



# Louisiana Public Service Commission

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June 3, 2021

### VIA HAND DELIVERY

Ms. Terri Bordelon  
Louisiana Public Service Commission  
Records and Recordings Division  
602 N. 5<sup>th</sup> Street

**Re: DOCKET NO. S-35709 – 1803 Electric Cooperative, Inc, ex parte. In re: Application for Recognition as a Regulated Public Utility.**

Dear Ms. Bordelon:

Please find *Staff's Report and Recommendation* to be filed in the above-referenced docket on behalf of the Louisiana Public Service Commission Staff.

Thank you for your assistance in this matter. Should you have any questions please do not hesitate to contact me at (225) 342-5703.

Sincerely,

Lauren Temento Evans  
Associate Counsel

Encl.  
cc: Service List

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LA PUBLIC SERVICE  
COMMISSION

**BEFORE THE**  
**LOUISIANA PUBLIC SERVICE COMMISSION**  
**DOCKET NO. S-35709**  
**1803 ELECTRIC COOPERATIVE, INC., EX PARTE**

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*In re: Application for Recognition as a Regulated Public Utility.*

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**STAFF REPORT AND RECOMMENDATION**

***Overview***

On September 1, 2020, 1803 Electric Cooperative, Inc. (“1803” or the “Company”) filed an application with the Louisiana Public Service Commission (“LPSC” or “Commission”) seeking recognition as a regulated public utility. 1803 committed in its application that upon such recognition, it agreed to be subject to the LPSC’s regulations and jurisdiction by being subject to the LPSC’s rules, regulations, and orders.<sup>1</sup> Notice of the application was published in the Commission’s Official Bulletin #1227, dated September 4, 2020. No requests for intervention were filed.

***The Parties***

1803 was incorporated on April 1, 2019 as a Louisiana electric cooperative organized pursuant to La. R.S. 12:401 et seq., is owned by five (5) LPSC-regulated member electric cooperatives, specifically Beauregard Electric Cooperative, Inc., Claiborne Electric Cooperative, Inc., Northeast Louisiana Power Cooperative, Inc., South Louisiana Electric Cooperative Association, and Washington-St. Tammany Electric Cooperative, Inc. (the “Member

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<sup>1</sup> Application at page 7.

Cooperatives”), and is domiciled at 10725 Airline Highway, Baton Rouge, Louisiana 70816.<sup>2</sup> 1803 currently has no employees and the Member Cooperatives have equal ownership interests in 1803. There are two uncompensated board members from each Member Cooperative on 1803’s Board of Directors.

### ***1803’s Request for Recognition as a Regulated Public Utility***

1803 stated in discovery that one of its primary goals is to assist the Member Cooperatives “by combining load, efforts, and resources to achieve economies of scale, efficiencies, and savings through sharing of costs, efforts and resources.”<sup>3</sup> 1803 stated in its application that it would not provide retail electric service but instead described that its role would be “to seek and supply wholesale power to the Member Cooperatives, and to provide such services that are incident to the same.”<sup>4</sup> When asked in discovery to expound on this statement, 1803 responded that such services may include 1803 serving as a market participant in MISO, ancillary services, MISO market charges, energy management, MISO settlement, and other costs.<sup>5</sup> The Company’s anticipated role is not unusual from the function of generation and transmission electric cooperatives in other jurisdictions providing services to electric cooperatives throughout the country. 1803 further described its nature as a new entity in the application in the following manner:

“1803 is presently conducting a Request for Proposals (‘RFP’) in LPSC Docket No. X-35283 pursuant to the LPSC’s General Order dated October 29, 2008, Docket No. R-26172, Sub-Docket C (the “MBM Order”) to seek a contract or contracts to potentially fulfill the wholesale power requirements of the Member Cooperatives beyond their current power supply contracts. 1803 intends to seek LPSC approval and certification as needed for any contract or contracts entered into by it for power supply pursuant to the LPSC’s General Order dated September 20, 1983, as amended and superseded by General Order (Corrected) issued May 27, 2009, in Docket R-30517

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<sup>2</sup> *Id.* at 1.

<sup>3</sup> Response to Staff Data Request 1-8.

<sup>4</sup> Application at page 6.

<sup>5</sup> Response to Staff Data Request 1-7.

