project before the ESA even takes effect. If that occurs, ratepayers could be forced to bear

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[66] Beauchamp Rebuttal Testimony at 6.
[67] Kunkel Direct Testimony at 11-12.
[68] Kunkel Direct Testimony at 12.
[69] Beauchamp Rebuttal Testimony at 9-12.

significant stranded costs on the partially constructed Planned Generators. As the NPOs' witnesses have explained, the earliest the ESA could take effect is December 1, 2026, and there is reason to think that the ESA's effective date will be even later.[70] Witness Kunkel estimated that other ratepayers could be responsible for up to $[[ ]] in stranded costs if the ESA takes effect on December 1, 2026, and potentially more if the ESA takes effect at a later date.[71] Notably, although Staff proposed a condition (Condition 2) that would have shielded ratepayers from these potential costs, ELL strenuously opposed it, arguing that Staff witness Sisung's recommendation is not "reasonable."[72]

Third, approving the Application would expose ratepayers to the risk of cost overruns on the Planned Generators, with the third gas plant at the Waterford site posing a heightened risk. Even under ELL's cost estimates, ratepayers would be responsible for 48% of the gas plants' revenue requirement if Laidley does not extend the ESA past 2041.[73] And as NPOs witness Kunkel explained, "there is a real risk of capital cost overruns with respect to the third of the Planned Generators."[74] She noted that ELL's cost estimate for this plant is identical to those for the two Planned Generators, which are further along in development, but given "[t]he market for new gas generation is tightening, costs are rising and thus it is not unreasonable to expect that the third Planned Generator will experience higher costs than the first two units."[75] And "[i]f the capital cost of any of the Planned Generators is greater than expected, other ratepayers will pay

[70] Kunkel Direct Testimony at 26; Direct Testimony of Nicholas W. Miller ("Miller Direct Testimony") at 29-30.
[71] Kunkel Direct Testimony at 26-27.
[72] Rebuttal Testimony of Ryan D. Jones ("Jones Rebuttal Testimony") at 35.
[73] Direct Testimony of Samrat Datta ("Datta Direct Testimony") at 10-11.
[74] Kunkel Direct Testimony at 24.
[75] Kunkel Direct Testimony at 24-25.

for the remaining revenue requirement associated with that cost overrun if the ESA is terminated before the end of the full 30-year period."[76]

Fourth, ELL's Application would expose ratepayers to significant stranded cost risks due to the inadequate length of the ESA's initial term, a problem compounded by the ESA's unreasonably short notice provisions for renewal. As NPOs witness Kunkel explained, "the fact that the initial term of the ESA (15 years) is significantly shorter than the depreciable life of the Planned Generators (30 years) means that ratepayers are exposed to significant risk of having to cover stranded costs associated with the Planned Generators, depending on the timing of when Laidley terminates the ESA and the timing of ELL's possible other generation resource needs."[77] Ms. Kunkel noted that the economic benefits cited by ELL witness Datta rely on certain assumptions about load growth, MISO energy prices, and the purported need to construct four new gas plants in the early 2040s (which ELL termed the "Otherwise Needed Generators"). Delving into ELL's assumptions, she discovered that two of those gas plants may not be needed if "the load forecast materializes closer to the MISO forecast than the ELL forecast," which would erase "approximately half of the 'avoided cost' benefit of the Otherwise Needed Generators."[78] She further noted that, because Laidley is not required to give notice of its non-renewal until November 30, 2040, ELL's ratepayers could be exposed to [[ ]] in stranded cost risk if Laidley does not renew the ESA past 2041.[79] And if Laidley terminated in the ESA in 2046 (after one 5-year renewal), she estimated that the net cost to ratepayers would be]].[80]

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[76] *Id.* at 26.
[77] Kunkel Direct Testimony at 14 (citation omitted).
[78] Kunkel Direct Testimony at 18.
[79] Kunkel Direct Testimony at 19-21.
[80] Kunkel Direct Testimony at 22-23.

