

139 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cleco Power, LLC

Docket Nos. ER12-1378-000
ER12-1379-000

(Consolidated)

ORDER REQUIRING COMPLIANCE FILING, CONSOLIDATING PROCEEDINGS,
ACCEPTING AND SUSPENDING PROPOSED TRANSMISSION RATES, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 31, 2012)

1. On March 29, 2012, in Docket No. ER12-1378-000, Cleco Power, LLC (Cleco) filed revisions to its Open Access Transmission Tariff (OATT) pursuant to section 205 of the Federal Power Act (FPA)¹ to implement cost-based formula rates for network integration transmission service, point-to-point transmission service, and Schedule 1 ancillary services. Also, in Docket No. ER12-1379-000, Cleco filed revisions to certain Cleco transmission service agreements to implement the same cost-based formula rates proposed for Cleco's OATT in Docket No. ER12-1378-000.² We will accept Cleco's filings in Docket Nos. ER12-1378-000 and ER12-1379-000, suspend scheduling, system control, and dispatch service, and the loss factors for a nominal period, and suspend the remainder of Cleco's filings for five months, make them effective subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. Cleco is a wholly-owned subsidiary of Cleco Corporation, a holding company. Cleco states that it is principally engaged in the generation, purchase, transmission,

¹ 16 U.S.C. § 824d (2006).

² Because the transmittal letters for Docket Nos. ER12-1378-000 and ER12-1379-000 appear to be identical, we will refer to them collectively as Cleco Transmittals.

distribution, and sale of electric energy in parts of north, central, south central, and southeast Louisiana. Cleco provides network integration transmission service under its OATT to five customers: Louisiana Energy and Power Authority (Louisiana Energy), the city of Alexandria, Louisiana (Alexandria), Entergy Louisiana LLC (Entergy), Louisiana Generating, LLC (Louisiana Generating), and Cleco's wholesale merchant affiliate.³ Cleco also provides long-term firm point-to-point transmission service under its OATT to Louisiana Energy. Finally, Cleco provides transmission service to Lafayette Utilities System (Lafayette), Louisiana Energy, Louisiana Generating, and Southwestern Electric Power Company (SWEPCO) under bilateral interconnection agreements that preceded Cleco's OATT.⁴

3. Cleco states that its current OATT rates were established by settlement in 1997, and established an annual transmission revenue requirement for purposes of network integration transmission service of \$29.3 million. Cleco adds that its current non-OATT transmission rates were established pursuant to a series of settlements resolving Cleco's last transmission rate case in Docket No. ER90-39-000.⁵

II. Cleco's Filings

4. Cleco proposes to replace its stated rates for network integration transmission service, point-to-point transmission service, and pre-OATT grandfathered interconnection agreements with a formula rate. Under Cleco's proposal, its transmission rates would be adjusted annually using Cleco's transmission revenue requirement based on actual cost inputs from its FERC Form No. 1 data and formula worksheets as well as projected transmission plant additions.⁶ Cleco explains that the formula rate has two components. First, the formula rate contains the formula used to establish the rates for network integration transmission service, point-to-point transmission service, and pre-OATT grandfathered interconnection agreement rates. Second, the formula rate is accompanied by protocols to implement the formula rate, which include the (1) annual true-up update process, (2) annual customer review and protest procedures, and (3) dispute resolution procedures.⁷ Cleco adds that the Transmission Enhancement

³ Cleco Transmittals at 4.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 6.

⁷ *Id.*

Charge Worksheet in Attachment 7 to Attachment H-A of the OATT is a placeholder for incentive return on equity (ROE) adders, which will remain at zero until Cleco receives Commission authorization for such an incentive.

5. Cleco explains that charges for hourly, daily, weekly, and monthly firm and non-firm point-to-point transmission service will be derived from the formula rate's \$/MW-year charge as calculated under the formula and posted on Cleco's Open Access Same-time Information System. Such rates will be calculated at the point of receipt on Cleco's system, and billing demands will be adjusted as appropriate "so that Cleco properly recovers its costs as determined through the formula."⁸

6. Cleco explains that network integration transmission service customers' monthly demand charge will be calculated by applying their monthly network load to the monthly transmission rate. While the monthly network load will still be measured by its coincident peak with Cleco's transmission system load, network integration transmission customers will no longer be billed based on their load ratio share of Cleco's revenue requirement.⁹ Cleco submits revised versions of the non-conforming service agreements it has with its network integration transmission service customers.

