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Do Not Pass Go, Do Not Collect \$200: Ending Louisiana's Monopoly Energy System Through Implementation of an Industrial Customer Market Option and a Renewable Generation Option

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Do Not Pass Go, Do Not Collect \$200: Ending Louisiana’s Monopoly Energy System Through Implementation of an Industrial Customer Market Option and a Renewable Generation Option

Miranda Scotten *

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INTRODUCTION

Our Earth’s climate is changing, and as a result of increasing sea levels and the rapid disappearance of the State’s coastal land, Louisiana is among the most vulnerable states in the United States to the impacts of this planetary threat.¹ As global temperatures continue to rise, the unprecedented droughts, floods, and heatwaves that Louisiana has already begun to experience are only expected to continue and intensify, putting millions of lives—and trillions of dollars of assets—at risk.² Driven by human activities, many of these observed changes have been linked to the rising levels of carbon dioxide and other greenhouse gases (GHG) in our atmosphere.³

Recent data shows that since the late 1700s, humans have increased the amount of carbon dioxide in the air by roughly 40%.⁴ In an effort to combat the catastrophic changes that have come as a result of GHG emissions, the United Nations developed a global “Race to Zero” campaign “to rally leadership and support from businesses, cities, regions, and investors for a healthy, resilient, zero carbon recovery that prevents future threats, creates decent jobs, and unlocks inclusive, sustainable growth” in a decarbonizing economy.⁵ This global effort mobilizes an integration of leading net zero initiatives, where these “real economy” actors join 120 countries in the largest alliance that is committed to achieving net zero carbon emissions by 2050.⁶ Collectively, these

1. CLIMATE INITIATIVES TASK FORCE, LOUISIANA CLIMATE ACTION PLAN 1 (2022), https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf [<https://perma.cc/9GN5-6BAE>].

2. *Id.*

3. *Id.* at 31.

4. *What Climate Change Means for Louisiana*, EPA (Aug. 2016), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-la.pdf> [<https://perma.cc/7R9U-FUVR>].

5. *Race to Zero*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://climatechampions.unfccc.int/system/race-to-zero/> [<https://perma.cc/AM5R-FLWB>] (last visited Mar. 24, 2024).

6. *Id.*

participants cover roughly 25% of global carbon dioxide emissions and over 50% of the Gross World Product (GWP).⁷

Being among the most vulnerable states to the impacts of climate change, it is long overdue for Louisiana to take a more proactive stance on one of the most predominant drivers of environmental change: GHG emissions.⁸ Impacts from the changes in Earth's climate are already being felt across the state, most seriously affecting Louisiana's coastal plain.⁹ For nearly a century, Louisiana's coastal plain has begun to slowly sink, with nearly 2,000 square miles of the state's land lost since the 1930s,¹⁰ and parts of Louisiana's coast disappearing at a rate equivalent to one football field every 100 minutes.¹¹ As sea levels continue to rise, coastal ecosystems will become submerged and converted to open waters; inland ecosystems will be displaced by saltwater penetration moving further inland; and hurricane impacts will begin to stretch further ashore and cause additional changes to the State's ecosystem.¹²

At present, this coastal crisis has exposed nearly two million Louisiana residents to the dangers of storm surge-based flooding, which in turn will lead many communities to become subject to the threat of complete submersion three or four decades into the future.¹³ In accordance with the Intergovernmental Panel on Climate Change's 2021 report, many of these changes are already irreversible for the foreseeable future.¹⁴ Thus, it is paramount that Louisiana takes immediate, aggressive, and comprehensive action to reduce GHG emissions and circumvent the more severe adaptational challenges that could arise in the coming decades.¹⁵

7. *Id.*

8. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 15.

9. *Id.*

10. *Id.* at 26.

11. Dan Swenson, *These Six Factors Explain Why Louisiana Is Rapidly Losing Land; See Graphics*, NOLA.COM, https://www.nola.com/news/article_59675b8c-bfbc-11eb-9602-47cf4c0429dc.html [<https://perma.cc/S5SA-BLLP>] (last updated May 31, 2021, 1:48 PM).

12. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 26.

13. *Id.*

14. The IPCC is the United Nations body for assessing the science related to the changes in the Earth's climate. *Summary for Policymakers Headline Statements*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, <https://www.ipcc.ch/report/ar6/wg1/resources/spm-headline-statements> [<https://perma.cc/RJQ2-N9QZ>] (last visited Mar. 24, 2024).

15. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 30.

In late 2020, Louisiana pledged to reduce GHG emissions to net zero by 2050 under an executive order signed by then-Governor Edwards.¹⁶ In furthering this commitment, standing alongside around 6,200 other members, Governor Edwards announced in late 2021 that Louisiana has joined the United Nations' Race to Zero campaign.¹⁷ The joining of this campaign came only months after Governor Edwards joined the U.S. Climate Alliance, a bipartisan coalition of governors committed to state-led action to reduce GHG emissions.¹⁸ By joining the Race to Zero global campaign, Louisiana has redoubled its commitment to achieve GHG emission reductions and establish a viable plan of action to achieve its goals through timely implementation.¹⁹

In ensuring that Louisiana does just this, the Governor tactically appointed leaders from across the government, the private sector, academic institutions, and civil society to follow the science "to arrive at policies able to help reduce Louisiana's contributions to global climate change while fully recognizing Louisiana's climate vulnerabilities and its industrial and economic characteristics."²⁰ This appointed Task Force is supported in their work by six sector committees acting on behalf of different sectors of the state's economy, and four advisory groups focused on science, equity, legal, and financial and economic concerns.²¹

The Governor's main purpose for launching the Climate Initiatives Task Force was to find solutions to improve the state's resilience, sustain its coast, and help obviate the harsher impacts of climate change, which could further threaten the health and safety of Louisiana's residents, the state's economic growth, and its vital habitats and ecosystems.²² With this, after an intensive 16-month collaborative process that was conducted over

16. La. Exec. Order No. 18-JBE-2020 (Aug. 19, 2020) (available at <https://gov.louisiana.gov/assets/ExecutiveOrders/2020/JBE-2020-18-Climate-Initiatives-Task-Force.pdf> [<https://perma.cc/Z9Q6-5ZB7>]).

17. *Louisiana Has Joined International Climate Change Campaign*, AP NEWS (Oct. 6, 2021, 3:21 PM), <https://apnews.com/article/climate-change-john-bel-edwards-louisiana-europe-environment-and-nature-665ba8bcf0b6507f8b9a357e45b23f4f> [<https://perma.cc/3ZDF-6NPA>].

18. *Gov. Edwards Joins Bipartisan U.S. Climate Alliance, Commits to Addressing Climate Change*, U.S. CLIMATE ALLIANCE (May 7, 2021), <https://usclimatealliance.org/press-releases/louisiana-joins-alliance-may-2021/> [<https://perma.cc/X5XM-MF4H>].

19. *Id.*

20. *Climate Initiatives Task Force*, OFF. OF THE GOVERNOR, <https://gov.louisiana.gov/page/climate-initiatives-task-force> [<https://perma.cc/9KVX-SBV2>] (last visited Mar. 23, 2024).

21. *Id.*

22. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 7.

49 public meetings, the Task Force unanimously approved the State’s first ‘Climate Action Plan,’ comprising 28 strategies and 84 specific actions focused on eight distinct areas that were found to be critical to a decarbonized future for Louisiana.²³

Among these eight focused areas, “clean energy transition” is central in furthering the Plan’s fundamental objectives which includes satisfying Louisiana’s GHG emission goals.²⁴ Electricity is the backbone of the Earth’s economy and a necessity for the procurement of a high-quality life—powering, heating, and cooling homes, businesses, information systems, infrastructure, and industrial facilities of every size.²⁵ As Louisiana moves to reduce its GHG emissions, clean and dependable electricity will become increasingly important as the built environment,²⁶ transportation systems, and large industrial users all shift away from the combustion of fossil fuels and onto the electric grid.²⁷ To make the most of this transition, it is critical that Louisiana takes feasible steps to ensure that the electricity being used to furnish these activities is both renewable and clean.²⁸ With this in mind, the Task Force has promoted clean and renewable energy through its most advantageous strategy proposal: a transformation of our electric grid to clean and renewable energy sources.²⁹ As Louisiana begins to move away from fossil fuels, the overall demand for electricity will increase, making the source of that electricity progressively more important.³⁰ In an attempt to increase clean and renewable sources of power generation while also increasing the reliability and resilience of the electric grid, the Task Force notably directs its attention to the electric grid itself and the power generation facilities and

23. *Id.* at 11.

24. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 43.

25. *Id.*

26. ‘Built environment’ is a term that speaks to “all aspects of our lives, encompassing the buildings we live in, the distribution systems that provide us with water and electricity, and the roads, bridges, and transportation systems we use to get from place to place. It can generally be described as the man-made or modified structures that provide people with living, working, and recreational spaces.” See *Basic Information About the Built Environment*, EPA, <https://www.epa.gov/smm/basic-information-about-built-environment> [<https://perma.cc/KWJ6-GTKX>] (last updated Feb. 8, 2024).

27. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 43.

28. Here, “clean” is defined as energy generation that results in emission of little to zero GHGs (e.g., nuclear, biowaste, and natural gas with carbon capture) and “renewable” is defined as naturally replenishing energy sources with zero GHG emissions (e.g., solar, wind, hydropower, and geothermal). *Id.* at 47.

29. *Id.* at 43.

