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-_____**

DIRECT TESTIMONY

OF

JOSHUA B. THOMAS

ON BEHALF OF

ENTERGY LOUISIANA, LLC

PUBLIC REDACTED VERSION

OCTOBER 2024

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LIST OF EXHIBITS

I. INTRODUCTION AND BACKGROUND

Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Joshua B. Thomas. My business address is 639 Loyola Avenue, New Orleans, Louisiana 70113.

Q2. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Entergy Services, LLC ("ESL") as the Vice President of Regulatory Services.

Q3. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am testifying before the Louisiana Public Service Commission ("LPSC" or the "Commission") on behalf of Entergy Louisiana, LLC ("ELL" or the "Company").

Q4. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I have a Bachelor of Arts degree in Accounting from The Catholic University of America, and I am a Certified Public Accountant licensed in the State of Louisiana and the Commonwealth of Virginia. I began work for ESL (at that time known as Entergy Services, Inc.) as Manager, Accounting Policy Implementation in 2008. In that role, I was responsible for reviewing and providing guidance to management on the accounting and reporting for a variety of transactions. In 2013, I became the Finance Director for Legacy Entergy Louisiana, LLC ("Legacy ELL") and Legacy Entergy Gulf States Louisiana, LLC ("Legacy EGSL"), which position became the Finance Director for Entergy Louisiana, LLC after Legacy ELL and Legacy EGSL consummated their Business Combination in 2015. In that role I was responsible for financial management, planning, monitoring, and reporting, as well as providing regulatory support to those Entergy Operating Companies ("EOCs").[1]

In August 2016, I became the Director, Regulatory Policy and in August 2017, I assumed the role of Director, Regulatory Filings and Policy. In that capacity, I provided support to the EOCs in the preparation and review of regulatory filings and provided support and testimony in matters involving regulatory policy, ratemaking, finance, and accounting. In July 2020, I became the Acting Vice President of Regulatory Services and subsequently took on my current role as Vice President of Regulatory Services in February 2021. In this role, I oversee the departments responsible for Regulatory Filings, Customer Rates and Revenues, and Regulatory Strategy. I also continue to provide support and testimony to the EOCs in matters involving regulatory policy, ratemaking, finance, and accounting. Prior to working at ESL, I was employed on the Staff of the U.S. Securities and Exchange Commission in the Division of Corporation Finance. In that position, I was responsible for the review of public company financial information and disclosures filed with the U.S. Securities and Exchange Commission.

[1] The five EOCs consist of ELL; Entergy Arkansas, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; and Entergy Texas, Inc.

Q5. HAVE YOU TESTIFIED BEFORE THE LPSC PREVIOUSLY?

A. Yes, I have. I also have testified previously on various issues in several proceedings before the Arkansas Public Service Commission, Mississippi Public Service Commission, Public Utility Commission of Texas, and the Federal Energy Regulatory Commission. A list of my prior testimony can be found on Exhibit JBT-1.

II. **PURPOSE**

Q6. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony discusses certain regulatory issues that the Commission will need to resolve in order for the Company to provide electric service to [redacted] ("Customer") for its planned [redacted] in Richland Parish (the "Project"). My conclusion and recommendations are as follows. First, the Commission should expressly confirm that the Planned Generators, defined below, are system resources and their fuel costs should be included in the calculation of ELL's Fuel Adjustment Clause ("FAC") because the Planned Generators will serve ELL's total load and all its customers.

Second, the Commission should find that providing electric service to the Customer and all that such service entails, as set forth in the Application and supported by testimony, is in the public interest. I base this recommendation on the transformative economic benefits the Customer's Project brings to Northeast Louisiana, the Customer's commitment to the funding of renewable resources and a demonstration carbon capture and storage ("CCS") project, the Customer's contributions of funding to cover a substantial portion of the necessary transmission additions for its service, the Customer's expected revenue levels exceeding the revenue requirements associated with necessary generation additions, and the broader benefits from other transmission projects.

Third, I recommend that the Commission find that ELL, through this Application and supporting testimony, has complied with the LPSC General Order dated September 20, 1983 ("1983 General Order")[2] and Rule 3 regarding Electric Service Agreements ("ESA") with industrial customers requiring significant resource additions from the LPSC General Order dated July 29, 2019 ("Industrial Load Rule").

Fourth, I recommend that the Commission grant an exemption to Market-Based Mechanisms ("MBM") Order[3] due to the specific facts and circumstances present here that create the need for the generating units necessary to serve the Customer ("Planned Generators"). Conducting a competitive solicitation process like a RFP pursuant to the MBM Order ***and*** meeting the Customer's electric service needs on the Customer's required timetable is impossible.

Fifth, I recommend that the Commission confirm that ELL may recover in its FAC the expense portion of payments pursuant to long-term service agreements ("LTSAs") for the Planned Generators.

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2 The 1983 General Order was amended by General Order dated May 27, 2009, Docket No. R-30517 *In re: Possible modifications to the September 20, 1983 General Order to allow (1) for more expeditious certifications of limited-term resource procurements and (2) an exception for annual and seasonal liquidated damages block energy purchases.*

3 General Order, Docket No. R-26172 Subdocket A, *In re: Development of Market-Based Mechanisms to Evaluate Proposals to Construct or Acquire Generating Capacity to Meeting Native Load, Supplements the September 20, 1983 General Order*, dated February 16, 2004, as amended by General Order, Docket No. R-26172 Subdocket B, dated November 3, 2006 and further amended by the April 26, 2007 General Order and the amendments approved by the Commission at its October 15, 2008 Business and Executive Meeting; the October 29, 2008 General Order, Docket No. R-26172, Subdocket C; and the October 14, 2024 General Order, Docket No. R-34247.

