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LA PUBLIC SERVICE
COMMISSION

April 28, 2023

Ms. Terri Lemoine Bordelon
Records and Recording
Louisiana Public Service Commission
602 North 5th Street, 12th floor
Baton Rouge, Louisiana 70802

VIA HAND DELIVERY

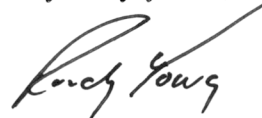
Re: In Re: Rulemaking to Research and Evaluate Customer-Centered Options for
all Electric Customer Classes as well as Other Regulatory Environments
LPSC Docket No. R-35462
KM File No. 4388-333

Dear Ms. Bordelon:

We have enclosed for filing an original and three (3) copies of Louisiana Energy Users Group's Response to Louisiana Public Service Commission Staff's Fourth Request for Information in the referenced docket.

If you have any questions, please do not hesitate to contact us. Thank you for your assistance.

Very truly yours,



Randy Young

JRY/mac

Enclosures

cc: Official Service List (via electronic mail)

Hand

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

**LOUISIANA PUBLIC SERVICE
COMMISSION,**
ex parte

DOCKET NO. R-35462

**In Re: RULEMAKING TO RESEARCH AND
EVALUATE CUSTOMER-CENTERED
OPTIONS FOR ALL ELECTRIC CUSTOMER
CLASSES AS WELL AS OTHER
REGULATORY ENVIRONMENTS**

**2023 APR 28 PM 1:56
LA PUBLIC SERVICE
COMMISSION**

**LOUISIANA ENERGY USERS GROUP RESPONSE TO
LOUISIANA PUBLIC SERVICE COMMISSION STAFF
FOURTH REQUEST FOR INFORMATION**

The Louisiana Energy Users Group (“LEUG”) appreciates the opportunity to submit the following to the Louisiana Public Service Commission (“LPSC”) in response to certain questions in the Staff’s Fourth Request for Information dated March 28, 2023, for which comments are due by April 28, 2023.

4-1) Please explain your view on the current restrictions pursuant to any LPSC rule, order, or procedure that would limit the following arrangements for the provision of electric service.

- a. A customer of an electric public utility providing electric service to an affiliated entity if both entities are located on a contiguous parcel of property.**
- b. A customer of an electric public utility providing electric service to a non-affiliated entity if both entities are located on a contiguous parcel of property.**

- c. A customer of an electric public utility providing electric service to itself (i.e., identical customer and entity) if the locations of electric service are not located on a contiguous parcel of property.**
- d. A customer of an electric public utility providing electric service to an affiliated entity if the locations of electric service are not located on a contiguous parcel of property.**
- e. A customer of an electric public utility providing electric service to a non-affiliated entity if the locations of electric service are not located on a contiguous parcel of property.**

LEUG Response:

LEUG understands this request from LPSC Staff to inquire regarding the current regulatory framework in Louisiana for “provision of electric service” from self-generated electricity such as Combined Heat & Power (“CHP”) cogeneration.

LEUG further understands this request from LPSC Staff to segregate its questions overall in the context of customer operations on contiguous vs. non-contiguous properties, and then also whether the customers are the same, affiliated, or non-affiliated.

LEUG views the core considerations for self-generation projects under the current regulatory framework as being focused primarily on the ownership and leasehold interest and/or operation and related threshold requirements of La. R.S. 45:121, 1161 and 1164, and whether such projects can practically be accomplished utilizing private transmission since electric utilities are not currently required under such provisions or otherwise by the LPSC to transport self-generated electricity for retail customers even though MISO has been in place as a regional transmission operator for the Entergy service area in Louisiana for the past decade since 2013.

LEUG recommends and supports the LPSC providing enhanced opportunities for self-generation of electricity by industrials in Louisiana, including in particular for CHP cogeneration.