30. *Id.*

utilities needed in order to dependably satisfy the future demands for electricity.³¹

As recognized by the Task Force and other clean energy proponents, the first step in gaining ground in this transformation is through the implementation of laws or regulations that are constructed precisely for the purpose of advancing the State's goals and objectives.³² For example, through the implementation of a Renewable and Clean Portfolio Standard (RCPS), a regulation that curtails GHG emissions associated with electricity generation, electricity expended in Louisiana would be subject to a requirement that it be produced from an increasing percentage of renewable or clean sources.³³ A RCPS—together with measures that improve efficiency, account for disruptions like major hurricanes, and protect consumers from additional costs or reduced liability—could yield profitable results for the State of Louisiana.³⁴

To provide support to regulations such as RCPS, Louisiana should also establish a statewide market or join an existing market for Renewable Energy Certificates (RECs) accessible to electric utilities.³⁵ RECs are purchasable, market-based instruments that represent the property rights to the environmental, social, and other non-power attributes of renewable electricity generation.³⁶ RECs have been recognized as playing a vital role in the accounting, tracking, and assigning of ownership to renewable electricity generation and use.³⁷ The merit of establishing RECs would be underpinned by requiring utilities to purchase them as an alternate means for meeting RCPS regulations.³⁸ This action suggests the participation of the Louisiana Public Service Commission (the Commission), utilities, and stakeholders in developing and implementing an RCPS and a statewide market for RECs.³⁹

A growing chorus of voices has been calling for states to hold oil and gas companies, like Exxon, accountable for lying about climate change,

31. *Id.* at 44.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 45.

36. The purchasing of RECs is equivalent to the purchasing of renewable energy and ultimately provides companies, institutions, and individuals with a simple way of offsetting their carbon footprint and supporting clean energy. *Id.* at 49.

37. *Id.* at 45.

38. *Id.*

39. *Id.*

all the while keeping the nation hooked on fossil fuels.⁴⁰ In singing such melodies, the choir has failed to include even a verse of accountability and scrutiny towards utilities.⁴¹ Specifically in Louisiana, these utilities include several vertically-integrated monopolies,⁴² such as Entergy and Cleco.⁴³ With the aid of the foregoing regulation(s), utility-scale action will empower Louisiana to implement necessary accountability standards while also allowing the State to overhaul its feeble monopoly system and present the invitation of competition to the market, particularly, one of limited retail open access.⁴⁴ Allowing for such a market will bring forth expansive opportunities for Louisiana to incorporate more players in the State's power system, all the while providing the public with access to renewable and clean energy—serving the better interests of the public by producing lower billings for electric service to all classes of Louisiana customers, both large and small.⁴⁵

With such a recognizable need for a revolution across Louisiana's power industry, Louisiana's only viable option in making a clean energy transition—while also providing its customers with safe and reliable service at the lowest reasonable cost⁴⁶—is through the implementation of

40. Alvin Powell, *Oil Companies Discourage Climate Action, Study Says*, HARV. GAZETTE (Sept. 28, 2021), <https://news.harvard.edu/gazette/story/2021/09/oil-companies-discourage-climate-action-study-says/> [<https://perma.cc/9JAR-AUZ3>].

41. *Id.*

42. Utility monopolies, like Entergy, are typically created through vertical integration. “Vertical integration” describes “a strategy that allows a company to streamline its operations by taking direct ownership of various stages of its production process rather than relying on external contractors or suppliers.” See Adam Hayes, *Vertical Integration Explained: How it Works, With Types and Examples*, INVESTOPEDIA, <https://www.investopedia.com/terms/v/verticalintegration.asp> [<https://perma.cc/GN8L-4ZH8>] (last updated Jan. 12, 2024).

43. Sam Carlin, *Louisiana PSC Approves New Power Deals for Co-ops, Siding Against Entergy and Cleco*, ADVOCATE (Oct. 19, 2022), https://www.theadvocate.com/baton_rouge/news/politics/article_d0f690f8-4fed-11ed-80ad-fb8a3c6d4a6.html [<https://perma.cc/X2HG-CGGK>].

44. LA. PUB. SERV. COMM'N, Doc. R-35462, IN RE: RULEMAKING TO RESEARCH AND EVALUATE CUSTOMER-CENTERED OPTIONS FOR ALL ELECTRIC CUSTOMER CLASSES AS WELL AS OTHER REGULATORY ENVIRONMENT 1 (2022).

45. *Id.*

46. The mission of the Louisiana Public Service Commission is “to provide reliable and affordable service to Louisiana customers while allowing the regulated utility to maintain a reasonable and fair rate of return.” *Utilities Division*, LA. PUB. SERV. COMM'N, <https://www.lpsc.louisiana.gov/Utilities> [<https://perma.cc/DN8L-L9R4>] (last visited Mar. 22, 2024).

a market of limited retail open access. Particularly, in making the pivotal step towards a more clean and efficient power system, the Commission should provide two options: an “Industrial Customer Market Option” and a “Renewable Generation Option.” The implementation of a competitive retail market would not only allow for the much-needed promotion of economic development within the state, but it would also deliver a more customer-oriented set of outcomes, one of these being the provided benefit of having the ability to circumvent the one-size fits-all tariffed utility rates, and instead be given the option to choose between competitive retail suppliers.⁴⁷ Moreover, the proposal for these two options are in accordance with the objectives and action items that have been proffered in the Louisiana Climate Action Plan for evaluation and consideration by the Commission.⁴⁸

Part I of this Comment provides background information necessary to evaluate the problems with Louisiana’s power industry and the proposed solutions. This Part begins by providing some insight into the breakdown of the power system. Additionally, Part I provides insight on ‘natural’ monopolies and describes in what context this structure is recognized as being more efficient than a competitive market. Lastly, Part I provides the requisite background on the Louisiana Public Service Commission and explains why this Commission plays such an essential role in providing a solution to this issue.

Part II of this Comment discusses the Commission’s failure to implement retail competition in the early 2000’s and the Commission’s duty to remain vigilant on a number of fronts before giving clearance for such a transition. This Part also examines problems with the current monopolistic structure of the State’s power industry, how these problems developed, and what their root causes are. It further examines the consequences of the current problems and how these consequences, together with the passage of time, have led to the desperate need for change within Louisiana’s power sector.

Part III of this Comment proposes solutions to the problems of the State’s power industry as it currently stands. These solutions include the implementation of a limited retail open access through an Industrial Customer Market Option, where qualified competitors will be permitted to enter the market and help Louisiana meet its GHG emission goals by sourcing in options that hold grid innovation and resilience at the forefront

47. LA. PUB. SERV. COMM’N, Doc. R-35462, IN RE: RULEMAKING TO RESEARCH AND EVALUATE CUSTOMER-CENTERED OPTIONS FOR ALL ELECTRIC CUSTOMER CLASSES AS WELL AS OTHER REGULATORY ENVIRONMENT 1 (2022).

48. See CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 42.

of its investments. Additionally, the solution proposes that this Customer Option be accompanied by the implementation of a Renewable Generation Option. These solutions will involve regulatory changes by the Public Service Commission, as well as changes made by the State legislation, which are central to fixing the current problems with the State's utilities structure. This Part further explains how the proposed solutions will combat the current problems of climate change. Lastly, Part III examines recent legislation and how such legislation can assist the state of Louisiana in implementing the proposed solution.

I. BACKGROUND

A. Electricity Breakdown

Electricity is the flow of electrical power or charge that is a fundamental part of nature and one of the most widely used forms of energy.⁴⁹ Also referred to as an energy carrier, electricity has the additive capability of being transformed into other forms of energy, such as mechanical energy or heat.⁵⁰

The first step in getting electricity to its end-users is through the medium of what is known as primary energy acquisition, which refers to the obtainment of the primary, naturally occurring energy source that will be converted to electricity.⁵¹ There are a variety of primary energy sources that may be used and converted into electricity, including fossil fuels (coal, oil, and natural gas); nuclear reactions (fission); and renewable sources (such as solar, wind, and hydroelectric power).⁵² These primary energy sources consist of renewable and nonrenewable energy, but electricity, as a secondary source, is neither.⁵³

49. *Electricity Explained: How Electricity is Delivered to Consumers*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/energyexplained/electricity/delivery-to-consumers.php> [<https://perma.cc/5JUN-GXQW>] (last updated Aug. 11, 2022).

50. *Id.*

51. Barry Posner & Farid Tayari, *The Fundamentals of Electricity Markets*, PENN STATE COLL. OF EARTH & MIN. SCI., <https://www.e-education.psu.edu/ebf200/node/151> [<https://perma.cc/BU9X-RCPX>] (last visited Mar. 22, 2024).

52. Lauren Dunlap et al., *Electricity 101: Terms and Definitions*, RES. FOR THE FUTURE (Mar. 3, 2020), <https://www.rff.org/publications/explainers/electricity-101/> [<https://perma.cc/7EQT-T24L>].

53. *Electricity Explained*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/energyexplained/electricity/> [<https://perma.cc/H9UC-XR4L>] (last updated June 30, 2023).

Once the appropriate primary energy source has been acquired, the generation process commences, where the energy source is then converted into electricity through the utility of an electric generator device.⁵⁴ For example, coal can be converted to synthetic gas, which can be converted to electricity; in this formulation, coal is a primary energy, synthetic gas is a secondary energy, and electricity is tertiary energy.⁵⁵ The generation process typically occurs at generation or power plants.⁵⁶ Following the production of electric power, generation plants then deliver the electricity to its end-users, including homes, buildings, and businesses, who receive this electricity through an interconnected grid that provides for the electricity's transmission and distribution.⁵⁷ This complex grid system consists of electricity substations, transformers, and power lines that connect electricity producers and consumers.⁵⁸ Throughout the United States, "the electricity grid consists of hundreds of thousands of miles of high-voltage power lines and millions of miles of low-voltage power lines with distribution transformers that connect thousands of power plants to hundreds of millions of electricity customers all across the country."⁵⁹

Following the generation process, the next course of action within the electricity valuation chain is the process of transmission.⁶⁰ This process refers to the transportation of generated electricity, generally over long distances, to the neighborhoods and cities where it will then be consumed.⁶¹ With regards to the consumption of electricity, low-voltage electricity is considered to be safer for homes and businesses.⁶² Nevertheless, on account of the fact that for every mile that electricity travels, some amount of power is lost, electricity is transmitted at extremely high voltages through high-voltage transmission lines in an

54. *Electricity Explained: How Electricity is Generated*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/energyexplained/electricity/how-electricity-is-generated.php>. [https://perma.cc/H9UC-XR4L] (last updated Oct. 31, 2023).

