

127 FERC ¶ 61,279
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. OA08-36-003

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued June 18, 2009)

1. On December 17, 2008, Cleco Power LLC (Cleco) submitted a compliance filing pursuant to the Commission's September 18, 2008 order issued in this proceeding.¹ Cleco revised its Attachment K to provide more detail to certain of the nine principles for transmission planning, including: coordination, openness, transparency, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation. We will accept Cleco's compliance filing, as modified below, as in compliance with the September 18 Order, subject to a further compliance filing.

I. Background

2. In Order No. 890,² the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed each transmission provider to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to its OATT (Attachment K).

¹ *Cleco Power LLC*, 124 FERC ¶ 61,264 (2008) (September 18 Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *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), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

3. The Commission in Order No. 890 directed each transmission provider to address in its Attachment K planning process the following nine planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;³ (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,⁴ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. Cleco's Order No. 890 compliance filing included proposed tariff provisions to establish a transmission planning process that satisfies the nine planning principles listed above. In the September 18 Order, the Commission accepted Cleco's proposed tariff provisions, subject to modification. Cleco has submitted a compliance filing addressing these modifications as required by the September 18 Order.

II. Notice of Filing and Responsive Pleadings

5. Notice of Cleco's compliance filing was published in the *Federal Register*, 73 Fed. Reg. 79,461 (2008), with interventions and protests due on or before January 7, 2009. The Lafayette Utilities System and the Louisiana Energy and Power Authority (Lafayette/LEPA) filed a protest. Cleco filed an answer.

III. Discussion

A. Procedural Matters

6. 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

³ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

decisional authority. We will accept Cleco's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

7. We will accept Cleco's compliance filing, as modified, subject to a further compliance filing. Although we accept Cleco's compliance filing below, subject to a further compliance filing to address certain discrete issues, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. As part of the Commission's ongoing evaluation of the implementation of the planning processes, the Commission intends to convene regional technical conferences later this year to determine if further refinements to these processes are necessary. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement. The conferences will examine whether existing transmission planning processes adequately consider needs and solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates. The Commission will also explore whether existing processes are sufficient to meet emerging challenges to the transmission system, such as the development of interregional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.

1. Coordination

8. In the September 18 Order, the Commission found that Cleco did not provide sufficient detail regarding its annual planning summit. The Commission stated that it is not clear, for example, whether stakeholders will receive the information, models, and plans that will be discussed sufficiently in advance of the summit to allow for meaningful review beforehand. The Commission also stated that it was not clear from Cleco's Attachment K whether stakeholders will be able to provide input regarding Cleco's planning criteria, models, studies, and transmission plans during the early stages of development through, for example, a password-protected internet site (Webroom) or stakeholder committees. The Commission directed Cleco to file a further compliance filing providing more detail regarding how its planning process will be coordinated with interested parties, including the specific opportunities for stakeholder input during the development of Cleco's planning criteria, models, studies, and transmission plans.

9. Additionally, the Commission found that Cleco had not provided sufficient information regarding its proposed use of a Webroom to facilitate stakeholder input, i.e., Cleco did not explain whether stakeholders may communicate among themselves using

the Webroom or whether posted comments and/or questions can be viewed by others. The Commission required Cleco to provide more detail regarding whether stakeholders may use the Webroom to coordinate input regarding Cleco's planning activities. The Commission further found that Cleco did not identify the matters on which the stakeholder committee would vote. Also, the Commission found that Cleco had unreasonably limited the ability of stakeholders to participate as voting members in the stakeholder committee. The Commission stated that although Cleco did not limit the type of entities that may participate generally, only certain specified groups may become voting members of the committee, which appears to exclude other classes of stakeholders, such as developers of merchant transmission or alternative resources, from the selection of a voting representative. Additionally, the September 18 Order found that although section 12.3 of Cleco's Attachment K provides that the committee shall select the high priority economic planning studies to be performed, Cleco did not explain whether that, or any other decisions, are subject to voting and, if so, whether voting would be by majority, super-majority, or some other mechanism. The September 18 Order required Cleco to allow all stakeholders to participate in the selection of a voting representative and to state more clearly how and when voting would take place.⁵

a. Compliance Filing

10. Cleco states that it revised section 5.1 (Transmission Planning Summit) to provide detail concerning the structure of its Transmission Planning Summit, which will take place annually and will provide stakeholders with the opportunity to provide feedback and input into Cleco's planning process. Cleco revised section 5.1.2 to provide that "[s]takeholder input and feedback is not limited to the Transmission Planning Summit, but may occur at any time during the Transmission Planning Process." Additionally, Cleco revised section 5.1.3 to provide that "Transmission Planning Summit information, including date, time, agenda and location or means to participate, will be posted within the public portion of Transmission Provider's [Open Access Same-Time Information System] site as well as posted within the password-protected internet site (Webroom) at least 30 days prior to the Transmission Planning Summit." Section 5.1.2 was also revised to provide that the Transmission Planning Summit would allow stakeholders to provide feedback and input in the transmission planning process including, but not limited to, model development, transmission plans for future reliability projects of the transmission provider, other planned transmission expansion projects, economic planning studies, and planning criteria, as well as to solicit membership for stakeholder committees.

11. Cleco revised section 5.2.1 to provide that the Webroom will maintain appropriate access to confidential and non-confidential information for all registered stakeholders. Section 5.2.1 provides that each registered stakeholder will have an account created to access information permissible under all applicable Commission regulations and

⁵ September 18 Order, 124 FERC ¶ 61,264 at P 17-19.

executed confidentiality agreements. It also provides that a non-confidential area of the Webroom will be accessible to all registered stakeholders and will contain non-confidential information. Cleco states that it has also revised section 5.2.1 to provide further detail concerning its Webroom to make clear that stakeholders may use the Webroom to provide input into the development of Cleco's planning criteria, models, studies, treatment of demand side management or other alternative resources, and transmission plans. Cleco states that section 5.2.1 also provides for registered stakeholders to store or post information and messages that are available to coordinate input regarding Cleco's planning activities.

12. Cleco also revised section 5.6 to provide a more detailed description of the stakeholder committee process. Section 5.6.1 provides for the formation of subcommittees to address selected topics as deemed appropriate. Section 5.6.2 permits all stakeholders, rather than only ones from certain groups, to join a stakeholder committee. Section 5.6.3 provides that decisions by the committee shall be made by simple majority vote of the entire membership committee. Section 5.6.6 provides that all committee meetings shall be open, where possible, to all stakeholders. Sections 5.7 and 5.8 were revised to reflect corresponding provisions.

b. Comments

13. Lafayette/LEPA argue that Cleco's revisions fail to clarify whether stakeholders will receive necessary information sufficiently in advance of the transmission planning summit to be able to provide meaningful input. Lafayette/LEPA state that Cleco should be directed to further revise its Attachment K to state that such information will be posted (and stakeholders advised of the posting) no less than 30 days before the Transmission Planning Summit.