7. For its grandfathered interconnection agreements with Louisiana Generating and SWEPCO, Cleco states that it will apply the formula rate to their monthly coincident peaks adjusted to the point of receipt to reflect that the transmission services provided by Cleco are similar to network integration transmission service under the OATT. For its grandfathered interconnection agreements with Lafayette and Louisiana Energy, Cleco states that it will apply the formula rate to those customers' contract demand adjusted to the point of receipt to reflect that transmission services provided by Cleco are "in the nature of" point-to-point transmission service for the output of a specific generator. Cleco adds that these agreements are adjusted to reflect the reduction in loss factors and the distribution charge described below.¹⁰ Cleco states that the initial rate period is June 1, 2012 through May 31, 2013. When its 2011 FERC Form No. 1 is available, Cleco will update the formula with 2011 data and projected capital additions for 2012. In

⁸ *Id.* at 7.

⁹ *Id.*

¹⁰ *Id.* at 8.

May 2013, the transmission revenue requirement will be trued up using actual costs and investments for 2012.¹¹

8. Cleco proposes a 10.6 percent ROE. Cleco argues that “the [discounted cash flow (DCF)] midpoint for the five-company proxy group is 10.57 percent as indicated from an overall range of 9.56 percent to 11.57 percent. The median result equals 10.59 percent, while the mean is 10.50 percent” and such ROE falls within the zone of reasonableness produced by applying the DCF approach to risk comparable utilities that serve the Gulf Coast or are part of the Southwest Power Pool.¹²

9. Cleco also proposes a formula rate for its Schedule 1, Scheduling, System Control and Dispatch Service. The Schedule 1 rate is determined by dividing Account No. 561 costs,¹³ removed from the transmission delivery service rate, by the annual transmission peak load. Cleco states that “[t]he formula rate excludes these costs in calculating the transmission delivery service rate. It is appropriate that customers under the [grandfathered interconnection agreements] pay this rate as well, and it is therefore included in the proposed changes to the rates for transmission service under [such agreements].”¹⁴ This yearly rate is then used to develop monthly, weekly, daily, and hourly rates that are applied to point-to-point transmission service customers’ reserved capacity. Network integration transmission service customers are assessed the same monthly rate applied to point-to-point transmission service customers times their monthly network load. The Schedule 1 formula will be updated annually and trued up in the same manner as the transmission formula.¹⁵

10. Cleco includes a revision to Attachment M, Use of Distribution Facilities, to its OATT to provide for a distribution service charge, which will be assessed to wholesale customers that use Cleco’s distribution facilities for delivery to their loads. Cleco explains that the distribution service charge was calculated by adding the net plant balances (excluding secondary distribution facilities) in FERC Account Nos. 360, 361,

¹¹ *Id.* The Commission notes that Cleco submitted 2011 FERC Form No. 1 data to the Commission on May 15, 2012, in the instant dockets.

¹² *Id.* at 9. Moul Test., Ex. CLE-7 at 12.

¹³ Account No. 561 includes various transmission system expenses including service and scheduling, dispatching services, and reliability standards development.

¹⁴ Cleco Transmittals at 9.

¹⁵ *Id.* See also Heintz Test., Ex. CLE-3 at 12, 24-25.

