

120 FERC ¶ 61,040  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Cleco Power LLC

Docket No. OA07-6-000

ORDER ACCEPTING COMPLIANCE FILING  
AND DENYING REQUEST FOR REPORTS

(Issued July 13, 2007)

1. On April 16, 2007, Cleco Power LLC (Cleco) filed a request to retain certain provisions of its Open Access Transmission Tariff (OATT) that vary from the non-rate terms and conditions of the *pro forma* OATT as modified in Order No. 890.<sup>1</sup> As discussed below, the Commission accepts Cleco's proposed deviations to its OATT to become effective July 13, 2007. The Commission also denies a request that Cleco report its activities under section 30.2 of its OATT.

**I. Background**

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.<sup>2</sup> Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

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<sup>1</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

<sup>2</sup> *See id.* at P 26-61.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as an independent system operator (ISO) or regional transmission organization (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit Federal Power Act (FPA) section 206 filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890, within 120 days from publication of Order No. 890 in the *Federal Register*, i.e., July 13, 2007.<sup>3</sup>

4. The Commission recognized, however, that some of these non-ISO/RTO transmission providers may have provisions in their existing OATTs that the Commission previously deemed to be consistent with or superior to the terms and conditions of the Order No. 888<sup>4</sup> *pro forma* OATT, but which *pro forma* terms and conditions were modified by Order No. 890. The Commission provided an opportunity for such transmission providers to submit an FPA section 205 filing seeking a determination that a previously-approved variation from the Order No. 888 *pro forma* OATT substantively affected by the reforms adopted in Order No. 890 continues to be consistent with or superior to the revised *pro forma* OATT. The Commission directed applicants to make those filings within 30 days from publication of Order No. 890 in the *Federal Register*, i.e., April 16, 2007, and to request that the proposed tariff provisions be made effective as of the date of the transmission provider's FPA section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of the billing cycle following that date. The Commission also requested that applicants state that the Commission has 90 days following the date of submission to act under section 205.

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<sup>3</sup> The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. See *Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

<sup>4</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub. nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

## II. Cleco's Filing

5. Cleco seeks to retain, with certain modifications, language in section 30.2 of Cleco's OATT providing for an expedited procedure for the designation of short-term network resources. Cleco states that section 30.2 of its existing OATT contains both the language of the Order No. 888 *pro forma* OATT and additional language to provide an expedited procedure for the designation of short-term network resources.<sup>5</sup> Cleco seeks to retain the expedited procedure, which it argues continues to be just and reasonable and consistent with or superior to the terms of the Order No. 890 *pro forma* OATT.<sup>6</sup>

### A. Cleco's Justification for Retaining Section 30.2

6. Cleco states that it has operated under the expedited short-term network resource designation procedures for nearly four years and that these procedures continue to be an important feature of Cleco's OATT, providing necessary flexibility to Cleco's network service customers, including Cleco itself in its capacity as supplier to its native load customers. Cleco explains that it is interconnected at multiple points with the transmission system of two Entergy Operating Company (Entergy) subsidiaries. Cleco states that under section 28.4 of its OATT, generation that a network customer obtains from a secondary resource (*i.e.*, not a designated network resource) is delivered using secondary network transmission service and is, therefore, classified as interruptible.

7. Cleco argues that the expedited procedure in section 30.2 of its OATT permits a network customer to designate a new network resource located in an adjacent control area on a short-term basis without going through the application and study procedures and without subjecting network service to a priority inferior to point-to-point service. As a result, the expedited procedure ensures that network customers can deliver their resources using firm network service, rather than using secondary network service that is subject to curtailment on a regular basis.

8. Cleco asserts that nothing in Order No. 890 has changed the need for this procedure. Cleco states that its expedited procedure for designation of short-term network resources therefore continues to be consistent with or superior to the provisions of the Order No. 890 *pro forma* OATT.<sup>7</sup>

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<sup>5</sup> Cleco Transmittal Letter (Transmittal Letter) at 4.