55. *Glossary*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/tools/glossary/index.php?id=Primary+energy> [https://perma.cc/887C-8GVW] (last visited Mar. 24, 2024).

56. Dunlap et al., *supra* note 52.

57. *Electricity Basics*, AM. PUB. POWER ASS'N, <https://www.publicpower.org/public-power/electricity-basics> [https://perma.cc/7364-XBE3] (last visited Mar. 24, 2024).

58. *Electricity Explained: How Electricity is Delivered to Consumers*, *supra* note 49.

59. *Id.*

60. *Id.*

61. Dunlap et al., *supra* note 52.

62. *Electricity Explained: How Electricity is Delivered to Consumers*, *supra* note 49.

effort to mitigate loss and allow for the utmost efficiency.⁶³ Once electricity has reached its designated location, transformers in a distribution substation are put in place between the transmission and distribution lines to tail off the voltage to levels that can safely be used by appliances and machines operated by end users.⁶⁴ From there, the distribution process institutes, and the low-voltage electricity is then carried over fairly short distances through local distribution wires and into businesses, buildings, and residences.⁶⁵

B. The Natural Monopoly Over Louisiana's Power Industry

With respect to the sources and providers of electricity, the origin and operation within the electricity industry varies from region to region.⁶⁶ Hence, the company selling power to consumers may be a not-for-profit municipal electric utility; an electric cooperative owned by its members; a private, for-profit electric utility owned by stockholders (often called an investor-owned utility); or in some states, consumers may purchase electricity through a power marketer.⁶⁷

The quantity of sources and providers that are found within the retail structure also varies among regions.⁶⁸ A region's electric utilities can be regulated and function as vertically-integrated monopolies, where the generation, transmission, and distribution process are all controlled by one entity and are accompanied by oversight from public utility commissions.⁶⁹ Alternatively, utilities can serve in a deregulated market where various entities execute different parts of the process and the price of electric energy is set by the market and is accompanied by federal oversight.⁷⁰ Particularly in Louisiana, utility companies such as Entergy and Cleco are traditionally regulated and function as vertically-integrated monopolies, otherwise known and treated as 'natural' monopolies.⁷¹

63. *Id.*

64. Posner & Tayari, *supra* note 51.

65. Dunlap et al., *supra* note 52.

66. *Id.*

67. *Electricity Explained: How Electricity is Delivered to Consumers*, *supra* note 49.

68. Dunlap et al., *supra* note 52.

69. Kathryn Cleary & Karen Palmer, *U.S. Electricity Markets 101*, RES. FOR THE FUTURE, <https://www.rff.org/publications/explainers/us-electricity-markets-101/> [<https://perma.cc/SB4C-GNDF>] (last updated Mar. 17, 2022).

70. *Id.*

71. Joseph Daniel, *Electric Companies Like Entergy Are Using Affiliate Transactions to Block Renewable Energy, Here's How*, EQUATION (Dec. 11,

A natural monopoly is a type of monopoly in an industry or sector that arises due to unique circumstances that conclusively lead to a single large producer being able to most efficiently provide service(s) in a certain territory.⁷² Two structural conditions that yield this type of monopoly in the electricity market include the exceedingly high barriers to entry and the enormous economies of scale.⁷³ Due to the high costs of building and maintaining big power plants and long-distance transmission lines and the sizable cost advantages reaped by efficient production, it did not make much sense to have multiple companies making such investments and competing over the same group of customers.⁷⁴ Instead, it seemed more sensible for one company to do it all—build, generate, and deliver power from the plants to the customers.⁷⁵

Despite anti-trust laws, natural monopolies are nevertheless permitted when a lone company can provide a product or service at a lower cost than any potential competitor and at a volume that can service an entire market.⁷⁶ The exclusive capability of being able to use an industry's limited resources to offer the lowest unit price to consumers makes it advantageous, in many situations, to have a natural monopoly.⁷⁷

With respect to the running battles between utilities and clean energy, most Americans are aware of—and harmonize with—the consensus view of electric utilities as the climate supervillain.⁷⁸ Be that as it may, the basis for why utilities rule with an iron fist is often misconstrued.⁷⁹ Let there be no mistake, greed and malice are certainly involved; but they, too, are mere symptoms of the root problem.⁸⁰ The source of utilities' current dysfunction is simple—it is the way utilities are structured.⁸¹ Electric

2019, 12:38 PM), <https://blog.ucsusa.org/joseph-daniel/electric-companies-like-entergy-are-using-affiliate-transactions-to-block-renewable-energy-heres-how/> [<https://perma.cc/XY3B-MZ24>].

72. *Natural Monopoly: Definition, How It Works, Types, and Examples*, INVESTOPEDIA, https://www.investopedia.com/terms/n/natural_monopoly.asp [<https://perma.cc/SQQ5-TJ8S>] (last updated June 7, 2023).

73. David Roberts, *Power Utilities Are Built for the 20th Century. That's Why They're Flailing in the 21st.*, VOX (Sept. 9, 2015, 9:10 AM), <https://www.vox.com/2015/9/9/9287719/utilities-monopoly> [<https://perma.cc/3LBK-6F9Q>].

74. *Id.*

75. *Id.*

76. *Natural Monopoly: Definition, How It Works, Types, and Examples*, *supra* note 72.

77. *Id.*

78. Roberts, *supra* note 73.

79. *Id.*

80. *Id.*

81. *Id.*

utilities in the United States are classified as quasi-public entities, meaning that these utility companies cannot seek to profit off of their main product—energy.⁸² Instead, utilities must operate under a cost-of-service regulation (COSR).⁸³ The structure of COSR gives utilities authorization to build assets (substations, transformers, meters, and power lines) and earn a return of and on their capital.⁸⁴ In short, utilities ultimately profit “by convincing regulators to allow them to invest in new power lines and make other capital expenditures for equipment—not by making the power lines they already have work more efficiently.”⁸⁵ This troubling barrier—arising from misaligned regulatory and economic incentives to build more stuff and sell more electricity—runs counter to social-policy goals like decarbonization.

All that is to say: With the urgency for a decarbonized energy transition and utility companies’ mere reluctance to comply with such change, it seems exceedingly clear that Louisiana’s electricity system is broken—a result of many failings that can be traced back to an outdated regulatory framework and abidance to centuries-old business models that have decelerated innovations surrounding safer, cleaner, and more affordable energy technologies. Following the structural factors that yielded justification for natural monopolies in the early 20th century, time appears to suggest that the once compelling and advantageous reasons for utility services to be bundled by a single “vertically integrated” monopoly have since been dispensed with.⁸⁶

The United States’s technological advancements have evolved to the point that many services within the electricity supply chain could be provided just as reliably, or better, by participants in competitive markets.⁸⁷ By ditching the 20th century “hub and spoke” grid and replacing it with a grid that is smart, modular, and multidirectional in function, states have the opportunity to move from a pure commodity business with

82. *Id.*

83. *Id.*

84. *Utility Rate Design & Complementary Policies*, SOLAR ENERGY INDUS. ASS’N, <https://www.seia.org/initiatives/utility-rate-design-complementary-policies> [https://perma.cc/299M-5JL5] (last visited Mar. 22, 2024).

85. Jeff St. John, *How to Move More Power with the Transmission Lines We Already Have*, VOX (July 29, 2022), <https://www.canarymedia.com/articles/transmission/how-to-move-more-power-with-the-transmission-lines-we-already-have> [https://perma.cc/B6WB-QMAJ].

86. See Joel B. Eisen, et al., *Virtual Energy*, 2024 U. ILL. L. REV. 107 (2023) (making the case for opening the electric grid and its regulatory framework in order to better accommodate virtual energy resources).

87. Roberts, *supra* note 73.

limited participants to a booming market that encompasses a range of distinct products and services, offered by a class of qualified industrial participants.⁸⁸

C. The Louisiana Public Service Commission

Pursuant to Louisiana Constitution Article VI, §21, the Louisiana Public Service Commission (the Commission) is charged with the responsibility and given the authority to regulate all common carriers and public utilities operating within the State.⁸⁹ Specifically, the Commission exercises regulatory jurisdiction over public utilities that supply electric, water, wastewater, natural gas, and certain telecommunication services in the state of Louisiana.⁹⁰ Historically, Louisiana electric utilities have been thought of and regulated as natural monopolies—so long as utilities supply safe and reliable service at the lowest reasonable cost to all consumers within their service area, the utilities have generally been granted an exclusive service territory and the opportunity to earn a fair rate of return.⁹¹

In holding such power, the Commission is given the exclusive obligation of adopting and enforcing reasonable rules, regulations, and procedures that are necessary for the discharge of its duties and shall have other powers and perform other duties as provided by law.⁹² The Commission plays a key role in deciding the costs that utilities charge, the types of services it provides, and the kind of energy that powers the state of Louisiana.⁹³ Thus, in order to implement the solution that this Comment provides for, the Commission must be convinced that the proposed solution supplies safe and reliable services at the lowest reasonable cost to all consumers within their service area.⁹⁴

88. *Id.*

89. LA. CONST. art. IV, § 21.

90. *About The Louisiana Public Service Commission*, LA PUB. SERV. COMM'N, <https://lpsc.louisiana.gov/About> [<https://perma.cc/97Z9-UPD2>] (last visited Mar. 23, 2024).

91. LA. PUB. SERV. COMM'N, No. U-21453, U-20925(SC), U-22092(SC)—(SUBDOCKET A)—B, IN RE: ANALYSIS OF COMPETITIVE IMPLICATIONS (2001).

92. LA. CONST. art. IV, § 21(B).

93. *Louisiana Public Service Commission Holds the Keys to Our Future*, ALL. FOR AFFORDABLE ENERGY (July 22, 2022), <https://www.all4energy.org/watchdog/louisiana-public-service-commission-holds-the-keys-to-our-future> [<https://perma.cc/D3VK-QBZM>].

94. LA. PUB. SERV. COMM'N, No. U-21453, U-20925(SC), U-22092(SC)—(SUBDOCKET A)—B, IN RE: ANALYSIS OF COMPETITIVE IMPLICATIONS (2001).

