

123 FERC ¶ 61,212
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. OA07-35-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued May 28, 2008)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA), Cleco Power LLC (Cleco) submitted its compliance filing as required by Order No. 890.¹ In this order, we will accept Cleco's filing, as modified, as in compliance with Order No. 890, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. 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.

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 independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register*

¹ *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), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

(i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.²

II. Compliance Filing

4. Cleco's filing is made in response to the compliance requirements described above. Cleco states that it proposes no substantive changes to its existing OATT other than those mandated by Order No. 890. Cleco states that it adopts the *pro forma* OATT mandated by the Commission, with limited modifications to address requirements of Order No. 890 which require transmission providers to propose their own tariff language, and that it is refileing its entire OATT as authorized by Order No. 890.³ Cleco further states that it is providing alternate tariff sheets to reflect recent tariff filings by Cleco that have not yet been acted upon by the Commission as of the time of its filing.⁴

5. Cleco's filing specifically addresses the following tariff provisions: (1) unreserved use penalties; (2) cluster studies; (3) distribution of late study penalty revenues; and (4) distribution of unreserved use and imbalance penalties.

III. Notice of Filing and Responsive Pleadings

6. Notice of Cleco's filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions and protests due on or before August 3, 2007. NRG Power Marketing Inc. (NRG PMI), Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, and NRG Sterlington Power LLC (collectively the NRG Companies) filed a timely motion to intervene. A timely motion to intervene and protest was filed by the Louisiana Energy and Power Authority (LEPA) and the Lafayette Utilities System (LUS) (collectively the Louisiana Municipals). Cleco filed an answer to the Louisiana Municipals' protest.

² 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).

³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

⁴ Cleco has included alternate versions of Sheet Nos. 59 and 60 to reflect the version of section 30.2 of Cleco's OATT proposed in Docket No. OA07-6-000. The Commission accepted this version of section 30.2, effective July 13, 2007 in *Cleco Power LLC*, 120 FERC ¶ 61,040 (2007). Cleco has also included alternate Sheet No. 100 to reflect the current list of Cleco's point-to-point transmission customers.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁶ 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.

B. Substantive Matters

9. As discussed below, we will accept Cleco's compliance filing, as modified, to be effective July 13, 2007. We also direct Cleco to file, within 30 days of the date of this order, a further compliance filing as discussed below.

1. Penalties for Unreserved Use of Transmission and Unreserved Use of Ancillary Services and Losses

a. Cleco's Proposal

10. Cleco states that its existing OATT already contains provisions concerning penalties for unreserved use of point-to-point transmission service and ancillary services. Cleco, however, modified the relevant tariff sections because Order No. 890 provides that these penalties be calculated in a manner different than that set forth in its existing tariff.⁷ In addition, Cleco notes that Order No. 890 permits unreserved use penalties for network integration transmission service.

11. With respect to unreserved use penalties, Cleco proposes to charge a separate penalty for each period of unreserved use. Cleco proposes imposing a penalty for

⁵ 18 C.F.R. § 385.214 (2007).

⁶ 18 C.F.R. § 385.213 (a)(2) (2007).

⁷ Cleco submitted revisions to sections 13.7(c) (Classification of Non-Firm Point-To-Point Transmission Service) and 14.5 (Classification of Non-Firm Point-To-Point Transmission Service) of its existing OATT to make the necessary changes for penalties for firm and non-firm point-to-point transmission service. Cleco also submitted revisions to sections 28.6 (Restrictions On Use of Service) and 30.4 (Operation of Network Resources) for network integration transmission service.

unreserved use of transmission service equal to 200 percent of the maximum firm point-to-point transmission service rate for the period of unreserved use, subject to three principles: (1) for single or multiple instances of unreserved use within a single day, the penalty shall be 200 percent of the maximum applicable daily rate (on-peak or off-peak, depending upon the day in which the unreserved use occurred) for firm point-to-point transmission service, based on the hour during the day in which the unreserved use was the highest; (2) for instances of unreserved use on two or more separate days within a single week, the penalty shall be 200 percent of the maximum weekly rate for firm point-to-point transmission service, based on the hour during the week in which the unreserved use was highest; and (3) for instances of unreserved use on two or more separate days within two or more separate weeks within a calendar month, the penalty shall be 200 percent of the maximum monthly rate for firm point-to-point transmission service, based on the hour during the month in which the unreserved use was highest. Cleco proposes similar penalties for unreserved use by network integration transmission service customers.

