

**LOUISIANA PUBLIC SERVICE COMMISSION  
ADMINISTRATIVE HEARINGS DIVISION**

**DOCKET NUMBER U-36507**

**VERDANT MICROGRID, LLC AND  
INGEVITY CORPORATION, EX PARTE.**

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*In re: Petition for declaration of non-jurisdictional status.*

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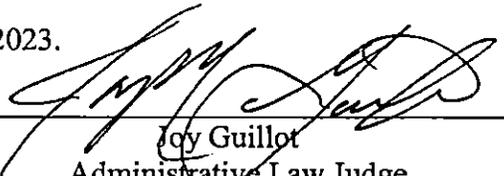
**PROPOSED RECOMMENDATION  
OF THE ADMINISTRATIVE LAW JUDGE**

The findings and conclusions recommended by the administrative law judge in this proceeding are contained within the attached Proposed Recommendation, which is being issued pursuant to the following provisions of Rule 56 of the Rules of Practice and Procedure of the Louisiana Public Service Commission:

- (1) The filing of exceptions to the *proposed* recommendation (within fifteen days of the filing of the *proposed* recommendation);
- (2) The filing of opposition memoranda to filed exceptions to the *proposed* recommendation (within fifteen days of the filing of the exception);
- (3) Issuance of the *final* recommendation of the Administrative Law Judge (following review of timely filed exceptions and opposition memoranda);
- (4) Requests by parties to present oral argument at the Commission meeting at which the Commissioners will consider and vote on the *final* recommendation (within five working days of issuance of the *final* recommendation); and
- (5) Instances in which the deadlines for the above-described procedures may be extended, abbreviated, or omitted.

Copies of the Rules of Practice and Procedure of the Louisiana Public Service Commission are available on the Commission's website: [lpsc.louisiana.gov](http://lpsc.louisiana.gov).

Baton Rouge, Louisiana, this 14<sup>th</sup> day of March, 2023.

  
Joy Guillot  
Administrative Law Judge

cc: Official Service List

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**PROPOSED RECOMMENDATION OF THE  
ADMINISTRATIVE LAW JUDGE**

**DRAFT ORDER**

*Overview*

In this proceeding, Verdant Microgrid, LLC (“Verdant”) and Ingevity Corporation (“Ingevity”) (collectively “Petitioners”) are seeking a Louisiana Public Service Commission (“LPSC” or the “Commission”) order declaring that the financing, construction, ownership, operation, maintenance, power generation and transfers, steam production, and any and all interests therein, including those arising from investment, ownership, lease, mortgage or assignment, of the Ingevity DeRidder Microgrid Project (the “Project”) will not render the Parties in Interest (as defined below) and the Project, either individually or collectively, an electric public utility under La. R.S. 45:121, La. R.S. 45:1161 and La. R.S. 45:1164 or otherwise subject Petitioners to Commission regulation pursuant to any other relevant state statute or Commission rule, regulation, or practice.

Cleco Power, LLC (“Cleco”), Entergy Louisiana, LLC (“ELL”) and Gulf States Renewable Energy Industries Association (“GSREIA”) intervened in the proceeding. The Council Utility Regulatory Office of the City of New Orleans is an interested party in the proceeding. Parties agreed to procedurally address the matter without an evidentiary hearing and instead file a Joint

Statement of Facts, Briefs and Reply Briefs. Briefs were filed by Petitioners, Commission Staff, ELL and Cleco. Commission Staff, ELL and Cleco oppose the Petitioners' request.

### ***Procedural History***

On August 17, 2022, Verdant and Ingevity filed their Petition for Declaration of Non-Jurisdictional Status and Request for Expedited Consideration ("Petition"). Notice of the Petition was published in the Commission's Official Bulletin on August 19, 2022. During the intervention period, Cleco and ELL intervened. On September 19, 2022, the Council Utility Regulatory Office of the City of New Orleans filed a request to be added to the instant docket as an interested party.

At the initial status conference held September 20, 2022, the parties agreed to a future status conference on December 6, 2022. On September 20, 2022, GSREIA filed a Petition for Intervention and for Inclusion on Service List; the Tribunal issued a Notice of Opportunity to File Comment on September 20, 2022, giving parties until September 30, 2022 to comment on GSREIA's petition. On October 3, 2022, the Tribunal granted GSREIA's petition.<sup>1</sup> During the December 6, 2022 status conference, the parties agreed to a procedural schedule setting forth filing deadlines. On December 29, 2022, Petitioners filed an Unopposed Motion to Upset Procedural Schedule. The motion failed to state the position of GSREIA, thus the Tribunal issued a Notice of Opportunity to File Comment on December 29, 2022, giving GSREIA until January 5, 2023 to file any comment on the motion. No comment was received, and the Tribunal granted the motion on January 6, 2023.

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<sup>1</sup> A corrected version of the ruling granting GSREIA's petition was filed on December 7, 2022. The initial ruling contained an incorrect header. However, GSREIA has been on the service list of Docket U-36507 since September 20, 2022, and the initial ruling granting GSREIA's intervenor status remains effective October 3, 2022.

On January 13, 2023, Petitioners, ELL, Cleco, and the Commission Staff filed their Joint Statement of Facts (“Joint Statement”). In the Joint Statement, the parties aver that, as to the listed facts, “there are no genuine issues to be tried.” However, the Joint Statement fails to state GSREIA’s position on the Joint Statement. Accordingly, the Tribunal issued a Notice of Opportunity to File Comment on January 19, 2023, giving GSREIA until January 25, 2023 to file a comment or position statement on the Joint Statement. GSREIA did not file any comments or position statement on the Joint Statement. On January 20, 2023, the Commission Staff filed an Unopposed Motion to Upset Procedural Schedule; the Tribunal granted the motion on January 20, 2023 modifying the briefing schedule. Briefs were timely filed by Petitioners, ELL, Cleco, and the Commission Staff on January 27, 2023, and Reply Briefs were timely filed by Petitioners, ELL, Cleco, and the Commission Staff on February 10, 2023.

### ***Jurisdiction and Applicable Law***

Pursuant to the Louisiana Constitution, Article 4, Section 21, the Commission shall regulate all common carriers and public utilities, and adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties. La. R.S. 45:1163(A)(1) provides that the Commission shall exercise all necessary power and authority over any electric light, heat, power, or other local public utility “for the purpose of fixing and regulation the rates charged or to be charged by and service furnished by such public utilities.”

La. R.S. 45:121 provides that an electric public utility is any person furnishing electric service within this state. However, La. R.S. 45:121, 1161 and 1164 all state that this shall not apply to “any person owning, leasing and/or operating an electric generation facility provided such person is not primarily engaged in the generation, transmission, distribution and/or sale of

electricity, and provided that such person (a) consumes all of the electric power and energy generated by such facility for its own use at the site of generation”.