14. In addition, with regard to the Webroom developed by Cleco, Lafayette/LEPA state that Cleco asserts in its compliance filing that it revised section 5.2.1 to make clear that stakeholders may use the Webroom to provide input into the development of Cleco's planning criteria, models, studies, treatment of demand side management or other alternative resources, and transmission plans. However, Lafayette/LEPA state that section 5.2.1, as revised, does not specify that stakeholder input will be received and considered during the development of the models, criteria and plans. Rather, Lafayette/LEPA argue that section 5.2.1 only states that stakeholders will be allowed to provide input into the transmission planning process by posting comments in the Webroom "at any time and from time to time." Lafayette/LEPA state that Cleco fails to clarify whether stakeholder input will be received and considered during the "early stages" of development, as required by the September 18 Order. Therefore, Lafayette/LEPA state that Cleco should be directed to submit a further revision of Attachment K that specifies that stakeholder input will be received and considered at the early stages of development of Cleco's models, studies, planning criteria and transmission plans.

15. With regard to stakeholder committees, Lafayette/LEPA state that Cleco has revised sections 5.6, 5.7 and 5.8 to provide a more detailed description of the stakeholder committee process. However, Lafayette/LEPA argue that Cleco fails to address the concern raised in the September 18 Order vis-à-vis the provision of voting rights only to specified categories of stakeholders and the resulting disenfranchisement of other stakeholder groups. Lafayette/LEPA cite as an example that merchant transmission entities continue under Cleco's proposal to be barred from selecting a voting representative.

16. Second, Lafayette/LEPA state that Cleco proposed in a new section 5.6.3 that any decision by the stakeholder committee will be by simple majority vote of the entire membership of the committee, whether or not present and voting with respect to any particular decision of the stakeholder committee. Lafayette/LEPA state that it is unclear whether, in referring to the entire membership of the committee, that Cleco intends to refer to a majority of the seven voting representatives (i.e., 4 out of 7) or to a numerical majority of registered committee members. Lafayette/LEPA argue that, either way, it is inappropriate to include absent, non-voting members in determining whether a majority vote has been obtained. Lafayette/LEPA argue that this provision would allow parties to affect voting outcomes simply by not showing up for meetings, which is manifestly improper. Lafayette/LEPA state that majority vote determinations should be based on the voting representatives actually present and casting votes in connection with any committee decision.

17. Third, Lafayette/LEPA state that Cleco added a new section 5.6.6 which provides that all committee meetings shall be open, where possible, to all stakeholders. Lafayette/LEPA state that Cleco leaves the door open for scenarios in which some number of stakeholders might be excluded from stakeholder committee meetings. Lafayette/LEPA state that the Commission should direct Cleco to strike "where possible" or to explicitly identify the circumstances in which it would be deemed not possible to allow all stakeholders to attend a committee meeting.

c. Cleco's Answer

18. Cleco states that its Attachment K already satisfies the Commission's concern regarding the ability of stakeholders to provide meaningful input at the Transmission Planning Summit. Cleco states that section 5.2.1 provides for a process by which, in advance of the Transmission Planning Summit, Cleco will post information in the Webroom, including, but not limited to, "transmission models, model input data, planning criteria, transmission studies, meeting dates, times, locations and agenda which may be retrieved by the user."⁶ Cleco states that stakeholders will be notified by an email-based exploder of any changes or additions to the information contained in the

⁶ Cleco's Answer at 5 (quoting section 5.2.1).

Webroom and will have 15 days to provide input on material posted by Cleco and thereafter Cleco will use reasonable efforts to respond to those inputs within 15 days. Cleco also states that the Transmission Planning Summit will then discuss the information posted by Cleco and the input provided by stakeholders. Therefore, Cleco asserts that the process contained in section 5.2.1 already provides for stakeholders to receive the information necessary for them to provide input at least 30 days in advance of the Transmission Planning Summit and no further change is needed.

19. Cleco also states that section 5.2.1 provides for stakeholders to post comments or questions in the Webroom “at any time and from time to time,” and that stakeholder opportunity for input “is not limited to the Transmission Planning Summit, but may occur at any time during the Transmission Planning Process.” Cleco states that “any time” necessarily includes the “early stages of development,” and therefore, stakeholders will have ample opportunity to provide input at all stages of the planning process, as required by the Commission.

20. Cleco further states that it has satisfied the Commission’s concern regarding the exclusion of developers of merchant transmission or alternative resources by adding a separate group for “demand side management or other alternative resource developer.”⁷ Cleco states that stakeholders need to be classified into interest groups if the process is to be wieldy, and the groups listed in section 5.6.2 do not exclude any entity currently known to Cleco. Cleco states that nothing in section 5.6.2 excludes any stakeholder from being a member of a group that will have voting rights in the stakeholder committee process.

21. Cleco states that the purpose of the language in section 5.6.3 is to ensure that a majority of the full membership of the stakeholder committee, e.g., 4 out of 7 members, affirmatively support each decision made by the stakeholder committee. Cleco states that Lafayette/LEPA do not explain why a stakeholder committee decision should be made when it is affirmatively supported by only a minority of the stakeholder committee’s full membership, as would be the case under its proposal. Cleco states that section 5.6.3 also provides that a proposal that does not obtain a majority vote may nevertheless be forwarded to Cleco for appropriate consideration, thereby providing an additional opportunity for Cleco to consider a proposal that is voted down.