Fifth, ratepayers would face significant cost risk due to the potential need for transmission mitigations and ancillary services. As NPOs witness Miller explained, there is a risk that additional transmission investments will be required beyond those identified in ELL's initial filing and witness Beauchamp's supplemental testimony.[81] Serving the data center load could also result in higher ancillary services costs.[82] Despite those risks, "[[ ]]. Therefore, these additional costs would be allocated across ELL's customer base. Existing ratepayers would likely bear the majority of these costs."[83]

Approving ELL's Application would expose ratepayers to other cost risks as well, as detailed by witnesses for the NPOs and other parties. For example, ELL's ratepayers may be forced to absorb higher energy costs related to the Planned Generators' operation.[84] And if Laidley does not renew the ESA in 2041, the Company may need to incur additional transmission costs to enable the Planned Generators to serve other load.[85] Despite that

[81] *See* Miller Direct Testimony at 5 (". . . I believe that ELL's Application may understate the full scope of transmission facilities necessary to meet this large new data center load. . . . [T]he transmission system designed by ELL may be subject to three types of constraints that could limit the delivery of power to the Customer data center: thermal constraints, voltage constraints, and transient stability constraints. Based on the evidence presented by ELL, I believe the Company has not adequately evaluated the risk of these potential constraints. If thermal, voltage, or transient stability problems are identified after further analysis (or after the data center's commencement of operations), ELL will need to apply mitigations. The potential cost of such mitigations could be significant."); *see also id.* at 6-16 (detailing the risks related to thermal, voltage, and transient stability constraints).

[82] Miller Direct Testimony at 25-27; Kunkel Direct Testimony at 29.

[83] Kunkel Direct Testimony at 29.

[84] Kunkel Direct Testimony at 29-32.

[85] As witness Kunkel explained, "although the two Planned Generators located in North Louisiana would remain operational to serve other ELL load, the bulk of that load is located in South Louisiana. This would significantly impact power flows on ELL's transmission system." *Id.* at 32.

possibility, ELL did not perform any power flow modeling to determine which transmission investments and upgrades would be needed.[86]

B. ELL has not adequately addressed the reliability risks of the proposed data center.

As discussed above, ELL's proposals would expose ratepayers to significant cost risks due to the potential need for additional transmission investments to serve the data center load. Yet even setting aside the cost implications, it is important to recognize that the rapidly fluctuating data center load creates reliability risks for Louisiana residents and business. As NPOs witness Miller summarized:

> ELL has failed to adequately evaluate the risks associated with the dynamic behavior of the Customer's data center load. Large data centers, like the one that ELL is seeking to accommodate, can have rapidly fluctuating loads. For example, the load can drop suddenly due to a disconnection in power, or the data center's energy demand can oscillate or ramp rapidly. As recent events in Texas and PJM have demonstrated, the rapidly fluctuating loads of large data centers pose serious challenges to the stability of the grid. Given that the Customer's proposed data center would be [[ ]] than existing data centers, these grid stability concerns are particularly acute here.
>
> If these load fluctuation problems are not adequately addressed, businesses and residents in North Louisiana could face major disruptions to their electric service. These load fluctuations could also damage equipment at the new Franklin Farms CCCT facility, as well as at nearby generation facilities, such as the Grand Gulf Nuclear Station. The ISO may have to adopt defensive operations strategies with significant cost and efficiency penalties. Addressing these load fluctuation problems could be costly, potentially requiring additional capital expenditures for transmission and substation equipment such as dynamic compensation equipment, EMS upgrades, and other infrastructure. Further, there is a risk of increased operating costs for ancillary services (such as REG and spinning reserve) because more expensive generation may need to run just to provide the additional support to the grid that was not anticipated in the planning process.[87]

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[86] *Id.* at 33.

[87] Miller Direct Testimony at 5-6.

As witness Miller further explained, ELL did not adequately investigate the risks associated with rapidly fluctuating load: "Apparently, the only load shape provided by the Customer to ELL was 'a monthly load ramp and expected load factor.' No hourly data was provided. It similarly appears that the Customer did not provide sub-hourly nor sub-second data, since [[ ]]. . . . Unless the Customer is required to operate with flat power demand, we should assume that the risks posed by the dynamic behavior of data centers apply here as well. To assume otherwise would expose ELL's existing customers to very significant grid reliability and cost risks."[88] Mr. Miller's testimony explained in detail these reliability-related risks,[89] which further underscore that the Application is not in the public interest.

C. Many of the Application's claimed benefits are illusory or unsupported.

In the Company's initial filing, ELL argues that the Commission should find the Application to be in the public interest. Many of those arguments focus on ELL's estimate of the ratepayer impact,[90] which were refuted by testimony from the NPOs and other parties, as discussed above in the Section II.A. But the Company also tried to support its Application by arguing that it would result in economic development, clean energy, and bill assistance benefits. Those arguments do not withstand scrutiny, because these claimed benefits of the Application are unsupported or illusory.