### ***The Parties in Interest***

In the Petition, Verdant and Ingevity, the Petitioners, sought a declaration that the “Parties in Interest”, either individually or collectively, would not be a public utility or an electric public utility. According to the Petition and the Petitioners Reply Brief<sup>2</sup>, the Parties in Interest are:

- A. Verdant – a Delaware limited liability company with its principal place of business in Maryland;
- B. Ingevity – owner and operator of a chemical plant in DeRidder, Louisiana that produces rosin and turpentine;
- C. ClearGen, LLC – a Blackstone Credit portfolio company;
- D. All Special Purpose Vehicles/Entities established or to be established for the purpose of holding/owning assets of the Project;
- E. All investors of the Project, including but not limited to tax equity investors and any financial institutions or lenders providing debt or equity capital in connection with any financing to the Project;
- F. All affiliates, including but not limited to, any administrative agent, collateral agent, assignees or designees, contractor or subcontractor, or successors of any of the foregoing Parties in Interest;
- G. VM Deridder 1, LLC – the Special Purpose Vehicle;
- H. CG Verdant Holdings, LLC – a subsidiary of ClearGen, LLC; and
- I. Ingevity South Carolina, LLC – a subsidiary / affiliate of Ingevity.

Additionally, in accordance with the Energy Services Agreement (“ESA”) and the MIPA<sup>3</sup>, or “financing agreement”, upon execution of the MIPA, VM Deridder (the Special Purpose Vehicle) will be transferred, in whole, to CG Verdant Development.<sup>4</sup>

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<sup>2</sup> In the Reply Brief of Petitioners, Petitioners added VM Deridder 1, LLC, CG Verdant Holdings, LLC, and Ingevity South Carolina, LLC to the list of Parties in Interest.

<sup>3</sup> MIPA is not defined in the parties briefs.

<sup>4</sup> Petitioners Brief, at 10.

### ***Findings of Fact***

The Parties filed an agreed upon Joint Statement of Facts on January 13, 2023. The parties agreed that as to these facts there are no genuine issues to be tried.

1. On August 17, 2022, Verdant Microgrid, LLC (“Verdant”) and Ingevity Corporation (“Ingevity”) filed a Petition for Declaration of Non-Jurisdictional Status and Request for Expedited Consideration (“Petition”) related to the proposed Ingevity DeRidder Microgrid Project, which consists of the design, construction and operation of a microgrid electric generation facility (the “Project”).
2. Verdant is a Delaware limited liability company with its principal place of business in Maryland.
3. Verdant is in the business of generating, distributing, and selling electricity produced from “microgrid” generating facilities that it designs, develops and operates on the property of its “host” consumer.
4. Verdant has no facilities, points of connection, or electric lines within the State of Louisiana.
5. Verdant’s proposed host consumer of the Project, Ingevity, has owned and operated a chemical plant in DeRidder, Louisiana (the “Plant”) since 1997.
6. Cleco Power currently provides LPSC-jurisdictional retail electric service to Ingevity pursuant to LPSC tariffs filed with and authorized by the LPSC. Cleco Power has provided such service to Ingevity since Ingevity’s Plant became operational in 1997. Ingevity advises that it would rely on Cleco Power to continue to provide power to Ingevity, albeit at a reduced amount.
7. The Project is designed to include the following components and equipment: (1) a solar array of approximately 1,000 kW; (2) two combined heat and power (“CHP”) containerized cogeneration systems each capable of producing 2,000 kW of electric energy; (3) a heat recovery steam generator (“HRSG”) designed to produce approximately 6,000 lbs of 150 psi steam per hour; and (4) ancillary pumps, piping, wiring, controls, and other equipment. Additionally, the Project includes specifically designed electrical system upgrades to the Ingevity Plant, and is also designed to include electric lines and steam lines to transmit and distribute electric power and steam generated from the Project to Ingevity.
8. The Project is designed so that all components would be located inside the Plant’s fence line, and no power generated from the Project is intended to be put to Cleco Power’s system, or sold into the wholesale market, or sold to anyone other than Ingevity. The Project is designed so that Ingevity would purchase and consume 100% of the power produced on-site.

9. An Energy Services Agreement (“ESA”) between Verdant and Ingevity South Carolina, LLC (a subsidiary/affiliate of Ingevity), would govern certain terms and conditions of the Project, pursuant to which, among other things, Ingevity would purchase and take delivery of all electricity generated by the Project.
10. Verdant and Ingevity have disclosed the draft ESA pursuant to the Confidentiality Agreement in this matter and the parties to this matter agree that, as a written document, the draft ESA is the best evidence of its contents, terms and conditions, which are incorporated by reference herein as if copied *in extenso*. A copy of the ESA is attached hereto as **Confidential Exhibit 1**.
11. Verdant would design, build, own and operate the Project for the duration of the project finance life of 25 years (“Project Finance Life” or “Delivery Period” as it is referred to in the draft ESA) after which ownership of the Project may be transferred to Ingevity, pursuant to the terms of the draft ESA.
12. Pursuant to the ESA, Verdant, as owner of the assets comprising the Project, will sell electricity to Ingevity, but Verdant has the right to transfer its rights under the ESA, as well as the assets comprising the Project, to a Special Purpose Vehicle (“SPV”) that it may create.
13. The aforementioned SPV is addressed in a “financing agreement” between Verdant and CG Verdant Development. The parties to this matter agree that, as a written document, the financing agreement is the best evidence of its contents, terms and conditions, which are incorporated by reference herein as if copied *in extenso*. A copy of the financing agreement is attached hereto as **Confidential Exhibit 2**.
14. If Verdant transfers ownership of the assets comprising the Project and its rights under the ESA to the SPV, then the SPV, as the owner of the assets comprising the Project, will sell electricity to Ingevity. The SPV will have no other business activities other than those arising out of this Project.
15. Ingevity would have no ownership or leasehold interest in the Project for the duration of the Project Finance Life/Delivery Period of 25 years.
16. Neither Verdant nor any of its affiliates or partners (nor any special purpose entity they may create) would consume any of the electricity produced by the Project.<sup>5</sup>
17. Neither Verdant nor any of its affiliates or partners (nor any special purpose entity they create) would sell any of the electricity generated by the Project at wholesale or to an electric public utility or to anyone other than Ingevity.

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<sup>5</sup> Notwithstanding this statement, the parties understand and acknowledge that almost all generating units, by design, use a certain amount of its own “produced power,” known as “parasitic load” or “station power.”