III. SYSTEM RESOURCES FINDING

Q7. PLEASE DESCRIBE THE FINDING THAT ELL REQUESTS WITH RESPECT TO THE PLANNED GENERATORS.

A. ELL requests that the Commission expressly confirm that the Planned Generators are system resources, and their fuel costs should be included in the calculation of ELL's Fuel Adjustment Clause because they are intended to serve all customers. This would treat these generators the same as all other generators that have been added to ELL's system over time.

Q8. WHAT FACTS SUPPORT A FINDING THAT THE PLANNED GENERATORS ARE SYSTEM RESOURCES?

A. This Customer will not take service under a special rate and will instead pay fuel and non-fuel rates that reflect rolled-in rates that are the same as that paid by other similarly situated customers, noting, as discussed by Company witness Ryan Jones, that this rate will include an appropriate minimum monthly charge to ensure that the customer is paying the incremental generation costs to serve under the applicable rate schedule. Rolled-in rates have been an important part of Louisiana's regulatory landscape for some time and ensure that similarly situated customers are not subject to discriminatory rates. While it would be consistent with long-standing practice for the Commission to consider any service provided to a customer under a tariff rate offered by the Company to be served by system resources, this request is unusual in that the Company is requesting certification of the Planned Generators in conjunction with a comprehensive proposal to serve the Customer's Project, which involves a significant new load. The

Company has presented this comprehensive proposal to the Commission because the size of the Customer Project's load drives the clear need for substantial new capacity, and as described by Company witness Laura Beauchamp in her direct testimony, the Planned Generators are necessary to provide safe and reliable service on a timeline that meets the Customer's ramp schedule. Ultimately though, the capacity and energy used to serve the Customer will come from the total system of the Company's generation portfolio, regardless of whether any individual generator is operating. Further, the Planned Generators will be offered into the MISO capacity and energy markets as with any other Company generation resource and receive capacity and energy credits/revenues that benefit all ELL customers.

Q9. GIVEN THAT THE CUSTOMER'S ELECTRIC SERVICE AGREEMENT IS FOR A FIFTEEN YEAR TERM, SHOULD THE COMMISSION CONDITION ITS FINDING REGARDING THE PLANNED GENERATORS ON THE CUSTOMER CONTINUING TO TAKE SERVICE AFTER THE FIRST FIFTEEN YEARS?

A. No. ELL and its customers currently bear the risk that another customer, even a large one, or a class of customers may cease to take service or reduce the level of service taken. First, nothing ELL knows today suggests that the Customer would not extend its ESA beyond the original term. Indeed, the Customer is investing multiple billions of dollars in its Project, and it seems unlikely that Customer simply would walk away from this investment at the end of the Original Term of the ESA.

Second, the risk of a large customer leaving is one that exists today. If an existing large customer leaves the ELL system, ELL would experience regulatory lag and likely would have a diminished opportunity to earn its authorized return on equity. Once rates are reset after the customer's departure, however, other customers would bear the reallocated cost of service. Despite this risk for all large customers, the Commission never has required that remaining customers be held harmless from the risk of a departing customer, and it would be unreasonable for the Commission to impose such a condition here because it would likely result in Louisiana losing the economic opportunity presented by the Customer. All customers benefit when new large customers are added, and conversely, customers lose that benefit if the same customer ceases taking service. To help ELL manage the risk of other customers bearing these reallocated costs, the ESA includes substantial termination payments, as described in the Direct Testimony of Company witness Phillip May, and requires that sufficient notice be provided in advance of termination or non-renewal to provide a reasonable opportunity for right-sizing the Company's generating fleet so that customers are not paying for unneeded capacity.

Finally—and importantly—in this case, there is only limited risk to ELL's other customers in the event that the Customer should decide not to renew service after the Original Term of its ESA. Potentially, if the Customer does not renew, another entity may purchase the Customer's Project and continue to take service in the same manner as the Customer. Alternatively, as demonstrated in economic analysis presented in the Direct Testimony of Company witness Samrat Datta, even in a scenario in which the Customer were to terminate the ESA after the Original Term expires and no other entity purchases the Project, ELL's other customers would not be harmed *(i.e.*, incur a net cost) by virtue of the proposed service to the Customer's Project; in fact, that economic analysis shows that other ELL customers would realize substantial net benefits from the Company providing such service, even assuming termination after year fifteen. This is true because of the significant revenues from the Customer during the Original Term of the ESA, which have the effect of lowering rates for other ELL customers. It is true also because, even if the Customer left the system in 2041, ELL and its customers would have the benefit of the Planned Generators at a much lesser revenue requirement than when the Planned Generators began operation and at a time when some other gas-fired units will be reaching the end of their useful lives. ELL does not have the ability to predict the future, but, as discussed in Mr. Datta's testimony, the Company's economic analysis evidence shows that the Planned Generators continue to have significant value in the future, whether the Customer continues to take service from ELL after the original term of the ESA ends or not.

IV. PUBLIC INTEREST

Q10. IS PROVIDING ELECTRIC SERVICE TO THE CUSTOMER, INCLUDING THE CONSTRUCTION OF THE PLANNED GENERATORS AND TRANSMISSION INFRASTRUCTURE IMPROVEMENTS AND THE BILLING TERMS, IN THE PUBLIC INTEREST?

