EARTHJUSTICE

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August 15, 2025

Via Express Mail

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

Re: **Docket No. U-37425**, Entergy Louisiana LLC, ex parte. In Re: Application for Approval of Generation and Transmission Resources in Connection with Service to a Single Customer for a Project in North Louisiana

Dear Ms. Abel:

Enclosed for filing in the above-captioned docket please find the original and two (2) copies of the non-confidential version of the Alliance for Affordable Energy and Union of Concerned Scientists' Opposition to the July 11, 2025 Contested Settlement.

In addition, I have also enclosed the original and two (2) copies of the **Confidential** Version of the Opposition to the July 11, 2025 Contested Settlement. The confidential version contains information that has been designated as Highly Sensitive Protected Material, and is being provided to you under seal, in a separate envelope, pursuant to the provisions of the LPSC General Order dated August 31, 1992, and Rules 12.1 and 26 of the Commission's Rules of Practices and Procedure.

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

Respectfully submitted,

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cc: service list - **Docket No. U-37425** (via electronic service)

Fedex

STATE OF LOUISIANA

BEFORE THE

LOUISIANA PUBLIC SERVICE COMMISSION

APPLICATION OF ENTERGY LOUISIANA, LLC FOR APPROVAL OF GENERATION AND TRANSMISSION RESOURCES PROPOSED IN CONNECTION WITH SERVICE TO A SIGNIFICANT CUSTOMER PROJECT IN NORTH LOUISIANA, INCLUDING PROPOSED RIDER, AND REQUEST FOR TIMELY TREATMENT	)	**DOCKET NO. U-37425**

OPPOSITION OF THE ALLIANCE FOR AFFORDABLE ENERGY AND UNION OF CONCERNED SCIENTISTS TO THE JULY 11, 2025 CONTESTED SETTLEMENT

Public Redacted Version

Dated: August 15, 2025

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INTRODUCTION

Data centers are large facilities packed with computer servers, networking hardware, and cooling equipment that support services like cloud computing and other data processing applications. Future electricity needs for artificial intelligence (AI) are highly uncertain—a product of rapidly changing technologies, inflated load forecasts, competitive markets, and an untested business model. And serving a data center's load, which can fluctuate wildly over very short periods of time, poses unique challenges to the stability of the grid. Yet Entergy Louisiana, LLC ("ELL" or "the Company") has brushed aside these concerns, seeking to spend billions of dollars to serve a proposed data center. In doing so, ELL has made a massive bet, one that risks overburdening captive ratepayers with stranded costs that could ultimately exceed a billion dollars.

In this case, ELL has asked the Louisiana Public Service Commission ("Commission" or "LPSC") to approve three combined cycle gas plants (the "Planned Generators") and various transmission facilities in order to serve an estimated [[ ]] MW of load from a data center to be constructed by Laidley LLC ("Laidley" or "the Customer"), a subsidiary of Meta Platforms, Inc ("Meta").[1] Among many other requests, ELL's Application seeks certification that the public convenience and necessity would be served by construction and use of the Planned Generators, as well as the construction of a 500 kV Mt. Olive to Sarepta transmission line at a cost of nearly $550 million.[2]

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

[2] ELL Exhibit 18, Direct Testimony of Daniel Kline ("Kline Direct") at 15.

Note: For the Commission's benefit, the NPOs wish to note two things regarding the citations in this brief: *First*, ELL has designated many discovery responses and other materials as Highly Sensitive Protected Material ("HSPM") and/or "Attorney's Eyes Only" (AEO). Any figures or other material that has been designated as HSPM/AEO have been redacted from the public version of this brief. *Second*, in this brief, any references to pre-

Although ELL has repeatedly asserted that its proposals are in the public interest, the record disproves this claim. The many deficiencies of ELL's Application are detailed in the direct and cross-answering testimony of witnesses for the LPSC Staff, Alliance for Affordable Energy and Union of Concerned Scientists ("NPOs"), Louisiana Energy Users Group ("LEUG"), and Sierra Club. Taken together, these testimonies demonstrated that: (i) ELL's proposals would expose ratepayers to enormous cost risks—risks that are compounded by the uncertain enforceability of Meta's parent guaranties; (ii) the Application would force ELL's ratepayers to cover the costs of a transmission line that is only necessary due to Laidley's data center; and (iii) serving the rapidly fluctuating load of this massive data center could threaten the stability of the grid. Moreover, although ELL has touted the jobs that will purportedly be created by the data center, and claimed that this project will add 1,500 MW of new solar resources, the record shows that these promised benefits are unproven and illusory.

Despite overwhelming evidence that the Application's risks far outweigh its purported benefits, several parties entered into a settlement with ELL on July 11, 2025 (hereinafter, the "Contested Settlement" or "Settlement").[3] Although its proponents claim that the Contested Settlement is in the public interest, the Settlement neither meaningfully addresses the Application's risks nor ensures that the alleged benefits will come to fruition. As such, the Contested Settlement is not in the public interest and should be rejected.

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filed testimony are to the unredacted, HSPM/AEO versions of those testimonies. This includes the exhibit numbers listed in footnotes. Counsel took this approach to minimize the need for switching back and forth between different documents. It is counsel's understanding that the page and line references in the public versions of each pre-filed testimony are consistent with the confidential versions. So, to the extent the public version of this brief includes quotes or other references to pre-filed testimony, those citations should be consistent with the public versions of the testimonies.

[3] *See* Joint Motion for Approval of Settlement Pursuant to Rule 57 (Aug. 7, 2025), Exhibit A – Final Stipulated Settlement Term Sheet (hereinafter, the "Contested Settlement").

The shortcomings of the Contested Settlement, which are detailed in Section II, are briefly summarized below. *First*, under the Contested Settlement, the Electric Service Agreement ("ESA") and Contribution in Aid of Construction ("CIAC") agreement would not be subject to Commission approval, and ELL and Laidley could renegotiate their contracts at any time—including after the Commission's approval of the Contested Settlement. When ELL filed its Application, it presented an ESA and a CCIAC agreement with Laidley. ELL's filing repeatedly referenced these agreements in support of its requests for certification of the Planned Generators and transmission facilities, among other requests. But ELL did not seek approval of the ESA and the CIAC agreement, and has maintained that it can modify those agreements after Commission approval. The Company asserts that, following approval of the Application, it can "negotiate changes to the ESA and/or CIAC without first obtaining Commission approval," or even "abandon the ESA and/or CIAC altogether in favor of other agreements without first obtaining Commission approval."[4] Although Staff witness Sisung recommended two conditions to address these risks, the Contested Settlement did include those conditions. Thus, any ratepayer protections set forth in the ESA and CIAC agreement could be abrogated at any time.

Second, the Contested Settlement fails to ensure the enforceability of the parent guaranties contained in the ESA and CIAC agreement. The parent guaranties are intended to provide "collateral security for a significant portion of Laidley's obligations under its agreements with ELL,"[5] and are necessary to ensure that Laidley's financial commitments are adequately secured by Meta.[6] Although Staff witness Sisung recommended that ELL provide a legal

[4] NPOs Exhibit 15 (ELL resp. to NPO 17-1).

[5] Staff Exhibit 2, Direct Testimony of R. Lane Sisung ("Sisung Direct") at 20.

[6] The parent guaranties are the only provisions that make Meta financially responsible for Laidley's commitments under the ESA and CIAC agreement. Without enforceable guaranties, Meta will have absolutely no financial obligations with regard to ELL's investments to serve the data center Project.

opinion confirming that Meta is actually bound by these parent guaranties, ELL has steadfastly failed to do so. And the Contested Settlement does not require ELL to provide a legal opinion. The Settlement's failure to address this issue underscores the riskiness of ELL's Application, because these parent guaranties would be the only protection for ratepayers if Laidley fails to meet its obligations under either the ESA or CIAC agreement.

Third, the Contested Settlement fails to protect ratepayers from the enormous cost risks of ELL's Application. ELL is proposing to spend unprecedented sums to serve Laidley's proposed data center. As discussed in Section II below, ELL's proposals would expose customers to the risk of:

- stranded costs if Laidley backs out of the data center project before the ESA even takes effect;
- cost overruns in constructing the Planned Generators;
- stranded costs due to the inadequate length of the ESA's initial term and unreasonably short notice provisions for renewal; and
- costs to address to transmission mitigations that ELL has not yet identified.

Although Staff witness Sisung and NPOs witness Kunkel recommended several conditions that shield customers from these risks, the Settlement did not include those conditions—leaving ELL's ratepayers exposed to enormous costs that would not be covered by the ESA or CIAC agreement.

Fourth, the Contested Settlement would saddle ELL's captive ratepayers with the costs of a transmission project that is only needed because of Laidley's data center. ELL proposes to build the 500 kV Mount Olive to Sarepta transmission line at an estimated cost of $546 million.[7] Under the Settlement, this transmission line would be considered a "System Improvement

[7] Kline Direct at 15.

Project"[8] despite the fact, as ELL concedes, it would not be necessary but for Laidley's data center.[9]

Worse, the Contested Settlement would allow these Customer-specific transmission costs into rates without any cap on the amount recoverable from other ratepayers. Capping the amount of costs that can be included in rates is critical, because ELL only provided a Class 5 estimate. Class 5 estimates often prove to be an inaccurate predictor of actual costs, and can significantly underestimate the actual cost of a capital project. Because the actual cost of the Mt. Olive to Sarepta transmission line could be double the estimated cost, without a cost cap this transmission project could ultimately cost ratepayers more than $1 billion. But whereas the record supports capping the amount recoverable through rates at $546 million (ELL's estimated cost), the Settlement does not place any ceiling on these transmission costs.

Fifth, the Contested Settlement does not address the reliability risks of serving the proposed data center load. Serving this load, which could fluctuate significantly over extremely short periods of time (within milliseconds, seconds, or tens of seconds), can threaten the stability of the grid.[10] Staff witness Sisung and NPOs witness Miller proposed several conditions to address these risks. But the Settlement failed to include those conditions, leaving Louisiana residents and businesses vulnerable.

In sum, ELL's Application carries significant risks, including unreliable grids, unreliable load forecasts, stranded assets, weakened utility finances and credit, and cost burdens unfairly shifted onto captive ratepayers. As testimony from Staff, the NPOs, and other parties has shown, the costs and risks of the Application far outweigh its purported benefits. Yet the Contested

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[8] *Id.* at 14.

[9] NPOs Exhibit 5, Direct Testimony of Nicholas W. Miller ("Miller Direct"), Ex. NMW-2 (ELL resp. to NPO 13-8(c)(ii)).

[10] Miller Direct at 20.

Settlement fails to address those risks, leaving ELL's ratepayers vulnerable to cost shocks, stranded assets, and grid reliability problems in the coming years. For these reasons, and as further explained below, the Commission should reject the Application and the Contested Settlement. If the Commission is inclined to approve the Application, the Commission should condition its approval by adopting the ratepayer safeguards outlined in Section III of the brief.

Aside from the merits, the Commission should dismiss ELL's Application for two procedural reasons. First, ELL's Application is premised on receiving a waiver of the Commission's Market-Based Mechanisms ("MBM") Order.[11] The Commission should deny ELL's request for exemptions from the MBM Order because the Company has failed to provide the required support for such exemptions, improperly limited its procurement process to self-build resources, and failed to show that it would be in the public interest to forgo the Commission's process for identifying lowest-cost resources. Second, the Commission should find that the participation of Laidley and Meta is necessary for the just adjudication of the issues in this proceeding because ELL is unable to provide even basic information on aspects of the Application, aspects which are vital to a finding that the Application is in the public interest. The assertions which ELL concedes it cannot substantiate include 1) the number of permanent jobs created by the data center and how many of those jobs will be local rather than remote;[12] 2) how Laidley's need for a specific amount of power was developed;[13] and 3) the Customer's sustainability goals.[14] Since neither Meta nor Laidley participated in this proceeding, the Commission should dismiss this proceeding, or remand the case back to the Administrative Law

[11] General Order 10-14-2024 (R-34247) ("2024 MBM Order") (Oct. 14, 2024).
[12] *See* NPOs Exhibit 16 (ELL resp. to Sierra 1-5); *see also* NPOs Exhibit 7 (ELL resp. to NPO 1-5).
[13] *See* NPOs Exhibit 8 (ELL resp. to NPO 1-7).
[14] *See* NPOs Exhibit 9 (ELL resp. to NPO 1-13).

Judge with instructions to meet the requirements of Louisiana Code of Civil Procedure Art. 641(1).