12. With respect to penalty charges for ancillary services, Cleco notes that existing section 3 (Ancillary Services) of its OATT establishes penalties for unauthorized use of ancillary services. In order to conform this tariff provision with the requirements of Order No. 890, Cleco has modified section 3 to impose on transmission customers, for each hour of unreserved use, a penalty equal to 200 percent of the maximum applicable ancillary services charge for that hour. Further, Cleco will retain its existing tariff provision that transmission customers must settle financially for any losses associated with their unreserved use as if those customers elected to have Cleco supply energy and capacity for such losses at 200 percent of the applicable energy and capacity loss rates as described in Schedule 9 of Cleco's OATT.⁸

b. Comments

13. The Louisiana Municipals urge the Commission to reject Cleco's tariff language imposing penalties on ancillary services and losses that were not included in the Order No. 890 *pro forma* tariff.⁹ The Louisiana Municipals argue that Order No. 890 does not permit an extension of penalties to ancillary services and losses associated with unreserved use. It asserts that if Cleco wishes to obtain authorization for penalties not included in the Order No. 890 *pro forma* tariff, the Commission should require Cleco to file a separate section 205 filing.¹⁰ Specifically, the Louisiana Municipals argue that

⁸ Cleco's July 13, 2007 Filing at 6.

⁹ Louisiana Municipals' August 3, 2007 Protest at 5.

¹⁰ *Id.*

Order No. 890 contains only limited mention of losses, and does not authorize penalty charges for ancillary services. The Louisiana Municipals argue that with respect to ancillary services, the Commission expressly stated transmission providers are only permitted to charge for actual use.¹¹

c. Cleco's Answer

14. Cleco notes that the Commission, in Order No. 890, permitted transmission providers to retain variations from the Order No. 888 *pro forma* OATT that had been approved by the Commission under its “consistent with or superior to” standard, to the extent that these provisions were not substantially modified by the reforms in Order No. 890.¹² Cleco further states that, in its July 13, 2007 filing, Cleco revised its tariff provisions to reflect principles governing unreserved use penalties stated in Order No. 890, and retained those provisions previously approved by the Commission which were not substantively modified by the reforms in Order No. 890. Cleco argues that its tariff provisions providing for penalties for unauthorized use of transmission service, and penalties for ancillary services and losses associated with unauthorized use, were previously accepted by the Commission under its “consistent with or superior to” standard.¹³

15. Cleco argues that there is nothing in Order No. 890 which supports the Louisiana Municipals’ contention that Cleco may not charge penalties for unreserved use of ancillary services or losses.¹⁴

d. Commission Determination

16. In Order No. 890-A the Commission clarified that all charges for ancillary services associated with unreserved uses must be based on the actual costs of the ancillary service attributable to the unreserved use (i.e., not subject to the 200 percent penalty rate).¹⁵ We reject Cleco’s tariff language that would charge a 200 percent

¹¹ *Id.* at 6 (citing Order No. 890 at P 840).

¹² Cleco’s August 20, 2007 Answer at 5 (citing Order No. 890 at P 136).

¹³ *Id.* at 5 (citing Cleco Power LLC, 105 FERC ¶ 61,222 (2003) and February 25, 2004 Letter Order in Docket No. ER03-1386-001).

¹⁴ Cleco’s August 20, 2007 Answer at 5.

¹⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 463.

penalty rate on unreserved use of ancillary services because it is not in compliance with Order No. 890-A.¹⁶

17. In Order No. 890, the Commission recognized that some transmission providers had received Commission approval to adopt variations from the *pro forma* OATT that are consistent with or superior to the Order No. 888 *pro forma* OATT. The Commission also noted that those variations that are not affected in a substantive manner by Order No. 890 may remain in place. In Cleco's case, the Commission approved under the consistent with or superior to standard, tariff provisions for penalties for transmission and losses in conjunction with unauthorized use of these services.¹⁷ Order No. 890 did not prohibit penalties for unauthorized use of transmission and losses. Here, Cleco modified its existing provisions regarding penalties on unauthorized use of transmission service to comport with the Commission's guidance on how unreserved use penalties should be calculated. Therefore, we will accept Cleco's revised OATT provisions regarding penalties for unreserved use of transmission. Cleco did not modify its previously approved penalties for the unauthorized losses. This variation was not affected in a substantive manner by Order No. 890 and we will allow it to remain in place.