22. Cleco further states that the purpose of the stakeholder committee process is to provide for stakeholders to have a voice on specified matters through voting representatives. Cleco states that one obvious circumstance where not all stakeholders should be permitted to attend a stakeholder committee meeting (or any other meeting in the transmission planning process) is where confidential information submitted by Cleco or by a third party is to be discussed, but where not all participants have executed

⁷ Cleco’s Answer at 6.

appropriate confidentiality agreements. Cleco states that, as Lafayette/LEPA have insisted elsewhere, and as discussed below, confidential information should be subject to appropriate limits on disclosure to anyone who does not agree to maintain confidentiality and to other appropriate protections for commercially sensitive information. Also, Cleco states that there could easily be other circumstances, not all of which can be identified at the present time, when it may be necessary to limit attendance at a stakeholder committee meeting to those voting representatives, rather than having all stakeholders present. Cleco states that its proposed language does not disenfranchise any stakeholder and should be accepted.

d. Commission Determination

23. We find that Cleco's compliance filing only partially complies with the requirements of the September 18 Order regarding coordination. We agree with Lafayette/LEPA's arguments that Cleco failed to clarify that stakeholders will receive necessary information sufficiently in advance of the Transmission Planning Summit to be able to provide meaningful input. Contrary to Cleco's answer, in section 5.1.3, Cleco has only committed to posting on its OASIS and in the Webroom the date, time, agenda and location or means to participate at least 30 days prior to the Transmission Planning Summit. Then, section 5.2.1 provides stakeholders 15 days to provide input on the transmission provider's postings under section 5.1.3 and gives Cleco 15 business days to respond to these stakeholder requests, questions or inputs. As Lafayette/LEPA argue, this posting of largely administrative information does not address the Commission's concern that Cleco post the information, models, and plans that will be discussed sufficiently in advance of the Transmission Planning Summit. We note that the first paragraph of section 5.2.1 states that Cleco will post in the Webroom information such as transmission models, model input data, planning criteria, and transmission studies, but does not specify when this information will be posted. In its answer, it appears that Cleco reads section 5.2.1 to grant stakeholders 30 days advance review before the Transmission Planning Summit, which would permit meaningful review. Therefore, we will require Cleco to make a compliance filing, within 60 days of the date of this order, making it explicit in section 5.2.1 that this information will be posted at least 30 days in advance of the Transmission Planning Summit.

24. We find that Cleco has addressed the Commission's concerns regarding the ability of stakeholders to provide input regarding Cleco's planning criteria, models, studies, and transmission plans during the early stages of development by revising section 5.6 concerning stakeholder committees along with other revisions. Specifically, section 5.6.1 has been revised to provide stakeholders collectively with the ability to provide input and feedback concerning the transmission planning process, including but not limited to planning criteria, models, studies, treatment of demand resources and transmission plans. Cleco also added a provision to section 5.6.1 whereby a stakeholder committee will form subcommittees to address a selected topic as deemed appropriate. Additionally, Cleco's section 5.6.2 has been revised to provide that all stakeholders shall have a fair

opportunity to join the committee, and attendance at committee meetings will not be limited to voting members. Section 5.6.2 has also been revised so that it no longer excludes any class of stakeholder because it provides that stakeholders will be classified into one of several groups, including demand or “other alternative resource developer.” We therefore find that there is nothing in section 5.6.2 that bars merchant transmission entities from selecting a voting representative. Additionally, section 5.6.2 provides that no stakeholder will either directly or through any energy affiliate have more than one representative on the stakeholder committee. These revisions, along with the ability of stakeholders to provide input at the annual Transmission Planning Summit as revised in section 5.1 and the ability to coordinate and transfer input through the Webroom as revised in section 5.2.1, allow stakeholders the opportunity to participate in the early stages of development of the planning criteria, models, and transmission plans.

25. We find that Cleco’s compliance filing partially complies with the requirement of the September 18 Order to explain more clearly in section 5.6.3 how voting will take place. Section 5.6.3 states that any decision made by the stakeholder committee will be by a simple majority vote of the entire membership of the committee. However, Cleco has not specified what matters would be subject to a vote by the members of the stakeholder committee. This section also provides that if a proposal does not have a majority of the votes, the committee can nevertheless forward the proposal to Cleco for appropriate consideration. Cleco does not make clear, though, how a proposal would be forwarded to Cleco if a majority of the votes is not obtained, and who would make that decision. In any event, whether stakeholder input into the transmission planning process is forwarded to Cleco for its consideration should not be subject to a vote. To the extent that Cleco chooses not to attend a stakeholder committee meeting,⁸ any and all input provided by stakeholders at the meetings should be forwarded to Cleco for its consideration in the transmission planning process. Therefore, we will require Cleco to make a compliance filing, within 60 days of the date of this order, explaining in section 5.6.3 what matters would be subject to vote of the stakeholder committee; how a proposal would be forwarded to the transmission provider if a majority vote is not obtained; and how Cleco will ensure it receives all stakeholder input provided at stakeholder meetings for it to consider in the transmission planning process.

26. We agree with Lafayette/LEPA that Cleco should explicitly identify circumstances under which it would not be possible for all stakeholders to be permitted to attend a committee meeting. We note that Cleco argues that section 5.6.6, as written, does not disenfranchise any stakeholder, but rather recognizes that there may be situations where access to meetings may be limited due to confidential or Critical Energy Infrastructure Information (CEII) concerns. However, the language of section 5.6.6 is not clear on this point. Cleco must clarify whether confidential or CEII concerns are the only

⁸ Section 5.6.5 states that Cleco may (but is not required to) attend stakeholder meetings.

circumstances where committee meetings will be limited, or identify any other circumstances. Therefore, we will direct Cleco to make a further compliance filing, within 60 days of the date of this order, to provide revised tariff sheets to explicitly state under which circumstances access to meetings would be limited.

2. Openness

27. In the September 18 Order, the Commission found that Cleco's proposed Attachment K partially complied with the openness principle set forth in Order No. 890, and therefore required certain modifications. The Commission found that it was not appropriate to require every participant in the planning process to execute a confidentiality agreement that incorporates Cleco's CEII procedures. The Commission also found that stakeholders should be able to obtain confidential information that is not CEII without being required to satisfy Cleco's CEII procedures. Therefore, the Commission directed Cleco to make a further compliance filing that revises its Attachment K to provide that only confidential information or CEII is subject to confidentiality agreements or password-protected access. Cleco was also directed to provide reasonable access to confidential information used in the planning process that is not CEII.