ARGUMENT

I. THE APPLICATION SHOULD BE DISMISSED BECAUSE ELL HAS NOT MET THE REQUIREMENTS FOR A WAIVER OF THE MBM ORDER.[15]

In its Application, ELL requests an exemption from (i) the request for proposals ("RFP") process in the Commission's Market-Based Mechanisms ("MBM") Order, (ii) the MBM Order's stated prohibition against alternative mechanisms being "limited to self-build or utility-owned resources," and (iii) any other requirements of the MBM Order. As discussed below, the Commission should deny ELL's request for exemptions from the MBM Order because the Company has failed to provide the required support for such exemptions, improperly limited its procurement process to self-build resources, and failed to show that it would be in the public interest to forgo the Commission's process for identifying lowest-cost resources.

Since its issuance in 2002, the MBM Order has required utilities to use a competitive solicitation process to evaluate proposals for specified generating capacity.[16] The Order "provides the structure within which utilities market test supply options to determine which is the lowest reasonable cost solution for the provision of reliable electric service."[17] Complying with the MBM Order demonstrates that a utility carefully considered comparable supply alternatives before selecting its preferred option.[18] Ultimately, the market test of an RFP is meant to "get the

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

[16] 2024 MBM Order at 1.

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

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

best deal for ratepayers."[19] In its most recent iteration, the Order requires RFPs to be "constructed as broadly as possible to allow for the review of all available options to add generating capacity."[20] This broad examination of alternatives must evaluate power purchase agreements ("PPAs") and all available types of resources, including intermittent resources and storage.[21]

Utilities may forgo the standard RFP process only if granted an exemption by the Commission. These exemptions are granted if certain requirements are met. First, the utility must demonstrate through "sworn support from a Company representative that sufficient circumstances exist such that a RFP competitive process subject to the [MBM Order] would not be in the public interest."[22] Second, the utility's alternative process can limit the types of resources under consideration only if the limitation is supported by a fully vetted Integrated Resource Plan ("IRP") and by sworn support.[23] Finally, the Order specifies that "[i]n no event" shall a utility propose an alternative that is "limited to self-build or utility-owned resources."[24]

ELL requests an exemption from the MBM Order's RFP process, the Order's prohibition on alternative mechanisms being "limited to self-build or utility-owned resources," and any other requirements in the MBM Order that the Company has not met.[25] ELL claims that an exemption is warranted because expedited action is necessary to secure Laidley's investment in Louisiana.[26]

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[19] *Re Market-Based Mechanisms to Evaluate Proposals to Construct or Acquire Generating Capacity*, Docket No. R-26172 (April 10, 2002) ("2002 MBM Order"), https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=n9GmBZHffzI%3D.

[20] 2024 MBM Order at Attach. A, ¶ 3.

[21] *Id.*

[22] *Id.* at Attach. A, ¶ 3.

[23] *Id.*

[24] *Id.* at Attach. A, ¶ 3.

[25] Application of Entergy Louisiana, LLC for Approval of Generation and Transmission Resources Proposed in Connection with Service to a Significant Customer Project in North Louisiana, Including Proposed Rider, and Request for Timely Treatment ("Application") at 26.

[26] Application at 26.

The Company requests the exemption despite failing to test the market for alternatives to the Planned Generators.[27] ELL also failed to consider generation options that were not utility-owned,[28] or submit competent sworn testimony to support assertions that Laidley's timeline and load request is incompatible with an RFP.

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

A. ELL failed to support its exemption request with sworn testimony.

The MBM Order requires that a utility proposing an alternative to the RFP procedure "demonstrate to the Commission with *sworn support* from a Company representative that sufficient circumstances exist" that it would be in the public interest to deviate from the normal RFP process.[29] Here, the circumstances that purportedly justify an exemption from the RFP procedure are that the Customer's load needs and timeline are incompatible with the RFP requirement, and that the economic benefits of the project support approval of the Application.

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[27] ELL Exhibit 33, Direct Testimony of Joshua B. Thomas ("Thomas Direct") at 25 ("the Planned Generators were not directly market-tested against other alternatives by ELL").

[28] ELL Exhibit 4, Direct Testimony of Laura K. Beauchamp ("Beauchamp Direct") at 43 (listing alternatives considered by the planning team).

[29] 2024 MBM Order at Attach. A, ¶ 3 (emphasis added).

ELL failed to meet this sworn testimony requirement, because the Company's testimony simply parrots unsubstantiated assertions from Laidley—a non-party in this proceeding. Far from providing "sworn support," ELL's exemption request is based on a series of a factual claims that are nothing more than hearsay.[30] Virtually all of ELL's support for the specific aspects of this data center project (i.e. load, job creation, timeline) is based on hearsay statements from Laidley, which is not a party. ELL's recitation of Laidley's hearsay statements goes to the heart of its exemption request, as Laidley's timetable and alleged load needs are what purportedly makes an RFP impossible.[31] Under the MBM Order, however, ELL cannot support its request for an exemption with hearsay about the Customer's requirements. Accordingly, ELL has failed to properly support its request for an exemption.

B. ELL only considered utility-owned options.

While the MBM Order allows utilities to seek exemptions from the requirement to conduct an all-source RFP under certain circumstances, it places one uncompromising limit on a utility's alternative approach: "In no event, . . . shall such a proposed alternative market-based mechanism be limited to self-build or utility-owned resources."[32] ELL did not follow this requirement. Instead, the Company selected the Planned Generators without giving non-utility resources a chance to compete.[33] As the Commission previously recognized, the MBM Order devotes significant attention to ensuring utility proposals do not receive preferential treatment.[34]

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

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

[32] 2024 MBM Order at Attach. A, ¶ 3.

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

[34] *1803 Elec. Coop., Inc., Ex Parte*, No. U-35927, 2022 WL 294416, at *10 (Jan. 28, 2022).

Because ELL failed to present a valid alternative market-based mechanism, the Company is not entitled to an exemption.

In its testimony, ELL tries to circumvent the MBM Order by claiming that its decision to self-build the Planned Generators was necessary and cost-effective. But ELL fails to fulfill the basic purpose of the Order's RFP requirement, which is to demonstrate which new resources are the best deal for ratepayers.[35] The RFP process has multiple consumer protections that ELL's proposal does not even attempt to replicate. ELL's arguments are unpersuasive because they fail to show that the Company would have selected the Planned Generators if it had conducted a meaningful test of the market for alternatives.

The most fundamental benefit of the MBM Order's RFP process is that independent power producers and infrastructure developers can propose lower-cost means of meeting customer needs than options the utility might identify on its own. The MBM Order takes advantage of these market opportunities by ensuring "utilities market test supply options to determine which is the lowest reasonable cost solution for the provision of reliable electric service."[36] The RFP process provides an opportunity for market actors to offer a wide variety of resources (e.g., complementary combinations of solar, storage, and other options), and the competitive pressure creates a strong incentive to offer those alternatives at low cost.

ELL's decision not to follow the MBM Order's RFP process is premised on the unsupported, self-serving assumption that no other generation could be constructed and available within Laidley's preferred timeline. However, the MBM process is designed to independently and *objectively* test the generation market. ELL's unfounded assumptions regarding other types

[35] 2002 MBM Order at 3.

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

of generation defeat the very purpose of the MBM Order's RFP process.[37] ELL did not market test the Planned Generators.[38] By failing to test the market, ELL put on blinders that prevented it from discovering lower-cost options. ELL compounded this problem by considering only a few narrow combinations of utility-owned generation resources.[39] These oversights are precisely why the MBM Order prohibits utilities from considering only self-build resources, even in situations where they can justify deviating from the standard RFP process.[40]

ELL also tries to justify its failure to issue an RFP by citing Company witness Owens's claim that "the only practical option to serve the Customer's Project is for ELL to build gas-fired capacity."[41] But Mr. Owens did not conduct any studies or analyses specific to this project to reach that conclusion.[42] For example, in assessing other resources, ELL "did not independently evaluate offers for storage and the alternative options for gas-fired capacity."[43] Mr. Owens's testimony only provides an "illustrative analysis" of the cost to provide the Customer with firm renewable power around the clock using a combination of solar and storage.[44] And Mr. Owens did not address at all the feasibility of third-party-owned generation resources (whether gas or renewables). Despite lacking any actual analysis, ELL concludes that the cost of self-build generation will be comparable to the cost of new build generation constructed by a third party.[45]

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

[38] Thomas Direct at 25.

[39] Beauchamp Direct at 43; ELL Exhibit 10, Direct Testimony of Nicholas W. Owens ("Owens Direct") at 4-6.

[40] 2024 MBM Order at Attach. A, ¶ 3.

[41] Thomas Direct at 22 (citing Owens Direct at 7).

[42] NPOs Exhibit 12 (ELL resp. to NPO 3-25).

[43] NPOs Exhibit 14 (ELL resp. to NPO 4-1). With regard to storage, Mr. Owens relies on the past "normal course of business" of ELL to conclude that a storage-only alternative would be too costly. Owens Direct at 6.

[44] NPOs Exhibit 10 (ELL resp. to NPO 2-8) (discussing Owens Direct at 4-5).

[45] NPOs Exhibit 13 (ELL resp. to NPO 3-27).

Mr. Owens reaches this perfunctory conclusion without providing any evidence that it would be impractical to procure gas-fired capacity from an independent supplier.[46] Simply put, while Mr. Owens addresses why he believes CCCTs are the appropriate resources for meeting the Customer's needs, he does not explain why procuring these resources on the competitive market would not be feasible.[47]

Mr. Owens's conclusion about the necessity of building gas-fired generation is also unreliable because—due to ELL's failure to issue an RFP—there was no opportunity to compare ELL's Planned Generators to competitive alternatives. RFP bids could have included numerous combinations of different resource types, giving ELL options for meeting its needs with a mix of solar, storage, and/or thermal resources. Mr. Owens did not have any of that real-world information. Instead, he only considers three hypothetical alternatives to ELL's Planned Generators—one that relies solely on renewables, another that relies on solar generation resources and 18-hour batteries to meet 100% of the projected need, and one that relies solely on storage.[48] Mr. Owens does not explain why he failed to consider renewable generation in combination with 4-hour batteries, a far more mature technology.[49] Nor does he explain why he failed to consider a combination of thermal and renewable resources—e.g., two gas plants (instead of three), coupled with solar and storage. Without access to the innovative creativity of the market, Mr. Owens is left to attack strawmen of his own invention.

[46] Owens Direct at 7.
[47] *Id.*
[48] *Id.* at 4-6.
[49] *Id.* at 4-5; ELL Exhibit 14, Direct Testimony of Matthew Bulpitt ("Bulpitt Direct") at 10 (untitled figure).

C. ELL's other justifications are without merit.

ELL's remaining justifications for its MBM exemption request are similarly unpersuasive. First, Company witness Thomas points to ELL's plans to "use competitive elements to procure major components" of the Planned Generators and use a competitive process to select a contractor for one of them.[50] These "competitive elements" do not allow ratepayers to reap the potential savings from procuring solar, storage, or independently owned resources.

Second, Mr. Thomas states that Laidley, a sophisticated energy user, had the opportunity to compare the Planned Generators to market alternatives and still agreed to use the generators under terms that protect existing customers from bearing their full cost.[51] ELL's assertion regarding Laidley's ability to compare alternative turns the MBM Order on its head, placing the obligation to find the least cost alternative on the customer rather than requiring the utility to use the actual market test required by the Order. Mr. Thomas's speculation is not evidence that these generators could pass a market test. The Application and its supporting documents contain no evidence regarding Laidley's examination—if any—of alternatives. And ELL admits that it has no information about "what comparison the Customer may or may not have performed."[52]

Finally, Mr. Thomas argues that the Commission's 2008 Unsolicited Offer General Order indicates a recognition that the MBM Order should not apply in unanticipated circumstances where compliance is impractical.[53] However, the Commission recently considered the precise question of how utilities should be allowed to show that extraordinary circumstances warrant an exemption of the MBM Order's RFP requirement.[54] The Commission's careful consideration of

[50] Thomas Direct at 24-25.
[51] *Id.* at 25.
[52] NPOs Exhibit 11 (ELL resp. to NPO 3-20).
[53] Thomas Direct at 23-24.
[54] *See* 2024 MBM Order at 2.

this issue culminated in its October 2024 amendments to Paragraph 3 of the Order.[55] Thus, while the MBM Order provides utilities with some limited flexibility, the Order expressly places clear limits on a utility's ability to avoid the RFP process and exclude consideration of potential opportunities for cost savings. Accordingly, for the reasons explained above, the Application should be dismissed for failure to follow the requirements of the MBM Order.

