

130 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Cleco Power LLC
Acadia Power Partners LLC

Docket No. ER10-286-000

ORDER ACCEPTING AGREEMENTS AND CONDITIONALLY GRANTING
WAIVER OF CERTAIN MARKET-BASED RATE AFFILIATE RESTRICTIONS

(Issued February 12, 2010)

1. On November 16, 2009, Cleco Power LLC (Cleco Power) and its affiliate, Acadia Power Partners, LLC (Acadia), submitted for filing under section 205 of the Federal Power Act (FPA):¹ (1) an Operation and Maintenance Agreement (O&M Agreement) between Cleco Power, Acadia, and Acadia Power Partners Pipeline, LLC; and (2) a Joint Ownership Agreement between Cleco Power and Acadia.² Cleco Power and Acadia also request limited waivers of certain market-based rate affiliate restrictions to permit Cleco Power to provide certain services, as described herein, to Acadia under the O&M Agreement. In this order, we accept the O&M Agreement and Joint Ownership Agreement for filing, and we conditionally grant limited waiver of certain affiliate restrictions, as requested by Cleco Power and Acadia.

¹ 16 U.S.C. § 824d (2006).

² November 16, 2009 Filing. Concurrently with their section 205 filing, Cleco Power and Acadia filed an application under section 203 of the FPA, 16 U.S.C. § 824b (2006), in Docket No. EC10-22-000, requesting Commission authorization for Cleco Power to acquire from Acadia, and for Acadia to sell to Cleco, an existing generating unit. Cleco Power and Acadia request that the Commission act on this FPA section 205 filing on the same date that it issues an order addressing their FPA section 203 filing. November 16, 2009 Filing at 2. The section 203 filing will be addressed in a separate order.

I. Background

2. Cleco Power and Acadia represent that Cleco Power, a direct, wholly-owned subsidiary of Cleco Corporation, is a franchised public utility company serving captive customers in Louisiana. The Commission has authorized it to make wholesale power sales at market-based rates.³ Cleco Power and Acadia state that Acadia is an exempt wholesale generator and is authorized to sell power at wholesale at market-based rates.⁴ Cleco Power and Acadia also explain that Acadia is fifty percent owned by Acadia Power Holdings, LLC, which is wholly-owned by Cleco Midstream Resources, LLC, a direct wholly-owned subsidiary of Cleco Corporation.⁵

3. Cleco Power and Acadia also state that Acadia owns a 1,160 megawatt electric generating facility (Acadia Facility) located near Eunice, Louisiana that consists of two power blocks, Power Block 1 and Power Block 2, plus common facilities necessary to operate Power Block 1 and Power Block 2. They explain that each power block is a 580-megawatt, gas-fired, combined-cycle generating unit. In addition, they state that there are common facilities necessary to operate both Power Block 1 and Power Block 2, which include all equipment and other assets located at the Acadia Facility that are used for the joint operation of the facility, such as the control room, an ammonia storage system, a switchyard building, a water treatment plant, and a six-mile intrastate natural gas pipeline that is used exclusively to transport natural gas to the facility.⁶ The Acadia Facility is interconnected to both the Cleco Power and Entergy balancing authority areas.

4. Cleco Power and Acadia explain that Cleco Power proposes to acquire Power Block 1 and an undivided fifty percent interest in the common facilities from Acadia. Upon closing of the transaction, Cleco Power will own Power Block 1, Acadia will retain Power Block 2, and Cleco Power and Acadia will each own an undivided fifty percent

³ *Central Louisiana Electric Co., Inc.*, 77 FERC ¶ 61,020 (1996), *reh'g denied*, 78 FERC ¶ 61,089 (1997), *aff'd sub nom. Louisiana Energy and Power Authority v. FERC*, 141 F.3d 364 (D.C. Cir. 1998).

⁴ November 16, 2009 Filing at 6 (citing *Acadia Power Partners, LLC*, Docket No. ER02-1406-000 (May 28, 2002) (unpublished letter order)). *See also Acadia Power Partners, LLC*, 113 FERC ¶ 61,073 (2005).

⁵ *Id.* at 5.