362, 364, and 365, and applying the relevant fixed-charge rate from the formula rate to produce an annual distribution revenue requirement, which was then converted to a monthly charge.¹⁶ The monthly distribution charges will be adjusted to the point of receipt and applied to loads that are coincident with Cleco's coincident peaks, rather than using the non-coincident peak and a ratchet, Cleco's current procedure.¹⁷

11. Finally, Cleco proposes to reduce its existing loss recovery factor under Schedule 9, Loss Compensation Service, of the OATT from 1.95 percent to 1.68 percent, and to implement a 2.9 percent factor for deliveries at voltages from 34,500 volts to below 69,000 volts, and 3.88 percent for deliveries at voltages from 13,800 to below 34,500 volts.¹⁸

III. Notice of Filings and Responsive Pleadings

12. Notice of Cleco's filing in Docket No. ER12-1378-000 was published in the *Federal Register*, 77 Fed. Reg. 20,816 (2012), with interventions and protests due on or before April 18, 2012. Notice of Cleco's filing in Docket No. ER12-1379-000 was published in the *Federal Register*, 77 Fed. Reg. 20,815 (2012) with interventions and protests due on or before April 19, 2012. Entergy Services, Inc. filed a motion to intervene in Docket No. ER12-1378. Lafayette and Louisiana Energy (together, Louisiana Municipals) and Alexandria filed motions to intervene and protest in Docket Nos. ER12-1378-000 and ER12-1379-000. On May 7, 2012, NRG Companies filed a late motion to intervene. On May 3, 2012, Cleco filed a motion for leave to answer and answer. On May 15, 2012, Alexandria filed a motion for leave to answer and answer.

A. Louisiana Municipals and Alexandria's Protests

13. Louisiana Municipals and Alexandria argue that the Commission should reject Cleco's requested 10.6 percent ROE because it is unsupported by a proper DCF analysis. Both argue that Cleco's filing does not follow the Commission's methodology in material aspects and does not support an ROE of 10.6 percent.¹⁹ For example, Louisiana

¹⁶ Cleco Transmittals at 10. Cleco also cites to FERC Account No. 36001, which is apparently a typographical error.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Louisiana Municipals Protest at 5-9; Alexandria Protest at 4-8.

Municipals state that the testimony submitted by Cleco's witness, Paul R. Moul,²⁰ is based on utilities within the same geographic area and ignores the screens the Commission has put in place to ensure that companies of comparable risk are used in a proxy group.²¹ In addition, Mr. Moul allowed Entergy to be included in the proxy group despite Entergy's announced intention to divest its transmission system. Alexandria makes similar arguments.²² Louisiana Municipals and Alexandria both submit a DCF analysis that they claim follows Commission precedent and that produces an ROE for Cleco of 8.55 percent.²³ As a result, they assert that Cleco's request for a 10.6 percent ROE is excessive, unjust, and unreasonable.

14. Louisiana Municipals and Alexandria fault Mr. Moul's use of a floor of 8 percent for the lowest cost of equity, arguing that such a floor is arbitrary. They argue that Commission practice requires identifying the average bond yield for the relevant Moody's public utility bond index and adding approximately 100 basis points to establish a floor. Louisiana Municipals state that the floor that would have resulted from using the Commission's prescribed method would be 6.08 percent. Alexandria states that its calculations lead to a proper floor of 6.21 percent.²⁴

15. Louisiana Municipals and Alexandria criticize the data used in Cleco's filing itself and in the accompanying DCF analysis. They argue that the data are "stale" because Cleco's filing includes 2010 FERC Form 1 data while Mr. Moul's DCF analysis was based on stock price data from July 2011 through December 2011.²⁵

²⁰ Moul Test., Ex. CLE-7.

²¹ Louisiana Municipals state that Cleco's Standard and Poor's credit rating is a BBB and its Moody's credit rating is a Baa2. Louisiana Municipals allege that Mr. Moul should have used companies that have credit ratings comparable to Cleco's. They argue that instead, Mr. Moul used two companies, one with a credit rating of A- and A2 and another with a rating of A and A3. Therefore, Louisiana Municipals argue that Mr. Moul did not use companies with comparable risk. Louisiana Municipals Protest at 7-8. *See also* Ex. CLE-9.

²² Louisiana Municipals Protest at 7; Alexandria Protest at 6-8.

²³ Ex. MI-1 and MI-2; Louisiana Municipals Protest at 9-11; Alexandria Protest at 9-12.

²⁴ Louisiana Municipals Protest at 8-9; Alexandria Protest at 7-8

²⁵ Louisiana Municipals Protest at 17; Alexandria Protest at 8.