II. ELL'S APPLICATION, AND THE CONTESTED SETTLEMENT, ARE NOT IN THE PUBLIC INTEREST.

The Application and the Contested Settlement should be denied because they are not in the public interest. As discussed below, approving the Contested Settlement (a) would expose ratepayers to unreasonable costs and risks; (b) threatens to destabilize the electric grid; (c) would saddle ratepayers with the costs of a transmission line that is unnecessary but for Laidley's data center; and (iv) promises benefits that are illusory and unsupported.

A. Approving the Contested Settlement would expose ELL's ratepayers to unreasonable costs and risks.

As witnesses for the NPOs and other parties have explained, ELL's proposals would expose ratepayers to significant costs and risks. And the Settlement Agreement does not meaningfully address those costs and risks.

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

[55] *See generally id.* (amending Attach. A, ¶ 3).

[56] NPOs Exhibit 1, Direct Testimony of Catherine Kunkel ("Kunkel Direct") at 5.

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

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

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

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

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[57] Application at 12.

[58] ELL Exhibit 2, Direct Testimony of Phillip R. May ("May Direct") at 23.

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

[60] Kline Direct at 15.

[61] *Id.*

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

[63] ELL Exhibit 6, Supplemental Direct Testimony of Laura K. Beauchamp ("Beauchamp Supplemental Direct") at 4.

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

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

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

[65] ELL Exhibit 8, Rebuttal Testimony of Laura K. Beauchamp ("Beauchamp Rebuttal") at 3-4. Rider 2 and the amended CIAC agreement were attached to witness Beauchamp's rebuttal testimony. *See id.*, HSPM Ex. LKB-6. Because the amended CIAC agreement contains the same critical shortcomings as the original CIAC agreement, the remainder of this brief will refer to the "CIAC agreement" in discussing both versions.

Unfortunately, these arrangements between ELL and Laidley would expose ratepayers to significant cost risks. These risks are further described below.

1. Under the Application, the ESA and CIAC agreement would not be subject to Commission approval.

Ratepayers are at significant risk because, under ELL's proposal, the ESA and CIAC agreement would not be subject to Commission approval. ELL takes the position that these contracts need not be approved by the Commission: "ELL thus does not require, and is not seeking, approval of Rider 2 or the Amended CIAC Agreement and is instead providing those agreements for informational purposes."[66]

ELL justifies its position by claiming that the ESA is simply the implementation of an existing approved tariff (Schedule LLHLFPS-L), but ELL's position is incorrect. As NPOs witness Kunkel explained, there are "key provisions of the ESA which are not found in the LLHLFPS-L tariff—including [[ ]]."[67] And "the terms of the ESA are critical to understanding the distribution of costs and financial risks between Laidley and other ratepayers," with ELL's initial filing citing the ESA more than 200 times.[68] Witness Kunkel warned about the risk of changes to the ESA, noting that renegotiations "could result in material changes to that agreement, with as-yet-undisclosed consequences to other ratepayers."[69]

Although the Company has since filed amended versions of the ESA and CIAC agreement, the risk remains that ELL and Laidley could renegotiate those contracts at any time—including **after** the Commission's approval of the Contested Settlement. ELL candidly admits

[66] Beauchamp Rebuttal at 6.
[67] Kunkel Direct at 12; *see generally id.* at 11-12.
[68] Kunkel Direct at 12.
[69] *Id.* 12.

this: It's the Company's position that, following approval of the Application, it can "negotiate changes to the ESA and/or CIAC without first obtaining Commission approval," or even "abandon the ESA and/or CIAC altogether in favor of other agreements without first obtaining Commission approval."[70] Moreover, these significant changes could happen without the Commission's knowledge, because ELL's position is that it "need not inform the Commission, Staff, or other parties to this proceeding of those changes."[71]

These troubling scenarios are precisely what Staff witness Sisung warned about. In his direct testimony, he identified many of the risks to ratepayers posed by the Related Agreements (i.e., the ESA, CIAC agreement, the CSR, and other agreements between ELL and Laidley).[72] And he noted the unusual nature of ELL's "request for certification of three Planned Generators and significant transmission investments in connection with service to a single ESA."[73] He then explained that he was "concerned that many of the risk mitigations and protections that the Commission will be relying on in making its public interest determination are derived from the contractual obligations contained in the Related Agreements which could be amended without Commission approval (e.g., Early Termination Fees and Collateral Security)."[74] To address these risks, he recommended that any non-ministerial changes to these agreements be subject to Commission review and approval.[75]

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[70] NPOs' Exhibit 15 (ELL resp. to NPO 17-1).

[71] *Id.*

[72] Witness Sisung describes the Related Agreements on page 27 of his direct testimony. He refers to the CIAC agreement as the "Continuing CIAC Agreement" to distinguish from two earlier contracts involving long-lead items. *See* Sisung Direct at 27-28.

[73] *Id.* at 67.

[74] *Id.* at 68 (emphasis added).

[75] *Id.*; Staff Exhibit 4, Cross-Answering Testimony of R. Lane Sisung ("Sisung Cross-Answering"), Ex. RLS-027 REV at 3 (Proposed Condition #15).

Because ELL proposes to place these agreements beyond the Commission's jurisdiction, approving the Application would expose ratepayers to an ongoing risk that ELL and Laidley could revise these financial arrangements. And the Contested Settlement does nothing to address this problem. As such, the Commission should deny the Contested Settlement.

If the Commission is inclined to approve ELL's Application, it should establish safeguards to protect against any subsequent revisions to the ESA and CIAC. The most straightforward way to do this would be to directly incorporate the ESA and CIAC agreement into the Commission's order, so the terms of those agreements are enforceable by the Commission. But at minimum, the Commission should adopt the following condition that was recommended by Staff witness Sisung:

> Any non-ministerial changes to the Related Agreements are subject to Commission approval. Alternatively, in the event ELL does not seek or receive Commission approval of such changes, ELL will indemnify and hold-harmless ratepayers for any losses caused by a modification to the Related Agreements that has not been approved by the Commission.[76]

Moreover, given the risk that ELL could again modify the ESA to serve additional load from Laidley's data center, the Commission should also adopt this condition recommended by witness Sisung:

> If the ESA is amended to increase the load to be served, ELL shall return to the Commission with the amended ESA and an updated proposal demonstrating how ELL intends on serving that updated load in a manner that continues to serve the public interest.[77]

These two conditions will help protect against these risks of the Company's Application.

[76] Sisung Cross-Answering, Ex. RLS-027 REV at 3 (Proposed Condition #15).
[77] *Id.* at 1 (Proposed Condition #1).

2. Ratepayers would be exposed to cost risks before the ESA takes effect.

If the Contested Settlement is approved, ratepayers would also be exposed to the risk that Laidley can back out of its data center project before the ESA even takes effect. If that occurs, ratepayers could be forced to bear significant stranded costs on the partially constructed Planned Generators. As the NPOs' witnesses have explained, the earliest the ESA could take effect is December 1, 2026, and there is reason to think that the ESA's effective date will be even later.[78] Witness Kunkel estimated that other ratepayers could be responsible for up to $[[ ]] in stranded costs if the ESA takes effect on December 1, 2026, and potentially more if the ESA takes effect at a later date.[79]

In rebuttal, Company witness Jones disputed that ratepayers could be subject to $[[ ]] of stranded costs, and presented his own estimate, claiming that customers would be "exposed to maximum of approximately $[[ ]] of 'uncovered' capital expenditures prior to the effective date of the ESA."[80] In developing this estimate, Mr. Jones relied on the parent guaranties being provided by Meta, Laidley's corporate parent.

But Mr. Jones's rebuttal merely underscores the riskiness of the Application for ELL's ratepayers. For one thing, even if witness Jones's calculation were accurate, ratepayers would still be exposed to $[[ ]] of stranded costs. That may be a small sum for Meta, which earned $135 billion (with a net income of $39 billion) in fiscal year 2024.[81] But $[[ ]] is a significant cost for ELL's customers, one they can ill afford.

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[78] Kunkel Direct at 26; Miller Direct at 29-30.

[79] Kunkel Direct at 26-27.

[80] ELL Exhibit 25, Rebuttal Testimony of Ryan D. Jones ("Jones Rebuttal") at 33-34; *see also* ELL Exhibit 37, Rebuttal Testimony of Samrat Datta ("Datta Rebuttal") at 25 ("Company witness Mr. Ryan Jones explains in his Rebuttal Testimony that Parent Guaranties under the CIAC provide protection to ELL's other customers in this scenario.").

[81] Sisung Direct at 18.

Moreover, witness Jones's reliance on parent guaranties highlights another key risk of this Application: It is unclear whether those guaranties are enforceable. As Staff witness Sisung explained, these parent guaranties are being provided "as collateral security for a significant portion of Laidley's obligations under its agreements with ELL,"[82] and he expressed concern about the enforceability of those guaranties, stating:

> [T]he sufficiency of the contractual obligations and the form of guaranty should be confirmed as providing the purported security by way of a legal opinion from New York counsel experienced in New York law concerning parent guaranty agreements, that confirms that the Parent Guaranties comply with and are enforceable under New York law. The opinion further should confirm under New York Law, that Meta, as the parent guarantor, is obligated for the contractual obligations to pay the Early Termination Fees contained in Section 7.F. of 1 Rider 1 to the ESA.[83]

Witness Sisung therefore recommended that ELL obtain a legal opinion on the parent guaranties' enforceability in his direct testimony, filed in April 2025.[84] It is unclear, however, whether that has actually been done.[85] During the hearing, in response to questioning on this issue, Witness Sisung stated [redacted]]][86] While it may be unclear to witness Sisung whether ELL obtained a legal opinion, it is very clear that there is no *evidence* that ELL obtained a legal opinion regarding the enforceability of the parent guaranty. ELL did not submit a legal opinion

[82] *Id.* at 20.

[83] *Id.* at 45-46.

[84] Sisung Cross-Answering, Ex. RLS-027 REV at 2 (proposed condition #9) ("The sufficiency of the Parent Guaranty contractual obligations and the form of guaranty should be confirmed as providing the purported security by way of a legal opinion from New York counsel experienced in New York law concerning parent guaranty agreements, that confirms that the Parent Guaranties comply with and are enforceable under New York law.")

[85] *See* Transcript of July 17, 2025 Hearing at 37.

[86] *Id.*

into the record in this proceeding. Thus, the enforceability of those guaranties remains, at best, an open question.[87]

The Commission should be aware how important an enforceable parent guaranty is to the protection of ratepayers. The Customer for the data center Project is Laidley, *not* Meta. Thus, all the legal obligations contained in the ESA and CIAC agreement are Laidley's obligations. Meta's only responsibilities and obligations related to those agreements stem from the parent guaranty.

Importantly, Laidley has only existed since March 15, 2024, becoming a Delaware domestic limited-liability company on that date.[88] Laidley is a special purpose vehicle ("SPV"). A special purpose vehicle is a subsidiary created by a parent company mainly and often solely to isolate the parent from financial risk. The operations of the SPV are limited to the acquisition and financing of specific assets. Laidley apparently is not an income-generating entity.[89] Thus, the only protection ratepayers have should any aspects of the ESA or CIAC agreement fail is the parent guaranty, which would place aspects of Laidley's liability onto Meta. ELL's failure to provide basic assurances to the Commission that this vital ratepayer protection is enforceable should result in the Commission finding that the Application, and Contested Settlement, are not in the public interest.

Notably, Staff witness Sisung agreed with Ms. Kunkel's identified risk,[90] sharing the NPOs' concern regarding pre-ESA investments that are not covered by the CIAC agreement.[91]

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[87] ELL's rebuttal testimony did not address, or even acknowledge, this recommendation from Staff witness Sisung.
[88] Delaware Department of State, Division of Corporations, Laidley, LLC, Entity Details. Laidley registered with the Louisiana Secretary of State as a non-Louisiana limited liability company on July 24, 2024.
[89] There is no financial information regarding Laidley in the record.
[90] Sisung Cross-Answering at 15.
[91] *Id.* at 15-16.