⁶ *Id.* at n.13.

interest in the common facilities. They also state that Acadia's sale of Power Block 1 to Cleco Power is subject to Commission approval under FPA section 203.⁷

A. O&M Agreement

5. As part of its acquisition of Power Block 1, Cleco Power states that it has entered into the O&M Agreement with Acadia. Under this agreement, Cleco Power will provide operation and maintenance services for Acadia at Power Block 2 and the common facilities. Cleco Power and Acadia represent that there must be only one operator because the common facilities are necessary to operate both power blocks. In support of this assertion, they state that there is only one control room and one common pipeline, and that the duplication of these and other facilities within the Acadia Facility would be impracticable and would result in additional expense.⁸ Cleco Power also states that, as a franchised public utility, its policy is to operate its own generating facilities.

6. Under the proposed O&M Agreement, Cleco Power will, among other things, provide Acadia with the following services at Power Block 2: (1) operate Power Block 2 under dispatch instructions provided by Acadia or its agent; (2) recommend to Acadia actions to be taken in connection with the capital repairs to, additions to, retirement of or replacement of Power Block 2; (3) provide all maintenance and all capital repairs and additions (other than major combustion turbine maintenance) as required for, and during any planned outages of, Power Block 2 in accordance with schedules provided by Acadia or its designee; (4) prepare and file with applicable government authorities all necessary applications, reports and other documents; (5) respond to emergencies and other unplanned outages involving Power Block 2; and (6) perform metering services for ammonia and natural gas consumption.⁹ Cleco Power and Acadia also state that, under the O&M Agreement, Cleco Power will, among other things, provide the following services to Acadia at the common facilities: (1) perform or cause to perform all capital

⁷ On January 22, 2010, Cleco Power and Acadia submitted a filing to notify the Commission that on January 13, 2010 in Docket No. U-31157, the Louisiana Commission authorized Cleco Power to acquire, own and operate the Acadia Facility, subject to certain ratepayer protection, hold harmless, and reporting requirements. *See* Cleco Power and Acadia January 22, 2010 Filing at 2. *See also* Cleco Power and Acadia December 30, 2009 Filing.

⁸ November 16, 2009 Filing at 7. In this regard, Cleco Power notes that its consulting engineer determined that \$2.9 million per year in savings could be achieved for Cleco Power's customers by operating the generating unit as a two-block facility instead of a stand-alone single power block resource. *Id.* at n.20.

⁹ *Id.* at 8-9.

repairs and additions involving the common facilities; (2) operate and provide maintenance for the pipeline assets in accordance with schedules; (3) coordinate any planned outages or shutdowns of any equipment comprising the common facilities with the outage schedules and operational activities of both power blocks; and (4) accounting, bookkeeping, and administrative services.¹⁰

7. With respect to the pricing of the services provided under the O&M Agreement, Cleco Power and Acadia state that Acadia will reimburse Cleco Power on a cost basis for all capital costs and operating expenses that it incurs as operator, in providing services to Acadia.¹¹ Cleco Power and Acadia explain that Cleco Power's costs for labor provided under the O&M Agreement are reimbursed based on a labor cost formula, including overhead, based on costs reported in Cleco Power's FERC Form 1 filings. They state that this cost-based arrangement is similar to the current arrangement between Acadia and Cleco Generation Services LLC, Acadia's non-regulated affiliate.

B. Joint Ownership Agreement

8. Cleco Power and Acadia state that the proposed Joint Ownership Agreement sets forth agreements, terms and conditions regarding the joint ownership and operation of the common facilities, use and administration of common resources, and respective ownership and operation of each power block. They explain that the two power blocks include the transmission and interconnection facilities attached to, and associated with, each power block. Those interconnection facilities form part of a single switchyard, which Cleco Power and Acadia state necessitates this sharing arrangement. Cleco Power and Acadia further explain that, under the Joint Ownership Agreement, the parties bind each other to use a single operator for both of the power blocks and the common facilities, and that the agreement provides for the shared use of power block interconnection assets to support each party's separate interconnection agreements, while sharing the risk of limited transmission capacity.¹²

C. Request for Waiver of Certain Market-Based Rate Affiliate Restrictions

9. In order to provide services under the O&M Agreement, Cleco Power states that it needs limited waivers of the Commission's affiliate restrictions. Cleco Power and Acadia also explain that they both have market-based rate tariffs on file with the

¹⁰ *Id.* at 9.

¹¹ *Id.*

¹² *Id.* at 11-12.