Potential scenarios for such CHP cogeneration projects could include, for example:

CHP Generation to Serve New Load:

New CHP Generation:

- (1) New or expanded CHP cogeneration to serve new load, with the generation shared by one or more industrials and using private transmission;
- (2) New or expanded CHP cogeneration to serve new load, with the generation shared by one or more industrials and using transmission service obtained through MISO;

Existing CHP Generation:

- (3) Existing CHP cogeneration to serve new load, with the generation shared by one or more industrials and using private transmission;
- (4) Existing CHP cogeneration to serve new load, with the generation shared by one or more industrials and using transmission service obtained through MISO;

CHP Generation to Serve Existing Load:

New CHP Generation:

- (5) New or expanded CHP cogeneration to serve load currently served by a regulated electric utility, with the generation shared by one or more industrials and using private transmission;
- (6) New or expanded CHP cogeneration to serve load currently served by a regulated electric utility, with the generation shared by one or more industrials and using transmission service obtained through MISO;

Existing CHP Generation:

- (7) Existing CHP cogeneration to serve load currently served by a regulated electric utility, with the generation shared by one or more industrials and using private transmission;
- (8) Existing CHP cogeneration to serve load currently served by a regulated electric utility, with the generation shared by one or more industrials and using transmission service obtained through MISO.

With respect to the LPSC restrictions under the current regulatory framework, whether contiguous properties or not, or affiliated entities or not, LEUG views the analysis or relevant statutes, rules and orders generally as follows.

An “electric public utility” is defined by La. R.S. 45:121 as an “any person furnishing electric service” within Louisiana. The LPSC has interpreted “furnishing electric service” as applying to the retail supply (as opposed to wholesale supply)¹ of electric service.

There is an exemption to the definition of “electric public utility” for any person² owning, leasing and/or operating an electric generation facility, provided such person is not primarily engaged in the generation, transmission, distribution, and/or sale of electricity and the power produced by the generation facility is consumed in whole or in part by such person with any surplus power being sold to an “electric public utility,” or into the wholesale power market.³

The LPSC has issued numerous orders finding that various generation project structures involving more than one person fall within the exemption and do not result in the creation of a jurisdictional electric public utility.⁴ In most of these

¹ See *In Re Dow Chem. Co.*, LPSC Docket No. 13-2000, 2000 WL 1725121, at *3 (Aug. 1, 2000) (finding “[t]he [wholesale] sale in interstate commerce of any power produced by the Project is subject to exclusive regulation by FERC, 15 U.S.C. § 824, and not within the jurisdiction of the LPSC.”); See also *In Re Bayou Verret Energy LLC*, LPSC Docket No. U-26140, 2001 WL 1824050 (Dec. 19, 2001) and in *In Re Energy Am. LLC of Michigan*, LPSC Docket No. U-26054, 2001 WL 1824048 (Dec. 19, 2001).

² Under the LPSC General Order dated July 1, 2019, Docket No. R-34738, governing electric utility tariff filings, the Commission has defined a “Customer” as a “(i) natural person or (ii) a single juridical entity, including any of its affiliated companies which are affiliated through common ownership, who receive, and pay for, Service from an Electric Utility.”

³ See La. R.S. 45:121, and also 1161 and 1164. La. R.S. 45:121 provides, in addition to defining the term “electric public utility” as any person “furnishing electric service” within this state, an exemption from being classified as an “electric public utility” for: “any person owning, leasing and/or operating an electric generation facility, provided such person is not primarily engaged in the generation, transmission, distribution, and/or sale of electricity and provided that such person: (a) consumes all of the electric power and energy generated by such facility for its own use at the site of generation or at some other location if mutually acceptable agreements to transport such electric power and energy can be reached with each electric public utility whose transmission facilities would be electrically utilized therefor, provided, however, notwithstanding any provision contained herein, there shall be no obligation or duty, expressed or implied, to purchase, to sell, to transport, or to engage in any other type of transaction with respect to the electric power and energy that may be generated by such person, imposed upon any public utility by this Section except as shall be provided in the cogeneration rules and regulations adopted by the Louisiana Public Service Commission pursuant to the Public Utility Regulatory Policies Act of 1978; or, (b) only consumes a portion thereof in such manner and sells the entire remaining portion of such electric power and energy generated to an electric public utility as herein defined; or, (c) sells the entire production of electric power and energy generated by such facility to an electric public utility as herein defined.