A. Yes, providing electric service to the Customer and all that such service entails, as set forth in the Application and supported by testimony, is in the public interest. When I make this statement, I am considering all agreements between the Company and the Customer and all actions to implement those agreements, including but not limited to the construction of necessary generation and transmission infrastructure, clean energy resources, billing terms, and rate schedule application. As I understand ELL's request, in the Application, the Company has put a single comprehensive, multi-part, interrelated transaction before the Commission that will allow Louisiana to host a new industry and attract significant investment to the state, and the Commission must determine whether that transaction in its totality should proceed or not. And I reiterate that approval of this single comprehensive, multi-part, interrelated transaction would serve the public interest.

Q11. WHAT IS THE PUBLIC INTEREST?

A. I want to preface this section with an acknowledgement that I am not a lawyer, and my testimony is not intended to provide a legal opinion or conclusion, but rather my understanding of what constitutes the public interest as that concept has been developed over the years in matters before the Commission.

The public interest is that which is thought to best serve everyone; it is the common good. If the net effect of a decision is believed to be positive or beneficial to society as a whole, it can be said that the decision serves the public interest.

Public utilities in general, and electric utilities in particular, affect nearly all elements of society. Public utilities have the ability to influence the cost of production of the businesses that are served by them, to affect the standard of living of their customers, to affect employment levels in the areas they serve, and to affect the interests of their investors. In sum, public utilities affect the general economic activity in the state.

Although I am not a lawyer, it is my understanding that in determining whether a particular decision or policy is in the public interest, there is no immutable law or principle that can be applied. While the public interest is often defined in terms of net benefits, such a test or standard merely substitutes one expression for another. The difficulty is in defining and, if possible, quantifying the net benefits.

It is recognized that net benefits cannot simply be defined as lower prices. For example, if lower prices are achieved through a reduction in the reliability or quality of service, it may very well be perceived that the lower prices have not produced net benefits. Similarly, higher prices might not produce negative net benefits or detriments. For example, if an existing price is low due to a cross-subsidy, removing that subsidy would raise that price, but doing so would not necessarily be detrimental. The Louisiana Supreme Court reached just such a conclusion in *City of Plaquemine v. Louisiana Public Service Commission*, 282 So. 2d 440, 442-43 (1973), when it found that:

> The entire regulatory scheme, including increases as well as decreases in rates, is indeed in the public interest, designed to assure the furnishing of adequate service to all public utility patrons at the lowest reasonable rates consistent with the interest both of the public and of the utilities.
>
> Thus the public interest necessity in utility regulation is not offended, but rather served by reasonable and proper rate increases notwithstanding that an immediate and incidental effect of any increase is improvement in the economic condition of the regulated utility company.

Objective measurement of how a decision affects the public interest is problematic at best. For the past seventy or more years, regulatory decision-making has been tested in the courts by a balancing-of-interests standard. In these cases, beginning with

Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 603 (1944), it is my understanding that the courts have found that if the regulatory body's decision reflected a reasonable balancing of customer and investor interests, the decision was to be affirmed as just and reasonable.

In sum, I understand that determining whether a decision is in the public interest requires a balancing of the various effects of a particular course of action measured subjectively over the longer run. Whether a course of action is in the public interest will depend upon relevant factors that are potentially quantifiable on an estimated basis, such as likely changes in costs, as well as upon other factors that are not quantifiable, such as the effect of that course of action on the robustness of a competitive market.[4] Finally, although witnesses can provide facts and opinions that bear on this issue, the decision-maker, the Commission, in the first instance must ultimately weigh all of these factors and conclude whether the particular proposed course of action is in the public interest.

Q12. IN YOUR OPINION, WHAT IS THE MOST SIGNIFICANT BENEFIT FROM ELL SERVING THE CUSTOMER'S PROJECT?

A. In my opinion, the economic benefit to Northeast Louisiana is the most significant benefit from ELL serving the Customer's Project. To quote Mr. May, the Customer's Project is "transformative." Economic development and job creation in that part of the state have been a longstanding, difficult challenge, and the parish where the Customer's

4 *See Permian Basin Area Rate Cases*, 390 U.S. 747, 815 (1968).

Project will be located is classified by the federal government as a Disadvantaged Community.[5] The Customer's Project, with at least 300-500 permanent jobs paying substantially above the average wage for Richland Parish, will create economic activity that this area has never experienced and improve the quality of life for the people who live there and for all of Louisiana. This type of difficult-to-quantify benefit to the public at large is exactly the type of benefit that a utility regulator must consider when determining whether a utility's proposed decision or action is in the public interest.

Q13. ARE THERE ANY OTHER SIGNIFICANT BENEFITS FROM ELL PROVIDING ELECTRIC SERVICE TO THE CUSTOMER?

A. Yes, the proposed Corporate Sustainability Rider ("CSR") to the ESA and the investments contemplated provide net benefits to customers. As explained by Ms. Beauchamp, the CSR was a relevant factor for the Customer to locate its Project in Louisiana and identifies customer-specific commitments for clean resources, including solar, solar and storage ("hybrid"), CCS, and potentially other clean resources.[6] Under the CSR, the subscription fee revenue from the Customer will offset a significant portion of the costs of the portfolio of up to 1,500 MW of solar and/or hybrid resources, and allow all customers to enjoy certain benefits of new solar and/or hybrid generating capacity at little to no cost.[7]

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[5] White House Council on Environmental Quality, Climate and Economic Justice Screening Tool (found at https://screeningtool.geoplatform.gov/).

[6] Direct Testimony of Ms. Beauchamp at 61.

[7] Direct Testimony of Ms. Ingram at 21.