18. Verdant and Ingevity have disclosed a document entitled “Ingevity Microgrid Ownership and Contract Structure” pursuant to the Confidentiality Agreement in this matter. A copy of the foregoing is attached hereto as **Confidential Exhibit 3**.
19. Verdant and Ingevity have disclosed a document containing an engineering diagram of the Project pursuant to the Confidentiality Agreement in this matter. A copy of the foregoing is attached hereto as **Confidential Exhibit 4**.
20. On September 1, 2022, Entergy Louisiana, LLC (“ELL”) filed a Petition for Intervention in this matter.
21. ELL operates as an electric public utility within the State of Louisiana, and owns and operates generation, transmission, and distribution facilities in Louisiana.
22. On September 2, 2022, Cleco Power filed a Notice of Intervention and Inclusion on Service List in this matter.
23. Cleco Power operates as an electric public utility within the State of Louisiana, and owns and operates generation, transmission, and distribution facilities in Louisiana.
24. The parties agree that this Joint Statement of Facts may be amended, by agreement of all parties hereto, and supplemented should it become apparent that a material fact was not included herein.

### ***Parties Positions***

#### **Verdant and Ingevity**

In this matter the Petitioners, Verdant and Ingevity, are seeking from the Commission an order declaring that, for the life of the Project, the Commission will not exercise its jurisdiction, to the extent such jurisdiction may exist, over the development, financing, construction, ownership, operation, maintenance, power generation and transfers, steam production, and any and all interests therein, including those arising from investment, ownership, lease, mortgage or assignment, of the Project, or otherwise regulate or classify the Project or the Parties in Interest, either individually or collectively, as a public utility or an electric public utility.

According to the Petitioners, Ingevity selected Verdant to achieve sustainability of its power supply through a microgrid system due to concerns with outages and unreliability in electricity provided to Ingevity's plant by Cleco. Petitioners contend that, while Cleco proposed resolutions to the power supply issues, the proposed resolutions were unacceptable. The Petitioners explain that the proposed microgrid system would include the design, construction, testing, commissioning, ownership, financing, operation, maintenance, repair, replacement, and renovation of the microgrid system, which would be placed on a portion of Ingevity's premises. The Project is designed so that all components would be located inside the Plant's fence line, and no power generated from the Project is intended to be put to Cleco's system, sold into the wholesale market, or sold to anyone other than Ingevity. The Project is designed so that Ingevity would purchase and consume 100% of the power produced on site. Petitioners point out that Ingevity would continue to rely on Cleco for approximately 10% to 20% of its power needs, and need to purchase standby service from Cleco.

Additionally, the Petitioners contend that the Project's financing and ownership structure enables it to benefit from certain federal tax credits. Petitioners explain that Verdant, with the help of its financing partner, ClearGen, LLC and its subsidiary/affiliate, CG Verdant Holdings, LLC would design, build, own and operate the Project for the duration of the project finance life of 25 years, for the benefit of Ingevity, after which ownership of the assets comprising the Project, may be transferred to Ingevity for the remaining equipment life (which is predicted to be at least ten years) pursuant to a Facility Purchase Option. Petitioners state that Verdant, as owner of the assets comprising the Project, will sell electricity and steam to Ingevity, but Verdant has the right to transfer its rights, as well as the assets comprising the Project, to a Special Purpose Vehicle that it may create. Petitioners assert that under the current structure, the cogeneration components will

receive a 30% Investment Tax Credit and the solar array will receive a 30% Investment Tax Credit outright, whereas a lease structure would pose a greater risk of tax credit claw backs.

Petitioners state that because Ingevity will provide the fuel and water which will be converted by the microgrid system into the electricity and steam which it will then consume, the pricing is directly tied to the use of the microgrid equipment and assets to produce such electricity and steam, and overall equipment and project costs. Petitioners argue that the Project structure is akin to a tolling service arrangement, wherein if Ingevity does not provide the fuel and water necessary to generate the electric and steam, no electricity and steam will be produced and Ingevity will still be required to make the minimum payments. Petitioners point out that, while the electricity generated will be priced by kW hours<sup>6</sup>, the purpose of the Project is to provide sustainable energy services, not merely generate and sell electricity. Petitioners argue that current pricing structure was selected for simplicity and convenience, and that it is based on the comprehensive suite of services the Project will provide to the Plant, but which are not independently priced.

Petitioners assert that Verdant will provide Ingevity with a “zero up-front” cost option for the Project whereby Verdant, on Ingevity’s behalf, finances, constructs, and operates the Project for the Project Finance Life, subject to the Facility Purchase Option, and then transfers the Project equipment and assets to Ingevity after Verdant makes its return on investment, at which point Ingevity will be self-generating its steam and electric power requirements, in addition to the electricity purchased from Cleco Power. Petitioners argue that this business model allows Ingevity to benefit from the Project without the need to acquire specialized knowledge and skills to deploy.

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<sup>6</sup> Petitioners’ Brief at 12.

the microgrid system and without the need to use operating cash or to incur additional balance sheet liabilities.

Petitioners argue that neither they, nor the Project, are included in the definition of electric public utility. Petitioners contend that the Project is a first of its kind to come before the Commission, represents the path forward for those seeking to provide their own electricity and steam to meet their energy needs, when they would otherwise be unable to do so because they lack the requisite expertise. The Petitioners argue they are not public utilities as they do not offer the same products and services offered by public utilities, and no purpose would be served by the Commission exercising jurisdiction over the Petitioners, including the fixing and regulation of the prices. Petitioners assert that while the Project may not be structured as a pure lease, like many the Commission has considered before, it is similar to cogeneration facilities for which the Commission has issued determinations of non-jurisdictional status. Petitioners cite several cases that they contend are substantially similar to the Project at issue and for which the Commission has previously held the parties do not fall within the definition of an electric public utility.<sup>7</sup>

Petitioners argue that the other parties to the docket present an oversimplified analysis of the Project, and the role of the Petitioners. Petitioners assert that Verdant is in the business of designing, developing and operating custom microgrid systems and generating, distributing, and selling not only electricity and steam, from the microgrid facilities that it designs, develops and operates on the property of its host consumer, but also providing a suite of energy services to its host consumer, which public utilities, such as Cleco and ELL, are simply unable to provide.

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<sup>7</sup> Citing *In Re Louisiana State Univ. & Mech. Coll.*, U-25985, 2001 WL 1824045 (La. P.S.C. Dec. 19, 2001); *In Re Ex Parte Private Power LLC*, U-26052, 2001 WL 1824046 (La. P.S.C. Dec. 19, 2001); and *Dyno Nobel, Inc. & Duke Energy One, Inc.*, U-36581, 2022 WL 17903076, (La. P.S.C. Dec. 19, 2022).

Petitioners assert that the generation of electricity only represents approximately 30% of the value of services Ingevity will receive under the Project.