2. Penalty Provisions for Multiple Instances of Unreserved Use

a. Cleco's Proposal

18. Cleco proposes revisions to sections 13.7(c) and 14.5 of its OATT to address penalties for unreserved use of transmission service by firm and non-firm point to point transmission service customers. Specifically, sections 13.7(c) and 14.5 of Cleco's revised OATT provide in the event that a transmission customer exceeds its firm or non-firm capacity reservation at any point of receipt or point of delivery, or uses transmission service at a point of receipt or point of delivery that has not been reserved, the transmission customer will be required to pay, in addition to the amount owed for the reserved capacity, a penalty on the excess amount of transmission taken. Cleco's OATT further states that, in each of these instances, transmission customers will be assessed a separate penalty for each period of unreserved use of transmission service.

19. Cleco further states in sections 28.6 and 30.4 of its OATT that in such instances of unreserved use a transmission customer will be assessed a penalty on the excess amount of transmission taken, with a separate penalty charged for each period of unreserved use.

¹⁶ In Docket No. OA08-68-000, in compliance with Order No. 890-A, Cleco filed to amend its tariff language regarding penalties assessed on unreserved use of ancillary services.

¹⁷ Cleco Power LLC, 105 FERC ¶ 61,222 (2003).

b. Comments

20. The Louisiana Municipals state that certain language Cleco includes in the penalty provisions of its OATT is ambiguous.¹⁸ Specifically, the Louisiana Municipals argue that sections 13.7(c), 14.5, 28.6 and 30.4 of Cleco's OATT contain language that suggests Cleco seeks to charge a separate penalty for each instance of unreserved use, as well as adopt Commission policy under which multiple instances of violation can result in a penalty that is in the next longer time frame.

21. The Louisiana Municipals contend that this combination of a separate penalty and the Commission's principles suggest that Cleco seeks to charge, for each instance of unreserved use, the highest possible rate between the two penalty measures. The Louisiana Municipals suggest that language imposing a separate penalty for each period of unreserved use be removed from sections 13.7(c), 14.5, 28.6 and 30.4 of Cleco's OATT.

c. Cleco's Answer

22. Cleco argues that the Commission in Order No. 890 recognized the general rule that each instance of unreserved use is subject to a separate penalty.¹⁹ However, Cleco adds that this rule is modified where there are multiple instances of unreserved use within a single period, to increase the financial penalty associated with serial violations. Cleco states that its tariff provisions governing unreserved use assess a separate penalty for each period of unreserved use, and then modify the general principle by providing for the assessment of penalties for multiple instances of unreserved use within a single period according to the principles described by the Commission in Order No. 890.

23. Cleco argues there is no basis to conclude that the language found in these provisions of its OATT could be used as justification for imposing penalties in a manner inconsistent with Order No. 890.²⁰ Cleco argues, therefore, that there is no reason to require modification of this tariff language.

d. Commission Determination

24. We find that Cleco's application of its penalty provisions for multiple instances of unreserved use within a single period is unclear. Specifically, Cleco's language in sections 13.7(c), 14.5, 28.6 and 30.4 of Cleco's OATT indicates that a separate penalty

¹⁸ Louisiana Municipals' August 3, 2007 Protest at 7-8.

¹⁹ Cleco's August 20, 2007 Answer at 8 (citing Order No. 890 at P 846).

²⁰ *Id.* at 8.

for each period of unreserved use will be charged. However it is unclear whether these charges are additive in nature (i.e., where a separate penalty is charged for each instance of unreserved use, and a penalty is charged again, combined with other penalties, for multiple instances of unreserved use in the next longer time frame). Therefore, we will require Cleco to modify its language in these sections to clarify that penalties for multiple instances of unreserved use are not additive in nature (i.e., each violation can only be assessed a single penalty under a single time frame).