16. Alexandria argues that Cleco's proposed formula rate is unjust and unreasonable in several respects. Alexandria faults Cleco's proposed 13-month average rate base to be used in the true-up calculations.²⁶ According to Alexandria, the true-up is based on a hybrid combination of a non-13-month average plant-in-service balances and year-end accumulated depreciation balances. Alexandria argues that Cleco's proposed true-up rate base does not conform to Commission policy requiring an average of 13 monthly balances for rate base balances. Alexandria argues that Cleco's proposed true-up rate base is not necessarily indicative of the plant dedicated to service throughout the year and adds that the proposal should be modified to require 13-month balances to conform to Commission policy.

17. Alexandria asserts that Cleco's proposed true-up procedure is flawed because it fails to take into account changes between the transmission loads used to establish the initial rates and the loads to which rates are actually applied during a calendar year. The failure to consider changes in transmission loads may result in Cleco's over or under collecting transmission revenues through the true-up.²⁷

18. Alexandria argues that Cleco's formula has several other problems:²⁸ (1) the formula includes an improper treatment of gains and losses on reacquired debt; (2) Cleco appears to have improperly allocated *ad valorem* property tax to transmission with no such taxes allocated to production in the formula; (3) the formula includes an unjust and unreasonable subsidization of Cleco's distribution customers because the rate fails to provide a credit to transmission customers for distribution under-build facilities attached to transmission facilities; (4) Cleco has not demonstrated that the level of revenue credits produced by the formula is reasonable and that customers will need the hearing and discovery processes to determine if any other revenue credits should be included to reduce Cleco's transmission revenue requirement; (5) the formula fails to provide a rate base credit, and such funds collected through rates reflect customer-contributed capital and should be treated as rate base credits so that Cleco will not earn a return on those funds; (6) Cleco's inclusion of the year-end balance of prepayments as a component of the formula rate has not been shown to be just and reasonable because using the year-end balance for prepayments can overstate the average balance during the year and artificially raise the rate produced by the formula; (7) Cleco has not demonstrated that its recovery of post-retirement benefits other than pensions (PBOP) expenses is just and reasonable because Cleco uses a "pay-as-you-go" method to recover PBOP expenses and Alexandria

²⁶ Alexandria Protest at 13-14.

²⁷ *Id.* at 14-15.

²⁸ *Id.* at 15-20.

states that there is a discrepancy between the test-year amount and the “pay-as-you go” amount recorded in the filing, thus requiring additional discovery; and (8) additional discovery is required to determine whether Cleco has properly calculated the monthly transmission rate load divisor to reflect all of the firm transmission loads on the Cleco transmission system.

19. Louisiana Municipals and Alexandria state that Cleco’s formula rate implementation protocols require modification because they violate Commission precedent.²⁹ Louisiana Municipals state that Cleco’s provision in the formula rate implementation protocols allowing it to make single issue filings to change the ROE and amortization and depreciation rates included in the formula rate is unjust and unreasonable because long-standing Commission precedent disfavors single-issue rate filings.³⁰ Rather, an applicant seeking a change in rates must demonstrate that the entire rate is just and reasonable and not just the portion that is being changed. If Cleco seeks to change its ROE or amortization and depreciation rates, it should support each component of its cost of service.

20. Both Louisiana Municipals and Alexandria argue that Cleco improperly seeks to limit the opportunity for interveners to challenge the inputs to or implementation of the annual formula rate. Louisiana Municipals point to language limiting challenges to a 195-day period from the issuance of an annual update. However, Commission precedent allows customers the right to challenge the inputs or implementation of the formula rate at any time they discover an error in data or computation.³¹ Louisiana Municipals point to another seemingly contradictory provision in the rate that recites parties’ right to challenge inputs or request changes under FPA section 206.³² Louisiana Municipals argue that the provisions as written are unjust and unreasonable. Alexandria proposes several changes to definitions and provisions in the protocols that it argues should replace

²⁹ Louisiana Municipals Protest at 11-16; Alexandria Protest at 21-24.

³⁰ Louisiana Municipals Protest at 13, citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, P 23 (2006), *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

³¹ Louisiana Municipals Protest at 14-15.