(collectively referred to as the ‘1983 General Order’), as will the Member Cooperatives for applicable contracts or agreements with 1803.”<sup>6</sup>

Since filing the instant request, 1803 has completed its Request for Proposal (“RFP”) process, has selected resources to replace resources of the individual Member Cooperatives set to expire near the beginning of 2025, and the selections are currently being vetted in a certification proceeding in front of the Commission by Commission Staff and Intervenors as part of LPSC Docket No. U-35927 (In re: *Application for Approval of Power Purchase Agreements and for Cost Recovery*).

### ***Commission Authority***

The Commission exercises jurisdiction in this proceeding pursuant to Article IV, Section 21(B) of the Louisiana Constitution.

### **La. Const. Art. IV, Sec. 21 provides in pertinent part:**

(B.) The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Article IV, Section 21 delegates to the Commission the exclusive and plenary power to regulate all common carriers and public utilities.<sup>7</sup> This plenary power is over retail exchanges, and generally speaking, the Commission does not have jurisdiction over wholesale transactions. However, the Commission does have jurisdiction over 1803 since the Company is an electric cooperative organized pursuant to La. R.S. 12:401 et seq.

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<sup>6</sup> Application at page 5.

<sup>7</sup> *Louisiana Power & Light Co. v. LPSC*, 609 So.2d 797, 800 (La. 1992); *Bowie v. LPSC*, 627 So.2d 164, 166 (La. 1993); *Entergy Gulf States, Inc. v. LPSC*, 1998-0881 (La. 1/20/99), 726 So.2d 870, 873.

The Federal Energy Regulatory Commission (“FERC”)<sup>8</sup> previously determined that Congress never intended the FERC to regulate cooperatives under the Federal Power Act.<sup>9</sup> In making this determination, FERC explained “[w]e have examined the terms and the legislative history of both [the Federal Power Act and the Rural Electrification Act]. We have also examined the Congressional and administrative interpretation of those Acts over the past 30 years. Despite the fact that the issue periodically came to the fore, the record over this extended period discloses not a single instance where Commission *jurisdiction* over *cooperatives* was asserted. All the indications are to the contrary. We therefore conclude that such *jurisdiction* does not presently exist.”<sup>10</sup> (emphasis in original). Furthermore, the United States Supreme Court has agreed with the FERC’s jurisdictional assessment, finding Arkansas Public Service Commission had regulation over electric cooperative wholesale rates and that there was no violation of federal law.<sup>11</sup>

### ***Staff Review***

Commission Staff and its consultant, J. Kennedy and Associates, Inc., (collectively, the “Commission Staff”) reviewed 1803’s application and the responses to detailed discovery issued to obtain additional relevant information. Commission Staff issued two rounds of data requests to 1803 requesting information including copies of all contracts entered into between 1803 and the Member Cooperatives, copies of all contracts between the Member Cooperatives and Louisiana Generating LLC in regard to current power supply, copies of financial statements issued to date, copies of budgeted data, details regarding employees and physical space both since incorporation

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<sup>8</sup> At the time of the decision, the FERC was known as the Federal Power Commission.

<sup>9</sup> *Dairyland Power Cooperative, Minnkota Power Cooperative, Inc., South Central Rural Electric Cooperative, Inc.*, Docket No. E-7113, 37 F.P.C. 12 (01/05/67).

<sup>10</sup> *Id.* at 33.

<sup>11</sup> *Ark. Elec. Coop. Corp. v. Ark. Public Serv. Comm’n*, 461 U.S. 375 (1983).

and projected, details regarding the ownership structure, details regarding 1803's role as a wholesale power supplier to the Member Cooperatives, details regarding other regulatory authority over 1803, details regarding all electric industry organizations that 1803 will be required to or will voluntarily join, details regarding 1803's anticipated association with the Midcontinent Independent System Operator, Inc. ("MISO"), details regarding the RFP process that 1803 is currently undertaking, and specific LPSC regulatory commitments that 1803 would be willing to make.

The Commission Staff finds that 1803's application and discovery responses form a sufficient basis to determine that the 1803's request should be granted. The Commission Staff agrees that the proposed structure of 1803 could help achieve increased economies of scale, efficiencies, and savings through the sharing of costs. Even though 1803 has committed in its application and in discovery responses generally to abide by the LPSC's rules, regulations, and orders, the Commission Staff further finds that 1803 should be required to abide by specific regulatory conditions in order for the LPSC to grant the request. Those specific conditions should be designed so that there is no doubt what will be required of 1803 by the Commission. There are no intervenors in this Docket, so there is no known opposition to the Commission Staff's findings.