Commission, and consequently, they are each subject to the Commission's market-based rate affiliate restrictions.¹³ They represent that they have included in the O&M Agreement provisions to ensure compliance with the affiliate restrictions. Specifically, the O&M Agreement specifies that Cleco Power, as operator of Power Block 2, will not: (1) purchase fuel or transportation service for the generation of electricity by Power Block 2; (2) sell electricity from Power Block 2; (3) make economic dispatch decisions for Power Block 2; (4) schedule planned outages for Power Block 2; or (5) arrange transmission services for sales of electricity from Power Block 2.¹⁴ Cleco Power and Acadia also explain that the O&M Agreement specifies that: (1) unless authorized by the Commission, the plant manager may not be a "marketing function employee" or a "transmission function employee" of Cleco Power; and (2) unless specifically authorized by the Commission, all other employees of Cleco Power who provide services to Power Block 2 may not be "marketing function employees" or "transmission function employees" of Cleco Power.¹⁵

10. Cleco Power and Acadia request specific waiver of three of the affiliate restrictions. First, they request limited waiver of section 35.39(c)(2)(i) of the Commission's regulations, which provides that "[t]o the maximum extent practical, the employees of a market-regulated power sales affiliate must operate separately from the

¹³ *Id.* at 10 (citing 18 C.F.R. § 35.39 (2009)).

¹⁴ *Id.*

¹⁵ *Id.* Cleco Power states that it is a "Transmission Provider," as that term is defined in the Commission's regulations and, consequently, that it also is subject to the Commission's Standards of Conduct. *Id.* at n.28 (citing 18 C.F.R. § 358.1, *et seq.* (2009)). The Commission's regulations with respect to the Standards of Conduct define "marketing function employee" as "an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions." 18 C.F.R. § 358.3(d) (2009). "Marketing functions" are defined as "the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales...." 18 C.F.R. § 358.3(c)(1) (2009). A "Transmission Function Employee" is defined as "an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions." 18 C.F.R. § 358.3(i) (2009). A "Transmission Provider" means "[a]ny public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce...." 18 C.F.R. § 358.3(k)(1) (2009).

employees of any affiliated franchised public utility with captive customers.”¹⁶ Cleco Power and Acadia state that, in addition to field and maintenance employees, who are already exempt from this restriction,¹⁷ this waiver would permit Cleco Power to share with Acadia certain employees who schedule outages for Cleco Power generation facilities so that those Cleco Power employees may also provide operation and maintenance services to Acadia at Power Block 2 and the common facilities. Cleco Power represents that approximately three employees in its Regulated Generation Group, among other duties, schedule outages for generating facilities owned by Cleco Power, and it therefore requests limited waiver of the affiliate restrictions to permit it to share these three employees with Acadia.¹⁸

11. Cleco Power and Acadia submit that good cause exists to grant this limited waiver because this is the only group of employees that will be in a position to dispatch and implement outages of Power Block 2, as instructed by Acadia, after the transaction closes. They state that after closing, Power Block 1 will be a Cleco Power generating resource and its scheduled outages must be coordinated with the scheduled outages of Cleco Power’s other generation resources. Cleco Power and Acadia argue that given the proximity of Power Block 1 and Power Block 2 to each other, and each power block’s dependence on the common facilities, maintenance outages must be coordinated, and that such coordination would most efficiently be performed by Cleco Power’s employees. They argue that “[t]he Commission has recognized the need for ‘practical and efficient operation’ of conjoined facilities in granting waiver of a utility’s market-based rate code of conduct.”¹⁹ In addition, Cleco Power and Acadia assert that granting the requested

¹⁶ *Id.* at 12 (citing 18 C.F.R. § 35.39(c)(2)(i) (2009)).

¹⁷ *Id.* (citing 18 C.F.R. § 35.39(c)(2)(ii) (2009)).

¹⁸ Cleco Power and Acadia explain that the Regulated Generation Group includes employees who will also be responsible for physical operations at Power Block 1, as well as other Cleco Power generating assets. Cleco Power and Acadia further explain that the Regulated Generation Group has a total of 374 employees across several divisions, such as administration, production engineering, engineering and construction, and Acadia Facility. According to Cleco Power and Acadia, approximately 70 of those 374 employees would have responsibilities with respect to both power blocks. Cleco Power and Acadia state that the vast majority of the 70 employees qualify as support or field and maintenance employees that may be shared with Acadia, but that three Regulated Generation Group employees, among other duties, schedule outages for generating facilities owned by Cleco Power. *Id.* at 13-15.