28. The Commission also expressed concern with Cleco's proposal to require stakeholders desiring to participate in communications through the Webroom to consent to Cleco sharing any information provided with all other stakeholders, including the marketing and energy affiliates of Cleco or a stakeholder. The Commission directed Cleco to make a further compliance filing that allows stakeholders, pursuant to procedures set forth in Cleco's Attachment K, to maintain the confidentiality of sensitive information submitted to Cleco for use in its planning activities.

a. Compliance Filing

29. Cleco states that it has revised section 6.1 of its Attachment K to provide that only those participants in the transmission planning process that wish to have access to confidential information and CEII must sign a confidentiality agreement designed to provide reasonable access to such information. Cleco states that stakeholders must be registered to gain access to Cleco's Webroom, but a stakeholder may request "public" access and thereby gain access to all non-confidential, non-CEII information posted in the Webroom. Cleco also revised section 6.1.4 to provide that after signing the confidentiality agreement a stakeholder will be issued a user name and password with restricted access rights for access to CEII or confidential information. Cleco states that it has also revised section 6.1.1 to make clear that stakeholders must also maintain the confidentiality of sensitive information submitted to Cleco for use in its planning activities.

b. Commission Determination

30. We accept the unopposed revised tariff provision as in compliance with the September 18 Order.

3. Transparency

31. In the September 18 Order, the Commission found that Cleco's proposed Attachment K partially complied with the transparency principle set forth in Order No. 890. The Commission found that each transmission provider's Attachment K planning process must adequately reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans. The Commission noted, however, that Cleco only committed to make available base case power flow models and did not describe how it will disclose the criteria, assumptions, and data that underlie those models. The Commission also found that Cleco failed to provide for the disclosure of information regarding the status of upgrades that are identified in its transmission plan. The Commission required Cleco to revise its Attachment K to make available the basic methodology, model criteria, and processes used to develop transmission plans, and the status of upgrades identified in Cleco's transmission plan. The Commission accepted Cleco's commitment to revise section 7.1 to provide for posting of its base case power flow models. Cleco committed to modify the second sentence in section 7.1 to replace "verify" with "replicate," so that it provides for stakeholders to be permitted to "replicate all studies and analyses including, but limited to, those related to the evaluation of specific projects for inclusion in the Construction Plan."

a. Compliance Filing

32. Cleco states that it has modified section 7.1 of its Attachment K to provide that Cleco will disclose, by posting within the Webroom, in addition to base case models, all other associated information, including the basic methodology, criteria, and processes used to develop transmission plans (including treatment of demand side management or other alternative resources). Cleco states that it has also added section 7.3.2 to clarify that Cleco will update stakeholders on changes in the planning process via the Webroom, including the transmission plan upgrade status changes. Additionally, Cleco modified the second sentence in section 7.1 to read: "This information shall be posted in such detail and format to permit stakeholders to verify and have the ability to replicate all studies and analyses."⁹

⁹ Cleco Power LLC, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 150.

b. Comments

33. Lafayette/LEPA argue that section 7.3.2 sweeps more broadly than the Commission directed. They argue that this is not the case where a broader disclosure commitment is in the stakeholders' interests. Lafayette/LEPA argue that the new provision suggests that Cleco is at liberty to make wholesale changes in the transmission planning process as long as it "informs" stakeholders of those changes through Webroom postings. Lafayette/LEPA argue that this provision will allow Cleco to dismantle the outcomes of the stakeholder planning process at its pleasure. They assert that if stakeholder involvement is to have any value at all Cleco cannot be permitted to vitiate the process by simply adopting, then disclosing, changes in the transmission planning process. Lafayette/LEPA contend that Cleco should be directed to submit a further revision to Attachment K that modifies section 7.3.2 only to the extent ordered in the September 18 Order. They maintain that if the Commission accepts Cleco's proposal to allow unspecified changes in the transmission planning process, the Commission should at least direct Cleco to modify section 7.3.2 to state that any such changes must be reviewed with stakeholders *before* they are implemented, not afterward through a Webroom posting.

c. Cleco's Answer

34. Cleco argues that section 7.3.2 does not suggest that Cleco is at liberty to make wholesale changes in the transmission planning process as long as it informs stakeholders of those changes through Webroom postings. Rather, Cleco states that section 7.3.2 recognizes that during the course of the transmission planning process there will, of necessity, be changes as data and models are refined, as stakeholder input is received, and as other developments occur that may not be foreseeable. Cleco also states that section 7.3.2 is intended to keep stakeholders informed so that they can provide input on these changes. Cleco argues that the suggestion by Lafayette/LEPA that "any such changes must be reviewed with stakeholders before they are implemented" is inconsistent with the Commission's recognition that Cleco is responsible for the reliable operation of its system and is, as such, responsible for transmission planning on its system. Cleco contends, for example, that it cannot be expected to review every change to models with stakeholders in advance. Cleco states that it is sufficient to make stakeholders aware of changes that have been made, so that stakeholders may then provide input.

d. Commission Determination

35. We find that Cleco's compliance filing partially complies with the requirements of the September 18 Order regarding transparency. We accept Cleco's explanation that it will disclose base case models and all other associated information in the Webroom as in compliance with the requirements of the September 18 Order. We also accept the change Cleco made to section 7.1 to post information in such detail and format to permit stakeholders to verify and have the ability to replicate all studies and analyses including,

but not limited to, those related to the evaluation of specific projects for inclusion in the Construction Plan. However, Cleco neglected to remove section 7.3.1, which provides that “information shall be made available to registered stakeholders to allow replication of planning study results *not associated with Transmission Provider’s Construction Plan.*” (emphasis added). This provision is inconsistent with the revisions to section 7.1 that we accept herein, and therefore, we direct Cleco to make a further compliance filing, within 60 days of the date of this order, removing section 7.3.1 from its Attachment K.

36. We also reject the changes to section 7.3.2. We find that the provision that Cleco will “keep stakeholders informed via Webroom of changes in the Transmission Planning Process including but not limited to transmission plan upgrade status changes” is overly broad given the Commission’s compliance directive to provide for the disclosure of information regarding the status of upgrades that are identified in its transmission plan. Therefore, we will direct Cleco to make a further compliance filing, within 60 days of the date of this order, revising section 7.3.2 to read: “Transmission Provider will keep stakeholders informed via Webroom of transmission plan upgrade status changes that occur during the transmission planning process.”

4. Comparability

37. In the September 18 Order, the Commission found that Cleco’s proposed Attachment K complied with the comparability principle set forth in Order No. 890 because Cleco commits to treat all similarly situated parties comparably in its transmission planning process and to accommodate the views and inputs of all stakeholders.¹⁰ However, the Commission noted that Cleco had not had an opportunity to demonstrate that it complies with the comparability requirements of Order No. 890-A since Order No. 890-A was issued on December 27, 2007, after Cleco submitted its initial Order No. 890 Attachment K compliance filing. In Order No. 890-A, the Commission required that the transmission provider identify as part of its Attachment K planning process “how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.”¹¹ The Commission stated that Cleco had not addressed how it would treat demand resources comparably and directed Cleco to make a compliance filing providing the necessary demonstration as required by Order No. 890-A.

a. Compliance Filing

38. Cleco modified several provisions of its Attachment K to demonstrate how it will treat all resources comparably. Cleco has revised section 8.1.1 and added new section 8.3 of Attachment K to explicitly state that stakeholders, including developers of demand

¹⁰ September 18 Order, 124 FERC ¶ 61,264 at P 44.