³² *Id.* at 15-16.

language advanced by Cleco that is intended to restrict the rights and protections afforded to parties and limit the scope of Commission scrutiny.³³

21. Louisiana Municipals state that Cleco's tariff is incomplete. They state that sections of the protocols reference sections in the tariff that do not exist. Louisiana Municipals argue that such incompleteness precludes full review of the tariff.³⁴

22. Louisiana Municipals request that the Commission set Cleco's rates for hearing in order to allow for discovery and thorough review. Louisiana Municipals state that Cleco's formula rate is not just and reasonable and Cleco's rate filings should be suspended and a refund effective date should be established.³⁵ Alexandria argues that the Commission should suspend the rate for five months and set it for hearing.³⁶

B. Cleco's Answer

23. In response, Cleco argues that the protesters' challenges to its DCF analysis are unwarranted. Cleco states that Mr. Moul's analysis resulting in the 10.6 percent ROE is appropriate because it used the Commission's DCF model and applied a regional proxy group consisting of electric utilities that are part of the Southwest Power Pool and the Gulf Coast region. Cleco states that its analysis follows the Commission's standard precedent³⁷ of using regional proxy groups in calculating ROE.³⁸

24. Cleco states that there is no need to suspend its proposed rates for five months, as Alexandria requests. Cleco notes that on April 25, 2012, Louisiana Municipals and Alexandria filed a complaint in Docket No. EL12-61-000 with the Commission. In the complaint, Louisiana Municipals and Alexandria request a refund effective date of April 25, 2012. Cleco argues that it would be inappropriate to suspend its proposed rates for five months while allowing an April 25, 2012 refund effective date for the Complaint. Cleco states that neither Alexandria nor Louisiana Municipals' protests provide any information regarding Cleco's rates, and they provide no calculations to support the

³³ Alexandria Protest at 21-24.

³⁴ Louisiana Municipals Protest at 16.

³⁵ *Id.* at 18.

³⁶ Alexandria Protest at 24-26.

³⁷ Cleco Answer at 5.

³⁸ *Id.*

claims. Cleco argues that both the protests and the complaint are based on adopting a different ROE than Cleco used while still using 2010 FERC Form No. 1 data in the formula rate. Cleco argues that a mere comparison of ROEs to be used in calculating charges provides no basis for a five-month suspension.³⁹

25. Cleco states that it has properly used end-of-year account balances per its FERC Form No. 1.⁴⁰ Cleco states that by using the actual year-end balances reported on the FERC Form No. 1, the true-up process is easier and much more transparent to customers⁴¹ and has been used by the Commission before. Cleco states that the formula actually supplements the FERC Form No. 1 data for the preceding calendar year regarding transmission plant-in-service with monthly weighted averages for projected capital additions. Cleco argues that its method will help reduce the lag between incurrence and recovery of cost of service and will protect customers from overcharges by the true-up mechanism.

26. In response to Alexandria's claim that Cleco's formula rate does not provide a rate base credit for customer contributed capital reserves. Cleco states that the credit for such reserves is \$274,749.⁴²

27. Cleco agrees with Alexandria that some of Cleco's property taxes may have been allocated improperly. Cleco states that it will correct the issue related to the property taxes in question and allocate an appropriate share to the production function.⁴³

C. Alexandria's Answer

28. Alexandria states that Cleco has misstated the relationship between the proceedings in Docket Nos. ER12-1378-000 and ER12-1379-000 and the complaint proceeding in Docket No. EL12-61-000. In response to Cleco's argument that a five-

³⁹ *Id.* at 7.

⁴⁰ Cleco states that it will answer the issues raised in the protests in greater detail in its response to the April 25 Complaint, which is based entirely upon the protests.

⁴¹ Cleco Answer at 9, citing *ISO New England, Inc.*, 113 FERC ¶ 61,243, at P 30 (2005) (finding that "the annual true-up mechanism sufficiently protects customers from possible unjust and unreasonable charges or overcharges.") and *American Transmission Co. LLC*, 93 FERC ¶ 61,267, at 61,862 (2000).

⁴² *See* Ex. CLE-5, Attachment H-A.