### ***Staff Recommendation***

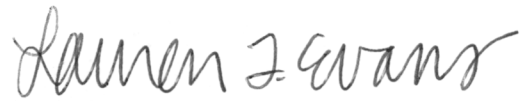
Based on the Commission Staff's review of the application and discovery responses, the Commission Staff recommends that the Commission grant 1803's request to be recognized as a regulated public utility in the State of Louisiana subject to the following conditions:

1. Upon Commission authorization of 1803 as a public utility, 1803 acknowledges it is a public utility under Louisiana law, and as such, is under the regulatory authority of the Commission.

2. 1803 will abide by all present and future requirements set forth by the Commission for rate case filings and rate tariffs.
  - a. Should the selected resources, in LPSC Docket No. U-35927, be certified by the Commission, 1803 shall file a request with the Commission seeking approval of rate(s) to be charged to the Member Cooperatives. This may include a review of the contract(s) between 1803 and the individual Member Cooperatives, as well as a review of any other materials deemed necessary by Commission Staff.
3. 1803 will abide by all present and future requirements set forth by the Commission for integrated resource plan filings.
4. 1803 will abide by all present and future requirements set forth by the Commission for the acquisition and certification of wholesale power supplies, including, but not limited to: constructed, acquired, or leased generation resources and new or renewal purchase power contracts.
5. 1803 will abide by all present and future requirements in regards to affiliate transactions enacted by statute or adopted by the Commission.
6. 1803 will abide by all present and future requirements in regards to financial instrument or physical natural gas hedging programs enacted by statute or adopted by the Commission.
7. 1803 will abide by all present and future renewable resource requirements enacted by statute or adopted by the Commission.
8. 1803 will abide by all present and future energy efficiency and demand side management programs required by statute or by the Commission.
9. 1803 will abide by all present and future requirements set forth by the Commission for securities issuances and credit agreements.
10. 1803 will abide by all present and future requirements set forth by the Commission related to acquisitions, legal reorganizations, and other restructurings.
11. 1803 will be required to participate in Docket No. R-34758 (In re: *Timely Disclosure of Facts and Notices, Regarding Such Matters as MaxGen Alerts, to Commission and Commissioners, and Related Matters*), report to the Commission, as required pursuant thereto, on the status of resource readiness, reliability, and performance, and adhere to any future rules established through Docket No. R-34758.

12. 1803 shall also report to the Commission annually on resource resiliency. This annual reporting shall provide the monthly generation by PPA, the number of times when any of the PPAs were called upon but could not serve the load due to outages, transmission constraints that restricted dispatch of the PPA resources, and/or any other issues with the PPA resources that had an impact on 1803.
13. Approval of 1803 as a public utility recognized by the Commission shall not in any way diminish the Commission's regulatory authority over the five-member cooperatives of 1803. Each entity (1803 and the five-member cooperatives) will be regulated independently of one another by the Commission.
14. 1803 will abide by all present and future requirements set forth by the Commission for the payment of Inspection and Supervision Fees, whether adopted by the Commission or enacted by statute.
15. 1803 will abide by all applicable present and future General Orders issued by the Commission.

Respectfully submitted,

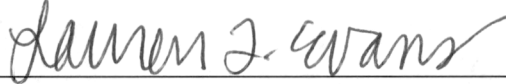


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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon all parties of record by fax, email or United States Mail, properly addressed and postage prepaid, facsimile, or email, on this 3rd day of June, 2021.

A handwritten signature in cursive script, reading "Lauren T. Evans", written over a horizontal line.

LAUREN TEMENTO EVANS

**Service List for Docket No. S-35709  
as of 6/2/2021**

**Commissioner(s)**

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Eric Skrmetta  
Foster L. Campbell  
Lambert C. Boissiere, III.  
Mike Francis

**LPSC Staff Counsel**

Lauren Evans, LPSC Staff Attorney

**LPSC Staff**

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**Applicant :                   1803 Electric Cooperative, Inc. ("1803")**

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