In response to potential assertions of violations of the 300 Foot Rule<sup>8</sup>, Petitioners contend that even if they were considered public utilities, they would not be in violation of the 300 Foot Rule as the point of connection at issue is further than 300 feet away, and the services offered are not the same commodity as those offered by Cleco. Petitioners contend that Verdant offers a unique suite of electric and thermal energy services, reduction of emissions, additional on-site equipment, and infrastructure upgrades, which public utilities simply do not offer.

Finally, Petitioners argue that, to the extent the Petitioners are considered electric public utilities and/or subject to the jurisdiction of the Commission, the Commission, by way of the plenary authority granted to it in the Constitution, is still afforded discretion in determining whether or not to regulate the minimal electricity generated by the Project. Petitioners contend that, in this matter, no purpose would be served by the Commission fixing and regulating the prices charged to Ingevity by Verdant. Petitioners point out that Ingevity has contracted, of its own free will, for the services and equipment to be installed on its private property, at the prices agreed upon by Ingevity and Verdant, all of which will ultimately be owned by Ingevity.

#### Commission Staff

Based on the assertions of the Petition, the terms of the agreement between Verdant and Ingevity, and the Joint Statement of Facts, it is Commission Staff's position that Verdant is a public utility subject to the jurisdiction of the Commission, whereas, at this time, Ingevity would not be a public utility subject to the jurisdiction of the Commission. Further, according to Commission

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<sup>8</sup> La. R.S. 45:123 and Commission Order dated October 6, 2005 (R-28269).

Staff, should the assets of the Project and the rights under the agreement be transferred to a Special Purpose Vehicle, the Special Purpose Vehicle would be considered a public utility subject to the jurisdiction of the Commission. Commission Staff further contends that, at the end of the 25-year term, should Ingevity select to obtain ownership of the Project, Ingevity should be required to seek a Commission-jurisdictional determination given the change in circumstances.

Commission Staff argues that, in order to be considered exempt from being a public utility, Verdant would first need to show that it is not primarily engaged in the generation, transmission, distribution, and/or sale of electricity. Commission Staff contends that Verdant has not proven this. On the contrary, Commission Staff points out that, pursuant to the Joint Statement of Facts, Verdant “is in the business of generating, distributing, and selling electricity produced from “microgrid” generating facilities that it designs, develops and operates on the property of its “host” consumer.” While Petitioners claim that “Parties in Interest” will not furnish retail electric service to the public, Commission Staff argues that this is inaccurate, as Verdant and/or the Special Purpose Vehicle are furnishing electricity to Ingevity, which is considered part of the public. Further, Commission Staff points out that Verdant is not consuming all of the electric power and energy generated by the Project for its own use at the site of generation or at some other location. Commission Staff maintains that under a plain reading of the exemptions provided in La. R.S. 45:121, 1161 and 1164(C), Verdant does not meet any of those exemptions, and would therefore be considered a public utility subject to the Commission’s regulation.

Commission Staff points out that in prior Commission jurisdictional determinations, the methodology in calculating payments between the parties has assisted in determining whether the agreement was under the Commission’s jurisdiction. Commission Staff states that Petitioners have alleged that the purpose of the Project is to provide sustainable energy services, not merely

generate and sell electricity; however, Commission Staff argues that neither the pricing structure nor the reasoning behind a project/agreement is a determinative factor for its jurisdictional status. Instead, Commission Staff contends that the determinative factor is whether a party is owning, operating, and/or leasing an electric generation facility for the purposes of furnishing some, or all, of the electricity to the public.

Commission Staff does contend that Ingevity would not be not considered a public utility subject to the jurisdiction of the Commission, as it owns and operates the chemical plant, does not furnish electric service in Louisiana, would be the host consumer of the Project, and would purchase from Verdant all of the power produced by the Project. Further, as the Commission Staff points out, Ingevity would have no ownership or leasehold interest in the Project, and would not operate the Project for the duration of the Project Finance Life.

Commission Staff points out that the Joint Statement of Facts indicates that Verdant has the right to transfer its rights, as well as the assets comprising the Project, to a Special Purpose Vehicle that it may choose to create. Commission Staff asserts that if such a transfer of the assets of the would occur, the Special Purpose Vehicle would then be considered a public utility subject to the jurisdiction of the Commission for those same reasons that Verdant would be considered a public utility. Commission Staff argues that Petitioners cannot elude Commission jurisdiction by simply placing a public utility under the ownership of a purported non-public utility.

In response to Petitioners assertions, Commission Staff further points out, the fact that Ingevity will consume all of the electric power at the site of generation, the location of the Project on Ingevity's premises, and the fact that Ingevity will consume all of the electricity generated by the Project, are not determinative factors for the Project's jurisdictional status. Commission Staff asserts that what is determinative of jurisdictional status is whether the owner, operator, or

generator is consuming the electric power produced. Commission Staff points out that the location of the facility is not equivalent to an ownership interest. Further, Commission Staff states that all parties agreed, in the Joint Statement of Facts, that Ingevity will not have an ownership or leasehold interest in the Project.

Commission Staff states that Verdant and Ingevity request a finding that all affiliates, including but not limited to any administrative agent, collateral agent, assignees or designees, contractor or subcontractor, or successors of any of the Parties in Interest, are determined not to be a public utility subject to the regulation of the Commission. Commission Staff notes that this category of all affiliates as presented in the Petition is overly broad and vague, and that additional details regarding each of the collective entities referred to as “all affiliates” would need to be presented in order for the Commission to make an appropriate determination as to their jurisdictional status. Without waiving the right to further analyze the jurisdictional status of each of these affiliates, Commission Staff contends that, insofar as the aforementioned affiliates would be successors to either Verdant or a Special Purpose Vehicle that has been transferred the assets of the Project, then such affiliates would likely be considered public utilities subject to the jurisdiction of the Commission.

Commission Staff contends that there is no indication, in either the Petition or the Joint Statement of Facts, that ClearGen would be engaged in the generation, transmission, distribution, and/or sale of electricity, nor is there any indication that ClearGen would operate the Project. Instead, according to Commission Staff, the Petition indicates that ClearGen, which is a Blackstone Credit portfolio company established to provide financing to projects like the one at issue herein, will be Verdant’s financing partner in the development of the Project. Commission Staff does clarify that it is unclear what CG Verdant Development’s, and possibly ClearGen’s,

relationship is with the Special Purpose Vehicle and whether that would render it a public utility. As such, Commission Staff reserves its right to make such a jurisdictional determination at a future time.

Commission Staff states that the Petition requests a finding that all investors of the Project, including but not limited to tax equity investors and any financial institutions or lenders providing debt or equity capital in connection with any financing of the Project, are determined not to be a public utility subject to the regulation of the Commission. Commission Staff notes that this category of “all investors” as presented in the Petition is overly broad and vague, and that additional details, including any contractual agreements, regarding each of the collective entities referred to as “all investors” would need to be presented, and reviewed, in order for the Commission to make an appropriate determination as to their jurisdictional status. Without waiving the right to further analyze the jurisdictional status of each of these investors, Commission Staff indicates that, in so far as the aforementioned investors occupy a financing role, such investors would likely not be considered a public utility.

