

127 FERC ¶ 61,001  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Cleco Power LLC

Docket No. OA08-68-000

ORDER ON COMPLIANCE FILING

(Issued April 1, 2009)

1. On March 17, 2008, under section 206 of the Federal Power Act (FPA),<sup>1</sup> Cleco Power LLC (Cleco) submitted proposed revisions to its Open Access Transmission Tariff (OATT) to comply with Order No. 890-A.<sup>2</sup> In this order, we accept Cleco's revised OATT, subject to a further compliance filing, as discussed below.

**I. Background**

2. In Order No. 890-A, the Commission granted limited rehearing and clarification of Order No. 890, largely affirming its reforms. Order No. 890-A continues the Order No. 890 objectives of ensuring that electric transmission service is provided on a nondiscriminatory, just and reasonable basis, helping to improve the foundation for a competitive electric power market, and providing for more effective regulation and transparency in the operation of the transmission grid.

3. The revisions in Order No. 890-A address, among other things, how transmission providers process service requests; under what circumstances long-term customers may renew (roll over) their transmission service; the ability of network customers to designate certain resources; and how point-to-point customers may reassign transmission capacity. As discussed in further detail below, the Commission also directed transmission

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

providers to address certain issues related to the calculation of available transfer capability and the calculation of incremental costs for purposes of imbalance charges.

## **II. Cleco's Compliance Filing**

4. Cleco states that it proposes no substantive changes to its existing OATT other than those mandated by Order No. 890-A. Cleco states that it adopts the *pro forma* OATT mandated by the Commission, with limited modifications to address requirements of Order No. 890-A, and that it is re-filing its entire OATT as authorized by Order No. 890-A. Cleco further states that its filing also contains two non-substantive changes to eliminate inconsistencies in its OATT. Cleco requests that its revised tariff sheets be made effective March 17, 2008.

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

5. Notice of Cleco's filing was published in the *Federal Register*, 73 Fed. Reg. 16,003 (2008), with interventions and protests due on or before April 7, 2008. On April 7, 2008, NRG Power Marketing LLC, 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 (Lafayette) (collectively Louisiana Municipals). Cleco filed an answer to the Louisiana Municipals' protest.

## **IV. Discussion**

### **A. Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), 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**

8. As discussed below, we will accept Cleco's Order No. 890-A compliance filing, as modified, to be effective March 17, 2008. We also direct Cleco to file, within 30 days of the date of this order, a further compliance filing as discussed below.

**1. Penalties on Losses Associated with Unreserved Use**

**a. Cleco's Filing**

9. Cleco retains an existing tariff provision that requires transmission customers to settle financially for any losses associated with their unreserved use at 200 percent of the applicable energy and capacity loss rates as described in Schedule 9 (Loss Compensation Service) of Cleco's OATT, as if those customers elected to have Cleco supply energy and capacity for such losses.

**b. Protest**

10. The Louisiana Municipals urge the Commission to reject Cleco's tariff language imposing penalties on losses associated in connection with unauthorized use. The Louisiana Municipals argue that Order No. 890 does not permit an extension of penalties on losses associated with unreserved use. Specifically, the Louisiana Municipals argue that Order No. 890 contains only limited mention of losses.

**c. Cleco's Answer**

11. Cleco states that the Louisiana Municipals merely repeat their objection to Cleco's imposition of penalties on losses associated with unreserved use and that the Louisiana Municipals inaccurately characterize Cleco's penalty for losses as new. Cleco explains that its tariff provisions providing for penalties for losses associated with unauthorized use were previously accepted by the Commission under its "consistent with or superior to" standard.<sup>3</sup> Cleco further argues that the Commission has not ruled that utilities may not impose penalty charges for losses incurred in conjunction with unreserved use. Cleco maintains that it should be permitted to continue this element of its pre-Order No. 890 tariff.