3. Distribution of Penalty Revenues

a. Cleco's Proposal

25. Cleco revised its existing section 15.8 of its OATT to propose a mechanism for distributing unreserved use penalties to non-offending transmission customers based upon the non-offending transmission customers' bills for the service month during which the unreserved use penalties were incurred.²¹ Cleco will apply this mechanism to the allocation of imbalance penalties under Schedules 4 and 10. Further, Cleco states that it will retain 50 percent of any unreserved use penalties to reflect the base firm point-to-point transmission service charge for the unreserved use.²²

26. Cleco's proposed new sections 19.10 (Distribution of Penalties for Failure to Meet Study Deadlines) and 32.5 (Penalties for Failure to Meet Study Deadlines) include language which provides that each non-affiliated transmission customer receive an equal share of late study penalty revenue, regardless of the amount of service taken. Each transmission customer that is an eligible recipient of late study penalty revenue assessed during a calendar quarter shall receive a pro-rata distribution of the total amount of penalties to be distributed.²³

b. Comments

27. The Louisiana Municipals protest Cleco's mechanism for distribution of unreserved use penalties in sections 15.8, energy imbalance penalties in Schedule 4, and generator imbalance service in Schedule 10, all of which allocate penalty revenue on the basis of transmission revenues. The Louisiana Municipals argue that this methodology does not account for discounted service and that the penalty revenues should be allocated on a pro-rata, MWh basis.

²¹ Section 15.8 provides for the distribution of penalty revenues from ancillary services, transmission services and losses.

²² Cleco's July 13, 2007 Filing at 7.

²³ Cleco Power LLC, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet Nos. 46, 47, 67.

28. The Louisiana Municipals protest Cleco's mechanism for distribution of late study penalties. Specifically, the Louisiana Municipals argue that section 19.10 of Cleco's OATT allocates revenues from penalties for late system impact studies or facilities studies in equal shares to all transmission customers. The Louisiana Municipals note that there can be great disparity in the utilization of the transmission system, and state that a standard allocation methodology, such as MWh, will better allocate penalty revenues.

c. Cleco's Answer

29. Cleco notes that Order No. 890 did not specify a mechanism for allocating these penalty revenues other than to identify the classes of customers eligible to receive distributions. Cleco states that in devising its allocation mechanism and in recognizing that the classes of customers that may receive distributions of unreserved use penalty revenues and imbalance penalty revenues are essentially the same, Cleco determined that it would be appropriate to continue its existing mechanism for allocating unreserved use penalty revenues and to apply that same mechanism to the allocation of imbalance penalty revenues.

30. Cleco argues that allocating late study penalties to customers on an equal basis is reasonable, and reflects the Commission's recognition that all customers are potentially harmed by a transmission provider's failure to process studies on a timely basis.²⁴

d. Commission Determination

31. Order No. 890 did not specify a mechanism for allocating and distributing unreserved use penalties and imbalance penalties. In section 15.8, Schedule 4 and Schedule 10, Cleco proposes to allocate penalty revenues based upon transmission revenues. We find Cleco's distribution methodology is reasonable and consistent with the goals of Order No. 890. The Louisiana Municipals have not shown that Cleco's proposed allocation based upon transmission revenues is an unreasonable implementation of Order No. 890. Accordingly, we accept Cleco's distribution methodology as a reasonable procedure for allocating penalty revenues, in compliance with the requirements of Order No. 890.

32. In section 19.10, Cleco proposes to allocate late study penalties equally to all customers. Cleco's proposal will distribute the revenues from late study penalties to transmission customers that took transmission service under the OATT during the calendar quarter in which the penalties were assessed. Each transmission customer that is an eligible recipient of penalties assessed during a calendar quarter shall receive a distribution of penalty revenues on a pro rata basis.

²⁴ Cleco's August 20, 2007 Answer at 9-10 (citing Order No. 890 at P 1351).

33. We find that Cleco's late study penalty distribution methodology is reasonable because every eligible customer is potentially harmed by the failure of Cleco to complete a study on time, and under Cleco's proposal, every eligible customer will be equally compensated. The Louisiana Municipals have not shown why larger customers on Cleco's system are harmed more than smaller customers and should be allocated a greater percentage of late study penalty revenues. Moreover, even if the Louisiana Municipals' proposal was shown to be one among multiple reasonable approaches, that is no basis for rejecting Cleco's reasonable proposal.

4. Eligibility to Receive Imbalance Penalty Revenue Distribution

Cleco's Proposal and Commission Determination

34. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.

35. In Schedules 4 and 10 Cleco proposes that customers eligible to receive imbalance penalty revenue distributions are those customers that did not incur imbalance penalties during one month of service.