¹¹ *Id.* P 45 (quoting Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216).

side management or other alternative resources, may submit information sufficient to demonstrate that any demand side management or other alternative resources may be relied upon for transmission planning purposes consistent with applicable reliability requirements. Cleco added language to section 9 to provide that all information provided by stakeholders will be treated on a comparable basis, including, but not limited to, information on existing generation resources, new generation resources, demand side management or other alternative resources, long-term firm point-to-point transmission service transactions, and new generation and delivery points for the planning horizon.

39. Cleco has also revised sections 5.2.1 and 7.1 of Attachment K to state that it will post in the Webroom its base case model, along with all other associated information, including, but not limited to, the basic methodology, criteria, and processes it uses to develop transmission plans, including treatment of demand side management or other alternative resources. The purpose of the posting of this information is for verification of inputs, assumptions, and methodologies and to permit stakeholders to verify and replicate all studies and analyses, including, but not limited to, those related to the evaluation of specific projects for inclusion in its construction plans. All stakeholders will be able to provide input into the planning criteria, models, studies, treatment of demand side management or other alternative resources, and transmission plans by posting comments and/or questions in the Webroom at any time and from time to time, and through participation in stakeholder committees. Cleco added new section 5.6.2 providing all stakeholders a fair opportunity to join stakeholder committees, including developers of demand side management or other alternative resources. In addition, Cleco added new section 5.1.2 to allow all stakeholders to provide feedback and input into Cleco's transmission planning process at the annual Transmission Planning Summit, including, but not limited to, model development, transmission plans for Cleco's future reliability projects, other planned transmission expansion projects, economic planning studies, planning criteria, and any other transmission related issue.

40. For economic planning studies, Cleco has revised section 12.1 to state that any stakeholder may request Cleco to conduct an economic planning study to evaluate specific, potential upgrades or other specific investment that could improve import capabilities, reduce congestion, incorporate new supplies, or integrate new demand resources and loads. Studies may involve the local or regional transmission grid where expansion or enhancements would result in benefits to a large number of customers and that identify enhancements that relieve congestion to integrate new resources.

b. Commission Determination

41. We find that Cleco has partially complied with the Commission's directives in the September 18 Order to identify how it will treat resources on a comparable basis and determine comparability for purposes of transmission planning. Specifically, Attachment K identifies where and when in the planning process stakeholders have an opportunity to provide their input regarding the development of assumptions used by Cleco in

transmission planning activities. Attachment K allows sponsors of all types of resources, including transmission, generation and demand resources, to provide information for use in developing the base-line assumptions and models used by Cleco. In sections 8.1.1 and 8.2.1, Cleco makes clear that transmission customers shall submit this data annually by October 15, but does not indicate in section 8.3 when developers of transmission, generation, and demand resources must do so. Accordingly, in the compliance filing ordered below, Cleco must indicate when developers of transmission, generation, and demand resources must submit their data.

42. Cleco allows all stakeholders to provide input and feedback on alternatives being evaluated for inclusion in Cleco's transmission plans. Cleco also clearly states that stakeholders can request economic planning studies to evaluate potential upgrades or other investments that could integrate new resources or loads. However, Cleco does not state where and when in its transmission planning process stakeholders can propose alternative solutions to identified needs. Cleco also fails to identify how it will evaluate alternative solutions when determining what facilities will be included in its transmission plan. We therefore require Cleco to submit a further compliance filing, within 60 days of the date of this order, revising Attachment K to state: (1) when developers of transmission, generation, and demand resources can submit their data pursuant to section 8.3; (2) where and when stakeholders can propose alternatives; and (3) how Cleco will evaluate and select from among competing solutions such that all types of resources are considered on a comparable basis.¹²

5. Dispute Resolution

43. In the September 18 Order, the Commission found that Cleco's proposed Attachment K partially complied with the dispute resolution principle set forth in Order No. 890. The Commission stated that during the dispute resolution process, even if parties seek resolution through Cleco's dispute resolution process, affected parties should retain any rights they may have under Federal Power Act (FPA) section 206 to file a complaint with the Commission. The Commission found that Cleco's proposed dispute resolution process may inappropriately affect the ability of a party to exercise its rights under section 206 of the FPA. Therefore, the Commission directed Cleco to make a further compliance filing revising its dispute resolution provision to preserve the rights of a party to exercise its rights under section 206 of the FPA.

¹² Tariff language could, for example, state that solutions will be evaluated against each other based on a comparison of their relative economics and effectiveness of performance. Although the particular standard a transmission provider uses to perform this evaluation can vary, it should be clear from the tariff language how one type of investment would be considered against another and how the transmission provider would choose one resource over another or a competing proposal.

a. Compliance Filing

44. Cleco states that it has revised section 10 of its Attachment K to make clear that the procedures set forth in section 10 do not affect the rights of parties either to file complaints under section 206 of the FPA or to make unilateral filings under section 205 of the FPA.

b. Comments

45. Lafayette/LEPA argue that Cleco has impermissibly exceeded the directives of the September 18 Order in at least two significant respects. First, Lafayette/LEPA contend that Cleco has added new language mandating binding arbitration of any dispute not within the Commission's jurisdiction for which the parties fail to agree on a dispute resolution forum. Lafayette/LEPA assert that Cleco's approach would prevent a party from pursuing other avenues of relief in the described circumstances (e.g., by seeking appropriate remedies in the courts). Lafayette/LEPA maintain that the provision for binding arbitration was not directed by the September 18 Order, and therefore, Cleco's addition of the binding arbitration provision is impermissible and should be removed.

46. Second, Lafayette/LEPA argue that Cleco has included language in section 10 of Attachment K aimed at preserving its FPA section 205 rights. They argue that while a reservation of section 205 rights is not inherently objectionable, the new language goes beyond the directive contained in the September 18 Order, which focused only on the preservation of stakeholders' section 206 rights.

c. Cleco's Answer

47. Cleco states that it has not added new language mandating binding arbitration. Cleco states that this language is not new and was previously contained in section 10.5 and merely relocated verbatim, along with the protective language, to section 10. Cleco states that Lafayette/LEPA are wrong when they claim that Cleco added this language as part of its December 17 filing and that Lafayette/LEPA's request that Cleco be required to remove it should be rejected.

