



# Louisiana Public Service Commission

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AUG 29 2023 PM 3:30

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August 29, 2023

### VIA HAND DELIVERY

Terri Bordelon  
Louisiana Public Service Commission  
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Baton Rouge, LA 70802

**Re: Docket No. R-35462, Louisiana Public Service Commission, ex parte. In re: Rulemaking to Research and Evaluate Customer-Centered Options for all Electric Customer Classes as well as Other Regulatory Environments.**

Dear Ms. Bordelon:

Please find the *Staff's Phase I Report* to be filed in the above-referenced docket. **Staff requests that the requested comments on certain issues in this report be filed no later than September 29, 2023.**

Thank you for your assistance in this matter. Should you have any questions please do not hesitate to contact me.

Sincerely,

Lauren Temento Evans  
Deputy General Counsel

Encl.  
cc.: Service List (via email)

**LOUISIANA PUBLIC SERVICE COMMISSION**

**DOCKET NO. R-35462**

**LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE.**

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***In re: Rulemaking to research and evaluate customer-centered options for all electric customer classes as well as other regulatory environments.***

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**STAFF'S PHASE 1 REPORT**

This proceeding was initiated through a Notice of Proceeding issued by the Louisiana Public Service Commission ("LPSC" or "Commission") on January 9, 2020 after a Directive from Commissioner Greene at the December 18, 2019 LPSC Business and Executive Session ("B&E"). The LPSC Staff ("Staff") was directed to research customer-centered options for all electric utility customers and to recommend a plan for how to ensure those customers are the focus in Louisiana.

The docket was also designed to consider any proposals not already being addressed in other dockets, as well as other options that may mitigate increased rates for Louisiana ratepayers. Staff issued three rounds of requests for comments and held a technical conference to gather and discuss information to be considered in the docket. On March 28, 2023, Staff issued a Notice of Staff's Intent to Proceed and Fourth Request for Comments. In that filing, Staff determined that this docket would be handled in phases, and that Phase 1 would address five topics: (A) Filing Transparency and Modernization; (B) The Structure of Requests for Proposals ("RFP") Issued by Utilities; (C) Participation in the Demand Response Process, Including Participation by an Aggregator of Retail Customers ("ARC"); (D) Electric Service for Electric Vehicles ("EVs"); and (E) Renewable Options. Pursuant to that notice, Staff submits its Phase 1 Report.<sup>1</sup>

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<sup>1</sup> The March 28, 2023 Notice issued by Staff provided a best-efforts deadline of July 31, 2023. On July 31, 2023, Staff issued a *Notice of Schedule Change*, wherein Staff provided notice of an anticipated August 31, 2023 filing date.

## **I. COMMISSION JURISDICTION AND AUTHORITY**

The Commission has been vested with the authority to regulate public utilities and common carriers and exercises jurisdiction in this proceeding pursuant to Article IV, Section 21(b) of the Louisiana Constitution of 1974, which provides in pertinent part:

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

The LPSC is dedicated to serving the public interest by assuring safe, reliable, and reasonably priced services are provided by the public utilities and common carriers subject to its jurisdiction. The LPSC carries out this responsibility via regulatory proceedings that ultimately lead to economic, legal, regulatory, and policy decisions made by five elected Commissioners. Within these proceedings, the LPSC strives to ensure a regulatory balance that allows regulated utilities an opportunity to earn a fair rate of return on their investments while also ensuring the impact of those investments on customers is reasonable and understood.

## **II. PHASE 1 ISSUES ADDRESSED BY STAFF**

### **A. Filing Transparency and Modernization**

While the directive issued in January 2020 initiated a broad docket to analyze many options and potential changes to Louisiana's regulatory structure, it also charged Staff to explore how the Commission can more effectively "ensure customers are the focus."

As such, Staff determined that regulated utilities should maintain and update certain relevant information on file with the Commission and provide that information within filings

affecting rates and service to ensure that the Commission has the information before and during decision making. As such, the Staff recommends the following:

***1. Information Provided Regularly to the Commission and with Each Request for a Base Rate Increase***

On January 31 and July 31 of each year, all regulated electric utilities shall file the information required in Exhibit A attached to this report, in a form similar to the form attached as Exhibit A to this report. These filings will be submitted into a single X docket created by the Commission so that any interested party can review each utility's Exhibit A filing at any time.

To clarify, the requirement would be that each utility provide the following information, to the extent it is relevant to that utility, in the format outlined in Exhibit A:

- The utility's name, followed by the total number of its customers in Louisiana, broken down by percentage of customers in each LPSC district in which the utility has at least one customer.
- The number of customers broken down by class (e.g., residential, commercial, industrial, and other), and the percentage of the utility's customers below the poverty line.
- The authorized Return on Equity ("ROE") and most recently filed earned ROE of the utility.
- The number of customer call/service staff located in Louisiana.
- The current typical bill for each of the hypothetical residential customers outlined in Exhibit A (i.e., 1,000 kWh, 1,250 kWh, 1,500 kWh, 2,000 kWh, 3,000 kWh, and 5,000 kWh).

- The utility's most recently calculated SAIDI and SAIFI reliability scores as calculated by the Institute of Electrical and Electronics Engineers (IEEE) standards. These scores should be accompanied with either a P for Pass or F for Fail based on whether the score falls above or below the IEEE applicable SAIDI and SAIFI standards outlined in Commission Orders. If a utility does not currently calculate its SAIDI and SAIFI metrics per the IEEE standard, it shall do so to comply with this filing requirement or otherwise explain in detail why its metrics differ from that calculated by the IEEE.
- The total cost of all currently existing storm recovery riders for a typical 1,250 kWh customer.
- The utility's total capacity of owned generation in MWs, with a breakdown in percentages of each resource type the utility owns.
- A breakdown of the utility's prior year O&M expenses by category.
- A graphical representation of the last 10 years of rates for a typical residential customer using 1,250 kWh per month, broken down between fuel and non-fuel rates.
- The utility's planned construction and capital investments broken down by, at least, generation, transmission, and distribution for the subsequent three years.

In addition, a document similar to Exhibit B attached to this report shall be attached to all of the following electric utility filings: (1) annual filings of Formula Rate Plans; (2) a request for a change in base rates, including riders, other than filings for the fuel adjustment clauses or environmental adjustment clauses; (3) a certification request under the Commission's 1983

General Order,<sup>2</sup> which requires the certification of generating facilities; and (4) a request under Commission Order R-26018,<sup>3</sup> which requires the certification of certain transmission facilities. The purpose of Exhibit B is to reflect the projected rate adjustment that will result from that filing. Exhibit B shall also include a listing of all pending rate adjustments that the utility has before the Commission that have not been approved. Should Exhibit B change during the pendency of the docket, Staff will provide an updated version to Commissioners before a final decision is made at a B&E. Electric jurisdictional utilities will cooperate with Staff to update Exhibit B for submission to the Commission.

## ***2. Electronic Filing***

The Commission currently has an open rulemaking to examine the ability and viability of creating an electronic filing system for all parties participating in an LPSC docket. Staff supports the use of electronic filings and believes that this issue should be addressed in the currently pending rulemaking (LPSC Docket No. R-35819). That rulemaking is currently awaiting the development of the software capable of implementing electronic filing. As soon as the software is developed, this issue will be taken up in that rulemaking. Upon the issuance of this Phase 1 Report, these matters will no longer be considered in Docket No. R-35462. All future comments and consideration of these issues will occur solely in LPSC Docket No. R-35819.

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<sup>2</sup> 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 the General Order in Docket No. R-30517 dated October 29, 2008, and corrected May 27, 2009.

<sup>3</sup> General Order dated October 10, 2013 (Docket No. R-26018), In re: Determination As to Whether The Commission Should Issue A General Order Asserting Jurisdiction Over The Certification of Utility Transmission Projects and the Determination of Whether Those Projects Are In The Public Interest.

### ***3. Customer Notice of Increases to Any Rates or Charges***

The Commission currently has an open rulemaking to consider rules regarding notification to be provided to customers in the event of rate increases. Staff supports additional communication between utilities and customers in the event of rate increases and believes that this issue should be addressed in the currently pending rulemaking (LPSC Docket No. R-34490).