36. We reject this proposal as inconsistent with the requirements of Order No. 890-A, which states that "the transmission provider should distribute the penalty revenue received in a given hour to those non-offending customers in that hour, *i.e.*, those customers to whom the penalty component did not apply in the hour."²⁵ Cleco must distribute the imbalance penalty revenue received in a given hour to non-offending customers in that hour. Customers that were out of balance but within the first tier should therefore be included in the distribution. We direct Cleco to make a further compliance filing defining "non-offending customers" on an hourly basis.²⁶

²⁵ Order No. 890-A FERC Stats. & Regs. ¶ 31,261 at P 333.

²⁶ In Cleco's Order No. 890-A compliance filing in Docket No. OA08-68-000, currently pending before the Commission, Cleco revised Schedules 4 and 10 of its OATT to reflect that imbalance penalty revenue received in a given hour should be distributed to customers who did not incur a penalty in that hour.

5. Cluster Study Provisions

a. Cleco's Proposal

37. Cleco proposes to incorporate a new section 19.11 to address clustering of transmission study requests.²⁷ Specifically, Cleco states that it will agree to cluster study requests by its customers if the individual transmission service requests either result in substantially common new facilities or create mutually beneficial counter-flows that reduce or eliminate the need for new facilities that would have been necessary but-for the cluster treatment. Cleco states that transmission service requests that are evaluated in a cluster must be the subject of identical redispatch options or conditional curtailment options, if either is applicable.

38. Cleco's proposed new section 19.11 requires customers whose requests are to be evaluated in a cluster to jointly execute a system impact study agreement, which shall be treated as a new study agreement for purposes of study priority and deadlines contained in section 19.3 of Cleco's OATT.²⁸ Cleco further proposes that cost allocation for new facilities identified in the cluster study will be pro rata among the customers in the cluster, to the extent that such costs are allocable to such customers pursuant to section 27 of Cleco's OATT.²⁹

b. Comments

39. The Louisiana Municipals note Cleco's requirement in section 19.11 that transmission service requests evaluated in a cluster must be the subject of identical redispatch options or conditional curtailment options, if either is applicable.³⁰ The Louisiana Municipals caution that such a condition could limit both the number and effectiveness of cluster studies. Given the Commission's desire to encourage the use of cluster studies, the Louisiana Municipals argue that this proposed language in section 19.11 of Cleco's OATT should be removed.

40. The Louisiana Municipals warn that Cleco's cluster study provisions found in section 19.11 may not comply with long-standing Commission policy.³¹ Specifically, the

²⁷ Cleco Power LLC, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet Nos. 47.

²⁸ *Id*

²⁹ *Id.*

³⁰ Louisiana Municipals' August 3, 2007 Protest at 7.

³¹ *Id.* at 6.

Louisiana Municipals assert that while Cleco uses language stating that costs of new facilities are to be allocated, *pro rata*, to customers in the study, it is not Commission policy that customers are always responsible for the cost of new facilities.³² Instead, the Louisiana Municipals argue that Cleco's cluster study provisions should utilize defined tariff terms that distinguish between direct assignment facilities and network upgrades. Moreover, the Louisiana Municipals suggest that Cleco permit customers to develop their own cost sharing methodology, and allow the *pro rata* assignment of costs to remain as a default provision.³³

c. Cleco's Answer

41. Cleco states that it has developed the clustering procedures set forth in section 19.11 of its OATT based on what Cleco currently believes it can accommodate. Cleco further states that the clustering procedures set forth in its OATT reflect what Cleco believes will have the potential to achieve more efficient solutions, given that Cleco has not previously performed clustered transmission studies.³⁴

42. Cleco argues that it can currently accommodate clustering of transmission study requests that are subject to identical redispatch options or conditional curtailment options, because such requests are sufficiently similar to permit Cleco to perform an appropriate clustered study and because of the potential efficiencies derived from the similar characteristics of the services to be studied. Cleco adds that as it gains experience in the area of clustered transmission studies it may conclude that other provisions for clustering can also produce efficiencies.³⁵

43. Cleco further states, with respect to language in section 19.11 concerning allocation of costs associated with new facilities, that Cleco's tariff language provides for new facilities costs to be allocated to customers in a manner consistent with section 27 of the OATT, which states that customers shall be responsible for costs to the extent consistent with Commission policy.³⁶ Therefore, Cleco argues, there is no need to revise section 19.11 to provide a restatement of Commission policy.