¹⁹ *Id.* at 15-16 (citing *Allegheny Energy, Inc.*, 119 FERC ¶ 61,025, at P 20 (2007) (*Allegheny*)).

waiver will not result in harm to Cleco Power's captive customers because there will be no incentive for its employees to schedule outages of Cleco Power generating facilities to provide sales opportunities to its market-regulated sales affiliate, Acadia. They add that Acadia's ability to sell power to Cleco Power is limited by the terms of Acadia's market-based rate tariff.²⁰

12. Furthermore, Cleco Power and Acadia contend that granting the waiver of the affiliate restrictions is consistent with Commission policy regarding the Standards of Conduct. Specifically, they argue that while the Commission determined in Order Nos. 697 and 697-A²¹ that employees who schedule maintenance outages may not be considered field and maintenance employees under the market-based rate affiliate restrictions, the Commission more recently, in Order No. 717, eliminated the concept of shared employees for purposes of meeting the independent functioning rule of its Standards of Conduct.²² Cleco Power and Acadia contend that the Commission now only applies the independent functioning rule under the Standards of Conduct to transmission function employees and marketing function employees, and they argue that the employees of Cleco Power's Regulated Generation Group are not marketing function

²⁰ See *Acadia Power Partners, LLC*, 115 FERC ¶ 61,394 (2006). Under its market-based rate tariff, Acadia is only authorized to make sales of economy and emergency energy indirectly to Cleco Power through an agreement with a non-affiliated marketer, Tenaska Power Services Co., to market the output of the Acadia Facility, under which sales to Cleco Power are on an hour-ahead, day-ahead, weekly or monthly basis. See November 16, 2009 Filing at 6. On December 23, 2009, the Commission granted Acadia authorization to make market-based rate sales to Cleco Power pursuant to an interim power purchase agreement. Under this agreement, Acadia may provide capacity and energy to Cleco Power for one year or less in the event that Cleco Power's acquisition of Power Block 1 does not close by December 31, 2009. *Cleco Power LLC*, 129 FERC ¶ 61,267 (2009).

²¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 (Order No. 697), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

²² November 16, 2009 Filing at 16 (citing *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280, at P 129 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009)).

employees. They therefore argue that the three employees in the Regulated Generation Group that schedule outages should not be of concern to the Commission in applying the separation of functions rule in the affiliate restrictions.²³

13. In addition, Cleco Power and Acadia represent that, under the O&M Agreement, Cleco Power employees working at the Acadia Facility will not perform any activities that could be considered wholesale marketing activities. They state that Cleco Power employees working at the Acadia Facility will not make economic decisions for either power block; such decisions will be made separately by each power block owner. Cleco Power and Acadia also represent that Cleco Power employees performing operation and maintenance services at Power Block 2 will not be involved in the sale of electricity from Power Block 2, purchase fuel or fuel transportation service for the generation of electricity at Power Block 2, or schedule planned outages for Power Block 2.²⁴

14. Second, Cleco Power and Acadia request limited waiver of the restriction on information sharing. Specifically, Cleco Power and Acadia request limited waiver of section 35.39(d)(1) of the Commission's regulations, which provides that "[a] franchised public utility with captive customers may not share market information with a market-regulated power sales affiliate if the sharing could be used to the detriment of captive customers, unless simultaneously disclosed to the public."²⁵ They state that this waiver is needed to permit access to market information concerning Power Block 1, such as outages, by Acadia marketing function employees who work at or visit Power Block 2, due to the proximity of Power Block 1 to Power Block 2. They explain that Cleco Power and Acadia have established detailed protocols, which are included in Exhibit M to the O&M Agreement, to ensure that Acadia employees will not have access to Cleco Power market information concerning Power Block 1 that may be stored in the control room at the Acadia Facility.

15. Cleco Power and Acadia state that Acadia employees, including employees who perform marketing functions, may from time to time have access to certain non-public Cleco Power market information concerning Power Block 1 simply by visiting Power Block 2. (For example, they note that there may be visual evidence of an outage of Power Block 1 as viewed from Power Block 2 or the common facilities.) Cleco Power

²³ *Id.*

²⁴ *Id.* at 13.