To address these risks, he proposed a specific condition (Condition #2) that would shield ratepayers from these potential costs:

> ELL shall prudently manage the CIAC Agreements and ratepayers will be held harmless and indemnified from any losses resulting from CIAC projects expenditures that are greater than the amount of the CIAC payments received from Customer. This hold harmless and indemnification shall explicitly include, but not be limited to, holding harmless and indemnifying ratepayers for any payments or expenditures on the Planned Generators before the Effective Date of the ESA that are greater than the amounts received from the Customer under the CIAC Agreements for the Planned Generators and secured by the Parent Guaranty, without regard to any monetary limitations imposed on the definitions of "Estimated Capital Costs" or "Generation Capacity Construction Costs" by provisions 1(f), 3(b) or other provision of the CIAC Agreement.[92]

Because ELL's proposals would expose customers to the risk of stranded costs before the ESA even takes effect, and because the Contested Settlement does not include the condition above recommended by Staff witness Sisung, the Commission should reject the Settlement. If the Commission is inclined to approve the Application, the Commission should include the above-cited condition in its approval order.

3. The ESA would expose ratepayers to potential cost overruns, stranded costs, and additional transmission costs.

Even if the ESA takes effect and ELL does not subsequently modify the agreement following Commission approval of the Contested Settlement, ratepayers would still be subject to significant cost risks. There are at least three buckets of risks that could harm ratepayers under the Contested Settlement.

First, approving the Settlement would expose ratepayers to the risk of cost overruns on the Planned Generators, with the third gas plant at the Waterford site posing a heightened risk.

[92] Sisung Cross-Answering, Ex. RLS-027 REV at 1 (Proposed Condition #2).

Even under ELL's cost estimates, ratepayers would be responsible for 48% of the gas plants' revenue requirement if Laidley does not extend the ESA past 2041.[93] And as NPOs witness Kunkel explained, "there is a real risk of capital cost overruns with respect to the third of the Planned Generators."[94] She noted that ELL's cost estimate for this plant is identical to those for the two Planned Generators, which are further along in development, but "[t]he market for new gas generation is tightening, costs are rising and thus it is not unreasonable to expect that the third Planned Generator will experience higher costs than the first two units."[95] And "[i]f the capital cost of any of the Planned Generators is greater than expected, other ratepayers will pay for the remaining revenue requirement associated with that cost overrun if the ESA is terminated before the end of the full 30-year period."[96]

LEUG witness Brubaker raised similar concerns about the Planned Generators' cost, explaining that "[t]he lack of a comprehensive competitive solicitation for the three units means that we do not know and cannot be assured that the cost of these units is the lowest reasonable cost as required by the Commission's Market Based Mechanism General Order. While Laidley's timeline may have prevented performance of a comprehensive competitive solicitation, the risk associated with that circumstance should not be placed on utility ratepayers who had nothing to do with the timing or acquisition process."[97] In order to partially protect ratepayers from these risks, Mr. Brubaker recommended "that the rate-based costs of these three [Planned Generators] be limited to the costs presented in ELL's filing, with the limited exception that the Commission

[93] ELL Exhibit 36, Direct Testimony of Samrat Datta ("Datta Direct") at 10-11.
[94] Kunkel Direct at 24.
[95] *Id.* at 24-25.
[96] *Id.* at 26.
[97] LEUG Exhibit 2, Direct Testimony of Maurice E. Brubaker ("Brubaker Direct") at 10.

could consider allowing for adjustments based on demonstrated changes in the law that are beyond ELL's control."[98]

Staff witness Sisung also raised similar concerns, explaining that the ESA's "Early Termination Fee does not cover potential cost over-runs on the Planned Generators if the Customer were to terminate prior to the end of the original term," and "[i]deally, the terms of the Parent Guaranty would be changed to include coverage of any cost overruns on early termination."[99]

These potential cost overruns, which could result in significant costs to ELL's existing ratepayers, is a further reason why the Commission should deny the Contested Settlement. If the Commission is inclined to approve ELL's Application, it should adopt LEUG witness Brubaker's recommendation to establish a cap on the costs of the Planned Generators that can be passed onto ratepayers. Specifically, those costs should be capped at the amount presented in ELL's initial filing.[100]

Second, the Contested Settlement would expose ratepayers to significant stranded cost risks due to (i) the inadequate length of the ESA's initial term and (ii) the ESA's unreasonably short notice provisions for renewal. As NPOs witness Kunkel explained, "the fact that the initial term of the ESA (15 years) is significantly shorter than the depreciable life of the Planned Generators (30 years) means that ratepayers are exposed to significant risk of having to cover stranded costs associated with the Planned Generators, depending on the timing of when Laidley

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[98] Brubaker Direct at 11.

[99] Sisung Cross-Answering at 21-22.

[100] Per Mr. Brubaker's testimony, this cost cap could include a limited exception if there are changes in law beyond ELL's control. Brubaker Direct at 11. Staff witness Sisung concluded that "absent the Commission accepting some variation of Mr. Brubaker's proposed condition that ELL's shareholders be required to cover overruns not otherwise covered by the Customer, the risks of cost overruns should be considered an unaddressed risk in the Commission's overall public interest determination." Sisung Cross-Answering at 22.

terminates the ESA and the timing of ELL's possible other generation resource needs."[101] Ms. Kunkel noted that the economic benefits cited by ELL witness Datta rely on certain assumptions about load growth, MISO energy prices, and the purported need to construct four new gas plants in the early 2040s (which ELL termed the "Otherwise Needed Generators"). Delving into ELL's assumptions, she discovered that two of those gas plants may not be needed if "the load forecast materializes closer to the MISO forecast than the ELL forecast," which would erase "approximately half of the 'avoided cost' benefit of the Otherwise Needed Generators."[102]

Witness Kunkel further noted that, because Laidley is not required to give notice of its non-renewal until November 30, 2040, ELL's ratepayers could be exposed to [[ ]] in stranded cost risk if Laidley does not renew the ESA past 2041.[103] As she explained:

> ELL estimates a new combined cycle resource to require a 40-month (3.5 year) construction time, but Laidley is only required to give 12 months' notice to renew the contract. This mismatch in timelines could lead to ratepayers being stuck with stranded costs. The first of the Otherwise Needed Generators is a combined cycle resource with a projected in-service date of August 31, 2041. Under the ESA, the date by which Laidley is required to give notice of not renewing the contract is November 30, 2040, only nine months before the in-service date of the otherwise needed generator.
>
> This means that ELL will likely incur more than [[ ]]% of the construction costs by the time that Laidley would be required to give notice to renew the contract or not. Specifically for the [[ ]] MW CC that ELL plans to construct in 2041 (at a cost of $[[ ]]), more than $[[ ]] of costs would be incurred before Laidley is legally required to decide whether or not to renew the ESA.
>
> Similarly, the second of the Otherwise Needed Generators is a combustion turbine with projected in-service date of August 31, 2042. ELL estimates a 36-month construction timeline for combustion turbines, meaning that ELL would have already issued a Final Notice to Proceed and be about 15

[101] Kunkel Direct at 14 (citation omitted).

[102] *Id.* at 18.

[103] *Id.* at 19-21. Ms. Kunkel further found that if Laidley terminated in the ESA in 2046 (after one 5-year renewal), the estimated net cost to ratepayers would be [[ ]]. *Id.* at 22-23.

> months into construction of this CT plant by the notice date of November 30, 2040.[104]

To address these risks, witness Kunkel recommended that "[t]he CPCNs for the Planned Generators should not be issued unless and until ELL and Laidley extend the initial term of the ESA to 25 years. This will more closely match the depreciable life of the gas plants and reduce the risk of stranded costs to other ratepayers."[105]

LEUG witness Brubaker raised similar concerns regarding the 12-month notice requirement for renewal of the ESA:

> The problem with this provision is that Laidley does not have to disclose its plans to ELL sooner than one year in advance of the end of the initial fifteen-year contract term. ELL's scenario might provide for a transition if ELL had enough advance notice that Laidley was not going to renew. The one-year notice provided in the current ESA is manifestly inadequate. If ELL will not know Laidley's plans until one year in advance of the end of the initial contract term, ELL cannot assume a Laidley contract cancellation, and instead would have to continue to plan to serve Laidley as well as other load because a one-year notice does not provide enough time to plan, perform an RFP and construct the facilities required to serve Laidley and the other customer load. ELL's assumptions are not compatible with a three-to-five year planning horizon. Accordingly, with a notice obligation of only one year, ELL will have to assume that it will serve both Laidley and other load. But if Laidley exercises its right not to renew with advance notice less than the planning horizon for new generation, ELL would face a significant over-capacity situation. This could be very costly to remaining customers if ELL tries to include those costs in rates. . . . Unless ELL is prepared to assume the adverse economic consequences of the potential over-capacity, some modification to the ESA will be required. I recommend that instead of requiring Laidley to provide a one-year notice if it elects not to renew, that notice period would be lengthened to five years to provide an adequate time for ELL to make alternative plans for serving its load.

[104] *Id.* at 20-21.
[105] *Id.* at 3, 35.

These enormous stranded cost risks are another reason why the Commission should not approve the Contested Settlement.

Third, ratepayers would face significant cost risk due to the potential need for transmission mitigations, as well as increased ancillary services costs. As NPOs witness Miller explained, there is a risk that additional transmission investments will be required beyond those identified in ELL's initial filing and witness Beauchamp's supplemental testimony. After a thorough review of the transmission aspects of the Application, Mr. Miller found that ELL may have "understate[d] the full scope of transmission facilities necessary to meet this large new data center load. . . . [T]he transmission system designed by ELL may be subject to three types of constraints that could limit the delivery of power to the Customer data center: thermal constraints, voltage constraints, and transient stability constraints."[106] His testimony details those constraints, and discusses the potential mitigations—many of which are costly—that may be needed to address those thermal, voltage, and transient stability constraints.[107] He concluded that "the Company has not adequately evaluated the risk of these potential constraints. If thermal, voltage, or transient stability problems are identified after further analysis (or after the data center's commencement of operations), ELL will need to apply mitigations. The potential cost of such mitigations could be significant."[108] He also found that serving the data center load could result in higher ancillary services costs.[109]

NPOs witness Kunkel explained the implications of these transmission risks for ELL's ratepayers. She observed that "[[

[106] Miller Direct at 5.
[107] *Id.* at 6-16.
[108] *Id.* at 5.
[109] *Id.* at 25-27; Kunkel Direct at 29.

[redacted]]]. Therefore, these additional costs would be allocated across ELL's customer base. Existing ratepayers would likely bear the majority of these costs."[110]

Because ELL's Application would expose ratepayers to significant cost risks resulting from transmission mitigation measures, and because the Contested Settlement does not address those risks, the Settlement should be denied.

If the Commission is inclined to approve the Application, it should adopt two common-sense conditions to shield ratepayers from these risks. First, as NPOs witness Kunkel recommended, the Commission should shield ratepayers from any unidentified transmission costs that may arise as ELL is building out the infrastructure needed to serve the data center project. The Commission should do so by adopting the following condition:

> If, as a result of subsequent studies, analysis, or operating experience, additional transmission facilities are identified as necessary to serve the Customer's data center beyond those identified in (a) Table 1 on pages 13-14 of the Kline Direct Testimony, and (b) ELL's public response to discovery request LEUG 7-8 (public redacted version), no portion of the cost of such facilities will appear in either ELL's retail or wholesale rates.[111]

Second, as recommended by Staff witness Sisung, the Commission should adopt the following condition:

> ELL shall produce, as expeditiously as possible, the information needed to address transmission concerns related to (1) thermal risks; (2) voltage risks; (3) transient stability risks; and (4) Customer load dynamic behavior risk. ELL shall analyze these risks as expeditiously as possible and present the Commission with the results of such analysis as soon as they are available. To the

[110] Kunkel Direct at 29. The amended CIAC agreement filed with ELL's rebuttal testimony addressed the additional transmission facilities referenced in witness Beauchamp's supplemental direct testimony, which were subsequently identified in ELL's response to discovery request LEUG 7-8. *See* Beauchamp Rebuttal at 5; Kunkel Direct, Ex. CMK-2 (ELL resp. to LEUG 7-8). But neither the amended CIAC nor Rider 2 [redacted].

[111] Kunkel Direct at 4, 35-36.