[88] Miller Direct Testimony at 19 (citation omitted).
[89] Miller Direct Testimony at 20-27.
[90] Thomas Direct Testimony at 13-17.

1. The jobs and economic benefits touted by ELL are based on hearsay and unsupported evidence.

Throughout the Application and accompanying testimony, ELL makes assertions that various aspects of the proposal demonstrate that that approval would be in the public interest. With regard to economic benefits, the factors ELL relies upon include that the data center is expected to employ 300 to 500 full-time employees;[91] and the economies of Richland Parish and the surrounding communities are expected to boom from the huge influx of capital investment needed to develop the community infrastructure required to support such a large number of new employees and their families.[92]

First, ELL states that "the economic benefit to Northeast Louisiana is the most significant benefit from ELL serving the Customer's Project," claiming "at least 300-500 permanent jobs paying substantially above the average wage for Richland Parish."[93]

ELL relies upon a variety of "commitments" from the Customer to support its economic benefits contention, but when asked for details about each of those commitments, ELL's response is invariably that the Company doesn't know. The Company's testimony simply parrots unsubstantiated assertions from the Customer and Meta – both of whom are not parties to this proceeding.

ELL is unable to provide even basic information on the economic benefits aspects of the Application. The assertions which ELL concedes it cannot substantiate include ELL's claim that the new Customer Project will provide 300-500 full-time jobs.[94] According to ELL, this figure is based on statements from the Customer "in publicly available press releases and other, similarly

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[91] Application at 1, 3; May Direct Testimony at 17. ELL claims that the Customer will hire *at least* 300 to 500 full-time employees with an average salary of $82,000. (emphasis added).

[92] Application at 3-4.

[93] Thomas Direct Testimony at 11-12.

[94] *See* Application at 1, 3; May Direct Testimony at 17.

public resources . . .."[95] ELL also refers the parties to Meta's website and a press release issued by the Louisiana Department of Economic Development. None of the information ELL relies on is sworn testimony. ELL also concedes that it does not possess any studies, analyses or other documentation which supports the assertion that the data center will directly employ 300 to 500 persons and yet again directs parties to another press release.[96]

Similarly, when asked if the jobs are all expected to be locally-based, as opposed to remote and whether the people employed will be those who live in the area, ELL disavows *any* responsibility for the commitment. ELL states that the information concerning jobs is based on ELL's understanding of the commitment made by the Customer and again points the parties to unsworn press releases and websites.[97]

These statements are certainly not a ringing endorsement of the number of jobs which will be created and are particularly disconcerting in light of the fact that job creation is the main economic benefit which is to be derived from the data center. Despite the level of job creation being one of the primary factors ELL relies upon to support its claim that the Application is in the public interest, ELL apparently has no information regarding how the number of permanent jobs was determined and whether those positions would actually benefit Louisianans. The Company certainly cannot provide sworn testimony on an issue it knows nothing about.

ELL's recitation of the Customer's unsworn statements goes to the heart of the Company's Application. Virtually all of ELL's support for the specific economic aspects of this project is based on hearsay statements not even from the Customer, but from the Customer's parent. As noted above, ELL asserts that the economies of Richland Parish and the surrounding

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[95] ELL Response to Sierra Club DR 1-5; *see also* ELL Response to NPO DR 1-5.
[96] ELL Response to NPO DR 1-5.
[97] ELL Response to Sierra Club DR 1-5.

communities are expected to boom from the huge influx of capital investment needed to develop the community infrastructure and required to support such a large number of new employees and their families.[98] Witness May contends that the Customer's Project and the utility infrastructure to support it present a transformative opportunity for Louisiana's economy and the communities that ELL serves in Northeast Louisiana.[99] Specifically, witness May states that it is his "understanding" is that the Customer has committed to investing billions of dollars in Richland Parish to build the Project and to hiring 300 to 500 full-time employees with an average salary of $82,000, which is significantly higher than Richland Parish's median household income of $48,125.28.[100] He argued this investment and job creation will spur incremental economic activity and benefits, creating a "major positive jolt" through, among other things, increased demand for goods and services in the region and multiplier effects from increased spending in the region by data center employees and the additional jobs that such spending will create when the Project locates in Richland Parish.[101]

Thus, it is clear that the linchpin of the alleged economic boom is the number of jobs created by the data center. The problem is that there is no record evidence to support ELL's contention that the data center will create 300 to 500 jobs. In fact, there is no credible evidence whatsoever regarding the number of jobs the data center will create. Since the touted economic boom is wholly dependent upon the number of jobs created, the Commission should find that there is no support for ELL's contention that the data center will result in an economic boom for Richland Parish. Because ELL has not supported its economic benefits claim, those claimed benefits cannot support a finding that the Application is in the public interest.