II. TWO DECADES OF CHANGE AND RESISTANCE CATALYZES THE NEED FOR IMPLEMENTATION OF LIMITED RETAIL OPEN ACCESS

A. The Louisiana Public Service Commission's Deliberate and Cautious Approach to Restructuring the Power Industry

In the early 2000s, the Commission addressed the questions and doubts surrounding the concept that “all functions performed by electric utilities are appropriately natural monopolies.”⁹⁵ The main focus of such inquiry relates to electricity regulation and whether natural monopolies should be done away with, effectively granting ultimate customers—end-users, such as firms or individuals, that purchase products for its own consumption and not for resale—with the option to select their generation supplier of choice.⁹⁶ Taking a “careful approach” to any sort of change in Louisiana’s regulatory structure, the Commission decided to “move slowly and deliberately in this area.”⁹⁷ Around the time that this question was addressed by the Commission, a number of states located on the West Coast and in the Northeast, where electricity rates are the highest in the country, had recently implemented “retail competition” (otherwise known as “retail access”) which would permit ultimate customers to choose their suppliers of generation.⁹⁸

Going back as far as the 1995 Business and Executive Session, the Commission then created a generic docket (Docket No. U-21453) to consider whether retail competition or deregulation of the electric industry was in the public interest in Louisiana.⁹⁹ The Commission’s Staff conducted an initial analysis, seeking information and comments from all segments of the industry.¹⁰⁰ After public hearings, the Staff issued a Report and Recommendation regarding the issue, concluding that a restructuring of the electric industry might be in the public interest “contingent on a variety of additional analyses being undertaken, safeguards established, and operational controls utilized over the process.”¹⁰¹ The Staff was unable to conclusively say that, at that time, “all classes of customers would

95. *Id.*

96. *Id.*

97. *Id.* (acknowledging that Louisiana is a relatively low-cost state and requires a cautious approach to making changes within the State’s current regulatory structure).

98. *Id.*

99. *Id.*

100. *Id.*

101. LA. PUB. SERV. COMM’N, NO. U-21453, U-20925(SC), U-22092(SC)–(SUBDOCKET A)–B, IN RE: ANALYSIS OF COMPETITIVE IMPLICATIONS (2004).

benefit if the retail electric industry were restructured.”¹⁰² The Staff ultimately reserved its recommendation to the Commission that implementation of retail access would be beneficial to all—at that point in time.¹⁰³

After accepting the Staff’s Report and Recommendation, the Commission, in its ongoing efforts to move methodically in this area, directed the Staff to examine ten individual matters in regard to restructuring the State’s power industry: (1) Stranded Costs; (2) Reliability; (3) Consumer Protection; (4) Consumer Education; (5) Universal Service; (6) Stranded Benefits; (7) Tax Implications; (8) Market Structure; (9) Market Power; and (10) Environmental Issues.¹⁰⁴ Public hearings were held where insight and opinions were once again elicited from industry members.¹⁰⁵

After a comprehensive analysis, the Staff issued three principal recommendations in early 1999.¹⁰⁶ These recommendations provided that the restructuring of the electric industry was not in the public interest at that time.¹⁰⁷ The Staff notes that implementation of customer choice in Louisiana could only be in the public interest “if retail access produced lower billings for electric service to all Louisiana residents.”¹⁰⁸ The Staff then went on to encourage the Commission not to abandon its slow and cautious approach and provided some direction by emphasizing that “electric restructuring should not go forward without a comprehensive analysis of the economic and other effects that restructuring would have on both large and small Louisiana consumers as well as the economy of the State as a whole.”¹⁰⁹

Pursuant to the 1999 Staff recommendations, the Commission once again deferred a public interest determination and reiterated its strict approach to this issue.¹¹⁰ Subsequently, the Commission requested both the development of a comprehensive plan regarding the transition to competition, and the performance of a comprehensive analysis concerning the economic and added effects that restructuring would likely have on all

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

of Louisiana's consumers and on the economy of the State of Louisiana as a whole.¹¹¹

Following submission of 11 different reports in January of 2001, the Staff once again reported under the heading of 'Public Interest Recommendation' that they are not convinced "that retail access for even large industrial customers is currently in the public interest" and "based on the information provided to date . . . [they] are unable to recommend that the Commission find that retail access for residential and commercial customers is in the public interest at this time."¹¹² They also maintained that "the slow and steady course followed by the Commission to date has, [they] believe, saved Louisiana ratepayers significant amounts of money, maintained reliable service, and permitted consumers to continue to receive substantial rate reductions and refunds."¹¹³

The Staff ultimately found that, "to the extent that this limited opportunity for access will encourage the building of additional merchant generation in Louisiana, retain existing businesses and attract new industry and keep jobs and tax revenues in Louisiana, all of that can be accomplished without putting residential, commercial, and small industrial customers at risk."¹¹⁴ Also pursuant to the Commission's directive, the Staff developed a transition plan that would, "to the fullest extent possible, protect all customers who do not elect access from any adverse consequences of competition, while preserving the benefits of rate decreases and refunds for those customers."¹¹⁵ The Staff came up with the following model:

Industrial customers with average loads of greater than 5 Mw would be permitted the opportunity to access the competitive generation market beginning 10/1/2003. Competition would not be implemented for residential, commercial, or small industrial customers (i.e., with average loads of less than 5 Mw). In addition, no industrial customer with an average load of 5 Mw or greater would be required to access the competitive market. Those customers would be free to remain with their incumbent utilities taking service at regulated rates. Transmission and distribution service would remain regulated. Customers choosing access could return to their former utility for service but if they do so, they must pay the greater of regulated rates or the market cost of power

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

incurred to serve them. Those customers leaving their utilities to access the competitive market would still remain liable for their fair share of stranded costs.¹¹⁶

Holding the responsibility of ensuring that Louisiana's jurisdictional ratepayers receive both safe and reliable services at the lowest reasonable cost, the Commission held that they were unable to vote for such implementation at that time.¹¹⁷ Despite the Commission's belief that the Staff Plan is both a careful and measured approach to the recognized issues—designated by efforts to retain the benefits of continued regulation for the large majority of customers and to allow alternative options to the minority who seek implementation of competition, all while maximizing the Commission's flexibility—the Commission decided that retail access “is not in the public interest for any customer class at this time.”¹¹⁸ Should the Commission determine, in the future, that retail access is appropriate and in the public interest for all customer classes, it retains the flexibility to pursue that option at a later date.¹¹⁹ Until the Commission determines it is no longer needed to serve regulated loads, utility generation will continue to be fully regulated.¹²⁰

While failing to implement retail competition in early 2000's, the Commission stated that it is their duty to remain vigilant on a number of fronts:

- (1) Texas and its definitive plan to move to competition and the potential consequential loss of industry or jobs
- (2) development at the federal level, both legislatively and at the Federal Energy Regulatory Commission, dictating that states prepare to adopt a transition plan in order to protect Louisiana ratepayers
- (3) additional issues that remain to be resolved so that if and when implementation of such plan is found to be within the public's interest, Louisiana can move forward in an informed manner.¹²¹

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

B. Entergy's Failures Shows the Need for Louisiana to Open its Market to Competition

Over the two decades that have followed this order by the Commission, Louisiana has seen an unprecedented number of environmental changes, and despite the climate effects that such changes have generated, the State's incumbent utility monopolies lay dormant and refuse to acclimate and take the proper actions towards ensuring that Louisiana's energy system is both clean and resilient.¹²² Even knowing the environmental, economic, and reliability benefits that would come from switching to a renewable future, South Louisiana continues to be grid blocked by the non-progressive local utility monopoly, Entergy.¹²³ In looking at the feebleness of Entergy's power grid, it seems quite heedless for Entergy to oppose the allowance of competition into the market.¹²⁴

Entergy's inability, as Louisiana's largest energy provider, to afford protections against the effects of climate change uncovers growing doubts as to whether such a vertically integrated power structure is still within the public's best interest.¹²⁵ Like many desecrating storms that came before it, Hurricane Ida exposed the fragility of Louisiana's power grid, knocking out electricity to hundreds of thousands of individuals and companies, not to mention practically all of New Orleans.¹²⁶ Many native New Orleanians and other close-by residents have lived through and have felt the effects of many of Louisiana's catastrophic hurricanes, from Betsy in 1965 to Katrina in 2005.¹²⁷ After years of learning how to stock days' worth of canned food, gas, flashlight batteries, and emergency medical supplies, it has become painfully clear to Louisiana residents that the monopolized power company Entergy New Orleans (ENO), along with its parent

122. William Berger, *The End Is near for Monopolies: We Must Liberate the US Power Consumer*, UTILITYDIVE (July 8, 2022), <https://www.utilitydive.com/news/electric-utility-monopoly-liberate-the-us-power-consumer/626775/> [https://perma.cc/SD28-ETG5].

123. Daniel, *supra* note 71.

124. Jon Schuppe, *Hurricane Ida Power Grid Failure Forces a Reckoning over Entergy's Monopoly in the South*, NBC NEWS, <https://www.nbcnews.com/news/us-news/hurricane-ida-power-grid-failure-forces-reckoning-over-entergy-s-n1279971> [https://perma.cc/2Z3U-G35V] (last updated Sept. 29, 2021, 12:34 PM).