> extent that the analysis concludes that material upgrades are necessary to mitigate these concerns, the costs of those upgrades shall be included in the Customer minimum bill or ELL shall seek a Commission determination of whether the inclusion of these costs in rates would still allow the Application to be found to serve the public interest.[112]

Witness Sisung stressed that this condition "should be added to **any** Commission approval of the Application."[113]

B. The Contested Settlement has not adequately addressed the reliability risks of the proposed data center.

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

> ELL has failed to adequately evaluate the risks associated with the dynamic behavior of the Customer's data center load. Large data centers, like the one that ELL is seeking to accommodate, can have rapidly fluctuating loads. For example, the load can drop suddenly due to a disconnection in power, or the data center's energy demand can oscillate or ramp rapidly. **As recent events in Texas and PJM have demonstrated, the rapidly fluctuating loads of large data centers pose serious challenges to the stability of the grid.** Given that the Customer's proposed data center would be [[ ]] than existing data centers, these grid stability concerns are particularly acute here.
>
> If these load fluctuation problems are not adequately addressed, businesses and residents in North Louisiana could face major disruptions to their electric service. These load fluctuations could also damage equipment at the new Franklin Farms CCCT facility, as well as at nearby generation

[112] Sisung Cross-Answering at 34; *see also* Sisung Cross-Answering, Ex. RLS-027 REV at 4 (Proposed Condition #22). The Contested Settlement includes a term that purports to protect ratepayers from additional transmission costs attributable to Laidley's data center. Contested Settlement at 17 (V.A). But as drafted, the term is essentially meaningless: it would allow Laidley to escape financial responsibility for such costs if *any* portion of the transmission upgrades benefited someone else. The Settlement term also fails to prescribe the specific studies that ELL must conduct, and does not establish a timeline for when such studies must be completed.

[113] Sisung Cross-Answering at 34 (emphasis added).

> facilities, such as the Grand Gulf Nuclear Station. The ISO may have to adopt defensive operations strategies with significant cost and efficiency penalties. Addressing these load fluctuation problems could be costly, potentially requiring additional capital expenditures for transmission and substation equipment such as dynamic compensation equipment, EMS upgrades, and other infrastructure. Further, there is a risk of increased operating costs for ancillary services (such as REG and spinning reserve) because more expensive generation may need to run just to provide the additional support to the grid that was not anticipated in the planning process.[114]

Unfortunately, ELL did not adequately investigate the risks associated with rapidly fluctuating load: "Apparently, the only load shape provided by the Customer to ELL was 'a monthly load ramp and expected load factor.' No hourly data was provided. It similarly appears that the Customer did not provide sub-hourly nor sub-second data, since [[ ]]. . . . Unless the Customer is required to operate with flat power demand, we should assume that the risks posed by the dynamic behavior of data centers apply here as well. To assume otherwise would expose ELL's existing customers to very significant grid reliability and cost risks."[115] Mr. Miller's testimony explained in detail these reliability-related risks,[116] which further underscore that the Application is not in the public interest.

Staff witness Sisung agreed with the risks identified by NPOs witness Miller. He noted that Figure 1 in Mr. Miller's testimony "illustrates the type of dramatic temporary load spikes that could be produced by a data center's potential dynamic load behavior," and found that Mr. Miller's testimony supports Mr. Sisung's "concerns related to the impacts that the data center may have on reliability during emergency conditions."[117]

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[114] Miller Direct at 5-6 (emphasis added).
[115] Miller Direct at 19 (citation omitted).
[116] *See id.* at 20-27
[117] Sisung Cross-Answering at 39-40; *see also id.* at 33-34.

Given the potential threat that these load fluctuations pose to the grid, it is critical that any Commission approval of the Application minimize those threats. To that end, if the Commission is inclined to approve the Application, it should adopt the following two conditions. The first condition, proposed by NPOs witness Miller, will help ensure that ELL and Laidley are proactively mitigating the risks of dynamic load behavior. The second condition, recommended by Staff witness Sisung, would help ensure that the data center appropriately reduces load when the grid is facing emergency conditions. These conditions are set forth below:

> ELL is directed to specify a set of detailed studies, in collaboration with the Customer, to evaluate risks as well as incremental capital and operating costs that may result from variations in the Customer's power consumption, and other dynamic behavior by the Customer load. Risks to reliability, power quality, and generation and transmission equipment should be considered. The detailed study specification will include plans for an initial evaluation study of these risks. The specification will document details of the ELL-Customer collaboration plan for ongoing evaluation, and as necessary mitigation, of risk, that covers the entirety of the project schedule. . . . At the completion of the initial evaluation study, ELL will make a filing in this docket that clearly identifies any problems associated with the Customer's dynamic load, and how ELL will collaborate with the Customer to address any problems that are identified during project execution. The full set of detailed studies will be completed by 12/31/27. At the completion of the detailed studies, ELL will make a filing in this docket that clearly identifies any problems associated with the Customer's dynamic load, how they have been addressed and any costs associated with mitigation.[118]
>
> ELL shall provide the Commission with (i) an agreement between ELL and the Customer on load reduction measures that the Customer will implement in times of system reliability concerns (e.g., MISO-called conservative operations, EEA1 or EEA2 events); (ii) an ELL load reduction plan for Commission approval that is designed to protect the reliability of the system against unplanned Customer load surges during times of system reliability concerns; and/or (iii) other proposed measures to ensure that the reliability of the system is protected against potential unplanned

[118] Miller Direct at 33.

> load surges from the Customer during periods of system reliability concern.[119]

These two conditions are necessary to protect the grid, and Louisiana residents and businesses, from the reliability risks posed by this large new data center. The Contested Settlement, however, does not include either condition. Because the Settlement would expose Louisiana to unacceptable reliability risks, the Settlement should be denied.

C. The Contested Settlement would require existing customers to pay for a transmission line made necessary by the new data center.

It is undisputed that the need for the Mt. Olive to Sarepta transmission line, which ELL estimates will cost ratepayers $546 million,[120] was prompted by Laidley's data center. As ELL admits, "but for the Customer Project, there is no immediate need for Mt. Olive to Sarepta 500 kV line."[121] Staff witness Sisung similarly observed that "the Mt. Olive to Sarepta transmission line would not be required but for the [data center] Project,"[122] as did LEUG witness Dauphinais.[123] Sierra Club witness Glick also submitted lengthy testimony regarding this proposed transmission line, concluding that "ELL has not demonstrated that the Mount Olive to Sarepta Transmission line is needed immediately but for the data center load and therefore has not justified classifying it as a System Improvement and allocating the costs to all ratepayers."[124]

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[119] Sisung Cross-Answering at 40; *see also id.*, Ex. RLS-027 REV at 4 (Proposed Condition #23).

[120] Kline Direct at 16.

[121] Miller Direct, Ex. NMW-2 (ELL resp. to NPO 13-8(c)(ii)) (acknowledging that "but for the Customer Project, there is no immediate need for Mt. Olive to Sarepta 500 kV line").

[122] Sisung Direct at 91.

[123] LEUG Exhibit 5, Direct Testimony of James R. Dauphinais ("Dauphinais Direct") at 11; *see also id.* at 12 ("ELL is only seeking a certificate in this proceeding for these facilities because ELL needs them in order to reliably serve Laidley.").

[124] Sierra Club Exhibit 1, Direct Testimony of Devi Glick ("Glick Direct") at 7; *see also id.* at 46-48.

Despite these findings—and ELL's clear admission—the Company proposed that the cost of these facilities be borne by all ELL ratepayers.[125] The Contested Settlement uncritically accepts this proposal.[126] Forcing other customers to pay for the costs of a line made necessary by Laidley's data center is another yet reason why the Contested Settlement is not in the public interest.

If the Commission is inclined to approve the Application, it should condition its approval on Laidley covering the costs of the Mt. Olive to Sarepta transmission line, as recommended by LEUG witness Dauphinais. Noting that "the portion of the cost of these facilities that is ELL retail jurisdictional is an incremental fixed cost incurred to serve Laidley that is no different than the cost of the New CCCT Generation necessary to serve Laidley," he recommended that "the minimum charge under ESA should be designed to cover the revenue requirement of the ELL retail jurisdictional portion of the Mt. Olive to Sarepta 500 kV Transmission Facilities just as it is designed to cover the revenue requirement of the New CCCT Generation."[127] More specifically, Mr. Dauphinais recommended that the Commission:

> condition its granting of certification of the New CCCT Generation and the Mt. Olive to Sarepta 500 kV Transmission Facilities on adoption by ELL of my proposed revision of the monthly minimum charge amounts under the ESA to cover the 15-year initial term of service revenue requirement for: The portion of the cost of the System Improvement Transmission Projects (Mt. Olive to Sarepta 500 kV Transmission Facilities and Sterlington 500 kV Substation Equipment Upgrades) that is expected to be allocated to ELL's retail customers as a whole under ELL's filed proposal in this case.[128]

[125] Application at 15-16, 27-29; *see also* Kline Direct at 16.
[126] Contested Settlement at 6-7 (¶ I.B.4).
[127] Dauphinais Direct at 12-13.
[128] *Id.* at 22.

This condition would relieve ELL's retail customers of an estimated $505 million[129] of transmission costs that the Company will incur specifically to accommodate Laidley's data center.

If the Commission is disinclined to adopt the recommendation of LEUG witness Dauphinais, at minimum it should establish a cap on the costs from the Mt. Olive to Sarepta transmission line that can be passed onto ratepayers. As Staff witness Sisung explained:

> I am concerned that the Class 5 Estimate provided for the cost of the [Mt. Olive to Sarepta] line is unreliable. In my experience, a Class 5 Estimate is often proven to be an inaccurate predictor of actual costs, and it could be significantly underestimating the actual cost of the project. **With a Class 5 Estimate, the actual cost of the Mt. Olive to Sarepta line could be double the estimated cost.**[130]

In other words, this transmission line's ultimate cost to ratepayers could exceed $1 billion. And as witness Sisung confirmed at hearing, under ELL's proposal [redacted]]][131] To shield ratepayers from this "substantial risk,"[132] the Commission should authorize ELL to recover no more than $546 million of these costs through rates.

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

In the Company's initial filing, ELL argues that the Commission should find the Application to be in the public interest. Many of those arguments focus on ELL's estimate of the ratepayer impact,[133] which were refuted by testimony from the NPOs and other parties, as discussed above. But the Company also tried to support its Application by arguing that it would

[129] *Id.* at 17-18.
[130] Sisung Direct at 99 (emphasis added).
[131] *See* Transcript of July 17, 2025 Hearing at 6.
[132] Sisung Direct at 99.
[133] Thomas Direct at 13-17.

result in economic development, clean energy, and bill assistance benefits. Those arguments do not withstand scrutiny, because these claimed benefits of the Application are unsupported or illusory. And the terms of the Contested Settlement do nothing to change that.

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

Throughout the Application and accompanying testimony, ELL touts the economic benefits of the data center Project and asserts that these benefits demonstrate that the Application is in the public interest. The level of job creation and the economic benefits from that job creation are the primary factors ELL relies upon to support its claim that the Project is in the public interest.[134] The factors ELL relies upon include that 1) Laidley is expected to employ 300 to 500 full-time employees;[135] and 2) the economies of Richland Parish and the surrounding communities are expected to boom from the huge influx of capital investment needed to develop the community infrastructure required to support such a large number of new employees and their families.[136]

ELL relies upon a variety of "commitments" from Laidley to support its contention that the Project will result in an economic boom in the Richland Parish, but when asked for details about each of those commitments, ELL's response is invariably that the Company doesn't know. ELL concedes in the Company's discovery responses that it has *no supporting evidence* for either of these economic claims. The Company's testimony simply parrots unsubstantiated assertions from Laidley—which is not a party in this proceeding.

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

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

[136] Application at 3-4.

ELL's lack of interest in this issue is breath-taking and irresponsible. ELL Witness Beauchamp expressly stated that the confidential agreement the utility reached with Laidley "is about the production of service of electricity, it is not tied to the number of jobs."[137] The Commission should conclude that the jobs and economic benefits allegedly to be secured by the Project are yet another illusory promise and reject the Contested Settlement.

Thus, ELL is unable to provide even basic information on the economic aspects of the Application,[138] aspects which are the cornerstone of ELL's public interest argument. Specifically, the assertions which ELL concedes the Company cannot substantiate include:

1. ELL's claim that the new Customer Project will provide 300-500 full-time jobs[139] is based on statements from Laidley "in publicly available press releases and other, similarly public resources . . .."[140]

2. When asked if the jobs are all expected to be locally-based, as opposed to remote, and whether the people employed will be those who live in the area, ELL disavowed any responsibility for the commitment. ELL stated that the information concerning jobs is based on ELL's understanding of the

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[137] Josie Abugov, *Plan to power Meta's massive Louisiana data center examined in key hearing*, NOLA (July 16, 2025), https://www nola.com/news/environment/meta-ai-data-center-louisiana-enviro/article_beb61093-ba7e-4b61-98d9-614f5a1867fe html. Witness Beauchamp also admitted that she did not know if the new hires would be locally based. *Id.*

[138] The NPOs asked for studies, analyses, or other support for the assertion that the data center would create 300-500 permanent jobs in Louisiana. NPOs Exhibit 7 (ELL resp. to NPO 1-5).