⁴³ Cleco Answer at 10, n.29.

month suspension of its proposed rate increase is inappropriate because of the pending complaint, Alexandria argues that it is consistent with Commission precedent to grant refund protection under FPA section 206 while simultaneously suspending a proposed formula transmission rate increase for five months under the Commission's *West Texas* policy.⁴⁴ Alexandria cites *Xcel Energy* in which the Commission suspended the formula rate increase while also instituting an investigation under FPA section 206.⁴⁵

29. Alexandria responds to Cleco's assertion that the complaint and protests do not provide any information relating to Cleco's existing rates and do not disclose the calculations upon which they are based. Alexandria asserts that it used Cleco's 2010 FERC Form No. 1 data, the same data that Cleco used to support its proposed rates. Alexandria argues that when it adjusted its calculations to use the 8.55 percent ROE indicated by its DCF analysis, it showed that Cleco's rate increase was excessive and that Cleco's current rates were overstated.⁴⁶

30. Alexandria also acknowledges Cleco's admission in its answer that Cleco erred in failing to allocate property taxes to the production function. Alexandria includes a workpaper that it states demonstrates the approximately \$2.4 million over allocation of property taxes to transmission.⁴⁷ Alexandria argues that Cleco fails to quantify the error in its allocation of property taxes in order to withhold information from Alexandria and the Commission and thus avoid a five-month suspension of its rate increase.⁴⁸

IV. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant NRG Companies' late-filed motion to intervene given its interest

⁴⁴ Alexandria Answer at 4.

⁴⁵ *Id.*, citing *Xcel Energy Services, Inc.*, 109 FERC ¶ 61,284 (2004).

⁴⁶ *Id.* at 5-6.

⁴⁷ *Id.* at Attachment 1.

⁴⁸ *Id.* at 6-7.

in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Alexandria and Cleco's answers because they have provided information that assisted us in our decision-making process.

B. Suspension, Hearing, and Settlement Judge Procedures

33. Cleco's proposal raises genuine issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

34. Our preliminary analysis indicates that Cleco's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept them for filing, suspend their effectiveness, and set them for hearing and settlement judge procedures, as discussed below.⁴⁹ In *West Texas Utilities Co.*,⁵⁰ the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension.⁵¹ In the instant proceeding, our preliminary analysis indicates that the proposed rates for scheduling, system control, dispatch service, and the loss factor may be unjust and unreasonable, but may not be substantially

⁴⁹ The Commission finds that Cleco did not submit the correct materials with its filings. Specifically, in Docket No. ER12-1378-000, the majority of the tariff records were submitted incorrectly in eTariff. The redline/strike-out versions of certain of the tariff records were submitted as the rich text format (RTF) version. Cleco must submit a compliance filing within 15 days of the date of this order to replace the incorrect records with a clean RTF version of the records for eTariff.⁴⁹ Further, in Docket No. ER12-1379-000, all the tariff records were submitted incorrectly in eTariff. The redline/strike-out versions were submitted as the RTF version. Cleco must submit a compliance filing within 15 days of the date of this order to replace the incorrect records with a clean RTF version of the records for eTariff.

⁵⁰ *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (finding that when more than 10 percent of a utility's proposed rate increase is found to be excessive, the Commission will suspend the rates for a five-month period).

⁵¹ See e.g., *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,236 (2012).

excessive, as defined in *West Texas*. Therefore, we will accept the rates for scheduling, system control, dispatch service, and the loss factor, suspend them for a nominal period, subject to refund, and set them for hearing and settlement judge procedures. With regard to Cleco's other proposed rates, our preliminary analysis indicates that those rates may be substantially excessive, as defined in *West Texas*, and therefore we will accept those rates, suspend them for the maximum five-month statutory period, subject to refund, and set them for hearing and settlement judge procedures.⁵²

35. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁵⁴

36. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

37. Cleco requests that the Commission consolidate Docket Nos. ER12-1378-000 and ER12-1379-000.⁵⁵ The Commission's practice is to consolidate proceedings where there

⁵² The Commission's decision to suspend the effective date for Cleco's rates for five months will not affect the outcome of the complaint proceeding in EL12-61-000, for which the Commission will issue a separate order. The suspension period is to protect customers from paying rate increases that may be unjust and unreasonable regardless of whether the rate would be subject to refund. *West Texas Utilities Co.*, 18 FERC at 61,375.