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

<sup>7</sup> *Id.* at 6-7

**B. Cleco's Proposed Revisions to Section 30.2**

9. Cleco states that existing section 30.2 of its OATT requires a network service customer seeking to use the expedited short-term network resource designation procedure to provide a faxed copy of the agreement between the energy supplier and the network service customer. In Order No. 890, however, the Commission determined that a transmission provider is not responsible for verifying that the generating units and power purchase agreements network customers designate as network resources satisfy the requirements in sections 30.1 and 30.7 of the *pro forma* OATT.<sup>8</sup> The Commission also altered the language of section 30.2. Cleco therefore proposes to revise section 30.2 of its existing OATT in three ways.

10. First, Cleco revised section 30.2 to incorporate new language contained in the Order No. 890 *pro forma* OATT. Cleco states that the revised section 30.2 requires that a network customer designate a new network resource through the Transmission Provider's OASIS, and include a statement from the new network resource that satisfies the conditions for network resource eligibility.

11. Second, Cleco modifies the language that specifies the expedited procedure for the designation of short-term network resources to reflect rulings in Order No. 890 regarding verification of power supply arrangements. Cleco states that these modifications: (1) remove the requirement that a network customer seeking to take advantage of the expedited procedure provide a faxed copy of the contract between the network customer and its energy supplier; and (2) substitute a requirement that the network customer provide a faxed copy, or other generally accepted documentation, of the transmission arrangements between the network customer and its energy supplier. Cleco states that this will allow it to verify the firmness of the third-party transmission arrangements necessary to expeditiously deliver the purchase to Cleco's system.<sup>9</sup>

12. Third, Cleco made technical changes to the language governing the expedited procedure, to correct for capitalization and punctuation.<sup>10</sup>

**III. Notice of Filing and Responsive Pleadings**

13. Notice of Cleco's filing was published in the *Federal Register*, 72 Fed. Reg. 20,524 (2007), with comments, protests or interventions due on or before May 7,

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<sup>8</sup> Order No. 890 at P 1521.

<sup>9</sup> Transmittal Letter at 4-5.

<sup>10</sup> *Id.* at 7.

2007. On May 7, 2007, NRG Power Marketing Inc., Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, and NRG Sterlington Power LLC (collectively NRG Companies) filed a protest to Cleco's filing. Cleco filed an answer to NRG Companies' protest.

**A. NRG Companies' Protest**

14. NRG Companies state that they support Cleco's proposed expedited procedure as potentially beneficial to NRG Companies as network customers.<sup>11</sup> NRG Companies argue, however, that the Commission must ensure that Cleco uses its discretionary authority in a non-discriminatory manner.<sup>12</sup> NRG Companies note Cleco's statement that Cleco has been using the expedited procedures for four years to provide such service to its existing network customers, including itself.<sup>13</sup>

15. NRG Companies contend that to ensure that Cleco is implementing its discretionary authority in a non-discriminatory manner, the Commission should require Cleco to provide a report summarizing all requests made for service from replacement network resources, whether under the OATT or under any grandfathered service agreements that permit the use of such resources. NRG Companies maintain that the report should: (a) specify whether Cleco made a favorable determination based upon its existing knowledge of its system, without the need for new system impact studies; and (b) explain any difference between the number of favorable determinations that Cleco made for itself as a network customer and those that Cleco made for all other customers.<sup>14</sup>

**B. Cleco's Answer**

16. Cleco asks the Commission to reject NRG Companies' request that the Commission require Cleco to submit a report concerning implementation of its currently effective procedure for the designation of short-term network resources pursuant to section 30.2 of Cleco's OATT.<sup>15</sup>

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<sup>11</sup> Protest at 1.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.*

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

<sup>15</sup> Answer at 1, 3.