**d. Commission Determination**

12. 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 Order No. 888 *pro forma* OATT provisions. 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 losses in conjunction with unauthorized losses associated with use.<sup>4</sup> As we previously

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<sup>3</sup>*Cleco Power LLC*, 105 FERC ¶ 61,222, at P 15 (2003).

<sup>4</sup> *Id.*

ruled,<sup>5</sup> Cleco did not modify its approved penalties for 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. Reservation Priority for Existing Firm Service Customers**

**a. Cleco's Filing**

13. Cleco has added new language to section 2.2 (Reservation Priority for Existing Firm Service Customers) for the right of first refusal, which provides, among other things, that existing firm service customers (wholesale requirements and transmission-only, with a contract term of five years or more), have the right to continue to take transmission service from the transmission provider when the contract expires, rolls over or is renewed. The existing firm service customer must provide notice to the transmission provider whether it will exercise its right of first refusal no less than one year prior to the expiration date of its transmission service agreement.

**b. Protest**

14. The Louisiana Municipals argue that the Commission should reject Cleco's modification of section 2.2 because the Commission has not yet approved Cleco's Attachment K filing. They note that the Commission has since issued multiple orders rejecting transmission provider's changes to section 2.2 as premature.<sup>6</sup>

**c. Cleco's Answer**

15. In its answer, Cleco agrees that it misinterpreted the Commission's intentions with respect to when the new rollover language in section 2.2 should be filed. Accordingly, Cleco agrees to withdraw the revised language in section 2.2, subject to refileing within 30 days of the Commission's acceptance of Cleco's Attachment K.

**d. Commission Determination**

16. The Commission clarified in Order No. 890-B that transmission providers may file revised rollover language only after the transmission provider's Attachment K planning process had been accepted by the Commission.<sup>7</sup> On September 18, 2008, in Docket

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<sup>5</sup> *Id.* P 17. *Cleco Power LLC*, 123 FERC ¶ 61,212 (2008).

<sup>6</sup> *See Idaho Power Co.*, 122 FERC ¶ 61,243, at P 34 (2008), and *El Paso Elec. Co.*, 122 FERC ¶ 61,222, at P 34 (2008).

<sup>7</sup> *See Order No. 890-B*, 123 FERC ¶ 61,299 at P 154.

No. OA08-36-000, the Commission conditionally approved Cleco's Attachment K.<sup>8</sup> Subsequently, on October 20, 2008 in Docket No. OA08-36-001, Cleco filed revised rollover tariff language for section 2.2, consistent with Order No. 890-B. Cleco's revised section 2.2 to its OATT was accepted by a delegated letter order issued in Docket No. OA08-36-001 on January 8, 2009. Accordingly, Louisiana Municipals' concerns are now moot.

**3. Calculation of Incremental Costs in Imbalance Charges and Distribution of Penalties from Imbalance Charges**

**a. Cleco's Filing**

17. Cleco states that it has added language to Schedule 4 (Energy Imbalance Service) and Schedule 10 (Generator Imbalance Service) to describe how Cleco will calculate incremental costs for imbalance charges, and how it will obtain each component input to the calculation. In addition, Cleco has revised Schedules 4 and 10 of its OATT to reflect that imbalance penalty revenue received in a given hour will be distributed to customers who did not incur a penalty in that hour, including customers who were out of balance but whose imbalances were within the first tier.

**b. Protest**

18. In their protest, the Louisiana Municipals urge the Commission to modify Cleco's proposal to use different incremental pricing depending on whether an imbalance is positive or negative. The Louisiana Municipals argue that the Commission expressly declined to adopt separate definitions of incremental and decremental costs. They state that Cleco's Schedules 4 and 10 require correction and clarification of the language governing calculation of incremental costs for imbalance charges, in order to comply with Order No. 890-A. The Louisiana Municipals state that Order No. 890-A clarified that the transmission provider should distribute penalty revenues based on individual hours and not based on monthly transmission revenues, as proposed by Cleco. The Louisiana Municipals are also concerned that Cleco's revisions to its imbalance penalty distribution mechanism only partially comply with Order No. 890-A. They urge the Commission to direct Cleco to distribute imbalance penalty revenues in Schedules 4 and 10 based upon the ratio of hourly transmission service revenues to the aggregate hourly transmission service revenues from customers that did not incur imbalance charges.