Staff recommends that any report in Docket No. R-34490 should consider, but not be limited to considering, the following issues:

- The extent of communication that should be provided to customers in the event of any notification of a proposed rate change, including any explanation of the duration of that rate increase, and a brief explanation of the need for the increase or decrease in rates.
- How such notice should be provided to customers and how they may take part in the LPSC proceeding addressing the rate increase and when the decision of the LPSC is scheduled.

Upon the issuance of this Phase 1 Report, these matters will no longer be considered in Docket No. R-35462. All future comments and consideration of these issues will occur solely in LPSC Docket No. R-34490.

### ***4. Utility Hearing and Litigation Expenses Reported***

When the LPSC and an LPSC-jurisdictional electric utility (or one of its affiliates) will be opposing parties in a contested proceeding before a state or federal court, or at the Federal Energy Regulatory Commission ("FERC"), that utility shall, no later than sixty days (60 days) after commencement of the proceeding, file with the Executive Secretary a report outlining the utility's

expected expenses for litigating the case through the time period allowed by the regulatory or judicial body considering the matter. This report should include the hourly rates and total projected fees to be paid to the following parties representing the utility: attorneys, expert witnesses, and other involved parties to the litigation. This report shall also include all projected allocations of the utility's (or affiliate's) employment expenses for its employed personnel's projected allocation of time to the contested matter. Within sixty (60) days after the conclusion of the proceeding at each tribunal (e.g. FERC, state or federal court) the utility shall submit a listing of the utility's actual hourly rates and total fees paid to the parties representing the utility in the proceeding, including allocations of utility employee expenses, up to that point as well as an explanation of the utility's expectation for recovery of those expenses.

#### **B. The Structure of Requests for Proposals Issued by Utilities**

In 2002, the Commission issued its initial Market Based Mechanisms Order, which was subsequently amended in 2004, 2006, and 2007. In 2008, the Commission issued the current version of the Market Based Mechanisms Order ("MBM" Order), and reiterated the intention of the order to "develop[] a market-based mechanism to evaluate proposals to construct or acquire generating capacity."<sup>4</sup> As further stated:

The adoption of the use of a market based mechanism was to demonstrate that applications for the construction and/or acquisition of additional regulated generation by utilities is the least cost

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<sup>4</sup> General Order dated October 29, 2008 (Docket No. R-26172 Subdocket C), In re: Possible suspension of, or amendments to, the Commission's General Order dated November 3, 2006 (Market Based Mechanisms Order) to make the process more efficient and to consider allowing the use of on-line auctions for competitive procurement. CONSOLIDATED WITH R-30517, 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.



alternative and in the public interest. The Commission believes that the process provides both the structure and use of the wholesale market sought by parties while at the same time preserving to the utilities their traditional responsibility for supply planning and acquisition. The Commission recognizes that the purpose of this process is to provide reliable service at the lowest reasonable cost, while allowing for the use of other public interest project selection criteria.<sup>5</sup>

The MBM Order requires that (1) the electric utility issuing a Request for Proposals ("RFP") hold one or more technical conferences with Commission Staff and participating organizations to review the utility's filings and proposals; (2) the electric utility may proceed with the RFP process after completion of a consultation process with Staff and participants; (3) the electric utility provide RFP bid results and its evaluation of those bids to Commission Staff and participating organizations deemed eligible to review such material subject to appropriate confidentiality projections; and (4) the electric utility provide an opportunity for Staff and eligible participant consultation before selecting purchase power contracts offers and/or rejecting RFP bids in favor of its own capacity construction process.

The current draft of the MBM Order, however, does not require utilities to alter their RFP processes to address concerns raised by participants, including concerns raised by Staff. As is currently allowed under the MBM Order, certain LPSC-jurisdictional utilities have ignored Staff's comments to design an RFP that does not undermine the very goal for which the MBM Order was adopted: "to provide reliable service at the lowest reasonable cost, while allowing for the use of other public interest project selection criteria."<sup>6</sup> In recent dockets, it has been shown that allowing for all potential generating facilities to be considered, including the consideration of Power

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Purchase Agreements (“PPAs”), can lead to savings for customers and that a failure to allow for comparison of those options does not permit the Commission to consider all options that could provide benefits to customers.

The Commission currently has an open rulemaking to recommend changes to the MBM Order.<sup>7</sup> Staff recommends that the issue of the inclusion of PPAs and broad resource consideration in all future RFPs also be considered in the pending rulemaking (LPSC Docket No. R-34247). Related to these matters, Staff suggests that certain specific customer-centered modifications be made to the MBM Order to address the following issues: (1) that all RFPs issued under the MBM order shall allow for PPAs to be included within the RFP process, and (2) that unless there is reliability need expressed, and fully justified by expert testimony from the utility issuing the RFP, all RFPs issued under this order shall allow for all sources of generation to be considered within the RFP. Upon the issuance of this Phase 1 Report, these matters will no longer be considered in Docket No. R-35462. All future comments and consideration of these issues will occur solely in LPSC Docket No. R-34247.

**C. Participation in the Demand Response Process, Including Participation by an Aggregator of Retail Customers (“ARC”)**

In the “Notice of Staff’s Intent to Proceed and Fourth Request for Comments” issued on March 28, 2023, the Staff committed to provide a report regarding the current and future potential rules and regulations for demand response resource participation within Louisiana, including

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<sup>7</sup> The Commission previously had two dockets open to consider changes to the MBM Order. On April 20, 2023, Staff filed a *Consolidation of Rulemakings by Dismissal of Docket No. R-34003* into Docket Nos. R-34003 and R-34247, due to the duplicative nature of the two dockets. The remaining docket is Docket No. R-34247, In re: Rulemaking to consider changes to the Commission General Order dated October 29, 2008, Docket No. R-26172 Subdocket C (“Market Based Mechanism Order”).

participation by ARCs. Those issues were and are primarily being addressed in two existing LPSC Dockets, Docket No. R-35135, *In re: Rulemaking Pursuant to the General Order Dated March 7, 2019 in Docket to Develop Rules Under Which Third-Party Aggregators of Retail Customers Seeking Authority to Operate will be Allowed to do Business Within the LPSC's Jurisdiction* (the “ARC Rulemaking”) and Docket No. R-35136, *In Re: Rulemaking to Determine Need for Rate Schedules and Programs Offering Demand Response Products, Development of Such Rate Schedules and Programs, Determination of Customer Participation in Such Programs, Allocation and Recovery of Program Costs, and Whether Such Programs Shall be Mandatory or Voluntary for Utilities as set Forth in Sec. 3 of the Rule Adopted in General Order Dated March 7, 2019 in Docket No.R-34948* (the “DR Rulemaking”). This report summarizes the status of those proceedings.

### ***1. The ARC Rule Making***

The purpose of the ARC Rulemaking was to develop a set of rules that would be applicable to all ARCs seeking to operate in the LPSC-jurisdictional portions of the State of Louisiana. After the ARC Rulemaking docket was opened, new developments at the FERC and in the Federal Courts occurred that potentially raised issues that could impact the LPSC's ability to regulate ARCs and that would need to be considered in the proceeding. In 2008, FERC issued its Order No. 719, which addressed Demand Response (“DR”) participation in organized wholesale markets and addressed ARCs.<sup>8</sup>

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<sup>8</sup> *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008).

In Order No. 719, FERC required RTOs to permit ARCs to bid demand response on behalf of retail customers directly into RTO markets “unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.” FERC allowed that opt-out because it recognized that allowing ARCs to bid into the wholesale markets without permission from retail regulators could have unintended consequences and place undue burdens on Relevant Electric Retail Regulatory Authorities (“RERRAs”). FERC explicitly found that, “this action properly balances the Commission’s goal of removing barriers to development of demand response resources in the organized markets that we regulate with the interests and concerns of state and local regulatory authorities.” The interests and concerns included the potential for harms to load-serving entities including unanticipated demand reductions, the potential for ARCs to engage in gaming, and the need for retail DR programs to be adjusted to accommodate ARC programs. In Order No. 719-A and 719-B FERC stated that it has jurisdiction to regulate the market rules under which an RTO or ISO accepts a demand response bid into a wholesale market, but it recognized that state regulators should determine the rules for ARC participation in retail and wholesale markets for DR resources.