³² *Id.* at 6-7.

³³ *Id.* at 7.

³⁴ Cleco's August 20, 2007 Answer at 11.

³⁵ *Id.*

³⁶ *Id.* at 12.

44. In response to the Louisiana Municipals' argument that Cleco should not impose a pro rata allocation method on customers in a cluster, but should permit customers to develop their own cost sharing methodology, Cleco states that nothing in Order No. 890 requires transmission providers to adopt such a provision.³⁷

d. Commission Determination

45. In Order No. 890, while the Commission did not generally require transmission providers to study transmission requests in a cluster, the Commission encouraged transmission providers to cluster studies when reasonable to do so. In addition, the Commission explicitly required transmission providers to consider clustering studies where the customers involved request a cluster and where the transmission provider can reasonably accommodate that request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings describing how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.³⁸

46. Cleco's new section 19.11 proposes that once the clustered customers sign the study agreement, Cleco will study the requests in the study using identical redispatch options or conditional curtailment options, if either are applicable. Cleco's proposal has the potential to achieve more efficient solutions by clustering transmission requests that either (1) result in substantially common new facilities; or (2) create mutually beneficial counter-flows that reduce or eliminate the need for new facilities that would have been necessary but for the clustered treatment. We accept Cleco's clustering procedures to impose the limitation in the study to use identical redispatch or conditional curtailment options.

47. Cleco's tariff language in section 19.11 provides that new facilities costs are to be allocated to customers in a manner consistent with section 27 of the OATT, which states that customers shall be responsible for such costs to the extent consistent with Commission policy.³⁹ The Louisiana Municipals argue that while Cleco references section 27 of its OATT, in order to clearly remain within Commission policy, the cluster study provisions found in section 19.11 should utilize defined tariff terms which distinguish between direct assignment facilities and network upgrades. The Louisiana Municipals' assertion that Cleco's tariff is unclear is without merit: Cleco's tariff clearly refers to section 27 of the OATT, and no additional language is necessary.

³⁷ *Id.*

³⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

³⁹ Cleco's August 20, 2007 Answer at 12.

48. The Louisiana Municipals' argument that Cleco should not impose a pro rata facilities cost allocation method on customers in a cluster, and that Cleco should permit customers to develop their own cost sharing methodology, is not required by Order No. 890. The Louisiana Municipals have not supported imposing a requirement that goes beyond those contained in Order No. 890, and we will not impose this requirement on Cleco. We will accept Cleco's pro-rata allocation approach for upgrade costs from a clustered study as reasonable.

49. We find that Cleco did not adequately describe how it will structure transmission customers' obligations regarding how it will allocate study costs among transmission customers that have joined a cluster. Therefore, we direct Cleco to file, within 30 days of the date of this order, a further compliance filing to include a description of how it will allocate study costs among transmission customers that have joined a cluster.

6. Annual Informational Filing

a. Comments

50. The Louisiana Municipals state that Order No. 890 requires an annual informational filing that informs the Commission and the public as to a transmission provider's implementation of penalty provisions. The Louisiana Municipals suggest that the Commission require Cleco to include the requirement that it make an annual informational filing, describing its assessment of penalties and distribution of penalty revenues, in Cleco's OATT.⁴⁰

b. Cleco's Answer

51. Cleco argues that Order No. 890 does not require transmission providers to reference this informational filing requirement in their OATTs. Cleco notes that the Louisiana Municipals provide no reason why Cleco should be required to modify its OATT in this manner. Cleco argues that since the Commission has already specified that the informational filing is to be made, there is no need to reiterate this requirement in the OATT.⁴¹

c. Commission Determination

52. We will not require Cleco to incorporate into its OATT the requirement that it must submit an annual informational filing as suggested by the Louisiana Municipals.

⁴⁰ Louisiana Municipals' August 3, 2007 Protest at 9.

⁴¹ Cleco's August 20, 2007 Answer at 10.

Order No. 890 makes clear that an informational filing is to be made, and this requirement does not need to be restated in the OATT.⁴²

The Commission orders:

(A) Cleco's compliance filing is hereby accepted, as modified, to be effective July 13, 2007, as discussed in the body of this order.

(B) Cleco is hereby directed to submit a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴² *Id.*