

134 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cleco Power LLC	Docket Nos. ER01-1099-014
Acadia Power Partners, LLC	ER02-1406-015
Cleco Evangeline LLC	ER99-2928-011

ORDER ON NOTICE OF CHANGE IN STATUS

(Issued January 14, 2011)

1. In this order, the Commission accepts a notice of change in status filed by Cleco Power LLC (Cleco Power), Acadia Power Partners, LLC (Acadia Power), and Cleco Evangeline LLC (Cleco Evangeline) (collectively, the Cleco Companies) relating to Cleco Power's acquisition of certain generation assets from Acadia Power. As discussed below, the Commission concludes that the Cleco Companies continue to satisfy the Commission's standards for market-based rate authority.

I. Background

2. On March 25, 2010 (March 25 Filing), as supplemented on April 28, 2010 (April 28 Filing), the Cleco Companies filed a notice of change in status pursuant to the reporting requirements of Order No. 652 and the requirement promulgated in section 35.42 of the Commission's regulations adopted in Order No. 697.¹ The Cleco Companies explain that on February 23, 2010, Cleco Power acquired from its affiliate, Acadia Power, Power Block One and related facilities (together, the Power Block One Assets) of

¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *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), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010); 18 C.F.R. § 35.42 (2010).

the Acadia Power Station.² The Cleco Companies explain that as a result of the transaction, Cleco Power now controls the 580 megawatts (MW) of net capacity associated with the Power Block One Assets. The Cleco Companies further explain that on December 31, 2009, Cleco Power's 500 MW long-term power purchase agreement with BE Louisiana LLC (BE Louisiana) expired. Additionally, the Cleco Companies explain that, concurrently with the expiration of the agreement with BE Louisiana, an interim tolling agreement between Cleco Power and Acadia Power for the Power Block One Assets became effective. Cleco Companies explain that the interim agreement served as a proxy for Cleco Power's acquisition of the facilities, while required regulatory approvals were pending. According to the Cleco Companies, the change in operational control over the acquired Power Block One Assets resulted in a *de minimis* net increase in Cleco Power's uncommitted capacity and has no significant or meaningful impact on wholesale competition.³

3. The Cleco Companies claim that the updated horizontal market power analyses submitted as part of their section 203 filing in Docket No. EC10-22-000 and their April 28 Filing in the instant dockets demonstrate that they satisfy the pivotal supplier and market share screens in the Cleco Power balancing authority area and first-tier markets.⁴ The Cleco Companies also state that they have not erected, and will not erect, barriers to entry into any relevant market.⁵ Cleco Companies additionally state that Cleco Power's acquisition of the Power Block One Assets does not raise any vertical market power concerns or change any of the vertical market power characteristics relied on by the Commission in granting market-based rate authority to the Cleco Companies.

4. On June 17, 2010, the Cleco Companies supplemented their notice of change in status filing to submit supporting base model Simultaneous Transmission Import Limit (SIL) data in raw file format, as required by *AEP Power Marketing, Inc.*⁶

5. On August 2, 2010, the Cleco Companies filed revised SIL data and values in order to address certain inaccuracies in their SIL study as well as revised indicative screens that they state show that they continue to pass the pivotal supplier and market

² On February 12, 2010, the Commission issued an order authorizing Cleco Power's acquisition of the Power Block One Assets from Acadia Power under section 203 of the Federal Power Act. *Cleco Power LLC*, 130 FERC ¶ 62,136 (2010).

³ April 28 Filing at 3-4.

⁴ March 25 Filing at 3; April 28 Filing at 4.

⁵ March 25 Filing at 3; April 28 Filing at 4.

⁶ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at App. E (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

share screens in the Cleco Power balancing authority area and first-tier balancing authority areas.

6. On September 3, 2010, the Director of the Division of Electric Power Regulation—West issued a letter under delegated authority directing the Cleco Companies to clarify certain aspects of their filing and to submit additional information.⁷ Among other things, Staff noted that the Cleco Companies had failed to provide sufficient evidence to support the SIL values they had submitted. For instance, the Cleco Companies failed to provide the seasonal benchmark models, support data files, and the First Contingency Incremental Transfer Capability (FCITC) results that identify the associated overloaded and contingency elements used when calculating the SIL values for the Entergy and AEP-West balancing authority areas, which are first-tier to Cleco Power. Staff also directed the Cleco Companies to correct a number of inaccuracies in the underlying SIL input files that the Cleco Companies had provided. For example, the Cleco Companies reported *negative* FCITC values for the City of Lafayette (Lafayette) and the Louisiana Energy & Power Authority (Louisiana Energy) balancing authority areas, which demonstrates that the seasonal benchmark case model has existing first-contingency overloaded transmission elements. Staff also directed the Cleco Companies to account for planned outages of non-affiliate generation, which the Cleco Companies had failed to do.⁸ Lastly, Staff directed the Cleco Companies to clarify the exact net increase in its generating capacity resulting from Cleco Power’s acquisition of the Power Block One Assets and the expiration of the BE Louisiana tolling agreement.⁹

7. On October 1, 2010, the Cleco Companies submitted its response to the Deficiency Letter (October 1 Filing). In the October 1 Filing, the Cleco Companies provide corrected SIL values for the Cleco Power, Lafayette, and Louisiana Energy balancing authority areas, including scaling up available generation in the exporting aggregated first-tier areas consistent with the April 14 Order.¹⁰ The Cleco Companies also submit updated market power indicative screens based on the corrected SIL values. They explain that the FCITC values are no longer negative for the Louisiana Energy and Lafayette balancing authority areas, due to the application of the Acadiana Area Load

⁷ *Cleco Power, LLC*, Docket No. ER01-1099-014 (Sept. 3, 2010) (unpublished letter order) (Deficiency Letter).

⁸ Deficiency Letter at P 5.

⁹ *Id.* P 6.

¹⁰ April 14 Order, 107 FERC ¶ 61,018 at App. E; *see also* Simultaneous Transmission Import Limit (SIL) Studies, Docket No. AD10-2-000, slide 59 (2009) (“[s]cale-up First-Tier Area available uncommitted generation for export, while respecting generator maximum outputs (Pmax)”), *available at* <http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=5001&CalType=%20&CalendarID=116&Date=12/16/2009&View=Listview>.

Pocket Operating Agreement, which eliminates the negative FCITC values originally reported.¹¹ They also state that, upon further review, they believe it is appropriate to reduce non-affiliate capacity for outages at certain non-affiliated facilities. The Cleco Companies also clarify that the exact net increase in the Cleco Companies' generating capacity from Cleco Power's acquisition of the Power Block One and the expiration of the BE Louisiana tolling agreement is 188 MW.¹²

II. Notice of Filings

8. Notice of the Cleco Companies' March 25 Filing was published in the *Federal Register*, 75 Fed. Reg. 16,784 (2010), with motions to intervene and comments due on or before April 15, 2010. None was filed.

9. Notice of the Cleco Companies' April 28 Filing was published in the *Federal Register*, 75 Fed. Reg. 25,233 (2010), with motions to intervene and comments due on or before May 19, 2010. None was filed.

10. Notice of the Cleco Companies' June 17 Filing was published in the *Federal Register*, 75 Fed. Reg. 36,649 (2010), with motions to intervene and comments due on or before July 8, 2010. None was filed.

11. Notice of the Cleco Companies' August 2 Filing was published in the *Federal Register*, 75 Fed. Reg. 48,663 (2010), with motions to intervene and comments due on or before August 23, 2010. None was filed.

12. Notice of the Cleco Companies' October 1 Filing was published in the *Federal Register*, 75 Fed. Reg. 63,454 (2010), with motions to intervene and comments due on or before October 22, 2010. None was filed.