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

[140] NPOs Exhibit 16 (ELL resp. to Sierra 1-5); *see also* NPOs Exhibit 7 (ELL resp. to NPO 1-5). See, also, ELL witness May's assertion that "the *initial indications* with respect to the Project are that the Customer will hire at least 300 to 500 full-time employees." May Direct at 17 (citation omitted) (emphasis added). ELL also refers the parties to META's website and a press release issued by the Louisiana Department of Economic Development. Neither of these are sworn testimony. Press releases and statements from government officials are not *evidence.* Thus, the press releases and public statements by government officials cited in ELL's filings cannot be viewed as evidence in this proceeding.

> commitment made by the Customer, again pointing to unsworn press releases and websites.[141]

All of ELL's support for the economic benefits of the Project is based on hearsay statements not even from Laidley, but from its parent—neither of which is a party in this case.

Meta's letter of April 2, 2025, did nothing to resolve this lack of evidence.[142] The letter simply reasserts the same claim that appears on Meta's website.[143] Similarly, Meta also baldly asserts that ELL's representations in this proceeding regarding the energy requirements, and economic development commitments, are *accurate*.[144] No one is denying that ELL successfully repeated what Meta told the Company. The issue is what analysis supports the numbers ELL relied upon. Meta's letter is nothing more than puffery, a letter promoting Meta rather than providing evidence.

In sum, ELL's recitation of Laidley's unsworn statements goes to the heart of the Company's Application. ELL cannot provide evidentiary support for the specifics of the economic opportunity allegedly presented by the Project—even though the level of job creation is the primary factor that ELL relies on to support its claim that the Application is in the public interest.[145]

This lack of attention to the vital economic issues surrounding the Project constitutes an abdication of ELL's responsibilities as a monopoly service provider required to operate in the public interest. Since ELL cannot substantiate the economic benefits of the data center Project,

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[141] NPOs Exhibit 16 (ELL resp. to Sierra 1-5). ELL also concedes that it does not possess any studies, analyses or other documentation which supports the assertion that the data center will directly employ 300 to 500 persons and again directs parties to yet another press release. NPOs Exhibit 7 (ELL resp. to NPO 1-5).

[142] ELL Exhibit 49 (Meta April 2, 2025 letter).

[143] *Id.* at 1.

[144] *Id.* at 2.

[145] "The economic benefit to Northeast Louisiana is the most significant benefit from ELL serving the Customer's Project." Thomas Direct at 11.

and because the Contested Settlement failed to provide any guarantees that would substantiate those claims, these unsupported claims cannot support a public interest finding. This is an additional reason why the Commission should reject the Contested Settlement.

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

ELL's Application includes a proposed Corporate Sustainability Rider ("CSR") as an addendum to the proposed Electric Service Agreement ("ESA"). According to ELL, Meta has committed to fund 1,500 MW of new solar and/or solar and storage ("hybrid") resources. In fact, ELL claims that "[t]he CSR requires the addition of incremental renewable resources."[146] ELL witness Ingram testifies that "[t]he CSR requires the addition of incremental renewable resources that complement other, reliable, dispatchable sources of generation."[147] As NPOs witness Gonatas noted, this implies that there is a binding commitment, like a firm PPA, for the 1,500 MW of solar.[148]

In reality, the benefits of the renewable commitment are highly questionable. For example, the purchase of energy or renewable attributes from the Designated Renewable Resources (as defined in the ESA Rider) "may be terminated by the Customer [[ ]], with financial risks borne by other ratepayers."[149] Specifically, according to ELL witness Ingram, in the case of early termination of receipt of designated renewable resources under the CSR, the Customer shall provide advance notice of such termination.[150] But as NPOs witness Gonatas explained, [redacted]

[146] May Direct at 35 (emphasis added); *see also* ELL Exhibit 29, Direct Testimony of Elizabeth C. Ingram ("Ingram Direct") at 6.
[147] Ingram Direct at 6 (emphasis added).
[148] NPOs Exhibit 3, Direct Testimony of Constantine Gonatas ("Gonatas Direct") at 5, 9.
[149] *Id.* at 3.
[150] Ingram Direct at 19 (public redacted version).

[redacted][151] Although witness Ingram downplays this scenario as "quite unlikely,"[152] the Company did not cite any basis for this belief. ELL ignores the possibility that if solar energy or storage costs drop, "the Customer may decide to terminate its contract to acquire solar/hybrid energy under the CSR and instead procure power via a lower cost PPA. Then, above market contracts for solar/hybrid procured through the CSR would be borne by ratepayers."[153] Specifically, if ELL fails to find a new subscriber for the Customer's renewable resources, costs and benefits for the designated renewable resources would be assumed by all of ELL's customers through rates.[154] Thus, and as further explained in witness Gonatas's testimony, the CSR terms do not include "a commitment to purchase renewable energy consistent with a binding or financeable PPA."[155]

Furthermore, there is a timing mismatch between the potential purchase of renewables and the Customer's gas-fired energy supply.[156] According to ELL, the first two Planned Generators will come online in late 2028,[157] however the CSR indicates the Company need not even designate renewable resources until 2030.[158] Thus, ELL and the Customer will potentially be two years behind in their efforts to offset emissions from the Planned Generators.

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

[151] Gonatas Direct at 9.
[152] Ingram Direct at 20.
[153] Gonatas Direct at 10.
[154] Ingram Direct at 19-20.
[155] Gonatas Direct at 9.
[156] *Id.* at 12.
[157] Bulpitt Direct at 19.
[158] Ingram Direct at 8 ("The CSR further requires the Designated Renewable Resources included within the Initial Renewable Subscription Amount to be fully identified by 2030.").

has the Company identified any particular transmission projects that would enable these resources.[159]

Finally, ELL exaggerates its joint commitments with the Customer to environmental stewardship, claiming—incorrectly—that the Company is "offsetting" 60% of Laidley's load with renewable power purchases and CCS technology.[160] These offsets are not actually "offsets" at all. "Unlike a pure energy purchaser, who can offset 100% of their procurement with renewable energy, here the Customer, through ELL's agency, is building and dispatching gas-fired CCCTs in tandem with renewable resources. Thus, the gas-fired CCCTs are not 'offset,' but they are 'matched.'"[161] Moreover, "nearly 2/3 of the proposed CSR contributions are from the CCS Low-Carbon Option,"[162] which is not addressed in the Contested Settlement. And as witness Gonatas determined, it is likely "that only 17% would be offset by the Designated Renewable Resources."[163]

The Commission should find that the CSR's environmental benefits are illusory because of numerous contingencies in the CSR, the inadequate development of transmission resources for renewables, and the distant timelines for developing the CSR resources. Thus, these CSR provisions cannot be considered a benefit for the ratepayers that supports approval of the Application. And because the Contested Settlement does nothing to ensure that this "commitment" is implemented, these provisions cannot support a public interest finding. The Contested Settlement should be denied.

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[159] Gonatas Direct at 4.

[160] *Id.* at 4.

[161] *Id.*

[162] *Id.*

[163] *Id.* at 24. If the CCS Low-Carbon Option were developed, witness Gonatas's estimate was that 37.4% in total (including the Designated Renewable Resources) would be conservatively offset.

If the Commission is inclined to approve the Application, it should adopt the following condition:

> ELL shall designate and procure the renewable resources available to fulfill the Customer's commitment to purchase 1,500 MW of renewable solar/hybrid resources under the CSR by January 3, 2027; and in procuring these resources shall issue RFPs that are open to all sources of clean and renewable energy, including solar, battery, wind, and hybrid resources.

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

In its Application, ELL repeatedly touts Laidley's agreement to make a matching contribution of up to $1 million to ELL's Power to Care Program.[164] But as NPOs witness Gonatas observed, the "Customer contribution is on a matching basis, . . . so if ELL's contributions fall short of $1 million, the Customer's contributions would fall short of $1 million also." He further noted how immaterial this contribution relative to the overall data center Project, with "a maximum contribution of $1 million per year over the 15-year contract term as a ratio to the $10 billion total Project value indicated from the Company press release" representing a contribution of "no more than 0.15% of the total Project value."[165]

The immateriality of this conditional commitment is even more striking when considering the vast resources of Laidley's corporate parent: "In the fourth quarter ending December 31, 2024, Meta reported revenue of $48.39 billion, a 21% increase compared to the same period in the previous year. The company's net income for the same quarter rose by 49% to $20.83 billion. For the fiscal year 2024, Meta's total revenue reached $134.9 billion, with a net income of $39.1 billion. In 2024, Meta generated $71.1 billion in operating cash flow, a 40.89%

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

increase from the previous year."[166]

For the reasons explained elsewhere in this brief, the Commission should deny the Contested Settlement because it is not in the public interest. The costs and risks to ratepayers, and the reliability risks to homes and businesses that depend on reliable power, are simply too great. But the fact that this funding commitment is immaterial and contingent represents another reason why the Settlement should be denied.

If the Commission is inclined to approve the Application, it should at minimum ensure that this Power to Care commitment is given effect. To the end, the Commission should include the following as a condition of its approval of the Application:

> ELL shall contribute at least $1 million annually to the Power to Care program in each of the years 2026-2041. These funds, plus any matching funds donated by Laidley LLC pursuant to the Corporate Sustainability Rider, shall be earmarked for residential customers in ELL's service territory. Only Louisiana residential customers of ELL shall be eligible to receive these Power to Care funds. If the Power to Care program is discontinued or suspended before the end of this time period, ELL shall notify the Commission and the parties in Case No. U-37425, and will submit a proposal for successor organization or program to receive the funds previously earmarked for Power to Care.

Although such contributions would be a drop in the bucket for ELL and Laidley, low-income customers' bill assistance needs remain great—and will become even greater as ratepayers absorb the costs of this Application.

III. SUMMARY OF CONDITIONS THAT WOULD BE NECESSARY TO BETTER PROTECT RATEPAYERS AND THE GRID FROM THE APPLICATION'S HARMS

For the reasons explained above, the Commission should reject the Application—and the Contested Settlement—because neither is in the public interest. But if the Commission is

[166] Sisung Direct at 18-19.

inclined to approve the Application, the Commission should adopt the following safeguards as a condition of its approval:

To protect ratepayers from the risk of post-approval changes to the ESA and CIAC agreement, the Commission should adopt the following two conditions:

> Any non-ministerial changes to the Related Agreements are subject to Commission approval. Alternatively, in the event ELL does not seek or receive Commission approval of such changes, ELL will indemnify and hold-harmless ratepayers for any losses caused by a modification to the Related Agreements that has not been approved by the Commission.[167]
>
> If the ESA is amended to increase the load to be served, ELL shall return to the Commission with the amended ESA and an updated proposal demonstrating how ELL intends on serving that updated load in a manner that continues to serve the public interest.[168]

To protect ratepayers from the risk of stranded costs incurred before the ESA's effective date, the Commission should adopt the following condition:

> ELL shall prudently manage the CIAC Agreements and ratepayers will be held harmless and indemnified from any losses resulting from CIAC projects expenditures that are greater than the amount of the CIAC payments received from Customer. This hold harmless and indemnification shall explicitly include, but not be limited to, holding harmless and indemnifying ratepayers for any payments or expenditures on the Planned Generators before the Effective Date of the ESA that are greater than the amounts received from the Customer under the CIAC Agreements for the Planned Generators and secured by the Parent Guaranty, without regard to any monetary limitations imposed on the definitions of "Estimated Capital Costs" or "Generation Capacity Construction Costs" by provisions 1(f), 3(b) or other provision of the CIAC Agreement.[169]

[167] Sisung Cross-Answering, Ex. RLS-027 REV at 3 (Proposed Condition #15).
[168] *Id.*, Ex. RLS-027 REV at 1 (Proposed Condition #1).
[169] *Id.*, Ex. RLS-027 REV at 1 (Proposed Condition #2).

To protect ratepayers from the risk of potential cost overruns in constructing the Planned Generators, the Commission should adopt the following condition:

> The rate-based costs of these Planned Generators will be limited to the costs presented in ELL's October 30, 2024 filing. If the costs are greater due to a demonstrated change in law beyond ELL's control, ELL may file a petition with the Commission to include such additional costs in ELL's retail rates.