125. *Id.*

126. *Id.*

127. Max Blau et al., *Entergy Resisted Upgrading New Orleans' Power Grid. When Ida Hit, Residents Paid the Price*, ENERGY NEWS NETWORK (Sept. 28, 2021), <https://energynews.us/2021/09/28/entergy-resisted-upgrading-new-orleans-power-grid-when-ida-hit-residents-paid-the-price/> [https://perma.cc/XB9W-DXPY].

corporation, was no better equipped to withstand Ida than any hurricane that came before.¹²⁸

When pressed by the community about the catastrophic power failure, Entergy's executives' response was that the power failures could not have been avoided amidst a storm like Ida.¹²⁹ This excuse was quickly debunked by an investigation conducted by ProPublica and NPR, which found that ENO, along with its parent company, Entergy, failed to take requisite steps to guard its users against power outages.¹³⁰ Despite many post-hurricane opportunities to build a more resilient power grid, Entergy has fiercely resisted all attempts that have been made by regulators and advocates to try and improve the State's infrastructure.¹³¹ In neglecting to prioritize grid modernization through the process of rebuilding its equipment post major storms, Entergy continuously fails to limit the scope and duration of power outages.¹³² But who is surprised—under current regulation, Entergy's revenue generation is tied directly to retail sales, meaning that any reduction in its energy consumption directly reduces Entergy's profitability.¹³³ This “throughput incentive” runs counter to social goals by creating a powerful financial disincentive for Entergy to support energy efficiency and clean and renewable distributed generation.¹³⁴

Rather than shift toward renewable energy, Entergy has instead doubled down on building generation plants that emit greenhouse gases—the same pollution that has induced and intensified the State's hurricanes.¹³⁵ In a late August Commission meeting, Boissiere and Commissioner Foster Campbell blamed Entergy Louisiana for creating a power grid that is too dependent on natural gas and for resisting investments in diversifying its fuel sources, i.e., renewable energies.¹³⁶

128. ENO is regulated by New Orleans City Counsel, not the Commission. However, recent discussion shows that future operations may shift utility oversight from local leaders to the Commission. See Robert Walton, *New Orleans City Council Votes to Investigate Entergy's Ida-related Failures*, UTILITYDIVE (Sept. 22, 2021), <https://www.utilitydive.com/news/critics-blast-entergy-new-orleans-merger-proposal-that-would-allow-it-to-av/606974/> [<https://perma.cc/6N75-2BPY>]; see also *id.*

129. *Id.*

130. *Id.*

131. Schuppe, *supra* note 124.

132. Blau et al., *supra* note 127.

133. Roberts, *supra* note 73.

134. *Utility Rate Design & Complementary Policies*, *supra* note 84.

135. Blau et al., *supra* note 127.

136. Wesley Muller, *Louisiana Utility Regulators Blame Entergy for Creating Grid Dependent on Costly Gas*, LA. ILLUMINATOR (Aug. 2, 2022, 10:55 AM),

Commissioner Campbell said the company's power generation is currently about 85% natural gas and 3% renewables.¹³⁷ With this, Commissioner Campbell also expressed his annoyance at Entergy executives' fighting back against paying customers fair market value for solar energy that they fed into the grid.¹³⁸

In additional efforts to fight climate regulations, Entergy's New Orleans subsidiary has continuously threatened the City of New Orleans with legal action if the city proceeded with a plan that would force the utility to move toward clean energy as part of an effort to combat climate change through Resilient Renewable Portfolio Standards (R-RPS).¹³⁹ The R-RPS, like a renewable portfolio standard (RPS), is a mandate to achieve a targeted percentage of energy from resources that are both renewable and resilient.¹⁴⁰

Entergy's actions, or lack thereof, make it clear that they have no desire to make the transition that is necessary to combat the unprecedented number of environmental changes that Louisiana continues to face.¹⁴¹ With competitors in the electricity industry, industrial suppliers would help maintain competitive rates, which would benefit all ratepayers by reducing or avoiding some of the need for Entergy to increase rates in order to restructure its aging fleet.¹⁴² Brubaker & Associates Inc. has estimated that the construction cost of Entergy's planned new generation resources would be in the range of 17 billion dollars, and the resulting increase to base rates on customer bills would be in the range of a 50% increase.¹⁴³

This unconscionable project can in fact be avoided by allowing the industry to be a part of the solution.¹⁴⁴ The industry can help avoid or reduce costs or rate increases for all ratepayers, while also providing

<https://lailluminator.com/2022/08/02/louisiana-utility-regulators-blame-entergy-for-creating-grid-dependent-on-costly-gas/> [<https://perma.cc/84RM-D57B>].

137. *Id.*

138. *Id.*

139. Daniel Tate, *Entergy to Rely on Gas While Claiming Net-Zero Emissions in 2050*, ENERGY & POL'Y INST. (Sept. 28, 2020), <https://www.energyandpolicy.org/entergy-net-zero/> [<https://perma.cc/LJB6-5XJS>].

140. *Id.*

141. *Id.*

142. LA. PUB. SERV. COMM'N, Doc. No. R-35462, IN RE: RULEMAKING TO RESEARCH AND EVALUATE CUSTOMER-CENTERED OPTIONS FOR ALL ELECTRIC CUSTOMER CLASSES AS WELL AS OTHER REGULATORY ENVIRONMENT 1 (2022).

143. *Id.*

144. *Id.*

support to Louisiana's economic development through new options.¹⁴⁵ This solution to this problem does not require deregulation of the electric utilities in Louisiana or transition to a full open market, but would instead provide customers with limited retail open access, allowing access to the significant amounts of renewable energy that will be needed by the industry in order to bring capital projects to Louisiana as they compete within their companies and against other potential sites within the United States and globally.¹⁴⁶

III. SOLUTION

The most advantageous approach that Louisiana can take to advance its GHG reduction goals—while also assuring its customers that utilities are providing safe and reliable service at the lowest reasonable cost—is through the implementation of limited retail open access, followed by the implementation of a renewable generation option. Following the assessments made by the Commission roughly two decades ago, by acknowledging the environmental changes that Louisiana has since experienced, it is quite clear that the implementation of limited retail open access is no longer ‘premature’ and, with respect to the several fronts that the Commission has sworn to remain vigilant on, all three have since come to fruition.¹⁴⁷

Louisiana is recognized for having some of the lowest energy rates in the United States.¹⁴⁸ However, Louisiana has the second highest poverty rate at an estimated 19% and has the fourth-lowest household median income.¹⁴⁹ In addition to these unwanted accolades, Louisiana also has the highest monthly electricity consumption per residential customer.¹⁵⁰ All things considered, Louisiana's residents are faced with some of the worst

145. *Id.*

146. *Id.*

147. *Id.*

148. *Scorecard: Leading States Cutting Costs for Residents with Energy Efficiency, but More Progress Needed*, AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON. (Dec. 6, 2022), <https://www.aceee.org/press-release/2022/12/scorecard-leading-states-cutting-costs-residents-energy-efficiency-more> [https://perma.cc/MS97-SAKZ].

149. *Median Household Income by State 2023*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/poverty-rate-by-state> [https://perma.cc/6WC8-JUAG] (last visited Jan. 18, 2023).

150. Lindsay Wilson, *Average Household Electricity Consumption-2024*, SHRINK THAT FOOTPRINT, <https://shrinkthatfootprint.com/average-household-electricity-consumption/> [https://perma.cc/D565-E69F] (last updated Mar. 9, 2024).

energy burdens in the country—meaning that an outsized portion of a household’s income is going towards energy bills, including electricity, natural gas, and other heating fuels.¹⁵¹

According to a 2022 report conducted by the American Council for an Energy-Efficient Economy (ACEEE), Louisiana is ranked 46th among the states in regard to equitable energy efficiency policies that seek to reduce energy burdens for low-income and disadvantaged households and historically underserved communities.¹⁵² The scorecard that the ACEEE distributed with its rankings presents an unequivocal showing that Louisiana, now more than ever, must prioritize energy efficiency.¹⁵³ Residents and communities across the state of Louisiana have much to gain from energy efficiency, and as the ACEEE stated in its 2022 scorecard, Louisiana can deliver these benefits by making necessary adjustments to one of its leading impediments: the State’s utility business model.¹⁵⁴

Today, Louisiana’s power system is built upon an infrastructure that was developed at the turn of the last century.¹⁵⁵ This long-standing utility monopoly model is an antique, established during a time when it was deemed a social good to have a single wire going to a single home, and when consumption of power was ever-increasing.¹⁵⁶ However, much has changed since then. Non-infrastructure resources, such as solar panels, batteries, smart generator sets, artificial intelligence, and software, have become increasingly available to provide power service directly to homes and businesses just as efficiently, if not more.¹⁵⁷ Yet, because these innovations hinder shareholder profits, Louisiana’s utility monopolies

151. *Scorecard: Leading States Cutting Costs for Residents with Energy Efficiency, but More Progress Needed*, *supra* note 148.

152. *Id.*

153. *Id.* Despite years of inaction, coupled with the undeviating resistance from Entergy, the Commission voted 3-2 in an early 2024 meeting on an energy efficiency resource standards (EERS) policy that will require utilities under its jurisdiction (Entergy, Cleco, Swepco, and others) to meet certain energy saving targets each year. The Commission’s new policy, set to begin in 2026, will require a shift from a voluntary, self-managing framework to one that is mandatory and involves a third-party administrator to oversee and provide public accountability. Muller, *supra* note 136.

154. *How Energy Efficiency Can Help Low-Income Households in Louisiana*, AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON., <https://www.aceee.org/press-release/2022/12/scorecard-leading-states-cutting-costs-residents-energy-efficiency-more> [<https://perma.cc/5BFR-CH99>] (last visited Jan. 18, 2023).