²⁵ *Id.* at 17 (citing 18 C.F.R. § 35.39(d)(1) (2009)). Cleco Power explains that this is a one-way restriction and, as established in Order No. 697-A, Cleco Power is not prohibited from having access to Acadia's market information as a result of providing services under the O&M Agreement.

and Acadia argue that it would be impossible for Cleco Power to monitor and post market information concerning Power Block 1, such as outages, obtained by marketing function employees of Acadia based on physical observations made during visits to Power Block 2. They request limited waiver to permit sharing of Cleco Power market information concerning Power Block 1 under such circumstances. They also request limited waiver of the information sharing restriction to permit Cleco Power to discuss with Acadia, after the fact, the reasons for any forced outages of Power Block 1. They state that granting this waiver would allow Cleco Power, as operator, to alert Acadia to any system weakness or equipment failures that also could cause a forced outage of Power Block 2. They add that such information sharing would promote the safety and reliability of electricity supplies, and would not provide Acadia with any information that could be used to the detriment of Cleco Power's captive customers.²⁶

16. Finally, Cleco Power and Acadia request waiver of the requirement in section 35.39(e)(1) of the Commission's regulations that pricing of non-power services provided by Cleco Power to Acadia be at the higher of cost or market price in order to permit Cleco Power to charge Acadia for operation and maintenance services based on Cleco Power's fully allocated cost of service.²⁷ They argue that the purpose of section 35.39(e)(1) is to ensure that the utility with captive customers does not recover too little for goods and services provided by a market-regulated power sales affiliate. They add that because Cleco Power does not generally offer market-priced operating services to third parties, it would not forego any profits due to a higher market price for such services. They also state that the only other operation and maintenance services Cleco Power provides is to other generating facilities that Cleco Power jointly owns, and that these services also are cost-based.²⁸ Cleco Power and Acadia further state that, as a company in a single-state holding company system,²⁹ Cleco Power may provide certain

²⁶ *Id.* at 17 (citing *Allegheny*, 119 FERC ¶ 61,025 at P 18, 20).

²⁷ Section 35.39(e)(1) of the Commission's market-based rate regulations provides that, "[u]nless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a franchised public utility with captive customers, to a market-regulated power sales affiliate must be at the higher of cost or market price." 18 C.F.R. § 35.39(e)(1) (2009).

²⁸ November 16, 2009 Filing at 19-20.

²⁹ Cleco Power represents that Cleco Corporation is a single-state holding company system, as defined in section 366.1 of the regulations. *Id.* at n.52 (citing 18 C.F.R. § 366.1 (2009)).

services to Acadia at cost under section 35.44(b)(4) of the Commission's regulations.³⁰ In addition, Cleco Power and Acadia argue that a cost-based O&M Agreement was a key part of the overall consideration agreed to by the parties as part of the terms and conditions of the transaction, and that waiver of section 35.39(e)(1) of the Commission's regulations would permit Acadia and Cleco Power to realize the benefits of their bargain.³¹

17. In addition, Cleco Power and Acadia note that Acadia plans to sell Power Block 2 and its remaining 50 percent interest in the common facilities to Entergy Louisiana LLC (Entergy Louisiana). They state that assuming Entergy Louisiana receives all necessary regulatory approvals and that the transaction is consummated, Entergy Louisiana will succeed to Acadia's rights and obligations under these agreements, and the inter-affiliate nature of the agreements at issue in this proceeding will therefore cease.³²

II. Notice of Filing and Responsive Pleadings

18. Notice of Cleco Power's filing was published in the *Federal Register*, 74 Fed. Reg. 64,068 (2009), with interventions and comments due on or before December 7, 2009. Entergy Services, Inc., filed a timely motion to intervene. The Louisiana Public Service Commission (Louisiana Commission) filed a notice of intervention and comments in support of the proposed O&M and Joint Ownership Agreements submitted by Cleco Power and Acadia. The Louisiana Commission also states that the Commission should grant all necessary waivers of the affiliate restrictions.