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[98] Application at 3-4.

[99] May Direct Testimony at 38.

[100] *Id.* (citation omitted). Of course, witness May's "understanding" is not evidence.

[101] *Id.* at 38-39 (citation omitted).

2. The solar and hybrid projects contemplated by the Corporate Sustainability Rider are unlikely to be developed.

ELL's Application includes a proposed Corporate Sustainability Rider ("CSR") as an addendum to the proposed Electric Service Agreement ("ESA"). According to ELL, Meta has committed to helping fund CCS technology at an Entergy power plant in Lake Charles as well as 1,500 MW of new solar and/or solar and storage ("hybrid") resources. In fact, ELL claims that "[t]he CSR *requires* the addition of incremental renewable resources."[102] But as NPOs witness Gonatas explains, the benefits of these commitments are highly questionable.

ELL and the Customer have agreed to commercial terms on an ESA, which includes a CSR covering 1,500 MW of solar and/or hybrid resources. ELL witness Ingram testifies that "[t]he CSR *requires* the addition of incremental renewable resources that complement other, reliable, dispatchable sources of generation."[103] As NPOs witness Goanata noted, this implies that there is a binding commitment, like a firm PPA, for the 1,500 MW of solar, as well as a firm commitment to fund CCS technology.[104]

In reality, the benefits of the renewable commitments are highly questionable. For example, the purchase of energy or renewable attributes from the Designated Renewable Resources (as defined in the ESA Rider) "may be terminated by the Customer [[ ]], with financial risks borne by other ratepayers."[105] Specifically, according to witness Ingram, in the case of early termination of receipt of designated renewable resources under the CSR, the Customer shall provide advance notice of such termination.[106] But as witness Gonatas explained, [redacted]

[102] May Direct Testimony at 35 (emphasis added); *see also* Ingram Direct Testimony at 6.
[103] Ingram Direct Testimony at 6.
[104] Direct Testimony of Constantine Gonatas ("Gonatas Direct Testimony") at 5, 8.
[105] Gonatas Direct Testimony at 3.
[106] Ingram Direct Testimony at 19 (public redacted version).

[redacted]]][107] Although witness Ingram downplays this scenario as "quite unlikely,"[108] the Company did not cite any basis for this belief. ELL ignores the possibility that if solar energy or storage costs drop "the Customer may decide to terminate its contract to acquire solar/hybrid energy under the CSR and instead procure power via a lower cost PPA. Then, above market contracts for solar/hybrid procured through the CSR would be borne by ratepayers."[109] Specifically, if ELL fails to find a new subscriber for the Customer's renewable resources, costs and benefits for the designated renewable resources would be assumed by all of ELL's customers through rates.[110] Thus, and as further explained in witness Gonatas's testimony, the CSR terms do not include "a commitment to purchase renewable energy consistent with a binding or financeable PPA."[111]

Furthermore, there is a timing mismatch between the potential purchase of renewables and the Customer's gas-fired energy supply.[112] According to ELL, the first two Planned Generators will come online in late 2028,[113] however the CSR indicates the Company need not designate renewable resources until 2030.[114] Thus, ELL and the Customer will potentially be two years behind in their efforts to offset emissions from the Planned Generators.

Moreover, the Company has not demonstrated progress towards identifying or enabling the Designated Renewable Resources, despite the fact that currently 75 GW of solar, solar and storage ("hybrid"), and wind projects in the MISO South interconnection queue. Nor has the

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[107] Gonatas Direct Testimony at 9.
[108] Ingram Direct Testimony at 20.
[109] Gonatas Direct Testimony at 10.
[110] Ingram Direct Testimony at 19-20.
[111] Gonatas Direct Testimony at 9.
[112] Gonatas Direct Testimony at 12.
[113] Bulpitt Direct Testimony at 19.
[114] Ingram Direct Testimony at 8 ("The CSR further requires the Designated Renewable Resources included within the Initial Renewable Subscription Amount to be fully identified by 2030.").