⁵³ 18 C.F.R. § 385.603 (2011).

⁵⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

⁵⁵ Cleco explains that consolidating its filings is necessary because the Commission's eTariff filing system permits the submission of no more than one tariff at a time, and therefore Cleco had to file its tariff in two parts. Cleco Transmittals at 2.

are common issues of law and fact. In this case, there are common factual issues, and thus we will consolidate ER12-1378-000 and ER12-1379-000 for purposes of settlement, hearing, and decision.

The Commission orders:

(A) Cleco's filings are hereby accepted and the rates for scheduling, system control, and dispatch service, and the loss factors are suspended for a nominal period, to become effective June 1, 2012; the rest of the proposed rates are suspended for the maximum five-month statutory period to become effective November 1, 2012, subject to refund, and all are hereby set for hearing and settlement judge procedures.

(B) Cleco is hereby directed to make a compliance filing within 15 days of the date of this order, to replace the incorrect records in Docket Nos. ER12-1378-000 and ER12-1379-000 with a clean RTF version of the records for eTariff.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Cleco's filings. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) – (F) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five days of the date of this order.

(E) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) Docket Nos. ER12-1378-000 and ER12-1379-000 are hereby consolidated for purposes of settlement, hearing, and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Cleco Power, LLC
Docket No. ER12-1378-000

Tariff Records Accepted, Effective November 1, 2012, Subject to Refund

Cleco Power LLC, FERC FPA Electric Tariff, Cleco Power LLC OATT:

[Attachment H-A, FORMULA RATE, 0.0.0](#)

[Attachment H-B, FORMULA RATE IMPLEMENTATION PROTOCOLS, 0.0.0](#)

Tariff Records Accepted, Effective June 1, 2012, Subject to Refund, and Further
Modification

Schedule 1, SCHEDULING, SYSTEM CONTROL AND DISPATCH SERVICE, 1.0.0

Schedule 9, LOSS COMPENSATION SERVICE, 1.0.0

Tariff Records Accepted, Effective November 1, 2012, Subject to Refund, and Further
Modification

Cleco Power LLC, FERC FPA Electric Tariff, Cleco Power LLC OATT:

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34., RATES AND CHARGES, 1.0.0

Schedule 7, LONG-TERM FIRM AND SHORT-TERM FIRM POINT-TO-POINT, 1.0.0

Schedule 8, NON-FIRM POINT-TO-POINT TRANSMISSION SERVICE, 1.0.0

Attachment F, SERVICE AGREEMENT FOR NETWORK INTEGRATION
TRANSMISSION SERVICE, 1.0.0

Attachment H, ANNUAL TRANSMISSION REVENUE REQUIREMENT FOR
NETWORK INTEGRATION, 1.0.0

Attachment M, USE OF DISTRIBUTION FACILITIES, 1.0.0

Appendix B

Cleco Power, LLC

Tariff Records Accepted, Effective November 1, 2012, Subject to Refund, and Further
Modification

Docket No. ER12-1379-000

Cleco Power LLC, FERC FPA Electric Tariff, Cleco Power LLC Rate Schedules and Service Agreements:

RS 10, RS 10-CLECO POWER/LAGEN ESIA, 3.0.0

RS 11, RS 11-CLECO POWER/LEPA ESIA, 1.0.0

RS 12, RS 12-CLECO POWER/LUS ESIA, 1.0.0

RS 17, RS 17-CLECO POWER/SWEPCO ESIA, 1.0.0

SA 90, SA 90-CLECO POWER/LAGEN NITSA, 1.0.0

SA 93, SA 93-CLECO POWER/ENTERGY NITSA, 1.0.0

SA 110, SA 110-CLECO POWER/CLECO POWER WES NITSA, 1.0.0

SA 113, SA 113-CLECO POWER/ALEX NITSA, 1.0.0

SA 115, SA 115-CLECO POWER/ENTERGY NITSA, 1.0.0

SA 119, SA 119-CLECO POWER/LEPA NITSA, 1.0.0