**c. Cleco's Answer**

19. In its answer, Cleco states that there is no substantive difference between its proposed language governing calculation of incremental costs for imbalance charges

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<sup>8</sup> *Cleco Power LLC*, 124 FERC ¶ 61,264 (2008).

under Schedules 4 and 10 and the modification proposed by the Louisiana Municipals. It states that it is willing to implement the proposed modifications suggested by the Louisiana Municipals.

20. Regarding the distribution of penalties from imbalance charges, Cleco states that nothing in Order Nos. 890 or 890-A requires that penalty revenues to be distributed based upon hourly transmission revenues, rather than monthly transmission revenues. Cleco states that it bills on a monthly basis and it is easier to calculate monthly transmission revenues than determine how much transmission service revenue a customer may have been responsible for in any given hour. Cleco states that its provision is clear and non-discriminatory. It states that the effect of the Louisiana Municipals' proposal would be to inject an unnecessary layer of complication into the distribution process.

**d. Commission Determination**

21. In Order No. 890-A, the Commission granted rehearing and found that transmission providers should base imbalance charges on the actual cost to correct the imbalance, which may be different than the cost of serving native load. As a result, the Commission modified the definition of incremental costs to include the cost of the last 10 MW dispatched for any purpose, whether to serve native load, correct imbalances, or make off-system sales.<sup>9</sup> The Commission also required each transmission provider to provide language in its OATT clearly specifying the method by which it calculates incremental costs for purposes of imbalance charges, as well as the method it will use to obtain each component of the calculation.<sup>10</sup> If start-up costs are incurred during an hour different from the hour of excess imbalance, the start-up costs may also be included in the calculation of incremental costs as long as they are associated with providing imbalance service.<sup>11</sup>

22. With regard to Cleco's proposed revisions to Schedules 4 and 10, we agree that Order No. 890-A did not adopt separate definitions of incremental and decremental costs when calculating imbalance charges. We agree with Louisiana Municipals that Schedules 4 and 10 should not reference positive and negative imbalances. Accordingly, we accept Cleco's offer to modify its proposed language governing calculation of costs for imbalance charges under Schedules 4 and 10. We direct Cleco to make a further compliance filing within 30 days of the date of issuance of this order.

23. In Order No. 890-A the Commission clarified that the transmission provider should distribute the imbalance penalty revenue received in a given hour to those non-offending customers in that hour, i.e., those customers to whom the penalty component

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<sup>9</sup> *Id.* P 309.

<sup>10</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 310.

<sup>11</sup> *Id.* P 312.

did not apply in the hour. Customers that were out of balance, but within the first tier, should therefore be included in the distribution. Cleco has complied with this requirement and modified its imbalance penalty distribution methodology. However, Cleco retained the provision for distributing hourly revenues from imbalance penalties revenues based upon monthly transmission revenues. We agree with Cleco that nothing in Order Nos. 890 or 890-A require that hourly revenues from imbalance penalties revenues should be distributed based upon hourly transmission service revenues. Cleco states that it bills on a monthly basis and it is easier to calculate monthly transmission revenues than determine how much transmission service revenue a customer may have been responsible for in any given hour. We find that Cleco's proposal is clear and non-discriminatory and find that the Louisiana Municipals have not supported the imposition of a requirement that goes beyond that contained in Order Nos. 890 or 890-A. Therefore, we accept Cleco's proposal to distribute penalty revenues based upon monthly transmission revenues.

The Commission orders:

Cleco's compliance filing is hereby accepted, as modified, effective March 17, 2008, subject to a further compliance filing, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.