Company identified any particular transmission projects that would enable these resources.[115] ELL's lack of effort certainly raises questions regarding whether the Company is seriously dedicated to this program.

In addition to the flaws described above, the CSR would expose ratepayers to potential costs related to the CSR's proposed Carbon Capture and Storage ("CCS") provision, referred to the "Low-Carbon Option." Under the CSR, the Customer may discontinue service to its LCO subscription by giving advance notice to ELL.[116] As witness Gonatas explained, "[t]he notice period would give the Company an opportunity to find another subscriber, but if the Company cannot do so, then remaining costs would be included in rates for all other customers net of a termination payment by the Customer."[117]

Finally, ELL exaggerates its joint commitments with the Customer to environmental stewardship, falsely claiming the Company is "offsetting" 60% of the Customer load with renewable power purchases and CCS technology.[118] These offsets are not actually "offsets" at all. "Unlike a pure energy purchaser, who can offset 100% of their procurement with renewable energy, here the Customer, through ELL's agency, is building and dispatching gas-fired CCCTs in tandem with renewable resources. Thus, the gas-fired CCCTs are not 'offset,' but they are 'matched.' Furthermore, nearly 2/3 of the proposed CSR contributions are from the CCS Low-Carbon Option,"[119] which is at best unlikely to come to fruition. As witness Gonatas determined, it is likely that only 17% would be offset by the Designated Renewable Resources. If the CCS Low-Carbon Option were developed, 37.4% in total (including the Designated Renewable

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[115] Gonatas Direct Testimony at 4.

[116] Ingram Direct Testimony at 24 (public redacted version).

[117] Gonatas Direct Testimony at 21 (citing ELL Response to LEUG 11-6 (public redacted version), attached as Exhibit CG-8) (describing termination payment).

[118] Gonatas Direct Testimony at 4.

[119] Gonatas Direct Testimony at 4.

Resources) would be conservatively offset.[120]

The Commission should find that the CSR's environmental benefits are illusory because of numerous contingencies in the CSR, the inadequate development of transmission resources for renewables, and the distant timelines for developing the CSR resources. Thus, these CSR provisions cannot be considered a benefit for the ratepayers that supports approval of the Application.

3. The Power to Care funding commitment is contingent and immaterial.

In its Application ELL repeatedly touts the Customer's agreement to make a matching contribution of up to $1 million to ELL's Power to Care Program.[121] But as NPOs witness Gonatas observed, the "Customer contribution is on a matching basis, . . . so if ELL's contributions fall short of $1 million, the Customer's contributions would fall short of $1 million also." He further noted how immaterial this contribution relative to the overall data center Project, with "a maximum contribution of $1 million per year over the 15-year contract term as a ratio to the $10 billion total Project value indicated from the Company press release" representing a contribution of "no more than 0.15% of the total Project value."[122]

D. If the Commission is inclined to approve the Application, it should withhold a CPCN for the third generator.

For the reasons explained above, this proceeding should be dismissed and, if the Commission reaches the merits, ELL's Application should be denied. But if the Commission is otherwise inclined to approve the Application, it should not issue a certification of public

[120] Gonatas Direct Testimony at 24.

[121] The commitment is cited more than 20 times in ELL's initial filing, and was prominently featured in ELL's press release. Gonatas Direct Testimony at 25.

[122] Gonatas Direct Testimony at 25.

convenience and necessary ("CPCN") for the third Planned Generator at this time. ELL's proposal for the third generator,[123] to be located at the Waterford site, is insufficiently developed and does not meet the requirements of the Commission's 1983 Order. As such, the CPCN request for this plant should be denied as premature.

There are at least two fundamental reasons why this CPCN request is premature. First, the costs of the third generator are too uncertain for a CPCN to be issued. The Commission's 1983 Order specifies that CPCN requests "shall include the specific data utilized by the utility in justification of the generation project or purchased power agreement, *an itemized projection of the total costs*, the scheduled completion date with appropriate time schedules for the percentage of the total project to be completed by specific target dates, and, in cases of purchased power or capacity agreements, the proposed contract in its entirety."[124]

ELL failed to provide an itemized projection in its Application, and acknowledged that the third generator's costs were uncertain. As ELL witness Bulpitt testified, "Unit 3 is expected to have similar costs to Units 1 and 2, but *the expected costs will depend on the site specifics of the selected site.*"[125] Although witness Beauchamp identified the location of the third Planned Generator in supplemental testimony, ELL did not provide an updated cost estimate for this proposed generator. And in a discovery response provided in late March 2025, ELL conceded that "[t]he cost estimate for CCCT #3 (to be located at the Waterford facility . . .) has not

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[123] *See* Application at 25 ¶ 2 (requesting that the Commission "[f]ind that the construction of one other CCCT in SELPA, including potentially the Amite South subregion, at a specific location that will be disclosed in a supplemental filing serves the public convenience and necessity and is in the public interest, and is therefore prudent, in accordance with the Commission's 1983 General Order").