The CSR further provides a path for critically important investment in CCS in Louisiana, as discussed by Company witness Nicholas Owens. The Customer has agreed to pay for the incremental cost to install CCS technology at the Company's Lake Charles Power Station ("LCPS") subject to certain conditions.[8] Currently, an urgent need to demonstrate the commercial viability of CCS applied to a Combined Cycle Combustion Turbine ("CCCT") exists, and the Customer's commitment to fund a commercial demonstration of CCS could help ELL pave the way for a technology application that is essential not only to meeting broader decarbonization goals, but in proving the viability of the technology for other customers. Using Mr. Owens's words, it is "hard to conceive of a more impactful clean energy funding commitment," for Louisiana and perhaps the world. The net benefits from the CSR and its funding commitments for critical investments are another factor supporting the public interest.

Q14. DO THE COSTS OF PROVIDING SERVICE TO THE CUSTOMER UNDULY BURDEN EXISTING CUSTOMERS?

A. No. ELL and the Customer have agreed that the Customer should pay a rate designed to ensure that the Customer is funding – either through direct financial payments or revenues paid to ELL for electric service – a reasonable and very substantial portion of the incremental cost associated with electric service to the Customer and a portion of ELL's embedded costs now borne by existing customers. Mr. Jones explains this in detail in his testimony. The Customer has agreed to fund directly the full cost of

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[8] Direct Testimony of Ms. Ingram at 22.

transmission projects that are required for the Company to provide service to the Customer's Project, with the exception of two transmission projects, which I discuss below, that have broader benefits and are classified as System Improvements; thus, subject to these exceptions, other customers will never bear the cost of those transmission projects. [redacted] Further, the sizable load associated with the Customer's Project will pay an allocated share[9] of the Company's Formula Rate Plan ("FRP") Rate Adjustment, the Fuel Adjustment Clause ("FAC"), and other applicable riders including the Financed Storm Cost and Resilience Riders, which will have the effect of reducing the rates other ELL customers pay as further detailed by Mr. Jones. Finally, the expected revenue from the Customer exceeds the Planned Generators' revenue requirements during the ESA's original 15-year term and will offset not only incremental costs but also embedded costs now borne by existing customers. Thus, the Planned Generators' revenue requirements will not cause existing customers' bills to increase. Assuming the Customer extends the ESA, which is a reasonable assumption considering the Customer's level of investment, there are few, if any, costs of the Planned Generators that will affect existing customers' bills, despite that all customers benefit from the Planned Generators as system resources. And, according to the economic analysis presented by Mr. Datta, even if the Customer terminates its ESA after year fifteen,

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[9] The allocated share to be paid by the Customer is determined by the allocation of these rider costs to the rate schedule under which the Customer will take service, as is the case for all customers taking service under this rate schedule.

ELL's other customers would not be harmed; in fact, when factoring in the savings they would realize from the Customer's contributions during the Original Term of the ESA and from the avoided cost of resources otherwise needed after year fifteen, ELL's other customers would realize substantial net benefits.

Q15. DOES THE COST OF THE TWO TRANSMISSION PROJECTS FOR WHICH THE CUSTOMER IS NOT PROVIDING AN OFFSETTING CONTRIBUTION NEGATE THE BENEFITS TO EXISTING CUSTOMERS DISCUSSED ABOVE?

A. No. In fact, the two transmission projects – the Mount Olive to Sarepta 500 kV line ("Mount Olive to Sarepta 500 kV Project") and the Sterlington Substation Project – benefit existing customers. Company witness Daniel Kline explains that the Mount Olive to Sarepta 500 kV Project will benefit ELL customers by beginning the development of a third extra-high-voltage path between generation and load centers in Arkansas and North Louisiana to load centers in south Louisiana. As customer demand grows, existing generation resources retire, and renewable resources increase in penetration, the ability to move power north and south will be critical. Also, the added capacity to the transmission system will make renewable energy more accessible, especially in the remote areas of North Louisiana where land availability and cost, transmission access, solarity,[10] and other factors make it likely that solar farms will locate. The line will also provide resilience benefits in this area, which experiences ice storms and tornadoes. Even though the Customer is not making a direct contribution

[10] In the electric industry, "solarity" refers to the strength of the solar resource in a given geographic area or alternately the capacity factor that can be expected from a solar resource in a given geographic area.

to these two projects, the Customer will bear a significant portion of the cost of the projects through its charges pursuant to its rate schedule and the FRP Rate Adjustment.

Q16. IS THE COMPANY REQUESTING APPROVAL OF ANY FINANCIAL CONDITION PROTECTIONS DURING THE PLANNED GENERATORS' CONSTRUCTION, SUCH AS CONTEMPORANEOUS RECOVERY OF CASH EARNINGS ON CONSTRUCTION-RELATED COSTS AT THIS TIME?

A. No. The Company has built in cash flow protections sufficient to protect the Company's financial integrity in the billing structure and ESA terms between the Customer and ELL, which terms are discussed in Mr. Jones's Direct Testimony.

Q17. PLEASE SUMMARIZE YOUR PUBLIC INTEREST RECOMMENDATION.