⁴ Such orders include the following: PPG Industries, Inc. and Entergy Power R.S. Corporation - Order No. U-24037 (4/21/99); Order No. U-24037-A (5/28/00); Occidental Chemical Corporation - Order No. U-24192 (7/30/99); Order No. U-24192-A (3/22/00); Order No. U-24192-B (7/25/01); Dow Chemical Company - Special Order No. 13-2000, Dkt. S-25041 (8/1/00); Texaco Power and Gasification Global Inc., Teco Power Services Corporation and CITGO Petroleum Corporation - Order No. U-25457 (2/21/01); Lake Charles Cogeneration LLC - Special Order No. 49-2004,

orders, the generation project is a Qualifying Facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). While there are some exceptions,⁵ the LPSC has historically generally required that any entity consuming power from the on-site generation project must have a direct or indirect ownership or leasehold interest in the project commensurate with its power take.

In most of the LPSC orders approving a cogeneration exemption for a structure in which multiple entities are consuming power for retail use, the entities have been located adjacent to the generation facility. Under the exemption, private entities may use self-generated power at the site of generation or at some other location if mutually acceptable agreements to transport power can be reached with the electric public utility. Neither Louisiana law nor federal law requires an electric public utility to use its distribution system to move power from the site of the generation to some other location owned by the private entities or a third party for retail consumption:

... there shall be no obligation or duty, expressed or implied, to purchase, to sell, to transport, or to engage in any other type of transaction with respect to the electric power and energy that may be generated by such person, imposed upon any public utility by this Section except as shall be provided in the cogeneration rules or regulations adopted by the Louisiana Public Service Commission pursuant to the Public Utility Regulatory Policies Act of 1978⁶

Absent the utility’s agreement to transport power from the private entities’ generation facility to an off-site location, those private entities would need to build their own facilities to transport the self-generated power as necessary for their self-use.⁷

Dkt. U-28031 (8/20/04); Air Liquide Large Industries US LP and Georgia Gulf Chemicals and Vinyls, LLC, Order No U-32131 (1/4/2012); The Dow Chemical Company, Order S-33436 (4/8/2015).

⁵ See Sabine Pass LNG, L.P. and Sabine Pass Liquification, LLC, ex parte, In re: Petition for Jurisdictional Determination, Order No. S-31970, 2011 WL 3558952 (La. P.S.C.); Sabine Pass LNG, L.P. and Sabine Pass Liquification, LLC, ex parte, In re: Petition to Reaffirm LPSC Order No. S-31970 and for Jurisdictional Determination, Order No. S-32940, 2013 WL 5673904 (La. P.S.C.); In re: Tembec USA, LLC Petition for Exemption, Order No. U-29258-A Corrected, (4/21/2006; and Lake Charles Cogeneration LLC, ex parte, In re: Petition for Jurisdictional Determination, Special Order No. 49-2004 Revised (9/8/2004).

⁶ See La. R.S. 45:121, and also 1161 and 1164.

⁷ See LPSC General Order R-26018, which contains Electric Utility Transmission Facility Certification and Siting Rules, dated October 10, 2013, and which provides in Section I that such certification requirements shall not apply to transmission facilities that are “privately constructed, owned and paid for by any industrial or other private entity or customer(s) and such are not subject to the jurisdiction of the Commission.” See also 18 C.F.R. § 292.101A qualifying facility may include transmission lines and other equipment used for interconnection purposes (including transformers and switchyard equipment), if:

(A) Such lines and equipment are used to supply power output to directly and indirectly interconnected electric utilities, and to end users, including thermal hosts, in accordance with state law; or

The LPSC has authority to adopt cogeneration rules that require an electric public utility to transport the power produced by the private entity to an off-site location for its own or a third party's self-use.⁸

LEUG does note that the proximity of location of the cogeneration unit and host load can affect which interconnected electric utility is required to provide back-up and maintenance power. In particular, the type of stand-by service available is dependent upon the type of cogeneration unit. For example, if the cogeneration unit is a QF, under federal and state law, the interconnected utility is required to provide nondiscriminatory supplemental, back-up and maintenance power to QFs.⁹ Under 18 C.F.R. § 292.305(b)(1), and Section 205(b)(1) of the LPSC's QF Regulations, LPSC General Order R-28376, a utility is obligated to provide stand-by and back-up power upon the request of a QF, but in the event there are multiple entities taking power from the generation facility, only those "consuming entities" considered part of the QF are entitled to maintenance and back-up power.¹⁰ In