On September 17, 2020, FERC, in Docket No. RM18-9-000, issued Order No. 2222, which addressed ARCs in the context of DRs and Distributed Energy Resources (“DERs”).<sup>9</sup> Order No. 2222 retained the Order No. 719 opt-out right for DR and Energy Efficiency (“EE”) resources, while allowing ARCs and aggregations of DERs to participate in the RTO markets.<sup>10</sup> Order No. 2222 enabled DERs to participate alongside traditional resources in the regional organized

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<sup>9</sup> *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (2020).

<sup>10</sup> *Id.* at P. 59.

wholesale markets through aggregations and required RTOs to revise their tariffs to establish DERs as a category of market participant. However, FERC shifted course in its Order No. 2222-A, issued on March 18, 2021.<sup>11</sup> In that Order, the FERC found that opt-outs would not apply to heterogeneous DER aggregations that include DR resources because those resources “are not solely aggregations of retail customers” and “extending the opt-out to demand resources in heterogeneous distributed energy resource aggregations would undermine the potential of Order No. 2222 to break down barriers to competition, interfering with our responsibility to ensure wholesale rates are just and reasonable.”<sup>12</sup> On June 17, 2021, FERC issued Order No. 2222-B, which reversed its Order No. 2222-A position and held that the opt-out right would apply to demand response resources that participate in heterogeneous distributed energy resource aggregations.<sup>13</sup> At the same time FERC determined that the opt-out issues would be examined in the ongoing rulemaking Docket No. RM21-14-000.<sup>14</sup> RM21-14 was established as a notice of inquiry on March 18, 2021 seeking comment on whether FERC should revise its regulations and require RTOs to accept aggregator bids from larger utilities when the retail regulators prohibit such customers’ demand response from being bid into organized markets by aggregators.<sup>15</sup> Comments were received to the NOI, and it awaits FERC action.

At the same time, FERC required the RTOs to submit compliance filings addressing tariff changes to allow these DER aggregations, including locational requirements for DER

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<sup>11</sup> *Order Addressing Arguments Raised On Rehearing, Setting Aside Prior Order In Part, And Clarifying Prior Order In Part*, 174 FERC ¶ 61,197, (2021).

<sup>12</sup> *Id.*, Order No. 2222-A, at P 23.

<sup>13</sup> Order No. 2222-B, 175 FERC ¶ 61,227 (2021) at P. 26.

<sup>14</sup> *Id.*

<sup>15</sup> *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (2021).

aggregations, distribution factors and bidding parameters, information and data requirements, metering and telemetry requirements, rules for coordination between the RTO, ARC, distribution utilities and retail regulators, and rules avoiding double-counting of payments across multiple DER programs. On April 14, 2022, MISO filed its Order No. 2222 compliance filing in FERC Docket No. ER22-1460. MISO proposed an October 1, 2029 implementation date due to the need to complete its new computer system and the prioritization of projects with greater potential benefits when that system is operational. FERC required MISO to submit additional information regarding its compliance filing, MISO complied, but FERC has not acted on that compliance filing. SPP submitted a compliance filing in FERC Docket No. ER22-1697, on April 28, 2022. SPP submitted an uncertain future implementation date due to the need to evaluate and implement software changes needed to comply with FERC's order. FERC sought additional information from SPP, SPP complied, but FERC has not yet acted on SPP's compliance filing. Staff has delayed issuance of an ARC recommendation with the hope that FERC guidance related to DER and DR issues on Order No. 2222 compliance for MISO and SPP would be forthcoming.

Based on the direction provided in this docket, Staff is providing this summary report regarding the status of ARCs in this docket and will be making a full Report and Recommendation in the ARC Rulemaking contemporaneously or shortly after the issuance of this Phase 1 Report. Generally, that Initial Report and Recommendation will propose for comment that ARCs be allowed to aggregate load for participation in wholesale DR programs if the ARC is approved to operate in Louisiana, in a pilot program for larger commercial and industrial customers, through utility rate schedules, with the utility acting as the market participant. Staff directs interested parties to the "Initial Staff Report and Recommendation" to be issued in LPSC Docket No. R-35135 for the details of Staff's recommendations. Upon the issuance of this Phase 1 Report, these

matters will no longer be considered in Docket No. R-35462. All future comments and consideration of these issues will occur solely in LPSC Docket No. R-35135.

## ***2. The DR Rulemaking***

Docket No. R-35136, the DR Rulemaking, was initiated by the LPSC by its General Order issued on March 7, 2019 in Docket No. R-34948.<sup>16</sup> Section 3 of that rule states: The Commission shall open a rulemaking proceeding within 30 days after a final rule is issued in this docket to:

- 1) determine the need for rate schedules and programs offering Demand Response products;
- 2) develop comprehensive sets of rate schedules and programs offering retail Demand Response products and allowing for the participation of their own Louisiana Retail Customers in the Demand Response programs, rate schedules, or markets of the RTOs in which they are a member;
- 3) determine whether certain larger customers should be allowed to participate directly in wholesale demand response programs and under what conditions; and
- 4) determine how the costs and benefits of any such rate schedules and programs shall be allocated and recovered.

The Commission will determine in any final rule whether these rate schedules and programs shall be mandatory or voluntary, and it shall have approval authority over any rate schedules and programs that are developed.

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<sup>16</sup> General Order dated March 7, 2019 (Docket No. R-34948), In re: Rulemaking to study the implications of participation of Aggregators of Retail Customers to determine whether, and under what conditions, such activity should be allowed in the Louisiana Public Service Commission's jurisdiction.

After a comprehensive rulemaking process, the Commission issued General Order dated May 26, 2021 (R-35136), which recognized the potential benefits of retail DR programs and required LPSC-jurisdictional utilities to file applications to implement specified DR programs or demonstrate why those programs are not in the best interests of customers. Compliance filings were made pursuant to that General Order, which remain under evaluation. Interested parties should review General Order dated May 26, 2021 (R-35136)<sup>17</sup> for more details on the requirements for demand response programs. Upon the issuance of this Phase 1 Report, these matters will no longer be considered in Docket No. R-35462. All future comments and consideration of these issues will occur solely in LPSC Docket No. R-35136.

#### **D. Electric Service for Electric Vehicles**

The successful implementation of a robust and accessible infrastructure for statewide electric vehicle charging will require the cooperation of a variety of public and private stakeholders. In Louisiana, the EV transition will involve, or already involves, coordination among ratepayers, consumer advocacy groups, industry groups, trade organizations, electric utilities, electric utility regulators (the LPSC and the Council for the City of New Orleans), the Legislature, the Department of Transportation and Development (“DOTD”), the Department of Agriculture, local government agencies, and EV charging station manufacturers.

Not all issues relating to the EV transition and the implementation of a statewide EV charging infrastructure are (or will be) subject to the jurisdiction of the LPSC. For example, DOTD

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<sup>17</sup> General Order dated May 26, 2021 (Docket No. R-35136), In Re: Rulemaking to Determine Need for Rate Schedules and Programs Offering Demand Response Products, Development of Such Rate Schedules and Programs, Determination of Customer Participation in Such Programs, Allocation and Recovery of Program Costs, and Whether Such Programs Shall be Mandatory or Voluntary for Utilities as set Forth in Sec. 3 of the Rule Adopted in General Order Dated March 7, 2019 in Docket No. R-34948.



is responsible for implementing the state's participation in the National Electric Vehicle Infrastructure ("NEVI") program. The Legislature has tasked the Department of Agriculture and Division of Weights and Measures with regulating the measuring devices used at EV charging equipment points of sale, similar to those used at retail gasoline pumps. Decisions regarding the placement and permitting of electric vehicle charging stations also may be subject to approval from local government land use, planning and zoning, and/or public works departments.

This section of Staff's report will focus on the current state of the implementation of EV charging infrastructure across Louisiana, including actions undertaken by electric utility regulators (the LPSC and the Council for the City of New Orleans), investor-owned electric utilities, the Louisiana Legislature, and the DOTD. Additionally, this section of the report addresses the potential issues the LPSC may need to address as EVs become more prevalent in Louisiana and thereby necessitate an increase in EV charging infrastructure.