A. ELL's provision of service to the Customer balances the interests of all stakeholders and, therefore, is in the public interest. As explained above, the Commission's public interest determination should consider all factors – costs and benefits, both quantifiable and difficult-to-quantify – expected to result from ELL's proposed action and should determine whether those factors balance the interest of all stakeholders, that is, the public. ELL's proposed action affects some stakeholders indirectly, such as the residents of Northeast Louisiana and the domestic economy as a whole, and other stakeholders very directly, such as the Customer and ELL's existing customers. The benefits of ELL's proposed action are remarkable and noteworthy. The Customer's Project brings transformative economic benefits to Northeast Louisiana, a disadvantaged area. There will be new jobs and new economic activity. The Customer has committed to funding additional renewable resources and a demonstration CCS project, which may pave the way for economically decarbonizing additional generation resources. There will be new transmission infrastructure to connect generation and load centers in Arkansas and North Louisiana to load centers in south Louisiana.

Although there are incremental costs from serving the Customer, ELL has balanced the interest of all stakeholders by requiring the Customer to offset a significant portion of incremental transmission and generation costs and a portion of embedded costs through significant contributions and expected revenue levels resulting from minimum monthly charges, filed rate schedule charges consistent with those paid by similar large energy users, the FRP Rate Adjustment, and rider charges. The Customer's contributions and expected revenue levels result in a balanced allocation of the incremental costs and embedded costs so that existing customers are not unduly burdened. Considering all factors, ELL's proposed action balances the interests of all stakeholders and, therefore, is in the public interest, and the Commission should conclude similarly.

V. COMPLIANCE WITH THE 1983 ORDER AND THE INDUSTRIAL LOAD RULE

Q18. WOULD YOU NOW DISCUSS THE APPLICABILITY OF THE COMMISSION'S 1983 GENERAL ORDER TO THE PROJECT?

A. Yes. The 1983 General Order provides, in pertinent part, that:

> No electric public utility subject to the jurisdiction of the Commission shall commence any on site construction activity or enter into any contract for construction or conversion of electric generating facilities or contract for the purchase of capacity or electric power, other than

> emergency or economy power purchases, without first having applied to the Commission for a certification that the public convenience and necessity would be served through completion of such project or confection of such contract. Feasibility and engineering studies, site acquisition and related activities preliminary to a determination of the desirability or need for plant construction or conversion on purchase power contracts are exempted from this requirement.

The Company's Application in this proceeding meets the terms of Paragraph 1 of the 1983 General Order. The costs incurred and analyses conducted to date have related to the "[f]easibility and engineering studies . . . preliminary to a determination of the desirability . . . for plant construction or conversion. . . ." As explained by Mr. Bulpitt, construction activity at the Planned Generator sites will not commence until ELL authorizes the contractor to do so.

The 1983 General Order also provides in paragraph 2, that:

> Applications submitted pursuant to this order shall include the specific data utilized by the utility in 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.

The Company, through the testimony and exhibits supporting the Application, meets the requirements of this paragraph.

Though broader in purpose, the proposed Monitoring Plan would meet the requirements of Paragraph 3 to "notify the Commission immediately when it is determined that project or contract costs will exceed that stated in the application or the completion date for commercial operation is extended."

Q19. WHAT IS THE INDUSTRIAL LOAD RULE?

A. In General Order dated July 29, 2019, the Commission adopted a rule, Rule 3, requiring a utility that participates in an Integrated Resource Plan ("IRP"), to make one of three types of filings with the Commission prior to entering into an ESA with a customer that would result in a 5% increase in the utility's peak load. The three types of filings are: (1) a filing illustrating how the most recent IRP accommodates the load growth, (2) a filing illustrating how the IRP would be modified to accommodate the load growth, or (3) a filing pursuant to the 1983 Order or the MBM Order (or both) requiring a Commission certification. The Company, through the testimony and exhibits supporting the Application requesting certification under the 1983 Order, meets the requirements of Rule 3. I note that the ESA is subject to a condition precedent regarding compliance with this rule.

VI. <u>REQUESTED EXEMPTION FROM THE MBM ORDER</u>

Q20. WHAT IS THE MBM ORDER?

A. On October 14, 2024, the Commission adopted the current version of the MBM Order, establishing various procedures and requirements for the market testing of any proposed capacity acquisition. The MBM Order augments the procedures of the 1983 General Order and requires a utility proposing to acquire or build new generating capacity to "employ a market-based mechanism" consisting of a "Request For Proposal ("RFP") competitive solicitation process..." that meets certain specified requirements.[11]

[11] MBM Order, Rules 1 and 3.

The utility must present the results and analysis from this RFP to the Commission as part of the "justification" required by Paragraph (2) of the 1983 General Order.[12] In addition, the MBM Order prescribes procedures to be followed by the utility in conducting the RFP process and presenting the results of that process to the Commission Staff.[13] The procedures required by the MBM Order include, among other things, the use of an Independent Monitor ("IM") to track the utility's conduct of the RFP process in which self-build proposals are competing, and the obligation to alert the Staff to any irregularities in the RFP process or any concerns.[14] Finally, the MBM Order provides a number of procedural safeguards designed to protect against changes to the self-build cost estimate during the RFP evaluation and selection process.[15] The revised and updated version of the MBM Order that the Commission recently adopted included various changes that address matters such as how the capacity size exemption is applied to intermittent resources,[16] certain objections to a utility's RFP that must be raised during the draft RFP process,[17] and certain new requirements on the scope of an RFP conducted under the MBM Order.[18]

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12 *Id.*, Rule 1.

13 *See generally id.*, Rules 3, 8-10, and 14.

14 *Id.*, Rule 15.

15 *Id.*, Rule 16.

16 *Id.*, Rule 2(a).

17 *Id.*, Rule 9.

18 *Id.*, Rule 3.

Q21. HAS THE COMPANY ISSUED AN RFP AS CONTEMPLATED BY THE COMMISSION'S MBM ORDER?