#### Cleco

Cleco asserts that, according to Louisiana law, the Joint Statement of Facts, and the Commission’s prior non-jurisdictional determination orders, Verdant would be acting as an “electric public utility” under the proposed Project by providing electricity to Ingevity, thus making Verdant subject to the Commission’s jurisdiction and regulation. Further, according to Cleco, granting Verdant a non-jurisdictional determination based on the Joint Statement of Facts would amount to a form of deregulation, allowing various unregulated entities to make retail electricity sales to customers without Commission oversight.

Cleco argues that Verdant's attempt to sell, at retail, power to Ingevity should render Verdant an electric public utility based on the statutory framework in Title 45 of the Louisiana Revised Statutes and the Commission's prior non-jurisdictional determination orders. Cleco contends that the Energy Services Agreement between Verdant and Ingevity makes clear that Verdant will be making retail sales of electric power to Ingevity. Further, Cleco asserts, the Special Purpose Vehicle would continue to sell electricity to Ingevity at retail, should Verdant transfer ownership of the Project. According to Cleco, the facts that Ingevity would purchase electric power from Verdant on the basis of the amount of electricity delivered and metered, and Ingevity would have no ownership or leasehold interest in the Project for the duration of the Project Finance Life/Delivery Period, runs contrary to the Commission's prior non-jurisdictional determination orders. While Petitioners make arguments about providing sustainable energy services, Cleco asserts that the relevant and determinative point is the fact that the Project is structured such that Ingevity would be purchasing electric power generated by the Project based on, and tied to, actual power production from the Project and the value of that electricity.

Cleco also argues that neither Verdant nor the Special Purpose Vehicle satisfy any of the statutory exemptions from being considered an electric public utility. Cleco points out that the statutory exemptions are a two-pronged analysis, and that even if the Commission did not consider Verdant to be "primarily engaged in the generation, transmission, distribution, and/or sale of electricity," the Project and the agreement between the Petitioners still would not qualify under the second part of the exemption analysis. Specifically, Cleco asserts, Verdant would not be (a) consuming all of the electric power and energy generated by the Project for its own use at the site of generation; (b) consuming a portion thereof and selling the entire remaining portion to Cleco; or (c) selling the entire production of electric power and energy generated by the Project to Cleco.

Cleco points out that Verdant would design, build, own and operate the Project for the duration of the Project Finance Life of 25 years and would sell all of the electricity generated by the Project to Ingevity. Cleco points out that the Project is designed so that Ingevity would purchase and consume 100% of the power produced.

Cleco states that Petitioners cite to and summarize prior Commission non-jurisdictional determinations, but Cleco contends that, unlike the Project at issue, in prior Commission non-jurisdictional determination orders the entity consuming the electricity produced by the generating facility at issue held either an ownership or leasehold interest in the facility and any payments made by the entity consuming the electricity so produced were not based on or tied to actual power production from the facility or the value of that electricity. Cleco argues that the Commission has been careful to require that projects are structured this way to ensure that there is no retail sale of electricity.

Cleco states that the Petition also contains an invalid request that the Commission not exercise its jurisdiction, to the extent that such jurisdiction exists. Cleco contends that the Petitioners are requesting that the Commission disregard its duty to regulate and exercise jurisdiction over Verdant, even if Verdant is an electric public utility. Cleco argues that Petitioners have not, and cannot, provide any authority that would support this request, and that finding an entity is an electric public utility triggers the Commission's constitutional obligation to exercise its jurisdiction.

Cleco also alleges that existing Commission rules prohibit Verdant from serving Ingevity. Cleco contends that Commission General Order dated October 6, 2005 (R-28269) and La. R.S. 45:123 explicitly prohibit an electric public utility from offering or extending service to any point

of connection that is already being served by another utility. Cleco points out that Ingevity is a current Cleco Power customer.

Cleco states that the Petitioners have alleged that Cleco's provision of electric service to the Ingevity Plant has become unreliable. However, Cleco disputes and denies the allegations contained in Petitioners' brief, and takes seriously its obligation to provide reliable service to all its customers. Cleco contends that the alleged service quality issues are not pertinent or material to the scope and purpose of this proceeding. Further, Cleco points out that the Commission has a specific procedural vehicle to address alleged inadequate service by an electric public utility.

Cleco also points out that the Petitioners' brief spends considerable time reciting purposes and alleged benefits of the proposed Project, all of which are irrelevant to the determination of whether the Petition should be granted or denied. Cleco states that the Commission has a pending and active rulemaking docket exploring and analyzing certain policy questions, particularly whether to allow some form of retail open access in the provision of electric service to consumers in Louisiana, including how or whether microgrids may be allowed to operate.

#### ELL

ELL contends that Verdant falls squarely within the legal definition of electric public utility and, contrary to Petitioners' assertion, does not fall within any exception to that definition. ELL asserts that the Project involves the proposed retail sale of electricity to a Louisiana customer by an entity that is not currently regulated, has no precedent in Louisiana, and is explicitly prohibited by statutory law and established rules of the Commission.

ELL argues that if the proposed project is implemented, Verdant would clearly meet the definition of electric public utility, as it is proposing to own and operate electric generation and

distribution facilities, take title to the electricity produced by the generating unit(s), and then distribute and sell it to Ingevity. While Verdant claims that it meets the limited exclusions of the definition of electric public utility, ELL asserts that, based on the plain language of the statute, the limited exceptions do not apply. ELL claims that Verdant is primarily engaged in the generation, distribution and sale of electricity, and that this would be Verdant's only activity in Louisiana. Further, according to ELL, Verdant will neither consume the electricity it produces for its own use, nor sell it to an electric public utility or in the wholesale market. ELL points out that Verdant intends to act as a retail seller by producing electricity and selling it to Ingevity for the latter's direct use.

ELL argues that while the Petitioners discuss the alleged benefits of the proposed microgrid, the purported unattainability of these alleged benefits from any other source, the reliability of Cleco's service, and the employment of Louisiana residents, ELL points out none of these factual assertions – which ELL characterizes as unsupported and speculative - are relevant to addressing the applicable legal principles. Further, according to ELL, the Petitioners point out that Ingevity is obligated to provide the fuel that will be converted by the microgrid system into electricity, but the Petitioners fail to explain the relevance of Ingevity's agreement to provide fuel for the non-solar generating units that comprise the proposed microgrid or point to any Commission precedent suggesting that the provision of fuel nullifies that Verdant is furnishing electric service.