### ***1. Electric Utility Regulators***

Separate from the instant proceeding, the LPSC opened a docket to determine the Commission's jurisdiction over the various methods of providing electricity to EVs and the infrastructure associated therewith. LPSC Docket No. R-36131 (the "EV Docket") was initiated as the result of Commissioner Skrmetta's directive to Staff at the July 14, 2021 B&E that instructed, in part:

... open a rulemaking proceeding to determine the Commission's jurisdiction over electric vehicle charging stations or any other method of providing electricity to electric vehicles and whether a

non-jurisdictional entity that owns and/or operates a charging station is subject to the Commission's jurisdiction.<sup>18</sup>

Many parties intervened in the EV Docket, including the three IOUs operating in Louisiana and under the jurisdiction of the Commission (Entergy Louisiana, Cleco, and SWEPCO); municipalities and electric cooperatives operating in Louisiana (Lafayette Utilities System, Pointe Coupee Electric, and the Association of Louisiana Electric Cooperatives); EV charging infrastructure providers (ChargePoint and Tesla); and a variety of other industry and consumer advocacy groups including the Alliance for Affordable Energy, the Louisiana Energy Users Group, Gulf States Renewable Energy Industries Association, Americans for Affordable Clean Energy, Alliance for Transportation Electrification, and the Louisiana Automobile Dealers Association. The Louisiana Department of Revenue also filed as an interested party.

Staff solicited comments from the intervenors in the EV Docket<sup>19</sup> and proposed certain recommendations, for which Staff solicited additional comments.<sup>20</sup> Among other things, Staff sought from intervenors feedback regarding the proposed definition of an “electric vehicle charging station” to be used by the Commission, as well as to what extent other regulatory jurisdictions (apart from the LPSC) have determined EV charging stations to be considered “public utilities.”<sup>21</sup>

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<sup>18</sup> LPSC Notice of Proceeding filed in LPSC Docket No. R-36131 dated August 17, 2021.

<sup>19</sup> Staff's Initial Request for Information and Comments filed in LPSC Docket No. R-36131 dated April 21, 2022.

<sup>20</sup> Staff's Proposed Recommendation filed in LPSC Docket No. U-36131 dated February 23, 2023.

<sup>21</sup> Staff's Initial Request for Information and Comments filed in LPSC Docket No. R-36131 dated April 21, 2022.

Staff issued its Final Recommendation in LPSC Docket No. R-36131 on April 21, 2023.<sup>22</sup>

Ultimately, Staff recommended the Commission adopt the following definition of an electric vehicle charging station:

An Electric Vehicle Charging Station is a person or entity that:

- (i) Purchases electricity from its electric public utility or municipal electric utility;
- (ii) Furnishes that electricity to the public for compensation exclusively to charge battery electric vehicles and plug-in hybrid electric vehicles; and
- (iii) Is not otherwise a public utility or electric public utility as defined by the Commission and Louisiana statutes.<sup>23</sup>

Staff recommended that the Commission, at this time, decline to exert its jurisdiction over electric vehicle charging stations primarily because electric vehicle charging stations are generally in the business of the resale of electricity and not engaged in the generation, transmission, distribution, and/or sale of electricity.<sup>24</sup>

Additionally, Staff requested the Commission “...require all jurisdictional electric utilities to submit a proposed rate schedule pursuant to Section 501 of General Order dated July 1, 2019 for Commission consideration... within sixty days of a Commission order adopting Staff’s proposed definition...”<sup>25</sup>

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<sup>22</sup> Staff’s Final Recommendations filed in LPSC Docket No. R-36131 dated April 21, 2023.

<sup>23</sup> *Id.* at page 5.

<sup>24</sup> *Id.* at pages 5-6.

<sup>25</sup> *Id.* at page 6.

Further, Staff recommended the Docket remain open for a Phase II review of other issues raised in the Docket surrounding electric vehicle charging stations and to allow for the consideration of additional rules.<sup>26</sup> Such additional rules may incorporate:

- Potential cybersecurity issues arising from the proliferation of electric vehicle charging stations;
- Volumetric vs. time-based electric vehicle charging pricing and whether there should be consistency between public utility pricing and electric vehicle charging pricing;
- Issues regarding service complaints;
- How certain electric vehicle charging station on-site generating units should be treated for regulatory purposes; and
- The circumstances under which a regulated electric utility can own, lease, operate, or control an electric vehicle charging station.<sup>27</sup>

Staff's Proposed Final Recommendation was placed on the agenda for the Commission's April 26, 2023 Business & Executive Session. This matter was discussed, and Commissioner Francis made the following motion:

I move that the Commission adopt Staff's Final Recommendation issued April 21, 2023 and further require: That Staff establish a procedural schedule in this docket for determination on Phase 2, including a best efforts deadline of July 31, 2023 for Staff to provide a report and proposed rules on Phase 2, as addressed by Staff in Docket No R-35462, including on "the circumstances under which a regulated electric utility can own, lease, operate, or control an EV charging station." This best efforts deadline is consistent with Staff's estimate provided in the Notice of Intent filed in Docket No. R-35462 regarding electric service to electric vehicles. Any changes

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

made to the estimate deadline in that docket will apply to the deadline in this docket, with an update of the changes provided to Commissioners.<sup>28</sup>

LPSC Order No. R-36131, dated May 24, 2023 (“EV Order”) memorialized Staff’s Recommendation and Commissioner Francis’s motion.<sup>29</sup> Pursuant to the terms set forth in Staff’s Final Recommendation and the EV Order, as of the date of this report, only Entergy Louisiana, Northeast Louisiana Power Cooperative, and Panola-Harrison Electric Cooperative have filed electric vehicle charging station rate schedules into the EV Docket. Additionally, no procedural schedule has been filed into the EV Docket.

The Council of the City of New Orleans (the “Council”), regulator of Entergy New Orleans (“ENO”), initiated its own EV and “Smart Cities” dockets (collectively, the “CNO dockets”).<sup>30</sup>

Regarding EVs the Council held:

1. That the council finds that encouraging the use of electric vehicles is in the public interest and consistent with the policies of this Council as expressed in Resolution Nos. R-17-428 and R-17-303
2. That the construction, location and operation of electric vehicle charging stations on both private and public property should be encouraged.
3. That a person or entity that purchases electricity from Entergy New Orleans or another utility regulated by the New Orleans City Council and furnishes such electricity exclusively to charge electric vehicles, to or for the public, for compensation, never was, and is not now, a utility or public utility as those terms are used in the New Orleans Home Rule Charter and the New

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<sup>28</sup> Minutes from the LPSC’s April 26, 2023 Business and Executive Session, page 5.

<sup>29</sup> General Order dated May 24, 2023 (Docket No. R-36131). In re: Determination of Commission Jurisdiction Over the Various Methods of Providing Electricity to Electric Vehicles, and the Infrastructure Associated Therewith.

<sup>30</sup> See Council of the City of New Orleans Utility Dockets UD-18-01 and UD-18-02.

Orleans City Code, and is not subject to the Council’s utility regulatory authority....<sup>31</sup>

ENO has generally agreed with the Council’s actions to date regarding electric vehicle regulation and stated, “ENO believes the Council should engage in additional efforts to promote EV adoption and to promote the installation of much-needed EV-related infrastructure.”<sup>32</sup> Additionally, ENO discussed plans arising out of its 2018 rate case before the Council wherein it proposed to invest \$500,000 in public charging infrastructure on City-owned property throughout New Orleans.”<sup>33</sup> Also, as a result of the 2018 rate case, the Council approved the Electric Vehicle Charging Infrastructure Rider (“EVCI Rider”) to fund a program open to non-residential customers for ENO to construct, own, and operate EV charging infrastructure on customer-owned property, with the cost of the investment recovered from the customer through a fixed monthly charge over a ten year period.<sup>34</sup> Any operation and maintenance costs will be determined by the level specified by the customer (ENO can provide ongoing monitoring, preventative maintenance and related services, if requested by the customer) and billed as a pass-through charge.<sup>35</sup>

In its comments, ENO touched briefly on the consequences of “socializing” the cost of installing electric vehicle charging stations across customers, stating that the cost of energy for installing 30 to 50 Level 2 charging stations would be *de minimus*, as evidenced by evidence

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<sup>31</sup> New Orleans City Council, Resolution R-18-100 filed in CNO Utility Docket No. UD-18-02 dated April 5, 2018, pages 3-4.