48. Further, Cleco states that its revisions to the dispute resolution provision do not go beyond the compliance requirements of the September 18 Order. Cleco states that the September 18 Order expressed concern that section 10.5 might inappropriately affect a party's rights to file a complaint under section 206. Cleco states, therefore, that it moved the protective language to section 10 to make clear that all parties retain their FPA filing rights during the dispute resolution process. Cleco states that Lafayette/LEPA express no substantive objection that it is improper for Cleco to retain language preserving its own section 205 rights as part of its compliance filing. Cleco states that the intent of the original language was to appropriately protect the filing rights of both Cleco and others. Cleco states that nothing in the September 18 Order suggests that it was inappropriate for

Cleco to preserve its section 205 rights. Cleco states that its inclusion of such language is ministerial in nature and under the circumstances should not be rejected. Cleco states that to the extent that the Commission rejects the provision, Cleco will submit a separate section 205 filing to modify section 10 to preserve its section 205 rights.

d. Commission Determination

49. We find that Cleco's compliance filing partially complies with the requirements of the September 18 Order regarding dispute resolution. We disagree with Lafayette/LEPA's contention that Cleco exceeded the directives of the September 18 Order. As Cleco stated, the provisions regarding resolution of non-jurisdictional disputes were already in Cleco's Attachment K. However, as Lafayette/LEPA point out, the added language mandates binding arbitration of any dispute not within the Commission's jurisdiction. We find that this provision is not within the Commission's jurisdiction and cannot be enforced under the FPA. The Commission has rejected, and will continue to reject, non-jurisdictional provisions submitted as part of a public utility's tariffs.¹³ Therefore, we will direct Cleco to make a compliance filing, within 60 days of the date of this order, reflecting the removal of this arbitration provision.

50. With regard to Cleco's section 205 rights, we agree with Cleco that there is nothing in Order No. 890 that would preclude Cleco from exercising its section 205 rights under the FPA. Also, Cleco has modified section 10 to state that nothing in that section will affect the rights of parties to file a complaint with the Commission under section 206 of the FPA, or to unilaterally make a section 205 filing. Therefore, we find that Cleco's dispute resolution provisions appropriately reflect that all parties retain their section 205 or 206 filing rights under the FPA during the dispute resolution process.

6. Regional Participation

51. In the September 18 Order, the Commission found that Cleco's proposed Attachment K partially complied with the regional participation principle set forth in Order No. 890. The Commission found that Cleco had not provided enough detail to allow customers and other interested stakeholders to fully understand how the data and inputs they provide on the local transmission plan will be integrated into the regional planning activities conducted by the Southwest Power Pool (SPP) and Southeast Reliability Council (SERC). For example, the Commission stated that Cleco's Attachment K did not provide timelines and milestones for the coordination of power flow models with SPP and SERC and system plans with its interconnected neighbors, including opportunities for stakeholders to provide input and comment in each process. Also, the Commission found that it was also unclear how each of the regional processes referred to by Cleco will interact with the others when coordinated with Cleco's own

¹³ *Boston Edison Co.*, 98 FERC ¶ 61,292, at P 17 (2002).

planning activities, including development of the construction plan. The Commission directed Cleco to make a further compliance filing describing in detail its process for coordinating with interconnected systems to share system plans in order to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources.

52. The Commission also found in the September 18 Order that Cleco failed to include tariff provisions in Attachment K to identify how stakeholders can review and comment on Cleco's planning criteria before they are finalized. The Commission stated that this applies equally to planning criteria developed by regional entities, such as SPP, that Cleco intends to incorporate into its own planning criteria. Therefore, the Commission directed Cleco to make a further compliance filing that revises its Attachment K to provide more detail regarding how the development of its planning criteria will be coordinated with interested parties, including the specific opportunities for stakeholder input.

53. Further, the Commission found that Cleco's Attachment K failed to identify any process for coordinating economic studies on a regional basis. The Commission stated that Cleco did not explain the scope of the SPP regional planning activities that Cleco participates in and whether economic planning studies are included. The Commission concluded that customers must be allowed to request that economic upgrades be studied.

a. Compliance Filing

54. Cleco revised section 11.1.1 to provide that it will coordinate its planning activities with those of SPP, SERC and other regional reliability organizations for development and consistency of the base case models, input data, and assumptions used in making reliability determinations. Section 11.1.2 has been revised to reflect that Cleco participates in the annual model development process for the SPP and SERC regions and provides appropriate base case model updates during their respective planning cycles.

55. Cleco revised section 11.1.2 to provide that the annual development process will be initiated with Cleco soliciting input data from the interconnected utilities and stakeholders. Section 11.1.2 also provides that information submittals will be posted within a designated area of the Webroom so that stakeholders may review, post messages and provide inputs for consideration during the process. Additionally, section 11.1.2 has been revised to state that the regional model development procedure requires Cleco to perform a series of model evaluations utilizing Cleco's planning criteria, as identified in section 5, and post the results in the Webroom. This provision also provides that stakeholders will be able to review and comment on these Webroom postings.

56. Section 11.1.2 has been revised to state that necessary model adjustments may be made at each stage with the opportunity for stakeholders to provide input prior to model changes submitted to the SPP and SERC regions. This section provides that the

evaluated model is posted within the regional model exchange mechanism which then incorporates Cleco's model within the regional model. Section 11.1.2 now provides that interconnected utilities obtain the regional model with the transmission provider's changes for their evaluation.

57. Section 11.1.3 provides that Cleco participates in the SPP Regional Transmission Planning Process by active membership within the Transmission Working Group. Section 11.1.3 also provides that Cleco participates and coordinates joint planning efforts with the owners of the interconnected transmission systems internal and external to SPP on a case-by-case basis. Section 11.1.3 further provides that system plans are shared in the model development process to ensure plans are simultaneously feasible while assumptions and data are consistent. Also, Cleco states that it participates in regional studies as requested by SPP, SERC or other regional reliability organizations. Additionally, section 11.1.2 provides that transmission providers that participate in the regional transmission planning process simultaneously coordinate and share transmission projects that are included in their construction plans for meeting planning criteria as well as resulting from economic studies.

b. Comments

58. Lafayette/LEPA argue that the new version of section 11.1.2 provides that information submittals that are designated by stakeholders as confidential information "will be posted within the designated area of the [W]ebroom for which stakeholders may review, post messages and provide inputs for consideration during the process." They assert that contrary to the directives of the September 18 Order, commercially sensitive information provided by stakeholders to assist in the transmission planning process will be posted in a portion of the Webroom accessible to other market participants. Lafayette/LEPA contend that the fact that those market participants may have executed a confidentiality agreement is likely to be of little comfort to the parties that provided the sensitive information, and, in any case, is not sufficient by the terms of the September 18 Order.