17. Cleco notes that the Commission authorized it to implement its expedited procedures for designation of short-term network resources in 2003 without imposing reporting requirements. Cleco states that it has used these procedures without complaint since that time. Cleco further states that no event in the intervening four years, nor anything in Order No. 890, lends support for the imposition of any additional reporting requirement associated with Cleco's proposal to continue those procedures. Cleco argues that NRG Companies provide no reason why the Commission should now require Cleco to report its activities under section 30.2 of its OATT. Cleco contends that NRG Companies provide no factual basis for any concern that Cleco may be exercising its authority under section 30.2 of its OATT in a discriminatory manner.<sup>16</sup>

18. Cleco states that one of the NRG Companies, Louisiana Generating LLC (LaGen), is a party to a pre-Order No. 888 Electrical System Interconnection Agreement (ESIA) with Cleco,<sup>17</sup> under which Cleco provides transmission services to LaGen. Cleco states that under the ESIA, there is no requirement to designate network resources, so there would be nothing to report concerning LaGen's use of its rights under the ESIA. Further, Cleco argues that LaGen has the benefit of Cleco's expedited procedures in its capacity as a network integration transmission service customer, and no obligation to designate network resources as a customer under the ESIA.<sup>18</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>19</sup> NRG Companies' timely, unopposed motion to intervene serves to make it a party to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>20</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Cleco's answer because it has provided information that assisted us in our decision-making process.

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<sup>16</sup> *Id.* at 3.

<sup>17</sup> *See* FERC Electric Rate Schedule No. 10.

<sup>18</sup> Answer at 3-4.

<sup>19</sup> 18 C.F.R. § 385.214 (2006).

<sup>20</sup> 18 C.F.R. § 385.213(a)(2) (2006).

**B. Commission Determination****1. Section 30.2 of Cleco's OATT**

21. We find that retention of Cleco's existing variation from section 30.2 of the *pro forma* OATT is consistent with the requirements of Order No. 890. In Order No. 890, the Commission revised section 30.2 to require that a designation of a new network resource must be made through the Transmission Provider's OASIS; it also required that the network customer include a statement that the new network resource satisfies the conditions for network resource eligibility. These provisions do not affect Cleco's ability to permit network customers to designate network resources on a short-term basis under its expedited procedure. Further, nothing in Order No. 890 has changed the need for this procedure. We also accept Cleco's proposed revisions to modify the language of section 30.2. We interpret that proposal to be in compliance with the requirements of Order No. 890 and consider the changes here for administrative convenience.<sup>21</sup> The Commission accepts Cleco's proposed variation and amendments to section 30.2 for filing to become effective July 13, 2007.<sup>22</sup>

**2. NRG's Request for Reports**

22. When the Commission authorized Cleco to implement its expedited section 30.2 procedures in 2003, the Commission did not impose reporting requirements. As Cleco notes, it has implemented these procedures without complaint since that time. NRG Companies point to no event in the intervening four years that would call into question Cleco's implementation of its expedited 30.2 procedure, and there is nothing in Order No. 890 that would necessitate imposition of the reporting procedures that NRG Companies seek. NRG Companies provide no factual basis for any concern that Cleco may be exercising its authority under section 30.2 of its OATT in a discriminatory manner. Because the NRG Companies have failed to support their request for reporting procedures, we will deny it.

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<sup>21</sup> The Commission directed transmission providers that are not located within the footprint of an ISO or RTO to conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890, on or before July 13, 2007.

<sup>22</sup> The Commission has considered only those previously-approved variations from the *pro forma* OATT that Cleco contends in its transmittal letter are consistent with or superior to the reforms adopted in Order No. 890. Acceptance of those proposed variations to the *pro forma* OATT tariff sheets does not relieve Cleco of the obligation to make a section 206 compliance filing for requirements of Order No. 890 not addressed in the instant filing as required by Order No. 890 on or before July 13, 2007.

The Commission orders:

(A) Cleco's proposed amendments to its OATT are hereby accepted for filing to become effective July 13, 2007, as discussed in the body of this order.

(B) NRG Companies' request for reporting procedures is hereby denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.