155. Berger, *supra* note 122.

156. *Id.*

157. *Id.*

have continued to impede windfalls, including price signaling, technological improvements, consumer choices and other technological advancements.¹⁵⁸

Despite such efforts, energy consumers are demanding alternative options that are more sustainable and reliable, all at consistently lower costs and accompanied by improved customer service.¹⁵⁹ Customers stand in need of innovation and the ultimate power to choose and take control of their energy.¹⁶⁰ The only receptive path towards providing customers with such economic feasibility seems to be found through a well-structured, well-regulated, and competitive market in Louisiana.¹⁶¹

Two pivotal developments—both primarily aiming to put an end to monopolies and liberate U.S. power consumers—provide support for the conclusion that despite differing platforms, the restructuring of the U.S. power industry ought to be a rare, nonpartisan area of agreement.¹⁶² In June of 2022, President Biden invoked the Defense Production Act to encourage domestic renewable energy manufacturing, while also putting a two-year moratorium on additional harmful tariffs that would have restrained the growth of the U.S. solar industry.¹⁶³ Apart from this act from the President, Republican Florida Governor Ron DeSantis vetoed a bill that would have authorized utilities to impose additional uncapped charges on residential solar customers to recoup lost revenue.¹⁶⁴ As it seems, Democratic agendas support mechanisms that pertain to the correction of climate change, while Republican agendas support advancing free markets and capitalism.¹⁶⁵

As previously stated—pursuant to Louisiana Constitution Article IV, §21—the Commission is charged with the responsibility and granted the authority to regulate all common carriers and public utilities operating within Louisiana.¹⁶⁶ Thus, the Commission plays a key role in determining

158. *Id.*

159. *Id.*

160. See Sam Karlin, *Louisiana Establishes Broad Energy Efficiency Program After Years of Inaction*, NOLA.COM (Jan. 24, 2024), https://www.nola.com/news/louisiana-establishes-long-sought-energy-efficiency-plan/article_f37bf460-bafe-11ee-86b6-f702e3c903b9.html [<https://perma.cc/G9B2-E4ZX>] (recognizing the years of continuous pleas made by “affordable-energy advocates” and the Commissions long awaited response thereto).

161. Berger, *supra* note 122.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. LA. CONST. art. IV, § 21.

the costs that the State's utilities charge customers, along with the *type* of services they provide and the *kind* of energy that powers the state.¹⁶⁷

In order to advance Louisiana's climate action goals while also ensuring that customers are receiving safe and reliable service at the lowest reasonable cost, the Commission should certainly acknowledge the ripeness of the State's need for a limited retail market.¹⁶⁸ More specifically, Louisiana should consider implementing two particular options: an industrial customer market option and a renewable generation option. Through the implementation of these two options, together, Louisiana will begin to see more efficiency and progress towards a cleaner and more renewable energy transition.¹⁶⁹

A. Implementation of an Industrial Customer Market Option and Emission Reduction Generation and Supply Program

The implementation of an industrial customer market option will benefit all ratepayers by reducing or avoiding some of the need for Entergy to increase rates to replace its aging generation fleet.¹⁷⁰ Under this competitive market approach, Louisiana industrial customers who choose to enter will have the option to either self-supply or purchase electric capacity and energy for some or all of their load.¹⁷¹ All while helping Louisiana's industry maintain competitive rates, this option would offer *limited* retail access to large industrial customers with average loads of greater than 5 Mw—resultantly allowing for the industry to avoid significant increase in costs.¹⁷² This minimum load requirement would preclude most, if not all, residential, commercial, or other small industrial customers from access to the competitive market.

Because industrial customers have considerable experience with purchasing different commodities both intrastate and interstate, they are in the best position to evaluate and assume the financial and service risks of self-supply.¹⁷³ By limiting access to industrial customers, there is no need

167. *Louisiana Public Service Commission Holds the Keys to our Future*, *supra* note 93.

168. LA. PUB. SERV. COMM'N, Doc. No. R-35462, IN RE: RULEMAKING TO RESEARCH AND EVALUATE CUSTOMER-CENTERED OPTIONS FOR ALL ELECTRIC CUSTOMER CLASSES AS WELL AS OTHER REGULATORY ENVIRONMENT (2022).

169. *Id.*

170. *Id.*

171. *Id.*

172. Such limited retail access for large customers has shown success within several states, such as Washington State and Montana. *See id.*

173. *Id.*

for the Commission to provide extensive safeguards to consumers that would likely be needed if all customers were qualified to participate in said option.¹⁷⁴ This limitation also assists in eliminating common issues “. . . such as the generation market concentration of Entergy as the incumbent supplier of electric power that would have to be addressed if all customer classes were given access to the market option.”¹⁷⁵

It is significant to note that this option will provide a multitude of benefits to all Louisiana customers, regardless of whether one chooses to participate or not.¹⁷⁶ However, as resourcefully provided by the Louisiana Energy Users Group (LEUG) in response to the Commission’s request for information on the potential risks of opening retail access:

Any potential risks associated with the Industrial Customer Market Option can be eliminated by evaluating and implementing appropriate safeguards as needed in key areas, including: (1) LPSC certification of retail suppliers, (2) LPSC reporting requirements for retail suppliers, (3) metering, (4) temporary default service, (5) return to regulated service, (6) stranded costs, (7) securitization costs, and (8) appropriate changes to LPSC rules as needed.¹⁷⁷

Additionally, in mitigating the risks and disadvantages to customers, the implementation of this option should be adopted in such a manner that it does not create cross-subsidies between those who participate and those who choose not to.¹⁷⁸ Lastly, and most importantly, the developed program design should ensure that system reliability is not adversely impacted.¹⁷⁹

In considering this option, the Commission should further evaluate the creation of an Emission Reduction Generation and Supply (ERGS) program. The ERGS program would provide greater efficiency to the production of electricity by allowing industry or other third-party energy generation that has been created from emission-reducing sources (e.g., battery storage, on-site renewable energy generation, and waste-heat generation) to automatically be sold back to the grid.¹⁸⁰ These transactions would transpire at retail rates and on an “as available” basis without

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 51.

classifying the energy resource owner as a regulated electric public utility.¹⁸¹

This option and the implementation of an ERGS program, most notably, would provide enhanced opportunities for cogeneration, otherwise known as Combined Heat & Power (CHP).¹⁸² CHP is an efficient and clean approach to affordable energy through “the concurrent production of electricity or mechanical power and useful thermal energy (heating and/or cooling) from a single source of energy.”¹⁸³ As stated in the Climate Action Plan, “maximizing the simultaneous cogeneration of electricity and heat from renewable sources at industrial facilities can encourage more efficient onsite energy generation for large consumers, reduce energy waste, and lower the demand on the electric grid.”¹⁸⁴

CHP is a type of distributed generation, which, unlike central station generation, is located at or near the site of utilization.¹⁸⁵ In turn, because of such close proximity, CHP possesses a suite of technologies that can recover and retain the heat that would normally be lost in the power generation process.¹⁸⁶ The overall efficiency of CHP directly correlates with the reduction of total exhausted energy and operating costs that most vital industries are required to absorb.¹⁸⁷ Apart from its cost-effectiveness, CHP also provides Louisiana with the near-term opportunity to advance

181. *Id.* It is important to note that in order for the Commission to fully implement such a program as described herein, the definition of “Public utility” found in Louisiana Revised Statutes section 45:1161 will likely need to be amended.

182. *Id.*

183. *Combined Heat and Power Basics*, OFF. OF ENERGY EFFICIENCY & RENEWABLE ENERGY, <https://www.energy.gov/eere/amo/combined-heat-and-power-basics> [<https://perma.cc/K3RV-ZH36>] (last visited Mar. 23, 2024).

184. In pursuing its role in advancing the State’s transition to clean and renewable energy sources through the expansion of power generation, it is paramount that legislatures look towards expanding Louisiana Revised Statutes section 45:121. However, in *City of Thibodaux v. Louisiana Power Light Co.*, the Secretary of the Commission stated: “The Commission has always considered the term ‘electric public Utility,’ meaning ‘any person,’ would include a municipal corporation as well as a private corporation and has acted on that presumption.” 360 U.S. 25 (1959). Thus, this statement leans towards a broader interpretation of Louisiana Revised Statutes section 45:121. See CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 51.

185. *Combined Heat and Power Basics*, *supra* note 183.

186. *Id.*

187. *About CHP—What Is Combined Heat and Power?*, BETTER BUILDINGS, U.S. DEP’T OF ENERGY, <https://betterbuildingssolutioncenter.energy.gov/chp/about> [<https://perma.cc/W349-WTY Y>] (last visited Mar. 22, 2024).

its goals in improving the State's environmental, economic, and energy future.¹⁸⁸

CHP technologies hold tremendous potential to advance energy reliability and resilience within the state of Louisiana. Specifically, CHP has the potential to:

improve energy efficiency by capturing heat that is typically wasted; advance our environmental goals by reducing emissions of harmful pollutants; diversify energy supply by enabling further integration of domestically-produced and renewable fuels; increase the resilience of our energy infrastructure by limiting congestion and offsetting transmission losses; enhance our energy security by reducing our national energy requirements and helping businesses weather energy price volatility and supply disruptions; and improve business competitiveness by increasing energy efficiency and managing costs.¹⁸⁹

Implementation of CHP technologies will incentivize industrial customers to build or utilize larger-scale, reduced-emissions energy resources by permitting them to share the electricity they produce, which indirectly contributes to the mitigation of energy loss and provides for the utmost efficiency of Louisiana's power grid.¹⁹⁰

B. Implementation of a Renewable Generation Option through the Adoption of a Green Tariff Program

In addition to implementing an industrial customer option, the Commission should accompany this with a renewable generation option through the adoption of a green tariff program.¹⁹¹ In shifting towards a more clean, renewable, and resilient power grid, implementation of this option can be instrumental in achieving Louisiana's climate action goals by allowing new opportunities for renewable energy products in coordination with contracting customers who could help mitigate the need

188. *Id.*

189. *Combined Heat and Power Basics*, *supra* note 183.

190. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 44.

191. Given that customers in a traditionally regulated market with vertically integrated utilities are largely restricted to the energy products that are provided to them by their utilities, it is essential to the efficiency of this green option that the Commission adopt a market structure that allows for competition. *See Green Power Market: U.S. Electricity Grid & Market*, EPA, <https://www.epa.gov/green-power-markets/us-electricity-grid-markets> [<https://perma.cc/35WB-4XWD>] (last updated Apr. 18, 2023).

for electric utilities that are limited on output or who anticipate significant and costly replacement of generation.¹⁹² The process of adding new sources of generation does not require ratepayers to be burdened by costs and risks.¹⁹³

By allowing customers the individual ability to support a greater amount of renewable energy development, Louisiana will find itself in a more efficient position to reduce its GHG footprint, along with the other air pollutants that are overwhelming the state.¹⁹⁴ Some additional benefits that Louisiana and its residents will gain from implementation of this option include community resilience, economic prosperity, and improvement of the public's health and the communities' health that are within close proximity of power plants.¹⁹⁵

As defined by the World Resources Institute, as well as adopted by the Commission, green tariffs are a renewable energy solution that provide easier access to clean power and allow “industrial and large commercial customers to be able to select and negotiate terms directly with renewable developers for renewable power supply, while coordinating the transaction through the utility to provide delivery and stand-by or back-up services.”¹⁹⁶ With this, it is important to note the distinction between renewable energy products and green tariffs.¹⁹⁷

192. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 44.