<sup>32</sup> Comments of Entergy New Orleans, LLC filed in CNO Utility Docket No. UD-18-01 dated October 11, 2019, page 4.

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

<sup>34</sup> Council Utility Advisors’ Report on Information Gathering in Connection with Regulatory and Related Matters Concerning Electric Vehicles and Electric Vehicle Charging Facilities Pursuant to Resolution No. R-18-537 filed in CNO Utility Docket No. UD-18-01 dated April 1, 2020, page 14.

<sup>35</sup> *Id.* at page 15.

submitted as part of their 2018 rate case.<sup>36</sup> ENO also pointed out the fact that the council also annually “...socializes millions of dollars’ worth of investments in energy efficiency and demand response to customers to support [ENO’s] Energy Smart program.”<sup>37</sup>

## **2. *Investor-Owned Electric Utilities***

Entergy Corporation sponsors the eTech program which “promotes the adoption of electric-powered alternatives to many applications that traditionally require fossil fuels. The program provides customer support by dedicated field representatives and financial incentives to Entergy customers who purchase select electric equipment.”<sup>38</sup> ELL’s coverage area is under the jurisdiction of the eTech program.

The eTech program offers cash incentives to those customers who purchase, on their own, at their own expense, select electric equipment. From the eTech website:

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<sup>36</sup> Comments of Entergy New Orleans, LLC filed in CNO Utility Docket No. UD-18-01 dated October 11, 2019, page 11.

<sup>37</sup> *Id.* at page 12.

<sup>38</sup> See <https://entergyetech.com/>

## Electric Technology



## Entergy Cash Incentive

Forklifts	\$250 – \$500
Digital Billboards	\$1,500 – \$5,000
Man Lift (Scissor Lift or Boom Lift)	\$100
Light Duty Electric Burden Carrier	\$100
Walk-Behind Floor Scrubber	\$100
Riding Floor Scrubber	\$150
Golf Cart	\$150
Level 2 EV Charger (Plug)	\$250

## Case-by-Case Basis

Truck Stop and Fleet Electrification	Rail or Mining Equipment
Material Handling Equipment	Industrial Equipment
Marine and Port Equipment	Industrial Welding
Airport Ground Support Equipment	Many other technologies may qualify

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Regarding electric vehicles, specifically, the eTech program offers a \$250 cash incentive for those customers who install a “Residential Level 2 EV Charger.”<sup>40</sup>

Meanwhile, ENO has a website specifically dedicated to electric vehicle charging stations for non-residential customers within in the City of New Orleans.<sup>41</sup> From ENO’s website:

Entergy New Orleans now partners with its customers to install and maintain EV chargers. Whether you’re a property developer trying

<sup>39</sup> <https://entergyetech.com/>

<sup>40</sup> <https://entergyetech.com/electric-vehicles/>

<sup>41</sup> <https://www.energy-neworleans.com/evcs/>



to include EV chargers in your project, a business owner trying to make charging available at the workplace and/or for your customers, or a fleet manager pursuing the benefits of electric fleet operations, Entergy can partner with you to select, install and maintain EV charging equipment to meet your needs.

Our experts will assist you in designing the optimal charging layout and number of chargers for your location and finding the right charging solution, such as Level 2 or DC Fast Charger.

The cost of the charger(s), installation and maintenance will be added to your monthly Entergy New Orleans bill.<sup>42</sup>

Residential customers in ENO's service territory are only offered the Residential Level 2 EV Charger \$250 cash incentive offered through the eTech program.<sup>43</sup>

Cleco maintains a page on its website dedicated to electric vehicles that explains the various types of electric vehicles, advantages of electric vehicles, a cost comparison between combustion engines and electric vehicles, plug-in hybrid and electric vehicles available, different types of electric vehicle battery systems, and a search tool for public electric vehicle charging systems. In part, Cleco states, "...Cleco is pledging to support EVs and its infrastructure with the goal of bringing business and industry to our service territory, as well as supporting energy efficiency and a reduction in carbon emissions nationwide."<sup>44</sup>

SWEPCO maintains a page on its website dedicated to the benefits of electric vehicles. Anyone inquiring about electric charging stations, qualified installation contractors, or local incentives are directed to contact [pev@aep.com](mailto:pev@aep.com).<sup>45</sup>

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<sup>42</sup> <https://www.entergy-neworleans.com/evcs/>

<sup>43</sup> <https://www.entergy-neworleans.com/evcs/>

<sup>44</sup> <https://www.cleco.com/residential-commercial/energy-efficiency-renewables/electric-vehicles>

<sup>45</sup> <https://www.swepco.com/clean-energy/electric-cars/>

### 3. *The Legislature*

Aside from electric utility regulators, the Legislature also has an interest in the successful implementation of EV charging infrastructure across the state. Senate Bill 460 of the 2022 Regular Session of the Louisiana Legislature, later signed by Governor John Bel Edwards and enrolled as Act No. 762, is known as the “Electric Vehicle Charging Equipment Network Act” and states:

The Louisiana Legislature hereby finds it necessary and in the best interest of the state to promote rapid development of a statewide electric vehicle charging network by doing all of the following:

- (1) Improving the quantity, quality, and variety of electric vehicle charging amenities and consumer experiences available in the state.
- (2) Urging the Louisiana Public Service Commission to establish an electric vehicle charging rate structure that promotes long-term alternative fuel market competition by encouraging transparent pricing, more stable electricity costs, expanded investment opportunities in charging infrastructure, innovation, and widespread implementation of publicly available fast charging, electric vehicle charging technology and equipment.
- (3) Urging the Louisiana Public Service Commission to explore excluding persons or corporations from the definition of public utility when all of the following occur:
  - a. These persons or corporations purchase electricity from an electric public utility or a municipal electric utility.
  - b. Those persons or corporations furnish electricity exclusively to charge battery electric vehicles and plug-in hybrid electric vehicles to or for the public for compensation.
  - c. Those persons or corporations do not otherwise operate as a public utility.<sup>46</sup>

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<sup>46</sup> Senate Bill 460 of the 2022 Regular Session of the Louisiana Legislature, by Senator Rick Ward, enrolled as Act No. 762.

House Bill 60 of the 2023 Regular Session of the Louisiana Legislature, later signed by Governor Edwards and enrolled as Act No. 293, includes the measuring devices at the point of sale as part of electric vehicle supply equipment (electric vehicle charging stations for consumer use) under the jurisdiction of the Louisiana Department of Agriculture, Division of Weights and Measures, similar to those used at retail gasoline pumps.<sup>47</sup>

#### ***4. DOTD and the NEVI Formula Program***

As part of the Bipartisan Infrastructure Law, enacted as the Infrastructure and Investment Jobs Act (“IIJA”) on November 15, 2021, the federal government aims to build out a nationwide network of 500,000 EV chargers by 2030.<sup>48</sup> The IIJA allocated \$5 billion to the National Electric Vehicle Infrastructure (“NEVI”) Formula Program, which provides states with funding to build out EV charging infrastructure along designated Alternative Fuels Corridors (“AFCs”) mainly along the Interstate Highway System.<sup>49</sup> Over a five year period, beginning in fiscal year 2022, Louisiana will receive approximately \$73 million dollars under the NEVI Formula Program.<sup>50</sup> DOTD is responsible for administering the NEVI Formula Program in Louisiana.<sup>51</sup>

Louisiana DOTD intends to provide grant funding for 80% of the costs of EV infrastructure projects within one mile of designated AFCs (during Phase I).<sup>52</sup> In Louisiana, designated AFCs

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<sup>47</sup> House Bill 60 of the 2023 Regular Session of the Louisiana Legislature, by Representative Michael Echols, enrolled as Act No. 293

<sup>48</sup> <https://www.fhwa.dot.gov/environment/nevi/>

<sup>49</sup> *Id.*

<sup>50</sup> Public Meeting Presentation Slides (found at [http://wwwsp.dotd.la.gov/Inside\\_LaDOTD/Divisions/Operations/Electric-Vehicle/Pages/default.aspx](http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Operations/Electric-Vehicle/Pages/default.aspx))