To protect ratepayers from the risk of increased costs due to unidentified transmission mitigations, the Commission should adopt the following conditions if it approves the Application:

> If, as a result of subsequent studies, analysis, or operating experience, additional transmission facilities are identified as necessary to serve the Customer's data center beyond those identified in (a) Table 1 on pages 13-14 of the Kline Direct Testimony, and (b) ELL's public response to discovery request LEUG 7-8 (public redacted version), no portion of the cost of such facilities will appear in either ELL's retail or wholesale rates.[170]

> ELL shall produce, as expeditiously as possible, the information needed to address transmission concerns related to (1) thermal risks; (2) voltage risks; (3) transient stability risks; and (4) Customer load dynamic behavior risk. ELL shall analyze these risks as expeditiously as possible and present the Commission with the results of such analysis as soon as they are available. To the extent that the analysis concludes that material upgrades are necessary to mitigate these concerns, the costs of those upgrades shall be included in the Customer minimum bill or ELL shall seek a Commission determination of whether the inclusion of these costs in rates would still allow the Application to be found to serve the public interest.[171]

[170] Kunkel Direct at 4, 35-36.

[171] Sisung Cross-Answering at 34; *see also id.*, Ex. RLS-027 REV at 4 (Proposed Condition #22).

To protect Louisiana communities and businesses from the reliability risks that will result from serving the Laidley data center load, the Commission should adopt the following two conditions if it approves the Application:

> ELL is directed to specify a set of detailed studies, in collaboration with the Customer, to evaluate risks as well as incremental capital and operating costs that may result from variations in the Customer's power consumption, and other dynamic behavior by the Customer load. Risks to reliability, power quality, and generation and transmission equipment should be considered. The detailed study specification will include plans for an initial evaluation study of these risks. The specification will document details of the ELL-Customer collaboration plan for ongoing evaluation, and as necessary mitigation, of risk, that covers the entirety of the project schedule. . . . At the completion of the initial evaluation study, ELL will make a filing in this docket that clearly identifies any problems associated with the Customer's dynamic load, and how ELL will collaborate with the Customer to address any problems that are identified during project execution. The full set of detailed studies will be completed by 12/31/27. At the completion of the detailed studies, ELL will make a filing in this docket that clearly identifies any problems associated with the Customer's dynamic load, how they have been addressed and any costs associated with mitigation.[172]

> ELL shall provide the Commission with (i) an agreement between ELL and the Customer on load reduction measures that the Customer will implement in times of system reliability concerns (e.g., MISO-called conservative operations, EEA1 or EEA2 events); (ii) an ELL load reduction plan for Commission approval that is designed to protect the reliability of the system against unplanned Customer load surges during times of system reliability concerns; and/or (iii) other proposed measures to ensure that the reliability of the system is protected against potential unplanned load surges from the Customer during periods of system reliability concern.[173]

[172] Miller Direct at 33.

[173] Sisung Cross-Answering at 40; *see also* Sisung Cross-Answering, Ex. RLS-027 REV at 4 (Proposed Condition #23).

To protect ELL's ratepayers from the cost risks of the Mt. Olive to Sarepta transmission line, the Commission should deny ELL's request to recover the costs of that transmission line in rates. Specifically, the Commission should adopt the following condition in granting certification of these transmission facilities:

> ELL and Laidley must revise the monthly minimum charge amounts under the ESA to cover the 15-year initial term of service revenue requirement for: The portion of the cost of the System Improvement Transmission Projects (Mt. Olive to Sarepta 500 kV Transmission Facilities and Sterlington 500 kV Substation Equipment Upgrades) that is expected to be allocated to ELL's retail customers as a whole under ELL's filed proposal in this case.[174]

If the Commission is not inclined to entirely shield ratepayers from the cost of these transmission facilities, it should establish a cap on the costs from the Mt. Olive to Sarepta transmission line that can be recovered in rates. Specifically, the Commission should cap the recoverable costs to be consistent with ELL's estimates, and authorize ELL to recover no more than $546 million of these transmission facility costs in rates, as reflected in the following condition:

> ELL may include no more than $546 million of the Mt. Olive to Sarepta transmission line capital costs in ELL's retail or wholesale rates.

To ensure that the 1,500 MW renewable energy commitment of the Application is realized, the Commission adopt the following condition if it approves the Application:

> ELL shall designate and procure the renewable resources available to fulfill the Customer's commitment to purchase 1,500 MW of renewable solar/hybrid resources under the CSR by January 3, 2027; and in procuring these resources shall issue RFPs that are open to all sources of clean and renewable energy, including solar, battery, wind, and hybrid resources.

[174] Dauphinais Direct at 22.

To ensure that the conditional Power to Care commitment is given effect, the Commission should adopt the following condition if it approves the Application:

> ELL shall contribute at least $1 million annually to the Power to Care program in each of the years 2026-2041. These funds, plus any matching funds donated by Laidley LLC pursuant to the Corporate Sustainability Rider, shall be earmarked for residential customers in ELL's service territory. Only Louisiana residential customers of ELL shall be eligible to receive these Power to Care funds. If the Power to Care program is discontinued or suspended before the end of this time period, ELL shall notify the Commission and the parties in Case No. U-37425, and will submit a proposal for successor organization or program to receive the funds previously earmarked for Power to Care.

IV. IF THE COMMISSION IS INCLINED TO APPROVE THE APPLICATION, IT SHOULD WITHHOLD A CPCN FOR THE THIRD GENERATOR.

For the reasons explained above, ELL's Application and the Contested Settlement should be denied. But if the Commission is otherwise inclined to issue a certification of public convenience and necessity ("CPCN") for the Planned Generators, it should not issue a CPCN for the third Planned Generator at this time. ELL's proposal for the third generator,[175] to be located at the Waterford site, is insufficiently developed and does not meet the requirements of the Commission's 1983 Order. As such, the CPCN request for this plant should be denied as premature.

There are at least two fundamental reasons why this CPCN request is premature. First, the costs of the third generator are too uncertain for a CPCN to be issued. The Commission's 1983 Order specifies that CPCN requests "shall include the specific data utilized by the utility in

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

justification of the generation project or purchased power agreement, *an itemized projection of the total costs*, the scheduled completion date with appropriate time schedules for the percentage of the total project to be completed by specific target dates, and, in cases of purchased power or capacity agreements, the proposed contract in its entirety."[176]

ELL failed to provide an itemized projection in its Application, and acknowledged that the third generator's costs were uncertain. As ELL witness Bulpitt testified, "Unit 3 is expected to have similar costs to Units 1 and 2, but *the expected costs will depend on the site specifics of the selected site*."[177] Although witness Beauchamp identified the location of the third Planned Generator in supplemental testimony, ELL did not provide an updated cost estimate for this proposed generator. And in a discovery response provided in late March 2025, ELL conceded that "[t]he cost estimate for CCCT #3 (to be located at the Waterford facility . . .) has not changed. *It remains a Class 5 estimate*."[178] Because ELL had not yet provided "an itemized projection of the total costs" of the third gas plant, it would be premature to issue a CPCN at this time.

Second, the connection between the third Planned Generator and Laidley's data center is tenuous. NPOs witness Miller noted that there are questions "about whether the third CCCT,

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[176] LPSC General Order (Sept. 20, 1983) (*In re: In the Matter of the Expansion of Utility Power Plant; Proposed Certification of New Plant by the LPSC*), as amended by General Order (Corrected), Docket No. R-30517 at 4 n.2 (May 27, 2009) (*In re: Possible modifications to the September 20, 1983 General Order to allow (I) for more expeditious certifications of limited-term resource procurements and (2) an exception for annual and seasonal liquidated damages block energy purchases*), https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=TRpix7l2Lss%3d (emphasis added).

[177] Bulpitt Direct at 42.

[178] Kunkel Direct, Exhibit CMK-11 (ELL Response to Staff 3-6 (public version)) (emphasis added). ELL's rebuttal testimony provides an EPC cost of the winning bidder from an RFP process that concluded in February 2025. ELL Exhibit 16, Rebuttal Testimony of Matthew Bulpitt at 2, 4. Despite that, ELL's discovery response, provided a month *after* the RFP's completion, characterized the Waterford cost estimate as a "Class 5 estimate." Moreover, ELL does not intend to execute an EPC agreement until November 2025. *Id.* at 5.

which would be sited at the Waterford site in southern Louisiana, makes sense from a transmission perspective."[179] He explained:

> First, ELL never independently evaluated the third generator in its transmission analyses. In all of the transmission scenarios that ELL thoroughly evaluated, the Company assumed that it would build three combined cycle units; the Company did not consider scenarios in which only the two 1x1 CCCTs near the data center would be built. The construction of three plants, with one located in southern Louisiana, was simply a base assumption for each scenario.
>
> Second, when asked in discovery to "explain, including any studies and analyses, why additional generation is necessary in the south when generating stations are being constructed in the north which are proposed and designed to serve the Customer's load," ELL did not provide any studies or analysis. Instead, the Company simply referred back to witness Kline's testimony. With regard to witness Kline's testimony on diminished north-to-south flows, ELL was asked to identify "the specific conditions under which north-to-south system flow would be diminished." ELL provided a conclusory response that simply cited back to the testimony.[180]

To further explore this question, Witness Miller sponsored a simple sensitivity analysis using the Company's load flow models. This sensitivity tested whether "removal of the third CCCT unit caused a significant increase in thermal violations." The analysis found "that, with the absence of the third CCCT, the transmission is mostly unchanged."[181] Although the analysis was illustrative, witness Miller concluded that it "raise[d] questions about the [transmission] benefits of the third CCCT that ELL is seeking to build, particularly in regard to serving the Customer load."[182]

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[179] Miller Direct at 31.

[180] *Id.* (citations omitted).

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

[182] Miller Direct at 32.

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

V. THE APPLICATION SHOULD BE DISMISSED BECAUSE META, AN INDISPENSABLE PARTY, HAS NOT PARTICIPATED IN THIS PROCEEDING.[183]

For the reasons explained below, the Application, and the Contested Settlement, should be denied. And the Application should be dismissed due to ELL's failure to comply with the requirements of the MBM Order. In addition to those fatal flaws in the Application, the Application should be dismissed because Meta has not been made a party to this litigation.

Louisiana Code of Civil Procedure Art. 641(1) provides that a person shall be joined as a party in the action when "in his absence complete relief cannot be accorded among those already parties." Parties needed for just adjudication in an action are those who have an interest relating to the subject matter of the action and are so situated that a complete and equitable adjudication of the controversy cannot be made unless they are joined in the action.[184] By using the word "shall," the article makes mandatory the joinder of the person described in Art. 641 as a party to the suit.[185] An adjudication made without making a person described in the article a party to the litigation is an absolute nullity.[186]

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[183] On March 5, 2025, the NPOs filed a Motion to Declare Laidley, LLC and Meta Platforms, LLC as Parties Necessary for Just Adjudication. On April 4, 2025, the Tribunal denied the Motion. On April 14, 2025, the NPOs filed a Motion for Immediate Review of Interlocutory Order. The Commission denied the Motion for Interlocutory Review on May 19, 2025. Thus, the Commission never addressed the merits of the arguments set forth in the Motion.

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

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

[186] *Miller v. Larre*, 19-208 (La. App. 5 Cir 12/11/19. 284 So.3d 1284, 1287.

At the outset, it is important to recognize the unique nature of this proceeding when compared to other proceedings in which Article 641 is usually considered. In most cases, the issues to be resolved are the rights or obligations of individual entities. In this instance, rather than assessing any individual claim, the Commission will address whether ELL's request is in the public interest. It is within this framework that Laidley and its parent company, Meta, should be declared parties necessary for the just adjudication of these issues.

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

In arguing that its Application is in the public interest, ELL describes actions that will purportedly be taken by the Customer. ELL relies upon a variety of Customer "commitments" to support its Application, but when asked for the basis of those commitments, ELL's response is invariably that the Company doesn't know. Similarly, ELL also makes assertions regarding the Customer's energy needs[187] and business practices. However, when asked for information regarding how those needs were developed, ELL once again cannot provide any information. ELL's testimony simply parrots unsubstantiated assertions from the Customer and Meta—currently non-parties in this proceeding.

Specifically, ELL raises two contentions that the Company claims establish that its Application is in the public interest. First, ELL asserts that the Customer's Project (i.e., the data

[187] According to Ms. Beauchamp, "Following the filing of the Application, the Customer approached the Company about increasing the load of the Project." Beauchamp Supplemental Direct at 4.

center) will provide significant economic benefits to the region. With regard to this issue, ELL claims that the Project will create 300-500 permanent jobs for the Richland area.[188] Second, ELL asserts that the Customer's strong desire to achieve its sustainability goals will result in the successful negotiation of significant benefits such as the construction of more renewables in Louisiana.[189] However, ELL concedes in the Company's discovery responses that it has *no supporting evidence* for either of these claims. ELL then suggests that parties rely on Meta websites, not even Laidley-provided information.