III. Discussion

13. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal, and vertical market power.¹³ As discussed below, the Commission concludes that the Cleco Companies continue to satisfy the Commission's standards for market-based rate authority.

¹¹ October 1 Filing at 3.

¹² *Id.* at 4-5.

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

1. Horizontal Market Power

14. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.¹⁴ An applicant that fails one or more of the indicative screens is provided with several procedural options including the right to challenge the market power presumption by submitting a DPT analysis, or, alternatively, sellers may accept the presumption of market power and adopt some form of cost-based mitigation.¹⁵

15. The Cleco Companies prepared the pivotal supplier and wholesale market share screens for the Cleco Power balancing authority area and for the balancing authority areas first-tier to the Cleco Power balancing authority area, including the AEP-West, Entergy, Lafayette, and Louisiana Energy balancing authority areas.

16. As noted in the Deficiency Letter, the Cleco Companies initially failed to account for planned outages of non-affiliate generation.¹⁶ We reiterate that filers must account for the planned outages of non-affiliate generation.¹⁷

17. As noted above, the Cleco Companies filed corrections to Cleco Power's SIL values and revised horizontal market power screens, including for the Cleco Power, Lafayette, and Louisiana Energy balancing authority areas.¹⁸ We find that, as amended, Cleco Power's SIL calculations are consistent with Appendix E of the April 14 Order, and Order Nos. 697-A and 697-B.¹⁹ Accordingly, we accept the SIL values contained in Appendix A to this order.

18. Future filers submitting screens for the areas and study period identified in Appendix A are encouraged to use the Commission-accepted SIL values found in Appendix A. In the alternative, such filers may propose different SIL values provided that their SIL studies comply with Commission directives and they explain why the

¹⁴ *Id.* P 62.

¹⁵ *Id.* P 63.

¹⁶ Deficiency Letter at P 5.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.20, P 43.

¹⁸ We emphasize that applicants must calculate their SIL values in accordance with existing Commission precedent. *See* April 14 Order, 107 FERC ¶ 61,018 at App. E. *See also* *AEP Serv. Corp.*, 131 FERC ¶ 61,146 (2010); *Carolina Power & Light Co.*, 128 FERC ¶ 61,039, *order on reh'g*, 129 FERC ¶ 61,152 (2009).

¹⁹ April 14 Order, 107 FERC ¶ 61,018 at App. E; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 142-146; Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 at P 22-25.

Commission should consider a different SIL value for a particular balancing authority area or study area than the Commission-accepted SIL values provided in Appendix A.

19. The Commission has reviewed the Cleco Companies' pivotal supplier and wholesale market share screens. We find that the Cleco Companies pass the pivotal supplier and wholesale market share screens in the Cleco Power balancing authority area and in all first-tier balancing authority areas. The Cleco Companies are not pivotal suppliers in the Cleco Power balancing authority area or in any first-tier markets. In addition, their market shares are below 20 percent in the Cleco Power balancing authority area and all first-tier markets.

20. Accordingly, we find that the Cleco Companies continue to satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the Cleco Power balancing authority area and all first-tier balancing authority areas.

2. Vertical Market Power and Barriers to Entry

21. As noted above, the Cleco Companies represent that the changes reported in the instant notification do not raise any vertical market power concerns or change any of the characteristics that the Commission relied on in granting market-based rate authority to the Cleco Companies. The Cleco Companies also stated that they have not and will not erect barriers to entry into any relevant market. Based on these representations, we find that the Cleco Companies' instant notification raises no vertical market power issues.

The Commission orders:

The Cleco Companies' notice of change in status is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A**Accepted SIL Values (in MW) for the Cleco, Lafayette and the Louisiana Energy Balancing Authority Areas. (Study period December 2007 to November 2008)**

Abbreviation	Balancing Authority Area	Winter 2007	Spring 2008	Summer 2008	Fall 2008
CLECO	Cleco	1,045	1,174	744	1,394
LUS	Lafayette	337	382	485	393
LEPA	Louisiana Energy	149	136	0	138