ELL asserts that while the statutory language, as applied to the stipulated facts, mandates dismissal of the Petition, it should be noted that past Commission "jurisdictional determination" orders further highlight that the Verdant proposal is prohibited. ELL argues that even a cursory review of orders cited by the Petitioners reveals that they do not support the Petitioners' position.

ELL further argues that Verdant's proposal explicitly prohibits an electric public utility from offering or extending service to any point of connection that is already being served by another utility, as Ingevity is currently being served by Cleco. Further, according to ELL, even if Cleco was not currently serving Ingevity, Verdant would still be prohibited from offering service to Ingevity as Ingevity's choice would be limited by the application of other rules, which would give the exclusive right to serve Ingevity to any other utilities that have electric lines within 300 feet of Ingevity's point of connection.

ELL also argues that Petitioners' additional request that the Commission not exercise its jurisdiction, to the extent such jurisdiction exist, is equally invalid. ELL states that Petitioners have not, and cannot, provide any authority that would support this alternative request. Indeed, ELL asserts, a finding that a party is proposing to act as an electric public utility in Louisiana triggers the Commission's constitutional obligation to exercise jurisdiction over, and thus regulate, the utility.

### *Analysis*

In this proceeding, Verdant and Ingevity requested a declaration from the Commission that the financing, construction, ownership, operation, maintenance, and power and steam transfers of the Project will not render the Parties in Interest and the Project, either individually or collectively, an electric public utility or otherwise subject to regulation by the Commission as an electric public utility. The question presented then is whether the Project, as presented by the Petitioners, would render any of the Parties in Interest electric public utilities subject to Commission jurisdiction. La. R.S. 45:121 provides that an electric public utility is any person furnishing electric service within

this state. However, La. R.S. 45:121, 1161 and 1164 provide exceptions to the definition of electric public utility by stating that it shall not apply to

to any person owning, leasing and/or operating an electric generation facility provided such person is not primarily engaged in the generation, transmission, distribution, and/or sale of electricity, and provided that such person: (a) consumes all of the electric power and energy generated by such facility for its own use at the site of generation ...; or, (b) only consumes a portion thereof in such manner and sells the entire remaining portion of such electric power and energy generated to an electric public utility ...; or, (c) sells the entire production of electric power and energy generated by such facility to an electric public utility ... .

Verdant is a Delaware limited liability company with its principal place of business in Maryland.<sup>9</sup> Verdant is in the business of generating, distributing, and selling electricity produced from “microgrid” generating facilities that it designs, develops and operates on the property of its “host” consumer.<sup>10</sup> Ingevity owns and operates a chemical plant in DeRidder, Louisiana.<sup>11</sup> Verdant would design, build, own and operate a microgrid electric generating facility (the “Project”) for the duration of the project finance life of 25 years.<sup>12</sup> Pursuant to the Energy Services Agreement between Verdant and Ingevity, Verdant, or a successive owner,<sup>13</sup> will sell electricity to Ingevity.<sup>14</sup> Ingevity would have no ownership or leasehold interest in the Project for the duration of the Project Finance Life/Delivery Period of 25 years.<sup>15</sup> Based on the facts agreed to by the Parties, Verdant (or its successor) would furnish electric service in the state, thereby making it an electric public utility.

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<sup>9</sup> Joint Statement of Facts, Finding of Fact No. 2.

<sup>10</sup> Joint Statement of Facts, Finding of Fact No. 3.

<sup>11</sup> Joint Statement of Facts, Finding of Fact No. 5.

<sup>12</sup> Joint Statement of Facts, Finding of Fact No. 11.

<sup>13</sup> Pursuant to the ESA, Verdant has the right to transfer its rights under the ESA, as well as the assets comprising the Project, to a Special Purpose Vehicle (“SPV”) that it may create. Joint Statement of Facts, Finding of Fact No. 12.

<sup>14</sup> Joint Statement of Facts, Finding of Fact No. 12.

<sup>15</sup> Joint Statement of Facts, Finding of Fact No. 15.

For the exceptions under La. R.S. 45:121, 45:1161 and 45:1164 to apply, the entity owning, leasing and/or operating the electric generation facility must not be primarily engaged in the generation, transmission, distribution and/or sale of electricity, *and* must 1) consume all of the electric power and energy generated by the facility for its own use at the site of generation; or 2) sell any non-consumed electric power to an electric public utility. The exceptions provided for in La. R.S. 45:121, 45:1161 and 45:1164 provide for a two-part analysis.

The first part questions whether the entity owning, leasing and/or operating the electric generation facility is primarily engaged in the generation, transmission, distribution and/or sale of electricity. There is no specific definition of “primarily engaged” in Louisiana law.<sup>16</sup> According to Black’s Law Dictionary, “primary” means first; principal; chief; leading; and to engage is to employ or involve one’s self; to take part in; to embark on.<sup>17</sup> The courts have held that “primarily” could mean of first importance, principally, essentially, fundamentally, primary, substantial or principal.<sup>18</sup>

Verdant is in the business of generating, distributing, and selling electricity produced from “microgrid” generating facilities.<sup>19</sup> Currently, Verdant has no facilities in Louisiana.<sup>20</sup> Verdant

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<sup>16</sup> The Commission has traditionally deferred to the definition set forth in federal law, which excludes owners of cogeneration facilities or small power production facilities from the definition ‘primarily engaged.’ See *In Re Louisiana State Univ. & Mech. Coll.*, U-25985, 2001 WL 1824045 (La. P.S.C. Dec. 19, 2001), FN 1, and *In Re Ex Parte Private Power LLC*, U-26052, 2001 WL 1824046 (La. P.S.C. Dec. 19, 2001), FN 2. However, no assertions have been made in this matter that the Ingevity.DeRidder Microgrid Project will be a cogeneration facility or small power production facility as defined in Commission orders or federal law.

<sup>17</sup> Black’s Law Dictionary (6<sup>th</sup> ed. 1990).

<sup>18</sup> The U.S. Supreme Court explained that “[a] literal reading of the statute is consistent with this legislative purpose. We hold that, as used in s 1221(1), ‘primarily’ means ‘of first importance’ or ‘principally.’ *Malat v. Riddell*, 383 U.S. 569, 572; 86 S.Ct. 1030, 1032; 16 L.Ed.2d 102 (1966). However, later the U.S. Supreme Court stated that

It is true that ‘primary’ when applied to a single subject often means first, chief, or principal. But that is not always the case. For other accepted and common meanings of ‘primarily’ are ‘essentially’ (Oxford English Dictionary) or ‘fundamentally’ (Webster’s New International). An activity or function may be ‘primary’ in that sense if it is substantial. *Bd. of Governors of Fed. Reserve Sys. v. Agnew*, 329 U.S. 441, 446; 67 S.Ct. 411, 414; 91 L.Ed. 408 (1947).