193. LA. PUB. SERV. COMM'N, Doc. No. R-35423, IN RE: RULEMAKING TO STUDY RENEWABLE ENERGY TARIFF OPTIONS WITH A FOCUS ON BRINGING NEW RENEWABLE RESOURCES INTO LOUISIANA (2020).

194. U.S. Env't Prot. Agency, *RECs: Making Green Power Possible*, YOUTUBE (Mar. 17, 2015), https://www.youtube.com/watch?v=_12VYXms6-c [<https://perma.cc/PG5A-SC26>].

195. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 44.

196. This is an energy-based green pricing program, offered by local utility and approved by the Commission, which allows customers a supply of renewable energy in typically 100-kWh “blocks” or as a fixed percentage of their monthly electric energy requirements. See BLAIR SWEZEY & LORI BIRD, UTILITY GREEN PRICING PROGRAMS: WHAT DEFINES SUCCESS?, NAT'L RENEWABLE ENERGY LAB'Y 4 (2001), <https://www.nrel.gov/docs/fy01osti/29831.pdf> [<https://perma.cc/ZCM3-HTEQ>]. Mansie Hough, *Utility Green Tariffs*, WORLD RES. INST., <https://www.wri.org/initiatives/utility-green-tariffs> [<https://perma.cc/MF3L-NCXD>] (last visited Mar. 22, 2024); see also LA. PUB. SERV. COMM'N, DOC. NO. R-35462, IN RE: RULEMAKING TO RESEARCH AND EVALUATE CUSTOMER-CENTERED OPTIONS FOR ALL ELECTRIC CUSTOMER CLASSES AS WELL AS OTHER REGULATORY ENVIRONMENT, LA. PUB. SERV. COMM'N (2022).

197. A renewable energy product refers to the energy sources and RECs associated with a particular facility that produces renewable energy, whereas a

By participating in this program, customers typically agree to pay a premium on their electric bill to cover the incremental cost of the additional renewable energy.¹⁹⁸ Having customers bear the cost of their investments, new renewable energy is accessible to the grid, at no expense to other customers, thereby insulating other ratepayers from the costs and potential risks of adding new generation and replacing its aging generation fleet.¹⁹⁹

There are several different green tariff programs being offered across the country, with each allowing eligible customers the capacity to source up to 100% of their electricity from renewable resources.²⁰⁰ In developing green tariff programs in the Commission's jurisdictional area, the LEUG has provided sound advice as to the key principles that should be followed:

1. Specific programs should be developed so that all customers have a reasonable opportunity to participate in at least one program.
2. There should not be any cross-subsidy between customers participating in the renewable programs and the general body of ratepayers who are not participating.
3. Customers who bear the cost burden of specific programs should be entitled to all of the benefits from the program, including, where applicable, revenues from the program and the RECs associated with the output of the program facilities.
4. It is also important that the programs be structured in a "user-friendly" way. Since these are voluntary programs, to be successful, they must attract ratepayers. Entergy has emphasized that it supports expansion of the use of renewable sources, so this, presumably, is a principle that Entergy would also embrace. Important aspects to be considered in such structure include, but are not limited, to the term of the tariff, the location of the resource, the treatment of the renewable attributes such as RECs, commercial traceability of the purchase being from a renewable

green tariff refers to a pricing structure that allows utility customers direct access to the renewable energy product.

198. SWEZEY & BIRD, *supra* note 196.

199. LA. PUB. SERV. COMM'N, DOC. R-35462, IN RE: RULEMAKING TO RESEARCH AND EVALUATE CUSTOMER-CENTERED OPTIONS FOR ALL ELECTRIC CUSTOMER CLASSES AS WELL AS OTHER REGULATORY ENVIRONMENT, LA. PUB. SERV. COMM'N 2 (2022).

200. *Procurement Guidance: Green Tariffs*, AM. CITIES CLIMATE CHALLENGE, <https://cityrenewables.org/green-tariffs/> [https://perma.cc/N2W5-BF9L] (last visited Mar. 20, 2024).

source, and the competitiveness of the pricing.²⁰¹

These recommendations are key to the overall design and implementation of green tariff programs.²⁰² Thus, in ensuring the success of green tariff programs, the Commission should provide directional principles for utilities in formulating a program.²⁰³ Additionally, the Commission should approve the development of more than one specific program in an effort to allow reasonable opportunity for all eligible customers to participate in at least one program.²⁰⁴ With any option that is developed, it should be priced under a cost-based approach.²⁰⁵ Although this kind of pricing ignores market changes, it is an approach that is predictable, simple to use, and quite easy to justify.²⁰⁶ Other parameters of the programs can be found within the contract terms and should attempt to balance the risks.²⁰⁷

For example, two programs that have proven to be effective are a Renewable Purchase and Utilization Transaction and an Overlay Transaction.²⁰⁸ A Renewable Purchase and Utilization Transaction permits eligible customers to purchase and use renewable energy products to provide for a portion of its load, allowing for customers to avoid certain charges from utilities (e.g., fuel costs and other applicable rates and riders).²⁰⁹ Additionally, the customer will pay for the transmission of the energy product to and through the local utility to the purchasing customer's site, as well as the standby charges that will cover supply when the output of energy products is less than what is needed by the

201. LA. PUB. SERV. COMM'N, Doc. R-35423, IN RE: RULEMAKING TO STUDY RENEWABLE ENERGY TARIFF OPTIONS WITH A FOCUS ON BRINGING NEW RENEWABLE RESOURCES INTO LOUISIANA (2020).

202. *Id.*

203. *Id.*

204. There is support that different ownership and contracting models can co-exist within the same territory. *See id.*

205. "To use the cost-plus pricing method, take your total costs (direct labor costs, manufacturing, shipping, etc.), and add the profit percentage to create a single unit price." *What is Cost Plus Pricing: Advantages & Disadvantages*, PADDLE (May 11, 2021), <https://www.paddle.com/blog/cost-plus-pricing> [<https://perma.cc/S8KE-8N64>].

206. *Id.*

207. LA. PUB. SERV. COMM'N, Doc. R-35423, IN RE: RULEMAKING TO STUDY RENEWABLE ENERGY TARIFF OPTIONS WITH A FOCUS ON BRINGING NEW RENEWABLE RESOURCES INTO LOUISIANA (2020).

208. *Id.*

209. *Id.*

customer.²¹⁰ All things outside of the requirements of the contract are supplied by the utility at the otherwise applicable rate.²¹¹ An Overlay Transaction is entirely removed from the existing purchases made from the utility.²¹² With this option, customers cover all expenses that are related to the green facility.²¹³

Note that there are several commonalities between these two options.²¹⁴ First, under both options, the purchasing customer will cover all costs and retain all benefits that are associated with the renewable energy product, including renewable energy certificates (RECs) and other associated attributes.²¹⁵ When participating customers purchase renewable energy, they may also purchase RECs, “a market-based instrument that represents the property rights to the environmental, social, and other non-power attributes of renewable electricity generation.”²¹⁶ REC attributes include, but are not limited to, certificate data and type, tracking system ID, renewable fuel type and facility location, and emissions rate of the renewable resource.²¹⁷ Additionally, the act of purchasing RECs is performed by consumers, who are either installing self-financed renewable electricity projects or purchasing renewable electricity directly from a renewable electricity project, such as through a power purchase agreement (PPA).²¹⁸

RECs have become an important tool for the renewable electricity market in providing companies with a simpler way to support clean

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. It is essential to the advancement of cleaner energy that customers be able to obtain all the benefits that are associated with the purchase of renewable energy products. *See id.*

216. *Green Power Markets: Renewable Energy Certificates (RECs)*, EPA, <https://www.epa.gov/green-power-markets/renewable-energy-certificates-recs> [https://perma.cc/V8LS-EPHD] (last updated Jan. 15, 2024).

217. *See* U.S. Env’t Prot. Agency, *supra* note 194.

218. PPAs are long term contracts between the organization purchasing renewable electricity and a party that generates that electricity, providing benefits which include: little capital investment on the part of the purchasing organization, offer certainty of electricity cost and allow for the accrual of savings often within the first year. However, physical PPAs may not be permissible unless Louisiana approves implementation of limited retail open access. *See* GREEN POWER PARTNERSHIP: GUIDE TO PURCHASING GREEN POWER, ch. 4 (2023), <https://www.epa.gov/sites/default/files/2018-08/documents/guide-purchasing-green-power-4.pdf> [https://perma.cc/P4EQ-V6CP].

energy.²¹⁹ RECs are measured in single megawatt-hour increments and are created at the point of electric generation.²²⁰ Each REC represents a determined amount of electricity that is produced and transported to the grid by a renewable energy product.²²¹ This market-based instrument plays a major role in accounting, tracking, and assigning ownership to both generation and use of green energy.²²² Thus, when purchasing renewable energy products, many participating companies use the retained benefits, like RECs and carbon offsets, to engage in GHG inventories to track their GHG emissions and carbon footprint.²²³ These inventories subsequently guide companies in developing strategies that effectively manage and lessen GHG emissions and climate risks that are associated with business operations.²²⁴ By means of this, most companies employ a mix of market instruments to track and substantiate emission reductions.²²⁵

Another parallel between the two options presented is that energy products can be owned by the electric utility or by a third party, making the question of ownership irrelevant.²²⁶ If the product is owned by a third party, the customer may select and negotiate terms directly with the green facility.²²⁷ However, under both options, the transaction would still be managed with and through the customer's local utility, pursuant to a green tariff program.²²⁸

Lastly, under both options, if the utility owns or contracts for the renewable energy product, the cost and benefits of that renewable resource should be 100% dedicated to the contracting customer or customers. When this is not feasible, and the product is partly for contracting customers and partly for the general body of ratepayers, the LEUG proposes the compelling solution that “there should be an explicit capacity and energy allocation between contracting customers on the one hand and the general

219. U.S. Env't Prot. Agency, *supra* note 194.

220. *Id.*

221. *Id.*

222. *Green Power Markets: Renewable Energy Certificates (RECs)*, *supra* note 216.