Similarly, ELL justifies the Project based upon the significant electric load (i.e. number of MW) required by the Customer to operate the data center.[190] However, once again ELL concedes that it has no information regarding how the load allegedly needed to operate the data center was calculated or determined.[191] Thus, only Meta knows how the necessary load was determined.

Finally, ELL's assertion that the "*record* also firmly establishes that the NPOs have no legitimate reason for seeking additional information"[192] is plainly wrong. Press releases[193] and public statements by government officials[194] are not *evidence*. The press releases and public statements by government officials cited in ELL's filing are not evidence in this proceeding.

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[188] Application at 1, 3; *see also* May Direct at 17 ("The Customer will hire *at least* 300 to 500 full-time employees with an average salary of $82,000") (emphasis added).

[189] For example, ELL asserts that the CSR "is an agreement designed specifically for (and open only to) the Customer that (1) identifies customer-specific commitments for clean resources, including solar, hybrid, CCS, and, potentially, wind and nuclear resources." Application at 17. According to ELL, the CSR supports the sustainability commitments of the Customer. Beauchamp Direct at 61.

[190] ELL asserts that it needs 2,262 MW of new baseload generation to serve the new Customer and existing customers. May Direct at 4.

[191] *See* Peremptory Exception and Motion to Declare Laidley, LLC and Meta Platforms, LLC as Parties Necessary for Just Adjudication in this Proceeding and Supporting Memorandum ("Motion"), Attachment 3.

[192] ELL Opposition at 3 (emphasis added). ELL's claim that the Company "has been as transparent as possible in its disclosures" is ironic given that the "disclosures" involving jobs, sustainability principles and necessary load are simply that ELL has no information. *Id.* at 4.

[193] *Id.* at 3-4.

[194] *Id.* at 2.

ELL has repeatedly conceded that it has no information about the number of jobs that will actually be created once the data center is operating or how the load Laidley is requesting was actually calculated. Furthermore, ELL acknowledges that it does not know the sustainability goals of the Customer and how those sustainability goals actually support ELL's assertion that the Customer will ultimately provide benefits still to be negotiated to the residents of Louisiana.

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

Similarly, ELL cannot provide evidentiary support for the specifics of the economic opportunity allegedly presented by the Project. Despite the level of job creation being one of the primary factors ELL relies upon to support its claim that the Project is in the public interest,[195] ELL apparently has no information regarding how the number of permanent jobs was determined and whether those positions would actually benefit Louisianans.[196] The Company certainly cannot provide evidentiary support on an issue it knows nothing about.

ELL also lacks any evidence regarding the Customer's sustainability goals. As stated by ELL witness Ms. Ingram, "It is my understanding that the Customer is dedicated to minimizing their environmental impact and promoting sustainability in all aspects of their business."[197]

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

[196] *See* NPOs Exhibit 16 (ELL resp. to Sierra 1-5); *see also* NPOs Exhibit 7 (ELL resp. to NPO 1-5).

[197] Ingram Direct at 6.

ELL's "understanding" of the Customer's sustainability goals is irrelevant and not evidence, particularly where the Company is relying on statements from Meta, not the Customer. Ms. Ingram also claims that the CSR was a "relevant factor for the Customer as it decided whether to move forward with selecting Louisiana for its investment."[198] Again, ELL did not provide any basis for this assertion. Given the fact that many of the alleged benefits of the Project, particularly the benefits of the CSR, are still subject to negotiation between ELL and the Customer,[199] knowing the sustainability goals that underlie the CSR is vital for a determination by the Commission whether the negotiations between the two parties are likely to result in the benefits ELL describes in the Application and testimony.

Finally, ELL's assertion that the "*record* also firmly establishes that the NPOs have no legitimate reason for seeking additional information"[200] is plainly wrong. Press releases[201] and public statements by government officials[202] are not *evidence*. Thus, the press releases and public statements by government officials cited in ELL's filing are not evidence in this proceeding. ELL has repeatedly conceded that it has no information about the number of jobs that actually will be created once the data center is operating or how the load Laidley is requesting was actually calculated. Furthermore, ELL acknowledges that it does not know the sustainability goals of the Customer and how those sustainability goals actually support ELL's assertion that the Customer will provide benefits to the residents of Louisiana.

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[198] *Id.* at 4.

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

[200] ELL Opposition at 3 (emphasis added). ELL's claim that the Company "has been as transparent as possible in its disclosures" is ironic given that the Company's "disclosures" involving jobs, sustainability principles and necessary load are simply that ELL has no information. *Id.* at 4.

[201] *Id.* at 3-4.

[202] *Id.* at 2.

Meta's letter of April 2, 2025, did nothing to resolve this lack of evidence.[203] Meta simply baldly reasserts the same claim that appears on Meta's website.[204] Similarly, Meta also baldly asserts that ELL's representations in this proceeding regarding the energy requirements, and economic development commitments are *accurate*.[205] No one is denying that ELL successfully repeated what Meta told the Company. The issue is what analysis supports the numbers ELL relied upon. Meta's letter is nothing more than puffery, a letter promoting Meta rather than providing evidence.

To summarize. the assertions which ELL concedes it cannot substantiate include 1) the number of permanent jobs created by the data center and how many of those jobs will be local rather than remote;[206] 2) how the Customer's need for a specific amount of power energy timeline and ramp up needs were developed;[207] and 3) the Customer's sustainability goals.[208]

Parties needed for just adjudication in an action are those who have an interest relating to the subject matter of the action and are so situated that a complete and equitable adjudication of the controversy cannot be made unless they are joined in the action.[209] The NPOs cannot obtain complete relief in this proceeding without the information that can only be provided by Meta. This relief could include stronger requirements to help ensure that the promised jobs are actually created, ratepayer protections for ratepayers should the data center's estimated load turn out to be incorrect and stronger safeguards to ensure that the benefits ELL is claiming will accrue from the

[203] ELL Exhibit 49 (Meta April 2, 2025 letter).
[204] *Id.* at 1.
[205] *Id.* at 2.
[206] *See* NPOs Exhibit 16 (ELL resp. to NPO Sierra 1-5); *see also* NPOs Exhibit 7 (ELL resp. to NPO 1-5).
[207] *See* NPOs Exhibit 8 (ELL resp. to NPO 1-7).
[208] *See* NPOs Exhibit 9 (ELL resp. to NPO 1-13).
[209] *Cohen v. Cohen,* 20-352, 329 So.3d 1057, 1062 (La. App. 5 Cir 10/13/21).

Customer to the residents of Louisiana will actually occur. ELL does not have the information which the NPOs need to assess these risks to ratepayers.

More importantly, a complete and equitable adjudication of the controversy cannot be made unless Laidley and Meta are joined in the action. It is clear from ELL's Application, testimony, and reliance on extra-record press releases and statements that the economic benefits of the Project are the cornerstone of ELL's public interest argument. If the Project does not actually produce 300 to 500 permanent jobs, that would significantly undercut ELL's public interest argument. And despite repeatedly asserting that the Project will create 300-500 jobs, ELL admits that it has no evidence to support this claim—but claims that Meta does.[210]

In the Ruling below, the ALJ has apparently determined that the NPOS have no substantial rights that would be protected by granting the motion.[211] However, joinder is necessary to protect the substantial rights of the NPOs. The Alliance is the only dedicated consumer advocate in Louisiana for residential utility customers. The organization participates in Commission proceedings to ensure the public's best interests are represented, ensuring that Louisiana ratepayers are not paying more than their fair share. Through four decades of service, the Alliance continues to demand lower bills, cleaner energy solutions, more good-paying jobs, and better infrastructure. Essentially, the Alliance's clients are the Louisiana ratepayers and the organization has a substantial interest in protecting those clients and asserting their rights.

[210] *See* Motion (filed Mar. 5, 2025); *id.*, Attachments 1 and 2.

[211] The ALJ's conclusion that joinder is absolutely necessary to protect substantial rights only where property or personal interest is at stake has no basis in Louisiana law. While many joinder motions brought pursuant to Art 641 (2) concern property or personal rights, the Courts have never limited the substantial rights protected by joinder to only property or personal interests. Moreover, the Alliance members, who are residential ratepayers, do have a substantial interest in the rates they pay and in these rates being just and reasonable and in the public interest.

Because of the significant gaps in ELL's filing, the only method by which the Alliance can protect those rights is through the joinder of Laidley and Meta.[212]

The ALJ also noted the lack of Commission decisions addressing the joinder issue and then leaps to the unsubstantiated conclusion that the issue does not arise because the Commission has the "ability to fully resolve matters over which it has jurisdiction." [213] The ALJ seems to assume that simply because this issue arises infrequently, this "fact" in and of itself warrants denial of the motion. This erroneous conclusion renders the decision arbitrary and capricious.[214] First, the fact that an issue is rare is no basis for a merits determination regarding that issue in a specific case. Moreover, the Commission has previously recognized that the indispensable party principle applies to the Commission.[215] Thus, the "lack of Commission precedent for compulsory joinder" is not a result of the Commission's ability to fully resolve matters over which it has jurisdiction, it is simply the result of the issue rarely needing to be raised by a party. The ALJ's unreasonable inference, that the small number of Commission decisions addressing the joinder issue means that joinder is not necessary, warrants a reversal of the Ruling.

Finally, the ALJ also notes in the Ruling that 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 l9(a), a rule similar to La. C.C.P. Article 641, et seq. However, even though this limitation has been applied at the federal level since at least the early 1980s,[216] not only have

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[212] Similarly, the Union of Concerned Scientists works to ensure that the benefits of affordable energy are distributed fairly, that there is meaningful public participation in Commission proceedings, and that the electricity grid and generation are appropriately modernized. On behalf of its nearly 1,000 Louisiana supporters, the UCS has a substantial interest in the issues ELL failed to provide any support for.

[213] Ruling on Peremptory Exception of Nonjoinder at 10 (Apr. 4, 2025) ("Ruling").

[214] A Commission order is arbitrary and capricious if based upon an error of law or not reasonably derived from the record evidence. *See, e.g., Herman Brothers, Inc. v. Louisiana Public Service Commission*, 564 So.2d 294, 297 La. 1990.

[215] TransLouisiana Gas Company (A Division of Atmos Energy Corporation) (Dallas, Texas), ex parte Docket No. U-19631, Order No. U-19631-(A) (September 3, 1992).

[216] *See, e.g., Costello Pub. Co. v. Rotelle*, 670F.2d 1035, 1044 (D.C. Cir. 1981).

the Louisiana courts not adopted the limitation, apparently no state court in the country has adopted the federal limitation. It is difficult to conclude that the federal cases are persuasive authority when no other jurisdiction has adopted their limitation. Despite this dearth of legal support for the limitation, the ALJ not only apparently adopted the federal limitation but provided no rationale for adopting a federal limitation[217] which has such little acceptance among other jurisdictions. This failure to provide a rationale for adopting the federal limitation, particularly in light of the fact that the limitation is an issue of first impression at the Commission, is arbitrary and capricious.

The gaps in this record should have been addressed by joining the parties that possess the information on which ELL's Application depends. Pursuant to Art. 641, a person shall be joined as a party in the action when in his absence complete relief cannot be accorded among those already parties. The standard to be applied is whether the party is needed for a just adjudication. In this instance, the Commission should find that the participation in this proceeding by Meta is necessary for a just adjudication of ELL's Application. The participation of Meta in this proceeding is necessary for the just adjudication of the issues in this proceeding because ELL is unable to provide even basic information on aspects of the Application, aspects which are vital to a finding that the Application is in the public interest. Since ELL cannot substantiate either the economic benefits of the Project or the energy needs of the Customer, a party who can provide the necessary information must intervene.

[217] Ruling at 13-14.

CONCLUSION

For the foregoing reasons, the Commission should find that Contested Settlement is not in the public interest and deny the approvals requested in the Settlement and ELL's Application.

If the Commission is inclined to approve the Application, it should, at a minimum, condition that approval upon the customer safeguards outlined in Sections II and III of this brief. Although these conditions would not fully protect ELL's captive ratepayers from the harms of the Application, they would significantly reduce ratepayers' exposure to stranded costs, and would help ensure stability of the grid.

August 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2025, I served copies of the foregoing pleading on all other known parties on the Official Service List for Docket No. U-37425 via electronic mail. I also served the Confidential version of this pleading upon ELL and other parties entitled to receive HSPM/AEO material.

Susan Stevens Miller