A. Although ELL is mindful of the importance of the MBM Order, ELL cannot conduct a Commission Staff-monitored RFP in the present circumstances. ELL requests that the Commission grant an exemption from the MBM Order for the Planned Generators. This exemption is reasonable and appropriate because of the specific facts and circumstances present here, including the need for expedited action to secure the Customer's investment in Louisiana, the substantial economic benefits to the citizens of the State of Louisiana afforded by the Project, and other circumstances described in the Company's Application and supporting testimony with respect to the Planned Generators. Conducting a competitive solicitation process like an RFP pursuant to the MBM Order ***and*** meeting the Customer's electric service needs on the Customer's required timetable is impossible. Other factors described below further support the Commission granting an exemption.

Q22. PLEASE DESCRIBE THE TIME CONSTRAINTS THAT THE CUSTOMER COMMUNICATED TO ELL.

A. The Customer requires that ELL serve an initial operating level of [redacted] by [redacted] increasing operating levels [redacted] and the Customer's maximum operating level of [redacted] by [redacted]. Additionally, the Customer's load will have a [redacted] load factor. As explained by Company witness Mr. Bulpitt, to meet the Customer's increasing load requirements on the requested timeline, the Company must construct CCCTs and complete construction of the first two of three Planned

Generators by 2028 and the third by 2029. As he further explains, other technologies considered by the Company were eliminated from consideration because of the accelerated timeframe in which the Customer requires service for its Project, because they are ill-suited to serving the load profile of the Customer's project, or for other reasons.[19] As Company witness Nicholas Owens explains, the only practical option to serve the Customer's Project is for ELL to build gas-fired capacity.[20] If ELL conducted an RFP in the manner prescribed by the MBM Order, the Company could not meet the Customer's load requirements in the timeframe required.

Q23. HOW IMPORTANT WAS ADHERENCE TO THE CUSTOMER'S REQUIRED TIMEFRAME?

A. The timing of ELL's adding generation needed to support the load increase associated with the Customer's Project was a key consideration in securing the Customer's commitment to locate the Project in Louisiana. As Mr. May discusses, speed to market is a key consideration in attracting loads like the Customer to Louisiana. ELL faced a choice of either telling the customer it would have to wait another year or more for completion of an RFP process in compliance with the MBM Order or developing a solution that would allow Louisiana to secure this Project and the economic benefits that come along with it. ELL reasonably chose the latter. Because, for reasons explained in more detail by Mr. Kline, new build generation is required as opposed to

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19 Direct Testimony of Matthew Bulpitt at 9-12.

20 Direct Testimony of Mr. Owens at 7.

procuring existing capacity, ELL believes that the cost of self-build generation will be comparable to the cost of new-build generation constructed by a third party. Both ELL and an experienced third-party developer would be sourcing new equipment from original equipment manufacturers and using EPC providers. As discussed by Mr. Bulpitt, ELL can point to other market data to demonstrate that the CCCT cost estimates are reasonable. Under these specific facts and circumstances and considering the timing needed to meet the Customer's in-service requirements, I believe the public interest is served by granting a good cause exemption to the MBM Order requirements. To determine otherwise would be telling the Customer and other prospective customers that Louisiana cannot accommodate economic growth at the speed of the current economy.

Q24. HAS THE COMMISSION PREVIOUSLY INDICATED THAT TIME REQUIREMENTS CAN BE A BASIS FOR EXEMPTING A UTILITY FROM COMPLIANCE WITH THE MBM ORDER?

A. Yes. The Commission has recognized that exceptional, unanticipated circumstances can arise in which compliance with MBM Order is not practical and utilities should have the flexibility to procure resources without an RFP to obtain customer benefits. For example, the Commission issued the Unsolicited Offer General Order[21] and made clear that the Commission would monitor utilities' obligation to evaluate unsolicited

[21] LPSC General Order 10-28-2008 (Docket No. R-30703, *Consideration of Procedures Whereby Jurisdictional Electric Utilities Must Provide the Commission Staff with Notice of Unsolicited Offers, as their Response to, and Analysis of, Unsolicited Offers*).

offers on a timely basis outside the RFP process, although the Commission strongly encouraged resource procurements through the RFP process.

The Commission's Unsolicited Offer General Order prescribes record retention requirements for unsolicited binding written offers, the utility's analysis of the offer, and the utility's determination as to the offer, including reasons, and directs utilities to file such records quarterly. The Unsolicited Offer General Order further requires that, if the seller is offering a product in an ongoing RFP, the seller must explain why the seller did not participate in the RFP. Thus, the Unsolicited Offer General Order ensures that customers have the opportunity to receive benefits that otherwise cannot be obtained through an RFP because of the seller's time constraints. Although the situation presented here does not involve a resource seller with a time constraint, the Customer has a required in-service timeframe that similarly prevents the completion of an RFP adhering to the requirements of the MBM Order to procure the resources required to serve the Customer.

Q25. WHAT OTHER FACTORS SUPPORT AN EXEMPTION FROM THE MBM ORDER?

A. As described further by Mr. Bulpitt, the Company plans to use competitive elements to procure major components of the two Franklin Farms Planned Generators. These actions will encourage economic pricing for these components, which comprise a significant portion of the project costs. And, with respect to the third Planned Generator, because that resource has a later required in-service date and given the tightening market for EPC resources, ELL plans to use a competitive process to select the EPC contractor for that third Planned Generator, which also will include competitive procurements for the major components for that unit, which means that the significant majority of this unit will be competitively bid.