223. RECs and carbon offsets are different instruments used for different purposes—RECs are used to manage indirect emissions and carbon offsets are used to reduce direct global emissions. *See id.*

224. *Id.*

225. *Id.*

226. LA. PUB. SERV. COMM'N, Doc. R-35423, IN RE: RULEMAKING TO STUDY RENEWABLE ENERGY TARIFF OPTIONS WITH A FOCUS ON BRINGING NEW RENEWABLE RESOURCES INTO LOUISIANA (2023).

227. *Id.*

228. *Id.*

body of ratepayers on the other hand, in order to avoid any cross-subsidies.”

In implementing green tariff programs, it is important to keep an eye on the changes that may arise from the influx of renewable energy.²²⁹ The Commission shall undergo routine assessments to determine the benefits, or lack thereof, of any green tariff program.²³⁰ Any such need for modifications or added costs should be reported by utilities and monitored and addressed by the Commission as necessary.²³¹

C. Clean Energy Support Through Federal Legislation

1. Inflation Reduction Act

With more fossil fuel and petrochemical facilities than the majority of other states, Louisiana is deemed “one of the better positioned states” to take advantage of the significant transformations in energy production and industrial manufacturing that the Inflation Reduction Act (IRA) would usher in.²³² The Inflation Reduction Act of 2022 is the most significant climate legislation in United States history.²³³ The IRA's provisions will fund green power, lower costs through tax credits, reduce emissions, and advance environmental justice.²³⁴ Being that the use and production of energy makes up the largest contributor to GHG emissions, this bill is predicted to restructure the American energy industry by putting non-fossil fuel alternatives within the reach of more people.²³⁵ While it would be fatuous to say the bill is a cure-all for the country’s climate crisis, the IRA is projected to assist Louisiana in further facilitating its emissions goal of reducing GHG to net zero by 2050—assistance that Louisiana and its residents so desperately need.²³⁶

229. *Id.*

230. *Id.*

231. *Id.*

232. Muller, *supra* note 136.

233. *Summary of Inflation Reduction Act Provisions Related to Renewable Energy*, EPA, <https://www.epa.gov/green-power-markets/inflation-reduction-act> [<https://perma.cc/3P66-SBUJ>] (last updated Oct. 25, 2023).

234. *Id.*

235. Bella Isaacs-Thomas, *What the Inflation Reduction Act Does for Green Energy*, PUB. BROAD. SERV., <https://www.pbs.org/newshour/science/what-the-inflation-reduction-act-does-for-green-energy> [<https://perma.cc/WR3X-Q767>] (last updated Aug. 17, 2022).

236. *Id.*

In regard to consumers, the IRA includes several tax credits and other financial incentives aimed at accelerating the transition to cleaner energy, all the while ensuring these options will be made more affordable for consumers—particularly those who fall within lower-to-middle income.²³⁷ The IRA also features critical investments targeted at consumers, including:

\$9 billion in home energy rebate programs to help people electrify their home appliances and for energy-efficient retrofits, with a focus on low-income consumers;

10 years of consumer tax credits to make heat pumps, rooftop solar, electric HVAC and water heaters more affordable, which make homes more energy efficient;

\$4,000 in consumer tax credits for lower- and middle-income individuals who buy used electric vehicles, and up to \$7,500 tax credits for new EVs; and

\$1 billion grant program to make affordable housing more energy efficient.²³⁸

To say the least, the IRA marks a big win for Louisiana’s aging electric grid, as well as for its consumers.²³⁹ Thus, the financial support and ample benefits that derive from this bill are expected to significantly assist Louisiana in transitioning to a cleaner and more reliable power grid.²⁴⁰

2. Infrastructure Investment and Job Act

Along with the IRA, the Infrastructure Investment and Jobs Act (IIJA), otherwise known as the Bipartisan Infrastructure Law, marks another big win for the country’s aging electric grid.²⁴¹ Among the many

237. *Id.*

238. SUMMARY OF THE ENERGY SECURITY AND CLIMATE CHANGE INVESTMENTS IN THE INFLATION REDUCTION ACT OF 2022, SENATE DEMOCRATS, https://www.democrats.senate.gov/imo/media/doc/summary_of_the_energy_security_and_climate_change_investments_in_the_inflation_reduction_act_of_2022.pdf [<https://perma.cc/MB4M-CW38>].

239. Isaacs-Thomas, *supra* note 235.

240. *Id.*

241. Rachel Smith, *The Grid Wins Big in the IIJA*, BIPARTISAN POL’Y CTR. (Sept. 23, 2021), <https://bipartisanpolicy.org/blog/the-grid-wins-big-in-the-iija/> [<https://perma.cc/2HWU-M86D>].

infrastructure-related investments, the IJA provides \$27.65 billion to improve grid resilience and reliability, including \$12.5 billion in borrowing authority.²⁴² It also reduces siting and permitting barriers that are currently blocking a much-needed transmission buildout.²⁴³

The Bipartisan Policy Center highlights three critical reasons why modernizing and considerably expanding the grid is needed now:

Growing variable renewable generation—A substantial buildout of renewables is expected over the next few decades due to the rapidly declining costs of wind and solar technologies and the need to meet mid-century climate goals. Because wind and solar resources aren't constantly available and predictable, a more integrated grid is needed to match electricity generation to demand, which is the foundation of grid reliability. Additional transmission development will also be needed to connect new renewable generation capacity—often located in remote areas—to population centers.

Electrification—Coupling power sector decarbonization with the electrification of other sectors of the economy, including transportation and buildings, is crucial for reaching net zero emissions by 2050. As part of the Decarb America Research Initiative, BPC has found that electricity demand will more than double over the next 30 years on the path to net zero. This can't be achieved without significantly expanding our current transmission capacity.

Increased need for resilience—Our grid is vulnerable to the physical impacts of extreme weather and wildfires, as evidenced by the 2021 Texas power crisis, and cyberattacks from foreign entities. A more interconnected grid creates redundancy which can improve resilience to both storms and national security threats.²⁴⁴

For these reasons, it is crucial that Louisiana addresses the issue of reliability and resiliency that is lacking within its power grid.²⁴⁵ With funding from the IJA, the state of Louisiana and the Commission can work more easily towards the solution discussed above, all while staying

242. *Id.*

243. *Id.*

244. *Id.*

245. CLIMATE INITIATIVES TASK FORCE, *supra* note 1, at 49.

cost-efficient, satisfying the Commission's approach, and working towards the State's climate action goals.

3. Necessary Implementation of "America's Clean Energy Future"

The passage of the IRA and the IIJA in no way guarantees fulfillment of any anticipated GHG emissions. The role in realizing the full potential of the IRA and the IIJA—in reducing GHG emissions and advancing growth in new and strategic economic sectors—rests in large part on the actions of the federal, state, and local government agencies who are tasked with implementation thereof.²⁴⁶ Further, state and local policymakers are deemed critical participants in utilizing these federal incentives in carrying out new climate and energy policies that ultimately benefit the state and its local communities.²⁴⁷

Given the broad jurisdiction and oversight that the Commission has over electric utilities and built infrastructure, the significant roles and opportunities found herein rest with them. Thus, in order for Louisiana to reap the promised benefits of recent legislation, the Commission should take full advantage of these novel investment opportunities if and when there is a consensus view that a competitive market will provide a solution that supplies safe and reliable services at the lowest reasonable cost to all consumers, both large and small, within their service area.

CONCLUSION

For Louisiana to make major strides towards its GHG reduction goals, it is critical that the Commission take into consideration and move forward with implementing an industrial customer market option accompanied by a renewable generation option. An overhaul of the State's feeble monopoly system and the permittance of competition within the market, particularly one of limited retail open access, will provide expansive opportunities to incorporate more players in the State's power system. Customers are pleading for the ultimate power to choose and to take control of their energy, and this can only be achieved by allowing *some* competition in the power industry.

In addition to an industrial customer option, the Commission should also adopt a renewable generation option and implement green tariff

246. Sam Ricketts et al., *Implementing America's Clean Energy Future*, CTR. FOR AM. PROGRESS (Sept. 14, 2023), <https://www.americanprogress.org/article/implementing-americas-clean-energy-future/> [https://perma.cc/MB4M-CW38].

247. *Id.*

programs.²⁴⁸ In shifting towards a more clean, renewable, and resilient power grid, this option is instrumental in achieving Louisiana's climate action goals by allowing new opportunities for renewable energy products in coordination with contracting customers who could help mitigate the need for electric utilities that are limited on output or who anticipate significant and costly replacement of generation.

Over the two decades that followed the Commission's deliberate and cautious approach to restructuring the power industry, Louisiana has seen an unprecedented number of environmental changes, and despite the climate effects that such changes have generated, the State's utility monopolies lay dormant and refuse to acclimate and take the proper actions towards ensuring that Louisiana's energy system is both clean and resilient. Additionally, due to the monstrous amount of money that is required to replace the State's utility generation, the industry, within a competitive market, can help to avoid or reduce costs or rate increases for all ratepayers while also providing support to Louisiana's economic development through new options.

In looking towards the cautious approach taken by the Commission, this solution confidently presents itself to be efficient and profitable enough to assure the Commission that its implementation will successfully provide safe and reliable services at the lowest reasonable cost to all consumers, both large and small, within their service area.

248. Given that customers in a traditionally regulated market with vertically integrated utilities are largely restricted to the energy products that are provided to them by their utilities, it is essential to the efficiency of this green option that the Commission adopt a market structure that allows for competition. See *Green Power Market: U.S. Electricity Grid & Market*, *supra* note 191.