

**LOUISIANA PUBLIC SERVICE COMMISSION  
ADMINISTRATIVE HEARINGS DIVISION**

**DOCKET NUMBER U-37425**

**ENTERGY LOUISIANA, LLC, EX PARTE**

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

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**RULING ON PEREMPTORY EXCEPTION OF NONJOINDER**

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

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

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

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

#### Reasons

##### A. Background and Procedural History

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

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<sup>2</sup> Even after the certification of the CCCT generators, ELL will need to procure and seek certification of 1,500 MW of solar and/or solar and storage resources to serve the Project.

<sup>3</sup> In its memorandum in opposition, ELL suggests this number may be as high as \$10 billion.

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

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

## B. Positions of the Parties

### i. NPOs

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

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

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

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

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



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

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

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

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

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<sup>5</sup> Oral Argument Tr. March 25, 2025, 20:23.

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

ii. SREA

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

iii. ELL

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

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

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

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

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

iv. Commission Staff

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

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

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

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

C. Discussion

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

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

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

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<sup>6</sup> See also La. R.S. 45:1163 and La. R.S. 45:1176.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

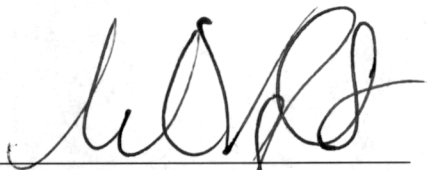
Finally, the NPOs and SREA fail to acknowledge that given the ongoing regulatory relationship between ELL and the Commission, Commission Orders are unlike court decrees which may be the final adjudication between the parties to the proceeding. The Commission can and often does place conditions on its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

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

D. Conclusion

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

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

  
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Melanie Verzwylt  
Chief Administrative Law Judge

cc: Official Service List

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