59. Lafayette/LEPA also argue that the provisions in sections 11.1.2 and 11.1.3 remain unclear how stakeholder-provided data and inputs will be incorporated into regional planning activities or how each regional process will interact with the others. They also contend that it remains unclear how the processes described by Cleco will ensure that system plans are simultaneously feasible and are based on consistent assumptions and data. Lafayette/LEPA assert that the Commission should direct Cleco to resubmit the regional participation provisions of its Attachment K.

c. Cleco's Answer

60. Cleco states that Lafayette/LEPA's objection is inconsistent with Order No. 890 and with the principle of openness, and should be dismissed. Cleco states that it has

satisfied the Commission's concern regarding the protection of sensitive material by providing for such material to be posted in a separate section of its Webroom, access to which will be password-protected and subject to the execution of a confidentiality agreement. Cleco states that this is entirely consistent with the Commission's discussion of the issue in Order No. 890, where it is clearly contemplated that password-protected access and confidentiality agreements will be used by transmission providers to maintain confidential information, and nothing in the September 18 Order suggests that the Commission intended for different procedures to be adopted. Cleco states that confidentiality agreements are routinely used to manage access to sensitive information, and if there is to be a truly open planning process as mandated by the Commission, stakeholders desiring fully to participate in the process will require access to confidential information provided by Cleco and by other stakeholders.

61. Cleco also states that Lafayette/LEPA's concerns that Cleco failed to provide sufficient information concerning Cleco's coordination with other entities and failed to explain how stakeholder input will be obtained, are fully addressed in Cleco's revised provisions. Specifically, Cleco states that section 11.1.2 describes how Cleco participates in regional planning processes, how stakeholders may provide data and input into these procedures (both at the request of Cleco and on their own initiative) and how regional models are developed through an on-going and iterative process. Cleco further states that section 11.1.3 explains how Cleco participates in the SPP regional planning process, in which system plans are shared through the model development process to ensure that they are simultaneously feasible and based on consistent data and assumptions. Cleco states that these provisions provide sufficient detail for stakeholders to understand and provide input into the regional planning processes in which Cleco participates.

d. Commission Determination

62. We find that Cleco's compliance filing partially complies with the requirements of the September 18 Order regarding regional participation. We find that Cleco has failed to provide timelines or milestones for the coordination of power flow models (i.e., base case models). Section 11.1.2 only provides that there is an annual model development process requiring inputs to be submitted by interconnected utilities and stakeholders by October 15, but does not provide any further timeline or milestone for the coordination of power flow models with SPP and SERC and system plans with its interconnected neighbors. We will require Cleco to make a further compliance filing, within 60 days of the date of this order, providing timelines or milestones for the coordination of power flow models.

63. We disagree with Lafayette/LEPA that Cleco does not make clear how stakeholder-provided data and inputs will be incorporated into regional planning activities. Cleco provides for opportunities for stakeholders to provide input and comment in each process by posting the results of model evaluations in the Webroom. We likewise disagree with Lafayette/LEPA that Cleco does not make clear how each

regional process will interact with others. Section 11.1.2 now provides that Cleco will perform a series of model evaluations utilizing Cleco's planning criteria.

64. Additionally, we find that Cleco has complied with the September 18 Order's directive to identify how stakeholders can review Cleco's planning criteria before they are finalized. Section 11.1.2 states that necessary model adjustments may be made at each stage with the opportunity for stakeholders to provide input prior to model changes being submitted to SPP and SERC. This section also explains that the development of Cleco's planning criteria will be coordinated with interested parties because the model will be posted within the regional model exchange mechanism, which incorporates Cleco's model with the regional model.

65. We also find that Cleco has explained the scope of its participation in SPP regional planning activities in sections 11.1.2 and 11.1.3 by stating that Cleco participates and coordinates joint planning efforts with the owners of interconnected systems internal and external to SPP on a case-by-case basis. Additionally, Cleco added the provision that economic studies are part of the transmission projects coordinated and shared by transmission providers that participate in the regional planning process. Also, Cleco has addressed the requirement in the September 18 Order that it allow customers to request that economic upgrades be studied on a regional basis by including new language in section 12.1 (discussed below concerning economic planning studies), making clear that those studies "may involve the local or regional transmission grid."

66. We disagree with Lafayette/LEPA's argument that the new section 11.1.2 will allow commercially sensitive information provided by stakeholders to assist in the transmission planning process to be posted in a portion of the Webroom accessible to other market participants. Section 11.1.2 states that information submitted may be designated as confidential information and be treated as such. As Cleco states in its answer, its Attachment K already provides for such material to be posted in a separate section of its Webroom, access to which will be password-protected in addition to being subject to the execution of a confidentiality agreement.

7. Economic Planning Studies

67. In the September 18 Order, the Commission found that Cleco's proposed Attachment K partially complied with the economic planning studies principle set forth in Order No. 890. The Commission stated that Cleco failed to specify adequate procedures for selecting those high priority studies that will receive rolled-in rate treatment. Also, the Commission required Cleco to make clear in sections 12.3 and 12.5 that Cleco will perform the high priority studies. The Commission further found that Cleco failed to state whether stakeholders, the committee, or Cleco can cluster or batch study requests to streamline processing. Therefore, the Commission directed Cleco to make a further compliance filing that revises its Attachment K to describe the procedures that will be

used to identify those high priority economic planning studies that will be performed by Cleco, including the opportunity to batch or otherwise cluster study requests.

68. The Commission also found that Cleco's Attachment K failed to provide adequate opportunity for stakeholder input in the development of its economic planning studies. The Commission stated that stakeholders must have the opportunity to comment on the data and assumptions used in economic planning studies in the early stages of development. Therefore, the Commission directed Cleco to make a further compliance filing that provides for stakeholder comment and input regarding the assumptions, methodologies, and results of economic planning studies.