(B) Such lines and equipment are used to transmit supplementary, standby, maintenance and backup power to the qualifying facility, including its thermal host meeting the criteria set forth in *Union Carbide Corporation*, 48 FERC ¶ 61,130, reh'g denied, 49 FERC ¶ 61,209 (1989), aff'd sub nom., *Gulf States Utilities Company v. FERC*, 922 F.2d 873 (D.C. Cir. 1991); or

(C) If such lines and equipment are used to transmit power from other qualifying facilities or to transmit standby, maintenance, supplementary and backup power to other qualifying facilities.

⁸ See 16 U.S.C. 824k(h), which provides a general prohibition on mandatory retail wheeling. However, this provision includes an express reservation of State or local government authority under State law concerning the transmission of electric energy directly to an ultimate consumer. Thus, LEUG submits that the LPSC, under its broad constitutional authority, could order a utility to transmit electric energy to an ultimate consumer based on state law.

⁹ *In re: Adoption of rules and regulations for the sales of electric energy by electric utility companies to qualifying cogeneration facilities and qualifying small power production facilities and the purchase of electric energy from such facilities as prescribed by Sec. 210 of the Public Utility Regulatory Policies Act of 1978 and rules promulgated thereunder*, Order No. U-14964 (LPSC 1982); *amended and superseded by In re: Generic Rulemaking Proceeding Concerning Avoided Costs Estimates*, Order No. U-22739, 1998 WL 223365 (LPSC 1998); *amended and superseded by In re: Generic Rulemaking Proceeding Concerning Avoided Costs Estimates*, General Order R-28376 (4/26/2007); *amended and superseded by In re: Changes to LPSC Avoided Cost General Order due to Implications of FERC decision in Docket QM14-3-000*, General Order R-34366 (1/19/2018); and Section 205(b)(1) of the QF Regulations; and 18 C.F.R. § 292.305(b).

¹⁰ Even as to those consuming entities designated as part of the QF, under 18 C.F.R. § 292.305(b)(2), the LPSC could waive the requirement of the utility to provide maintenance and back-up power if it finds such requirement would either impair the utility's ability to render adequate service to its customers; or place an undue burden on the utility. 18 C.F.R. § 292.305(b)(2) provides:

(2) The State regulatory authority (with respect to any electric utility over which it has ratemaking authority) and the Commission (with respect to any nonregulated electric utility) may waive any requirement of paragraph (b)(1) of this section if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the State regulatory authority or the Commission, as the case may be, finds that compliance with such requirement will:

- (i) Impair the electric utility's ability to render adequate service to its customers; or
- (ii) Place an undue burden on the electric utility.

Also see Section 205(b) (2) of the QF Regulations, LPSC General Order R-28376. The LPSC has never waived the requirement of maintenance and back up power to QFs or related industrial hosts.

determining whether a consuming entity is an integral part of a QF, the FERC applies its four factor test set forth in *Union Carbide Corporation*.¹¹

Union Carbide Corporation dealt with a partnership between Union Carbide and Fina that planned to operate a QF at a site adjacent to a Fina plant. The facility would provide steam and electricity to Fina, and electricity only to a Union Carbide plant 1.7 miles away. The power would be transmitted to the Union Carbide plant via a privately owned line. The utility objected to QF certification of such a plan, arguing that the term “facility” did not include a multi-plant operation separated by almost two miles.

FERC and the court, on appeal, held that Union Carbide’s plant was an “integral component” of the entire QF facility, and that it was entitled, under the regulations governing QFs, to back-up power. FERC established four relevant factors for determination of whether a particular facility is an “integral component” of a QF. These factors were specifically listed in *Calcliner Industries, Inc. and Superior Graphite Co.*,¹² as follows:

- (1) whether the power producing and consuming components are commonly owned or operated;
- (2) whether the power producing and consuming components are in close proximity;
- (3) whether the functional characteristics of the system are part of an integrated industrial operation;¹³ and
- (4) whether there is an existing customer/supplier relationship.