III. Discussion

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

20. We find that the O&M and Joint Ownership Agreements allow for the efficient and economic operation of the Acadia Facility. We will accept the O&M and Joint Ownership Agreements for filing, and grant the requested limited waivers of the affiliate restrictions, as discussed below. This acceptance is subject to the conditions discussed below and is effective, as requested, on the date on which Cleco Power acquires Power Block 1 from Acadia. (Cleco Power's acquisition of Power Block 1, which is the subject

³⁰ *Id.* at 19 (citing 18 C.F.R. § 35.44(b)(4) (2009)).

³¹ *Id.* at 20.

³² *Id.* at n.21.

of the FPA section 203 filing submitted in Docket No. EC10-22-000, is being approved in an order that is being issued concurrently with this order.) Accordingly, we will direct Cleco Power and Acadia to submit a compliance filing to reflect this effective date in the O&M Agreement and the Joint Ownership Agreement, in accordance with Order No. 614,³³ within 10 days of the date of consummation of the transaction.

21. In Order No. 697, the Commission codified certain affiliate restrictions in its regulations to protect captive customers from the potential for a franchised public utility to interact with a market-regulated power sales affiliate in ways that transfer benefits to the affiliate and its stockholders to the detriment of the captive customers.³⁴ Captive customers are defined as “any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.”³⁵ As discussed below, we will grant the request of Cleco Power and Acadia for limited waiver of certain affiliate restrictions, subject to conditions.

22. We will grant the request of Cleco Power and Acadia for limited waiver of the requirement in section 35.39(c)(2)(i) of the Commission’s regulations that employees of Cleco Power and Acadia operate separately for the limited purpose of permitting the three employees in Cleco Power’s Regulated Generation Group to provide operation and maintenance services to Acadia at Power Block 2 and the common facilities. We will grant this waiver request based on the filing parties’ representation that, given the proximity of Power Block 1 and Power Block 2 to each other, each power block depends on the common facilities, maintenance outages must be coordinated, and such coordination would most efficiently be performed by Cleco Power’s employees. Granting limited waiver based on the conjoined nature of the facilities is therefore consistent with *Allegheny*, where the Commission granted waiver of the market-based rate code of conduct’s³⁶ information sharing provision based on the applicants’ representations that the waiver was necessary to allow for the practical and efficient operation of the conjoined facilities.³⁷ However, waiver of this requirement is limited to

³³ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

³⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 513.

³⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 202 and 18 C.F.R. § 35.36(a)(6) (2009).

³⁶ The market-based rate code of conduct was the predecessor to the affiliate restrictions codified in Order No. 697.

³⁷ *Allegheny*, 119 FERC ¶ 61,025 at P 20.

the three employees in Cleco Power's Regulated Generation Group who schedule outages for generating facilities owned by Cleco Power, for their work at the Acadia Facility. Any Cleco Power employee responsible for, or engaging in, marketing activities, or decisions that would affect marketing activities, cannot be shared, nor does the waiver granted herein make such conduct permissible. As a condition of this limited waiver, Cleco Power and Acadia will be required to maintain sufficient records to enable the Commission to audit their compliance.

23. We will also grant Cleco Power and Acadia limited waiver of the restriction on information sharing in section of section 35.39(d)(1) of the Commission's regulations to permit access to market information concerning Power Block 1, such as information regarding forced outages, by Acadia employees who work at or visit Power Block 2, due to the close proximity of the two power blocks.³⁸ This waiver is based on Cleco Power's and Acadia's representations that: (1) such waiver is needed to permit access to market information concerning Power Block 1 (e.g., outages) by Acadia marketing function employees who work at or visit Power Block 2 due to the physical proximity of the two power blocks; (2) Cleco Power and Acadia have established detailed protocols to ensure that Acadia employees will not have access to Cleco Power market information concerning Power Block 1 as may be stored in the control room at the Acadia Facility; and (3) that it would be impossible for Cleco Power to monitor and post market information concerning Power Block 1 (e.g., outages) obtained by marketing function employees of Acadia based on their physical observations made during visits to Power Block 2. This waiver is granted only for the types of communications listed herein and does not authorize Acadia to have access to other market information obtained by Cleco Power. Even taking into consideration this limited waiver, we emphasize that Cleco Power and Acadia are prohibited from using any of their employees as a conduit for improperly disclosing market information.³⁹ In addition, under this waiver, Cleco Power is permitted to discuss with Acadia, as requested, only after the fact, the reason for any forced outages of Power Block 1. Further, Cleco Power and Acadia are required to maintain sufficient records to enable the Commission to audit their compliance.