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

include Interstates 10, 12, 110, 210, 610, 220/Loop 3132, 49 (and future I-49 corridor including I-910, US 90, and US 167), 59, 55, and LA 1/LA 3235.<sup>53</sup>

Under Phase 1 of the program, DOTD is planning for 120 DC fast chargers to be installed at 30 new and upgraded sites along AFCs.<sup>54</sup> Phase 2 of the program calls for 190 new sites beyond the AFCs with approximately 760 total EV chargers including both Level 2 and DC fast chargers.<sup>55</sup> Federal requirements require chargers must be available for public use, ADA compliant, accessible 24/7, multilingual, contain a Type 1 Connector, include directional signage, and be a maximum of fifty miles apart (without a waiver), among other requirements.<sup>56</sup>

As of June 2023, DOTD is continuing to finalize the RFP for the first round of grant applications and anticipates this RFP will be released in the late summer or early fall.<sup>57</sup> The only LPSC-jurisdictional electric utility that responded to DOTD's Notice of Intent for funding under the NEVI Formula Program was Cleco.<sup>58</sup> Other Louisiana electric utilities that responded were ENO and Lafayette Utility Systems, although they are not subject to the jurisdiction of the LPSC.<sup>59</sup>

Nothing in DOTD's literature inherently prevents electric utilities from receiving NEVI Formula Program grant funds. Additionally, DOTD intends that grant recipients will have to work with the local utilities serving each site to determine the costs related to serving prospective EV charging infrastructure, to include components to connect the station to an electricity source,

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> 2022 Notice of Intent Respondents (found at [http://wwwsp.dotd.la.gov/Inside\\_LaDOTD/Divisions/Operations/Electric-Vehicle/Pages/default.aspx](http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Operations/Electric-Vehicle/Pages/default.aspx))

transformers and other on-site electrical equipment for power, costs to acquire and install electric service, equipment, and upgrades (e.g., power meter, transformer, switch gear), and any minor grid upgrades to connect the station to the grid distribution network (such as extending power lines or upgrading existing lines).<sup>60</sup>

## ***5. Conclusions and Recommendations***

Staff recommends that any additional discussion or action regarding EV and EV charging station regulation in Louisiana, to the extent such issues may be subject to the regulatory authority of the LPSC, occur in the EV Docket. However, to address the Commission's direction for a best-efforts deadline for Staff to provide a report and proposed rules on Phase 2, Staff provides the following key issues that should be considered in that rulemaking, along with its initial recommendations:

- Whether or not utility customers installing EV charging equipment at their homes, workplaces, or other properties will be required to have such EV charging equipment separately metered, submetered, or incorporated into the existing meter. Staff initially recommends that the choice be left to the customer on whether they decide to separately meter the EV charging equipment. This is not dissimilar to a customer of a water utility requesting a separate meter that does not include a sewerage charge for purposes of watering plants or filling a swimming pool. Customers generally have the option there, and Staff believes that utilities should establish processes to provide that option for EV customers.

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<sup>60</sup> Public Meeting Presentation Slides (found at [http://wwwsp.dotd.la.gov/Inside\\_LaDOTD/Divisions/Operations/Electric-Vehicle/Pages/default.aspx](http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Operations/Electric-Vehicle/Pages/default.aspx))

- What incentives, if any, might be available to customers to install EV charging equipment. Staff is not opposed to the type of incentive offered through the Etech program discussed above. Staff further recommends that each utility provide a rate schedule similar to an Additional Facilities Charge (“AFC”) rate schedule to provide customers an option to spread out the cost for the installation of EV charging equipment.
- To what extent an electric utility might be able to recover the costs of installing and maintaining EV charging stations, assuming the LPSC allows electric utilities to participate in providing EV charging stations to retail customers. The LPSC thus far has declined to exert its jurisdiction over electric vehicle charging stations. Consistent with that direction, Staff recommends that LPSC-jurisdictional utilities not be allowed to maintain and operate EV charging stations. Nevertheless, such prohibition would not limit a utility’s unregulated affiliate from maintaining and operating an EV charging station in Louisiana, provided that the utility’s affiliate is subject to the same rules as any other entity installing an EV charging station. In other words, an affiliate of an LPSC jurisdictional utility could maintain or operate an EV charging station provided that none of the costs of those operations are included in regulated retail rates. However, if this path is chosen by an LPSC jurisdiction utility, Staff recommends that the LPSC require the jurisdictional utility to annually file a report showing all allocations of costs and expenses associated with or otherwise subsidizing the affiliate’s operation and maintenance of the EV charging station to ensure that jurisdictional retail customers are not being allocated

any costs associated with the affiliate's operation and maintenance of the EV charging station(s).

- Whether or not electric vehicle charging pricing to the end user should be based on volumetric or time-based pricing. The LPSC has, to date, declined to exert its jurisdiction over electric vehicle charging stations and Act No. 293 of the 2023 Regular Session of the Louisiana Legislature placed the measuring devices at the point of sale under the jurisdiction of the Louisiana Department of Agriculture, Division of Weights and Measures. Accordingly, Staff's opinion is that pricing determinations are best handled by the Louisiana Department of Agriculture.

Staff proposes that the recommendations in this report be filed in Docket No. R-36131 with a request for comments on the issues and recommendations listed, along with any other recommendations commenters may wish to provide. Additionally, Staff recommends that it continue monitoring and coordination with other state agencies' relevant activities being undertaken relating to the EV transition and buildout of EV charging infrastructure statewide. Within Docket No. R-36131, Staff will develop a process to provide such updates to the Commission.

Upon the issuance of this Phase 1 Report, these matters will no longer be considered in Docket No. R-35462. All future comments and consideration of these issues will occur solely in LPSC Docket No. R-36131.

## **E. Renewable Options**

One of the key customer centered options that has been presented in recent years is the opportunity for customers to voluntarily source their electricity from renewable generation. There

are essentially four options for customers to do so and the Staff has examined each of those options to evaluate their benefits and costs. Those four options as summarized by the Staff are: (a) "Traditional" PPAs and Ownership of Renewable Resources; (b) "Virtual" PPAs; (c) "Sleeved" PPAs; and (d) Green Tariffs.

### ***1. The Renewable Options***

#### **a. Utility Ownership of Renewable Resources / Traditional PPAs**

Utility ownership of renewable generation is treated no differently than ownership of any other type of generation in terms of ratemaking. The capital costs are included in rate base and charged to customers via cost-based ratemaking, and customers receive the benefit of the energy provided by the renewable resources as opposed to the costs of fuel from traditional resource types. Likewise, traditional PPAs are well understood and have been negotiated between utilities and generation providers for decades. They are subject to the Commission's review under the MBM Order and the 1983 General Order. The basic structure of a PPA is that the utility pays a generation developer/owner a set \$/MWh rate in exchange for the energy from the developer/owner's facility and, in turn, receives the energy and sometimes capacity from that facility. Within the current RTO paradigm, the utility then sells that energy into the RTO market (if participating in a market) and is compensated at locational marginal pricing ("LMP"). The difference between the price paid to the developer/owner (\$/MWh) and the LMP price received by the utility from the RTO (\$/MWh) is a benefit or cost that is flowed through to most retail customers, typically through fuel



adjustment clauses. The value, if any, of the Renewable Energy Certificate (“REC”)<sup>61</sup> associated with the renewable resource is shared with customers if the utility monetizes those RECs in a REC market.

#### **b. Virtual PPAs**

Virtual PPAs predominantly occur within an RTO energy market where the generation developer/owner is free to construct a resource and sell the energy from that resource into that market at a price determined by the RTO market. Regulated utilities are not directly involved in this transaction, as the direct financial transaction from the sale of energy (and capacity) is conducted by the generator developer/owner in the RTO market (*i.e.*, MISO and SPP). In a virtual PPA, the generation developer/owner sells the energy from the facility into the MISO or SPP market and receives compensation for the energy from its facility at the RTO LMP. Any generator developer/owner can do this in MISO or SPP today, renewable or not.