Assuming that the above four factors are satisfied, then the Entergy stand-by rate schedules would be applicable and the terms of such schedules must be considered.

4-2) With regard to any restrictions identified in response to Staff 4-1, please explain in detail your understanding of the public policy behind the restrictions (if any) and your understanding of how these policy implications have been addressed by the Commission previously, if at all.

¹¹ *Supra.*

¹² 66 FERC P 61,148 (1994).

¹³ In *Union Carbide Corporation*, the relevant factor was that the power line used to link the power producing and consuming components was a private line and thus considered a part of an integrated operation.

LEUG Response:

LEUG understands the cogeneration provision in La. R.S. 45:1161 and 1164 was enacted initially four decades ago in 1982, for purposes which included enhancing opportunities for industrial cogeneration of electricity and economic development opportunities for Louisiana. As such, the current cogeneration provision was enacted long before MISO implementation and transmission access opportunities became available in Louisiana beginning in 2013.

4-3) Has the Commission allowed for any of the arrangements outlined in Staff 4-1 through jurisdictional rulings that allow for certain types of arrangements to occur? If so, please explain in detail.

LEUG Response:

See response to 4-1.

4-4) With regard to the requests for comments in Staff 4-1 (c-e), should the distance between non-contiguous sites influence the restrictions (if any) placed on this type of arrangement or the policy implications surrounding those restrictions (if any)?

LEUG Response:

No. Transmission service and access under the MISO tariff is not restricted by whether the points of service between generation and load are contiguous or not.

4-5) Please explain whether you are aware of any restrictions included in the tariffs, rate schedules, or terms and conditions of any LPSC jurisdictional utility that restricts any of the scenarios outlined in Staff 4-1 above.

LEUG Response:

Entergy Louisiana, LLC's Schedule QFSS, effective October 1, 2015, states: "Qualified Facility Standby Service shall be for Backup Power, Maintenance Power, and Additional Standby Power to replace electric energy or capacity ordinarily generated by a Qualified Facility's own qualified electric generation equipment during an unscheduled or a scheduled outage of the Qualified Facility. All Service is supplied through one metering installation at one Point of

Delivery.”¹⁴ If a Qualifying Facility serves multiple industrial hosts at different locations through the use of Entergy’s distribution system or using transmission service obtained through MISO, each industrial end user utilizing power from the Qualifying Facility will require standby service.

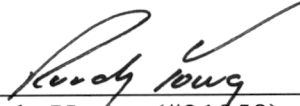
4-10) For any party of the docket, please provide any valuation methodologies you would propose to establish a current value of each type of generator owned (or contracted for) by an LPSC jurisdictional utility, including providing any examples of valuation methodologies that may have been used in other jurisdictions of which the party is aware.

LEUG Response:

The context of the Staff question is not clear to LEUG as written, and thus LEUG’s response is provided in a general sense. In general, one possible approach to establish the value of each type of generator owned (or contracted for) by an LPSC jurisdictional utility would be to forecast the market value of each such resource in the MISO or SPP (as applicable) energy, operating reserve and capacity markets over the expected remaining life of the units. Modeling information from the utility’s Integrated Resource Plan (“IRP”) could potentially be used as a starting point for such analysis. LEUG further submits that if the LPSC Staff is contemplating valuation of generation resources for purposes of analysis of stranded costs, then it is important to consider that any analysis of potential stranded costs would need to evaluate significant other factors beyond valuation of generation units such as for example: avoided generation replacements and additions, and load growth projections.

¹⁴ Depending upon the circumstances and structure of the Qualifying Facility, the restrictions contained in Schedule QFSS that the backup service be provided through one metering installation could be contrary to the requirements of the *Union Carbide Corporation* decision.

RESPECTFULLY SUBMITTED:



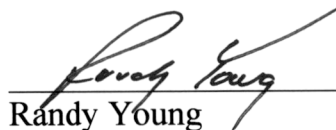
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Response of Louisiana Energy Users Group to Louisiana Public Service Commission Staff's Fourth Request for Information has been served by electronic mail and/or by U.S. mail, postage prepaid, on all parties on the Official Service List.

Baton Rouge, Louisiana this 28th day of April 2023.



Randy Young