24. We will also grant Cleco Power and Acadia waiver of the requirement in section 35.39(e)(1) of the Commission's regulations that pricing of non-power services provided

³⁸ Such waiver is consistent with the Commission's determination in *Allegheny* to grant waiver of the market-based rate code of conduct's information sharing restriction for the limited purpose of allowing the continued sharing of information to the extent necessary to manage the physical operations at conjoined facilities, and to allow practical and efficient operation of the conjoined facilities. *Id.*

³⁹ 18 C.F.R. § 35.39(g) (2009).

by Cleco Power to Acadia be at the higher of cost or market price with respect to operating and maintenance services provided by Cleco Power to Acadia at the Acadia Facility to permit Cleco Power to charge Acadia based on Cleco Power's fully allocated cost of service, so long as Acadia does not pay less than the actual cost for such services. We grant this waiver based on the applicants' representation that the only other operating and maintenance services that Cleco Power provides to other generating facilities are also cost-based, and that attempting to estimate a market price for operating services would be purely speculative.⁴⁰ However, waiver of this requirement is limited to the non-power services provided by Cleco Power to Acadia at the Acadia Facility. Further, such waiver is conditioned on the requirement that Cleco Power does not offer market-priced operating services to third parties, and therefore would not forego any profits due to a higher market price for such services. With this condition, we find that granting limited waiver of this requirement will not result in harm to captive customers. Cleco Power and Acadia are required to maintain sufficient records to enable the Commission to audit their compliance.

25. The waivers granted herein are limited to the specific facts and circumstances presented by Cleco Power and Acadia in their November 16, 2009 Filing, and only apply to the operating and maintenance services and non-power services provided by Cleco Power to Acadia at the Acadia Facility under the O&M and Joint Ownership Agreements, as discussed above. Further, based on the representation of Cleco Power and Acadia that Acadia has agreed to sell Power Block 2 and the remaining fifty percent interest in the common facilities to Entergy Louisiana, we understand that the waivers granted in this order will expire with Acadia's sale of Power Block 2 to a non-affiliate. We will direct Cleco Power and Acadia to notify the Commission within 30 days of the consummation of any transaction in which Entergy Louisiana acquires Power Block 2 and the remaining fifty percent interest in the common facilities. In addition, to the extent there is any material change in circumstances that would reflect a departure from the facts, policies, and procedures that we have relied upon in granting the requested waivers, Cleco Power and Acadia will be required to inform the Commission within 30 days of any such change. With the exception of the limited waivers specifically granted herein, all of the other affiliate restrictions continue to apply to Cleco Power and Acadia.

26. We direct Cleco Power and Acadia to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions sections of their market-based rate tariffs to list the limited waivers granted herein and include a citation to this order.⁴¹

⁴⁰ November 16, 2009 Filing at 20.

⁴¹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 385 n.517; Order No. 697, (continued...)

The Commission orders:

(A) Cleco Power's and Acadia's O&M Agreement and Joint Ownership Agreement are hereby accepted, subject to conditions, to be effective on the date on which Cleco Power acquires Power Block 1 from Acadia, as discussed in the body of this order.

(B) Cleco Power and Acadia are hereby directed to submit a compliance filing, within 10 days of the date of consummation of Cleco Power's acquisition of Power Block 1 from Acadia, to reflect the effective date of the O&M Agreement and Joint Ownership Agreement, as discussed in the body of this order.

(C) Cleco Power's and Acadia's request for limited waivers of the certain affiliate restrictions is hereby granted, subject to conditions, as discussed in the body of this order.

(D) Cleco Power and Acadia are hereby directed to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions sections of their market-based rate tariffs, as discussed in the body of this order.

(E) Cleco Power and Acadia are hereby directed to notify the Commission within 30 days of the consummation of any transaction in which Entergy Louisiana acquires Power Block 2 and the remaining fifty percent interest in the common facilities, as discussed in the body of this order.

(F) Cleco Power and Acadia are hereby directed to maintain records to enable the Commission to audit their compliance, as discussed in the body of this order.

(G) Cleco Power and Acadia must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the waivers granted herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.