Another important factor is that the Customer, which is a sophisticated energy user and had options, agreed to ELL utilizing the Planned Generators at their projected cost presented in this Application, together with a true-up to final costs, and billing terms that protect existing customers from bearing the full cost of the Planned Generators. This financial commitment by the Customer significantly lessens the risk that that any above-market costs for these resources ever would be borne by other ELL customers. Moreover, an RFP pursuant to the MBM Order does not guarantee a price for a resource. Rather, the RFP is evidence to justify that the public convenience and necessity would be served by the construction of the generating facilities at issue. Although the Planned Generators were not directly market-tested against other alternatives by ELL, the Customer had the ability to compare the Planned Generators to alternatives in the marketplace and had the incentive to do so because the billing terms adjust charges to the Customer for the actual cost of the Planned Generators, as discussed by Company witness Mr. Jones. These facts give assurance that the Planned Generators are the lowest reasonable cost alternative for meeting ELL's capacity and energy requirements with the addition of the load associated with the Customer's Project.

Q26. IS THE COMPANY SEEKING TO AVOID THE OBLIGATION TO PRUDENTLY MANAGE THE CONSTRUCTION OF THE PLANNED GENERATORS?

A. No. As discussed by Ms. Beauchamp, the Company has proposed a monitoring plan that is consistent with previous monitoring plans approved by the Commission. The relief requested by the Company in the Application does not seek prejudgment of the prudence Company's management of the construction of the Planned Generators. The Commission retains the right to subsequently review the Company's prudence in managing the construction of the Planned Generators through its normal means.

VII. LONG-TERM SERVICE AGREEMENTS

Q27. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?

A. In this section, I address the proposed ratemaking treatment for the expense portion of LTSA payments ("LTSA Expenses"). As explained by Mr. Bulpitt, ELL intends to enter into LTSAs for major maintenance of the Planned Generators. Mr. Bulpitt provides a summary of the terms of the LTSAs.

Q28. HOW DOES ELL PROPOSE TO RECOVER THE LTSA EXPENSES?

A. As discussed by Mr. Bulpitt, the payments for major maintenance services included on the base scope of work of the LTSA are expected to be variable and depend on the number of unit starts and hours of run-time. Consistent with past Commission practice, the Company proposes that the LTSA Expenses be recovered through the FAC. Variable, generation-dependent expenses such as these are properly recovered through the FAC. The Commission has previously authorized FAC recovery for similar costs for ELL's Lake Charles Power Station,[22] J. Wayne Leonard Power Station,[23] and Ninemile 6 unit,[24] as well as several other facilities, including Perryville,[25] Acadia Power Block 2,[26] Ouachita Unit 3,[27] Calcasieu,[28] and Union Power Blocks 3 and 4.[29] I see no credible reason why the Commission should depart from its prior practice regarding LTSA Expenses in this proceeding.

Q29. IS FAC RECOVERY OF THE VARIABLE LTSA COSTS CONSISTENT WITH THE COMMISSION'S GENERAL ORDER DATED NOVEMBER 6, 1997 IN DOCKET NO. U-21497 ("FAC GENERAL ORDER")?

A. Yes. The FAC General Order provides that the "purpose of the Louisiana Fuel Adjustment Clause mechanism is to provide an opportunity for the timely recovery of actual fuel and generation-dependent costs incurred by electric utilities on a monthly basis." The FAC mechanism was "established due to the materiality and historical or potential volatility of these costs." The LTSA Expenses are similar to fuel costs in that

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22 LPSC Order No. U-34283, dated July 20, 2017 (Lake Charles Power Station).

23 LPSC Order No. U-33770, dated December 14, 2016 (St. Charles Power Station).

24 LPSC Order No. U-31971, dated April 5, 2012 (Ninemile 6).

25 LPSC Order No. U-27836, dated May 3, 2005 (Perryville).

26 LPSC Order No. U-31196-C, dated February 9, 2011 (Acadia). The "certain other costs specified at page 27, line 7-8 of the Highly Sensitive Direct Testimony of D. Andrew Owens" includes the costs of the variable Siemens Long-Term Program Contract, which is the equivalent of an LTSA.

27 LPSC Order No. U-30422-A, dated October 31, 2009 (Ouachita).

28 LPSC Order No. U-32759-A, dated November 21, 2013 (Calcasieu).

29 LPSC Order No. U-33510, dated November 5, 2015 (Union). The "Quarterly Fees" provided for in the LTSA related to Union Power Blocks 3 and 4 are discussed on pages 10 and 11 of the Highly-Sensitive Direct Testimony of John F. Harrison.

they are correlated with production and will be incurred as the Planned Generators operate. FAC recovery is appropriate as it will ensure that customers pay the actual LTSA Expenses when such costs are actually incurred. Recovering these expenses through base rates gives rise to the possibility that the Company would recover amounts greater or less than the actual expenses incurred, due to the potential volatility in these expenses from year-to-year.

Q30. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY AT THIS TIME?

A. Yes, at this time.

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF ORLEANS

NOW BEFORE ME, the undersigned authority, personally came and appeared, **Joshua B. Thomas**, who after being duly sworn by me, did depose and say:

That the above and foregoing is his sworn testimony in this proceeding and that he knows the contents thereof, that the same are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he verily believes them to be true.