<sup>19</sup> Joint Statement of Facts, Finding of Fact No. 3.

<sup>20</sup> Joint Statement of Facts, Finding of Fact No. 4.

would design, build, own and operate the Project for the duration of the project finance life of 25 years.<sup>21</sup> Pursuant to the Energy Services Agreement, Verdant, as owner of the assets comprising the Project, will sell electricity to Ingevity.<sup>22</sup> Verdant has the right to transfer its rights under the Energy Services Agreement, as well as the assets comprising the Project, to a Special Purpose Vehicle that it may create, which would then sell the electricity to Ingevity.<sup>23</sup> The Special Purpose Vehicle will have no other business activities other than those arising out of this Project.<sup>24</sup>

Petitioners allege in their Reply Brief that the generation of electricity represents approximately 30% of the value of services Ingevity will receive under the Project. However, this assertion was not agreed to by the parties as a fact in the Joint Statement of Facts, nor were the underlying calculations based on admitted facts. Therefore, Petitioners' "30%" assertion is factually and legally unsupported.

Based on the Joint Statement of Facts, in Louisiana, Verdant and/or successors would design, build, own and operate the Project, and then sell electricity to Ingevity.<sup>25</sup> Hence, in Louisiana, Verdant would be primarily engaged in the generation and sale of electricity in Louisiana.

The second part of the two-part analysis questions whether the entity consumes all of the electric power and energy generated by the facility for its own use at the site of generation, or sells any non-consumed electric power to an electric public utility. All parties agree, as stated in the Joint Statement of Facts, that neither Verdant nor any of its affiliates or partners (nor any special

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<sup>21</sup> Joint Statement of Facts, Finding of Fact No. 10.

<sup>22</sup> Joint Statement of Facts, Finding of Fact No. 12.

<sup>23</sup> Joint Statement of Facts, Finding of Fact No. 12 and 14,

<sup>24</sup> Joint Statement of Facts, Finding of Fact No. 14.

<sup>25</sup> Joint Statement of Facts, Finding of Fact No. 11 and 12.

purpose entity they may create) would consume any of the electricity produced by the Project.<sup>26</sup> Therefore, based on the facts in evidence, neither Verdant, nor its affiliates, partners or a special purpose vehicle, would consume all of the electric power and energy or sell it to an electric public utility.

Taken as a whole, the facts in evidence indicate that, in Louisiana, Verdant would be primarily engaged in the generation and sale of electricity, and would not consume all of the electric power and energy produced nor sell it to an electric public utility. Therefore, the exceptions provided in La. R.S. 45:121, 45:1161 and 45:1164 would not apply.

Petitioners might argue that the analysis of the request involves a very mechanical application of La. R.S. 45:121, 45:1161 and 45:1164. Petitioners may argue this mechanical analysis fails to account for the novel and progressive bundle of services to be provided to Ingevity under the Project, which were clearly not contemplated by statutes enacted in the 1970s, and the legislative purpose behind these statutes. The starting point for the interpretation of any statute is the language of the statute itself. *Auricchio v. Harriston*, 2020-01167, p. 4 (La. 10/10/21); 332 So.3d 660, 662. Further, “[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” La. C.C. Art. 9. As La. R.S. 45:121, 45:1161 and 45:1164 are clear and unambiguous when the exceptions to being an electric public utility should apply, their application has not led to an absurd consequence.

The Petitioners cite several dockets/cases that they claim set a precedent for granting their request. Each case presented relevant facts making them distinguishable from the instant matter.

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<sup>26</sup> Notwithstanding the “parasitic load” or “station power” mentioned in the Joint Statement of Facts Footnote 1.

In *In Re Louisiana State Univ. & Mech. Coll.*, U-25985, 2001 WL 1824045 (La. P.S.C. Dec. 19, 2001), the Commission order was specifically conditioned upon the proposed cogeneration facility obtaining and retaining its status as a Qualifying Facility pursuant to 16 U.S.C. § 796 *et seq.* and FERC's regulations, 18 C.F.R. § 292.101, and 18 C.F.R. § 292.201. Further, the order provided that the lease payments would be based on project costs and not tied to power production or the value of electricity.

In *In Re Ex Parte Private Power LLC*, U-26052, 2001 WL 1824046 (La. P.S.C. Dec. 19, 2001), the facility at question would be owned 50.1% by and 49.9% by Cabot Corporations. The Commission found that “as long as Cabot's capacity entitlement equals Cabot's ownership interest in the Project Company, there is no sale of electric power to Cabot. In accordance with La. R.S. 45:121, La. R.S. 45:1161 or La. R.S. 45:1164, Cabot, as an owner of the Project Company, will be consuming for its own use all or a portion of the electric power and energy produced from its 49.9% capacity.” Further, wholesale sales in interstate commerce made by the Project Company, on behalf of either Cabot or Petitioner, from a qualifying cogeneration facility, would not be subject to the Commission's jurisdiction, but would fall under the jurisdiction of FERC.

In *In Re Shell Oil Co.*, U-24645, 2000 WL 346405 (La. P.S.C. Jan. 18, 2000), it was noted that, prior to completion of the facility, that unless Shell Oil Company elected to purchase the facility, the entire project would be leased to Shell. Further, the rents under the lease would not be tied to the quantity or value of the production of power from the project, not whether Shell actually produces power from the project and without regard to the amount or value of power produced by Shell. It was again noted that the Commission's order was conditioned upon the facility retaining its status as a qualifying facility.

In *In Re Rs Cogen, LLC*, U-24037, 1999 WL 420650 (La. P.S.C. Apr. 21, 1999), the facility was a combined cycle cogeneration power project developed jointly by PPG Industries, Inc. and Entergy Power R.S. Corporation, and the electric power generated by the facility will either be consumed by PPG or sold into the wholesale market. It was again noted that the Commission's order was conditioned upon the facility retaining its status as a qualifying facility.<sup>27</sup>

In *Sabine Pass Lng, L.P. & Sabine Pass Liquefaction, LLC Ex Parte*, U-32940, 2013 WL 5673904, (La. P.S.C. Oct. 4, 2013), the matter dealt with a liquified natural gas facility (“LNG”), in which Sabine Pass Liquefaction, LLC would provide natural gas to Sabine Pass LNG, L.P. and Sabine Pass LNG, L.P. would convert the natural gas to electricity for use in the operation of the Liquefaction Facility. The agreement between the parties provided for a fixed charge for the bundled services based on a fixed quantity of LNG, times a fixed reservation fee and a fixed operating fee. The bundled rate for services is not

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<sup>27</sup> *In Re Rs Cogen, LLC*, U-24037, 1999 WL 420650 (La. P.S.C. Apr. 21, 1999) also discusses ownership limitations that affected whether an entity involved in a qualifying facility was “primarily engaged”, however those restrictions were removed in 2006. See Revised Regulations Governing Small Power Production and Cogeneration Facilities, 71 FR 7852-01.

based on the amount of electricity produced, or even directly tied to the cost of conversion. Additionally, Cheniere Energy Investments, LLC holds a 100% ownership interest in both Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.