The key aspect of the virtual PPA is that the generator/developer/owner described above enters into a “contract for differences” with a participating customer (typically an industrial or group of commercial customers). In a contract for differences, the participating customer agrees to pay the generator developer/owner a fixed \$/MWh fee in exchange for the RTO market revenues that the generator developer/owner receives from the MISO Market. Virtual PPAs provide price certainty in cash flow to the generator developer/owner so that it can receive financing for the

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<sup>61</sup> A REC is a market-based instrument. There are specific markets and mechanisms that provide for the trading of RECs between renewable generator owners and those seeking the benefit of holding the REC. The holder of the REC receives the rights to the environmental, social, and other non-power attributes of the renewable resource to which the REC is assigned. They are issued on a MWh basis and paid for on a \$/MWh basis, and both are associated with the MWhs produced by the accredited renewable generator.

project and the participating customer accepts the market risk/benefit of the energy value produced by the resource in exchange for the RECs. Non-participating customers should see no direct effect as a result of this type of transaction. Nevertheless, there is the potential that an influx of virtual PPAs could indirectly lead to increased congestion charges and costs for transmission upgrades for reliability that would be borne by the host utility and therefore passed on to non-participating customers. This would be primarily driven by the lack of incentive in virtual PPAs for the generator developer/owner to register its resource as a network resource within the RTO because such registration would require the generator/developer to incur cost for transmission upgrades for the interconnection of that asset. Without those transmission upgrades being performed at the time of the generator interconnection, utility customers are likely to incur increased congestion costs and the costs of future transmission upgrades necessary to relieve such congestion.

### **c. Sleeved PPAs**

Within an RTO energy market, there is little difference between a Sleeved PPA and a Virtual PPA from the participating customer perspective. In both cases, the participating customer accepts the market risk/benefit of the resource in exchange for the RECs. Because Virtual PPAs are readily accessible in areas covered by RTO energy markets, Sleeved PPAs are more prevalent where utilities are not participating in an RTO energy market.

Similar to traditional PPAs, regulated utilities are still involved in sleeved PPAs as they would have to execute the contract with the renewable asset developer at the negotiated rate brought to it by the participating customer “sleeving” the PPA and the utility would still interact with the RTO for the sale of energy (and potentially capacity) within the market. The key differences between a sleeved PPA and a traditional PPA are that in a sleeved PPA:

- (a) The participating customer negotiates the PPA and brings it to the utility. As such, it does not go through a Request for Proposal (“RFP”) process that may be subject to Commission rules and regulation.
- (b) The participating customer bringing the sleeved PPA to the utility gets all of the net economic benefit or cost of that particular PPA, including the RECs associated with it.

Both of these differences could lead to customers participating in a Sleeved PPA getting the best economic resources, which would lead to those customers receiving all of the benefits of those resources to the potential detriment of the non-participating customers. In addition, because of the economics associated with this Sleeved PPA transaction, without a regulatory requirement, it is likely that the renewable asset will not register as a network resource in the applicable RTO and therefore host utility customers will not directly recognize any capacity benefits of the resource within the RTO market.

#### **d. Green Tariffs**

Under a green tariff model, a participating customer pays to the utility a set subscription fee corresponding to a certain portion of the utility’s renewable portfolio, and in exchange, that participating customer receives the MISO market revenues (at LMP) for the portion of the portfolio to which it subscribed. Green Tariffs can be structured based on utility owned generation or third party PPAs entered into by the utility. If based on a third party PPA, then similar to a sleeved PPA, the utility directly contracts with the developer/generator owner and the financial risks within the energy market are born by the participating customer.

The subscription fee for participating customers is calculated by the utility (subject to Commission approval) and is based on the cost that the utility incurs for owned generation or pays

to the developer/generator for third party PPAs, usually with a discount based on some portion of the capacity value that the new renewable resource provides. That discount is then paid for by the non-participating customers. The end result is that the participating customer receives all of the Renewable Energy Credits (RECs) from the renewable asset and either (1) incurs net costs when the LMP is lower than the subscription costs or (2) receives net revenues when the LMP is higher than the subscription costs. And, the non-participating customers get the benefit of a capacity resource at a discounted value without the risks (or benefits) associated with energy price differentials between the energy costs of the renewable resources and the LMP price received for that generation.

## ***2. Staff's Recommendation***

After reviewing the options available for customers to reach their individual goals of sourcing energy from renewable resources, Staff has three recommendations within this rulemaking.

First, Staff concludes that Louisiana customers within the RTO markets in which their utilities already operate, have the option of achieving their renewable goals without LPSC interaction through the use of Virtual PPAs. As such, it is not necessary for the LPSC to establish rules and programs for Sleeved PPAs when the outcomes sought through that type of transaction are already available to the very customers that would be proposing Sleeved PPAs (*i.e.*, large industrial and commercial customers). The use of Sleeved PPAs as opposed to Virtual PPAs would simply shift risks to non-participating customers with no discernable benefit to non-participating customers. As such, Staff recommends that no such rules be established.

Staff agrees, however, that it is beneficial to develop programs that allow for customers of all classes to receive access to the attributes of renewable generation if they so choose.

Additionally, Staff agrees that it is important to incentivize utilities to provide those options as a customer centric opportunity *if* those options can provide benefits to both participating and non-participating customers. In Staff's view, the utility Green Tariff option provides the best opportunity for this result. In previous dockets, Staff consultants have suggested that there be a requirement for all utilities to develop such a Green Tariff option for the benefit of their customers.<sup>62</sup> Staff reinforces that position here and, as such, Staff's second recommendation is that should the Commission require all utilities to update their Tariffs to include a Green Tariff option rate schedule for the benefit of their customers, it should be in a separate docket, or otherwise make a filing in a separate docket explaining to the Commission's satisfaction why such a Green Tariff rate schedule would not be reasonable for that specific utility.<sup>63</sup>

Finally, Staff's third recommendation is that to the extent renewable resources sourced by the utility are not subscribed by a participating customer, whether under a Green Tariff or any other model, there should be a standard requirement that the value of any REC proceeds be credited to the benefit of customers. This condition would require that all RECs received from renewable resources be credited to the benefit of customers, either through a utility's FAC or through a separate rider that provides for dollar-for-dollar credit of the REC revenue to the utility's customers.

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<sup>62</sup> See Direct Testimony of Jonathan Bourg in LPSC Docket U-36385 at page 22 (Suggesting "a requirement that SWEPCO further develop a Green Tariff offering within 3 months of any Commission approval of the Selected Wind and Solar Facilities in this docket.")

<sup>63</sup> The Commission has a rulemaking open to study certain tariff options (Docket No. R-35423, In re: Rulemaking to Study Renewable Energy Tariff Options with a Focus on Bringing New Renewable Resources into Louisiana); however, no final rules have been promulgated in that docket. In order to avoid duplicative rules on the same issues, Staff recommends the Commission close Docket No. R-35423 and consider recommendations regarding Green Tariffs in this docket.

### 3. *Other Proposals*

#### a. **Distributed Sun's Proposal**

At the Technical conference held in this docket on December 15, 2022, Distributed Sun made a presentation that explained its proposal for a program that would provide the costs and benefits of renewable generation to industrial customers seeking such renewable generation options. Staff has had several meetings with Distributed Sun's representatives. From a cost recovery perspective, Distributed Sun's proposal can be viewed similarly to a PPA between the participating utility and Distributed Sun. The utility pays the cost of the PPA and in turn would receive the energy benefits in the RTO market. The benefits would be shared with customers through the utility's FAC as is required under Commission orders; the costs would presumably be recovered through the same mechanism, though this is not clear under the proposal.

Distributed Sun's proposal provides for a multiparty transaction that changes the nature of the direction of cash flows, but ultimately results in something akin to a Sleeved PPA with a *variable* pricing mechanism. As with a Sleeved PPA, Distributed Sun is proposing that it identify and negotiate for the renewable project being brought to the utility for inclusion in retail rates. There are essentially three parties that receive costs and benefits in the proposal: (1) participating customers (*i.e.*, an industrial or large commercial user); (2) non-participating customers (*i.e.*, the remaining ratepayers of a utility); and (3) Distributed Sun (which may or may not assign its benefits and costs to a separate developer/owner of a renewable project).<sup>64</sup>

The proposal from Distributed Sun is unique and based on Staff's research has not been applied in any other jurisdiction in the United States. Without an implemented model of its

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<sup>64</sup> There is also a "community benefit" component described below.

proposal on which to base an analysis, the Staff believes that there are several important issues to consider.