69. Additionally, the Commission found that Cleco failed to identify any process for studying potential upgrades or other investments that could reduce congestion or integrate new resources on an aggregated or regional basis. The Commission stated that in Order No. 890 the Commission required transmission providers to allow for studies that evaluate the integration of new supply and demand resources into the regional transmission grid and the expansion of the regional transmission grid in a manner that benefits larger numbers of customers, such as by evaluating transmission upgrades necessary to connect major new areas of generation resources.¹⁴ The Commission also directed Cleco to make a further compliance filing that revises its Attachment K to address this obligation.

a. Compliance Filing

70. Cleco states that section 12.3 has been modified to clarify that the three highest priority economic planning studies will be selected by an economic planning stakeholder subcommittee, and the transmission provider will perform the study by March 1 of the following year. Section 12.3 was also revised to provide that the transmission provider will allow the economic planning stakeholder subcommittee to batch or cluster studies if doing so will streamline processing of the studies. Additionally, Cleco has revised section 12.4 to provide a process for stakeholder input concerning assumptions, methodologies, and economic planning results throughout the study process.

71. Cleco states that it has revised section 12.1 of its Attachment K to provide that economic planning studies may involve the local or regional transmission grid where expansion or enhancements would benefit a large number of customers, as well as those that identify enhancements to relieve congestion to integrate new resources.

¹⁴ September 18 Order, 124 FERC ¶ 61,264 at P 83 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528).

b. Commission Determination

72. We accept the unopposed revised language as in compliance with the September 18 Order.

8. Cost Allocation

73. In the September 18 Order, the Commission found that Cleco's proposed Attachment K partially complied with the cost allocation principle set forth in Order No. 890. The Commission found that, with respect to economic upgrades, Cleco failed to provide sufficient detail regarding how its proposal to allocate costs to entities proposing construction will be applied. The Commission stated that the details of the proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty. The Commission found that it was unclear, however, how costs for economic projects will be allocated among multiple parties requesting an upgrade and directed Cleco to make a further compliance filing that revises its Attachment K to provide additional detail regarding how costs will be allocated among parties requesting that an economic upgrade be constructed. The Commission also stated that it accepts Cleco's commitment to fix the term of the construction plan at 10 years.

a. Compliance Filing

74. Cleco states that it has revised section 13.2 of its Attachment K to provide that, for non-reliability upgrades that do not fit under existing rate structures, costs will be allocated to the customer or customers requesting the project. Cleco states that where multiple customers request a project, the costs of the project will be shared equally among the customers, unless an alternative cost allocation method is proposed and agreed upon among the parties. Cleco also states that a stakeholder committee shall consider and may propose methods for allocating costs to any beneficiary of expenditures for economic upgrades other than the entity proposing such expenditure. Cleco states that if it, or another party, requests an enhancement to a non-reliability upgrade project, the incremental cost of the enhancement will be recovered pursuant to section 13.1, or allocated to the party requesting the enhancement, unless some other agreement is reached among the affected parties. Cleco states that, to the extent that a non-reliability upgrade provides benefits to Cleco's native load customers, such benefits will be recognized through an offset to the costs otherwise allocable to the requesting customer or customers. Cleco also states that it has modified the definition of "Construction Plan" in section 3.4 to confirm that the term of Cleco's construction plan is fixed at 10 years.

b. Comments

75. Lafayette/LEPA argue that the method proposed by Cleco in section 13.2 for cost allocation disputes will likely create more problems than it solves. They argue that a *pro*

rata sharing of cost among multiple parties proposing an upgrade will not correspond, except by coincidence, with the distribution of any associated benefits. Lafayette/LEPA contend that state regulators are unlikely to accept an allocation of costs that has no logical nexus to the associated benefits. They assert that an argument may be made, however, that inclusion of the “equal sharing” method in the tariff *compels* state regulators to pass the assigned costs through retail rates. Lafayette/LEPA maintain that the Commission should direct Cleco to propose a cost allocation method that will produce rational outcomes in the context of multi-party proposals.

c. Cleco’s Answer

76. Cleco states that the September 18 Order determined that Cleco failed to provide sufficient detail concerning how costs for economic projects will be allocated among multiple parties requesting an upgrade. Cleco states that in its December 17 filing, it revised section 13.2 of its Attachment K to provide that where a non-reliability upgrade is requested by multiple parties and the project does not fit under existing rate structures, the costs associated with the project will be shared equally among all requesting parties unless an alternative cost allocation method is proposed and agreed upon among the parties. Cleco states that Lafayette/LEPA offer no alternative cost allocation method and fail to demonstrate that Cleco’s proposed tariff revision does not meet the basic requirements of the Commission’s orders. Cleco states that the Commission required transmission providers to address cost allocation as one of the transmission planning principles because participants seeking to support new transmission investment need some degree of certainty as to the costs they will incur. Cleco states that its proposed methodology provides that certainty while recognizing that the parties may wish to negotiate an alternative cost allocation methodology in particular circumstances.

77. Cleco further states that the cost allocation methodology contained in section 13.2 addresses concerns regarding the matching of costs and benefits by providing mechanisms for allocating costs to entities who did not propose, but who benefit from, economic upgrades and for reducing the costs allocated to requesting parties to reflect benefits to Cleco’s native load customers resulting from such upgrades. Cleco further states that while Lafayette/LEPA speculate regarding the views of state regulators, no state regulator has objected to Cleco’s proposal. Cleco states that its proposed cost allocation method satisfies the Commission’s concerns stated in Order No. 890 and is an appropriate methodology for use on Cleco’s system given the Commission’s recognition that regional flexibility should be allowed in this area.

d. Commission Determination

78. We find that Cleco has complied with the directive in the September 18 Order to provide additional detail regarding how costs will be allocated among parties requesting that an economic upgrade be constructed. Lafayette/LEPA have provided no evidence to support their claim that a *pro rata* sharing of cost among multiple parties proposing an

upgrade will not correspond, except by wild coincidence, with the distribution of any associated benefits. Additionally, section 13.2 does not limit the cost allocation to only equal sharing among all requesting parties, but also provides that an alternative cost allocation method can be proposed and, if agreed upon among the parties, can be used instead. We also find that the multi-party allocation method proposed by Cleco includes an adequate mechanism to consider whether parties who benefit from an economic upgrade, but did not propose it, would still be responsible for some of the costs of that upgrade. For example, section 13.2 provides that a stakeholder committee shall consider and may propose methods for allocating costs to any beneficiary of expenditures for economic upgrades other than the entity proposing such expenditure. Lastly, Lafayette/LEPA's argument that state regulators are unlikely to accept an allocation of costs made pursuant to a cost allocation methodology such as Cleco's is speculative and we reject it.

The Commission orders:

(A) Cleco's compliance filing is hereby accepted, as modified, subject to a further compliance filing, as discussed in the body of this order.

(B) Cleco is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.