In *Occidental Chem. Corp., Ex Parte*, S-34773, 2018 WL 2102284, (La. P.S.C. May 2, 2018), Occidental Chemical Corporation was exercising its Early Buyout Option to terminate the lease of the Taft Cogen Project and purchase the Taft Cogen Project. The Commission specifically held that “any electrical power produced by the Taft Cogen Facility and not required for internal consumption by the Taft Chemical Complex or Taft Cogen Project shall only be sold to an electric public utility or in the wholesale power market subject to FERC jurisdiction.” The order states that Taft Cogen Project is self-certified with the FERC as a qualifying facility.

In *In Re Basell U.S.A., Inc.*, U-26139, 2001 WL 1824049 (La. P.S.C. Dec. 19, 2001)<sup>28</sup>, the Commission pointed out that the Project Owner will lease the entirety of the project to Basell and will not take title to any electricity that it produces. Basell will fully control the generation capacity of the project and shall be the sole owner of all electricity and steam generated by the project. Further, the rental payment will not be tied to the quantity or value of the production of power from the project. It was again noted that the Commission’s order was conditioned upon the facility retaining its status as a qualifying facility.

In *Dyno Nobel, Inc. & Duke Energy One, Inc.*, U-36581, 2022 WL 17903076, (La. P.S.C. Dec. 19, 2022), Duke Energy One, Inc. will construct, lease, operate, and maintain the project for Dyno Nobel. Duke will construct the project, will lease the entirety of the project to Dyno Nobel, and will not have any right, title, or interest to any electricity that the project produces. The fixed monthly rental payments are not tied to or adjusted to account for the quantity or value of the electric energy produced from the leased facility. The parties anticipate certifying the project as qualifying cogeneration facility.

### Request to Abstain

Petitioners, in their Reply Brief, request that to the extent that the Commission finds that Verdant and and/or the Special Purpose Vehicle, or any of the Parties in Interest, are considered an electric public utility subject to the jurisdiction of the Commission, the Commission, by way of the plenary authority granted to it in the Constitution, is still afforded discretion in determining whether or not to regulate the minimal electricity generated by the Project. Petitioners contend

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<sup>28</sup> The citation in Westlaw contains a typographical error. Order No. U-26139 lists the petitioner as *Basell* U.S.A. Inc. and not *Besell* U.S.A., Inc.

that no purpose would be served by the Commission fixing and regulating the prices charged to Ingevity by Verdant. Cleco argues that Petitioners have not, and cannot, provide any authority that would support this request, and that finding an entity is an electric public utility triggers the Commission's constitutional obligation to exercise its jurisdiction. ELL contends that this request has no merit and the request is asking the Commission to disregard its duty to regulate.

La. Const. art. IV § 21(B) provides that the Commission “*shall* regulate all common carriers and public utilities.” (Emphasis added). Courts have held that La. Const. art. IV § 21(B) grants “in mandatory language, constitutional jurisdiction to the [C]ommission over all common carriers and public utilities.” *Power & Light Co. v. Louisiana Public Service Comm'n*, 609 So.2d 797, 1992 W.L. 355138 (La.1992) (No. 92-CA-1186) (quoting *Cajun Electric Power Cooperative, Inc. v. Louisiana Public Service Comm'n*, 544 So.2d 362 (La.1989), *cert. denied*, 493 U.S. 991, 110 S.Ct. 538, 107 L.Ed.2d 536 (1989)).

Once it has been determined that any of the Parties in Interest, Verdant and/or any subsequent entity, are an electric public utility subject to the jurisdiction of the Commission, then the Commission, pursuant to its constitutional mandate, shall regulate such public utilities.

#### Additional Assertions

Petitioners made several allegations regarding the service quality provided by Cleco to Ingevity. The instant matter is a Petition filed and noticed as a declaration for non-jurisdictional status. Therefore, the allegations made by Petitioners against Cleco regarding service quality are not relevant in this docket. La. R.S. 45:1196 allows for the filing of a petition at the Commission against a regulated company “of anything done or omitted ... in contravention of any order, rule, regulation, rate, or classification.” Further, Commission Order dated October 6, 2005 (R-28269)

provides that “any consumer receiving electric service from an electric public utility which is subject to the jurisdiction of this Commission who feels aggrieved with the reliability of electric service being received by him/her may apply to this Commission for an order directed to his/her present supplier to show cause why the consumer should not be released from said supplier.”

There were also allegations, including assertions of non-comparable products<sup>29</sup>, regarding the possible implications of the 300 Foot Rule.<sup>30</sup> It is again noted that the instant matter is a Petition filed and noticed as a declaration for non-jurisdictional status, and any 300 Foot Rule allegations are irrelevant in the instant docket.

### ***Conclusion***

In the Petition in the instant matter, Verdant Microgrid, LLC and Ingevity Corporation requested that the Commission

issue an order on an expedited basis, with an immediate effective date of the resulting order, declaring that the financing, construction, ownership, operation and maintenance and power and steam transfers of the Project as described herein will not render the Parties in Interest and the Project, either individually or collectively, an electric public utility under La. R.S. 45:121, La. R.S. 45:1161 and La. R.S. 45:1164 or otherwise subject Petitioners to regulation as an electric public utility by the LPSC pursuant to any other relevant state statute or LPSC rule, regulation, or practice.<sup>31</sup>

After careful consideration of the parties' briefs and the applicable cases, the Commission concludes that Petition is **DENIED**.

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**DISTRICT V**  
**CHAIRMAN FOSTER L. CAMPBELL**

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<sup>29</sup> Petitioners cited *Capital Utilities Corp. v. Louisiana Pub. Serv. Comm'n*, 97-2206 (La. 3/4/98); 708 So.2d 368, for its assertion that they were not offering the same commodity as Cleco or any public utility. *Capital Utilities Corp* involved a complaint filed with the Commission regarding service quality issues.

<sup>30</sup> La. R.S. 45:123 and Commission Order dated October 6, 2005 (R-28269).

<sup>31</sup> Petition at 11.

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**DISTRICT IV**  
**VICE CHAIRMAN MIKE FRANCIS**

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**DISTRICT I**  
**COMMISSIONER ERIC F. SKRMETTA**

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**DISTRICT II**  
**COMMISSIONER CRAIG GREENE**

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**DISTRICT III**  
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as of 3/14/2023**

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