Joshua B. Thomas

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 17th **DAY OF** October **2024**

Karen Freese
NOTARY PUBLIC

My commission expires: For life

Karen H. Freese - La. Bar No. 19616
Notary Public for the State of Louisiana
My Commission issued for Life

Listing of Previous Testimony Filed by Joshua B. Thomas

DATE	TYPE	SUBJECT MATTER	REGULATORY BODY	DOCKET NO.
04/09/2013	Direct	Hurricane Isaac Cost Recovery	LPSC	U-32764
10/24/2013	Rebuttal	Hurricane Isaac Cost Recovery	LPSC	U-32764
10/30/2013	Direct	Ninemile 6 Revenue Requirement	LPSC	U-33033
12/20/2013	Direct	Hurricane Isaac Storm Cost Recovery	CNO	UD-14-01
09/30/2014	Direct	ELL/EGSL Business Combination	LPSC	U-33244
11/06/2014	Direct	ELL/EGSL Business Combination	CNO	UD-14-03
01/13/2015	Direct	Union Power Station	LPSC	U-33510
05/01/2015	Rebuttal	ELL/EGSL Business Combination	LPSC	U-33244
06/05/2015	Rebuttal	Union Power Station	LPSC	U-33510
07/31/2015	Supplemental	Union Power Station	LPSC	U-33510
08/25/2015	Direct	St. Charles Power Station	LPSC	U-33770
09/21/2015	Settlement	Union Power Station	LPSC	U-33510
11/2/2016	Direct	Lake Charles Power Station	LPSC	U-34283
11/15/2016	Direct	Oxy PPA Amendment	LPSC	U-34303
02/23/2017	Direct	Carville PPA	LPSC	U-34401
04/21/2017	Direct	MISO Renewal	LPSC	U-34447
04/24/2017	Rebuttal	Lake Charles Power Station	LPSC	U-34283
11/02/2016	Settlement	Lake Charles Power Station	LPSC	U-34283
05/23/2017	Direct	Washington Parish Energy Center	LPSC	U-34472
08/21/2017	Direct	ELL FRP Extension/Modification	LPSC	U-34631
11/15/2017	Direct	Attachment O Tariff Update	FERC	ER15-1436
03/15/2018	Direct	EMI Formula Rate Plan (FRP-6)	MPSC	2014-UN-132
03/20/2018	Rebuttal	Attachment O Tariff Update	FERC	ER15-1436
05/15/2018	Direct	ETI Rate Case	PUCT	48371
07/06/2018	Direct	EAI FRP Evaluation	APSC	16-036-FR
08/16/2018	Rebuttal	ETI Rate Case	PUCT	48371
09/21/2018	Direct	ENO Rate Case	CNO	UD-18-07
10/19/2018	Rebuttal	EAI FRP Evaluation	APSC	16-036-FR
03/22/2019	Rebuttal	ENO Rate Case	CNO	UD-18-07
05/24/2019	Rejoinder	ENO Rate Case	CNO	UD-18-07
05/28/2020	Direct	ELL FRP Extension/Modification	LPSC	U-35565
07/06/2020	Direct	Other Post-Employment Benefits	MPSC	2020-UA-90
07/06/2020	Direct	Pension	MPSC	2020-UA-91

11/09/2020	Rebuttal	EAL FRP Extension	APSC	16-036-FR
11/24/2020	Sur-Surrebuttal	EAL FRP Extension	APSC	16-036-FR
05/21/2021	Direct	ENO Storm Application	CNO	UD-21-02
07/30/2021	Direct	ELL Storm Recovery (Financing)	LPSC	U-35991
07/30/2021	Direct	ELL Storm Recovery (Ancillary)	LPSC	U-35991
09/22/2021	Direct	ELL Hurricane Ida Escrow	LPSC	U-36154
09/30/2021	Supp. Direct	ELL Storm Recovery	LPSC	U-35991
01/31/2022	Answering	SERI UPSA Rate Complaint	FERC	EL20-72-000
02/10/2022	Settlement	ELL Storm Recovery	LPSC	U-35991
04/11/2022 (Revised 05/17/2022)	Cross-Answering	SERI UPSA Rate Complaint	FERC	EL20-72-000
09/09/2022	Answering	SERI UPSA Rate Complaint	FERC	EL20-72-000
04/03/2023	Cross-Answering	MSS-4 Replacement Tariff, NOLC ADIT	FERC	EL22-6, et. al.
04/03/2023	Amended	Walnut Bend Acquisition	APSC	20-052-U
05/09/2023	Rebuttal (Amended)	Walnut Bend Acquisition	APSC	20-052-U
07/07/2023	Amended	Walnut Bend Acquisition	APSC	20-052-U
07/11/2023	Direct	MSS-4 Replacement Tariff, NOLC ADIT	FERC	EL22-6, et. al.
07/11/2023	Amended	Walnut Bend Acquisition	APSC	20-052-U
09/12/2023	Direct	MSS-4 Replacement Tariff, NOLC ADIT	FERC	EL22-6, et. al.
10/13/2023	Direct	SERI Pension	FERC	ER22-24
11/03/2023	Answering	MSS-4 Replacement Tariff, NOLC ADIT	FERC	EL22-6, et. al.
11/27/2023	Direct	MSS-4 Replacement Tariff, NOLC ADIT	FERC	EL22-6, et. al.
11/28/2023	Cross-Answering	MSS-4 Replacement Tariff, NOLC ADIT	FERC	EL22-6, et. al.
12/22/2023	Rebuttal	MSS-4 Replacement Tariff, NOLC ADIT	FERC	EL22-6, et. al.
01/11/2024	Cross-Answering	MSS-4 Replacement Tariff, NOLC ADIT	FERC	EL22-6, et. al.

04/05/2024	Rebuttal	SERI Pension	FERC	ER22-24