First, the Distributed Sun proposed cost structure includes a fixed pricing floor and ceiling, which is unlike other renewable PPA structures. The proposed structure is that non-participating customers pay the participating customer via the provision of a credit to that customer, and that credit would be based on an LMP value established with a collar of a floor and a ceiling. Otherwise stated, the credit for a month (paid to participating customers from non-participating customers) would be calculated based on the RTO LMP revenues associated with the renewable project for any given time period. The important aspect of the proposal, however, is that the credit paid by non-participating customers can never be less than a certain value (set by Distributed Sun) nor more than a certain value (set by Distributed Sun).

As a hypothetical example,<sup>65</sup> assume that Distributed Sun's proposal called for a minimum price of \$30 and a maximum price of \$60. In this case, non-participating customers would pay no less than \$30 and no more than \$60. For any hour that the LMP value associated with the particular project falls below \$30, non-participating customers pay \$30 via the credit mechanism and receive less than \$30 in revenues from the applicable RTO associated with the generator. If the LMP value associated with the particular project is above \$60, then non-participating customers pay the \$60 via the credit mechanism and receive greater than \$60 in revenues from the applicable RTO associated with the generator.

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<sup>65</sup> Staff had not included the actual numbers of the proposal to protect confidentiality.

In many ways, this proposal functions no different than a Standard PPA. The important difference is that the price is set without a competitive process, which the Staff feels is imperative as discussed in Section B above.

While the non-participating customers pay the credit described above, the participating customers receive that same credit and then negotiates a transaction (not regulated or approved by the LPSC) where it pays some amount of money (potentially more or less than the credit received) to Distributed Sun and in return receives the RECs from the project and perhaps shares in some of the energy price risks/benefits between the floor and ceiling of the collar. Distributed Sun would receive the payment stream from the participating customer and use that stream to either develop and own and operate a renewable project on its own or assign such development to an independent developer/owner.

Although not initially addressed in Distributed Sun's proposal, through discussions, Distributed Sun has indicated that its projects would receive Network Resource Interconnection Service ("NRIS") service. If that is the case, that would be an additional benefit that all retail customers of the utility would receive in exchange for the other risks and rewards that they are proposed to face. Staff recommends that any approval of the Distributed Sun proposal require that the developer obtain NRIS service and provide the capacity benefits to the utility's retail customers.

Distributed Sun's proposal also includes a community benefit, which, as described, would provide that the project owners will contribute 10% of its subscription revenues to low- and moderate-income programs including both on-site jobs for local residents and community



investment funds earmarked for programs in parishes in which the subscribers' facilities are located.

Staff's analysis of the Distributed Sun proposal is that Distributed Sun is offering the LPSC a policy decision to compare the proposed societal benefit of Distributed Sun's proposed 10% contribution to low-and moderate- income programs against a proposed pricing system to non-participating customers that would have them undertake the risk of paying more for energy than they otherwise would have to pay below the floor with the potential benefit of receiving more for energy than they otherwise would have to pay above the ceiling. Any such policy decision would be completely dependent upon the floor and ceiling prices of the proposed collar, and it is Staff's opinion that the Commission would have to analyze that opportunity/risk in relation to other competitive opportunities/risks that non-participating customers would have available, such as potential participation in the Green Tariff if the Commission were to direct such an option be implemented as Staff recommends herein. As Staff has emphasized in Section B of this report related to the structure of RFPs, any such competitive comparison would have to be made in a transparent and open process for the Commission to have before it all the risks and benefits of the competitive options, while respecting legitimate confidentiality concerns.

**b. Together Louisiana**

Together Louisiana, a non-profit organization, made a presentation to the LPSC at the February 16, 2023 B&E regarding a proposal described as "Community Lighthouses." The concept presented to the Commission is that solar and/or battery resources would be placed in a central location in a community to allow the community to access electricity and vital services that need electricity in times of distress such as hurricanes or other natural disasters. Together Louisiana

has already implemented its Community Lighthouse concept and proposes to exponentially grow the program.

Because the concept is related to vital community services reliant on electric service, there has been consideration given over whether any part of Together Louisiana's proposal should be considered in this docket for possible expansion. Staff has engaged in numerous meetings with Together Louisiana to ascertain if consideration should be given to this expansion proposal within this docket. To date, Together Louisiana has not made a specific proposal but has been diligently engaged in discussions with the Commission and its Staff. Together Louisiana has recently stated that it has engaged consultants and developed a plan which could be presented in the near future. Staff awaits receipt of the plan and will continue to work with Together Louisiana to ascertain whether there is any consideration that should be given to any proposal it may make in this docket or another docket.

### **III. CONCLUSION**

There are many issues in this Docket and Phase 1 covers a broad breadth of those issues. Many of these same issues are being considered in other dockets. As such, Staff's Phase 1 Report concludes by providing a summary of the issues that are being addressed here and those that will be addressed in other dockets so that parties can appropriately submit their comments and the Commission can orderly address the issues at hand.

#### **A. Request for comments in this docket**

As noted in the report above, Staff requests comments within this docket on several important issues. Staff requests that comments on these issues be issued within 30 days of the filing of this Phase 1 Report. Upon receipt of those comments, Staff will issue proposed rules on

each of these issues separately and will allow for a further comment period before final rules are promulgated.

- The format and data that utilities would be required to be provide regularly to the Commission and with each base rate adjustment filing as outlined in Section II.A.1 of this report.
- The data that will be provided by utilities regarding hearing expenses as outlined in Section II.A.4 of this report.
- The Staff's proposed regulatory structure for renewable options as outlined in Section II.E.2, specifically, but not limited to, to Staff's three proposals: (1) that the Commission not create rules to provide for the provision of Sleeved PPAs; (2) that the Commission should require utilities to provide Green Tariff options; and (3) that the benefit of RECs not subscribed under a Green Tariff option be shared with customers on a dollar-for-dollar basis.
- The Distributed Sun Proposal and its impact on other renewable options with specific comments on how the public policy benefit of the economic development contribution proposed should influence the Commission's consideration of this proposal. Staff's comments on this issue are presented in Section II.E.3.a of this report.

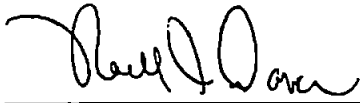
#### **B. Issues that will be addressed in in other dockets**

Several of the matters addressed in this Phase 1 Report, which Staff agrees are "Customer Centered Options" are already being addressed in other dockets. While Staff has outlined the

issues it believes are important within those dockets, Staff requests that comments on those issues be addressed in the dockets specific to those issues:

- Electronic filing procedures as discussed in Section A.2, will be addressed in Docket No. R-35819.
- Staff's recommendation related to what form of notice should be provided to customers related to rate changes. This will be addressed in Docket No. R-34490 as outlined in Section II.A.3 of this report.
- Staff has raised a few concerns that should be addressed in modifying the MBM Order to be consistent with a customer centric view. Those issues will be addressed in Docket No. R-34247.
- The Commission's jurisdiction over demand response resources and ARCs is being addressed in LPSC Docket Nos. R-35135 and R-35136. Staff made several recommendations in Section C of this report, but any further consideration of those recommendations will be addressed in those dockets.
- The LPSC's jurisdiction over EV charging stations and EV charging infrastructure is already being addressed in Docket No. R-36131. In Section D of this report, Staff provides several recommendations on how those rules can ensure a customer centric outcome, but the specifics of how those are implemented will be addressed in Docket No. R-36131.

Respectfully submitted,



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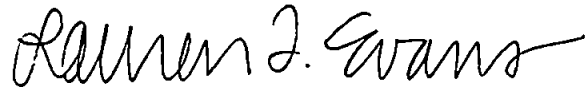
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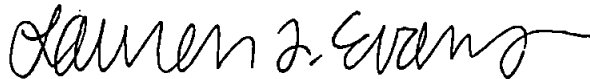
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon all parties of record by email properly addressed on this 29th day of August, 2023.



LAUREN TEMENTO EVANS