[124] LPSC General Order (Sept. 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 General Order (Corrected), Docket No. R-30517 (May 27, 2009) (*In re: Possible modifications to the September 20, 1983 General Order to allow (I) for more expeditious certifications of limited-term resource procurements and (2) an exception for annual and seasonal liquidated damages block energy purchases*), https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=TRpix7l2Lss%3d (emphasis added).

[125] Bulpitt Direct Testimony at 42.

changed. *It remains a Class 5 estimate.*"[126] Because ELL had not yet provided "an itemized projection of the total costs" of the third gas plant, it would be premature to issue a CPCN at this time.

Second, the connection between the third Planned Generator and Laidley's data center is tenuous. NPOs witness Miller noted that there are questions "about whether the third CCCT, which would be sited at the Waterford site in southern Louisiana, makes sense from a transmission perspective."[127] He explained:

> First, ELL never independently evaluated the third generator in its transmission analyses. In all of the transmission scenarios that ELL thoroughly evaluated, the Company assumed that it would build three combined cycle units; the Company did not consider scenarios in which only the two 1x1 CCCTs near the data center would be built. The construction of three plants, with one located in southern Louisiana, was simply a base assumption for each scenario.
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> Second, when asked in discovery to "explain, including any studies and analyses, why additional generation is necessary in the south when generating stations are being constructed in the north which are proposed and designed to serve the Customer's load," ELL did not provide any studies or analysis. Instead, the Company simply referred back to witness Kline's testimony. With regard to witness Kline's testimony on diminished north-to-south flows, ELL was asked to identify "the specific conditions under which north-to-south system flow would be diminished." ELL provided a conclusory response that simply cited back to the testimony.[128]

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[126] Kunkel Direct Testimony, Exhibit CMK-11 (ELL Response to Staff 3-6 (public version)) (emphasis added). ELL's rebuttal testimony provides an EPC cost of the winning bidder from an RFP process that concluded in February 2025. Rebuttal Testimony of Matthew Bulpitt at 2, 4. Despite that, ELL's discovery response, provided a month after the RFP's completion, characterized the Waterford cost estimate as a "Class 5 estimate." Moreover, ELL does not intend to execute an EPC agreement until November 2025. *Id.* at 5.

[127] Miller Direct Testimony at 31.

[128] Miller Direct Testimony at 31 (citations omitted).

To further explore this question, Witness Miller sponsored a simple sensitivity analysis using the Company's load flow models. This sensitivity tested whether "removal of the third CCCT unit caused a significant increase in thermal violations." The analysis found "that, with the absence of the third CCCT, the transmission is mostly unchanged."[129] Although the analysis was illustrative, witness Miller concluded that it "raise[d] questions about the [transmission] benefits of the third CCCT that ELL is seeking to build, particularly in regard to serving the Customer load."[130]

Because ELL has not satisfied the requirements of the 1983 Order, and because the transmission benefits of the third generator have not been established, it would be premature to issue a CPCN on this record. Thus, if the Commission is otherwise inclined to approve the Application, it should still deny the CPCN for this third Planned Generator.

III. CONCLUSION

For the foregoing reasons, the Commission should deny ELL's Application.

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[129] Miller Direct Testimony at 31-32. The results of this sensitivity analysis are further described in CEII-HSPM Exhibit NWM-14, attached to witness Miller's testimony. Note: Because that Exhibit contains information that has been identified as Critical Energy Infrastructure Information ("CEII"), it was only provided to those who signed an appropriate NDA for CEII.

[130] Miller Direct Testimony at 32.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2025, I served copies of the foregoing pleading on all other known parties on the Official Service List for Docket No. U-37425 via electronic mail. I also served the Confidential version of this pleading upon ELL and other parties entitled to receive HSPM/AEO material.

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