

114 FERC ¶61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Cleco Power LLC	Docket Nos. ER01-1099-010 ER01-1099-011 ER99-3855-006 ER03-1368-003
Cleco Marketing & Trading LLC	ER99-2300-008 ER03-1369-003
Cleco Evangeline LLC	ER99-2928-007 ER99-2928-008 ER03-1371-003
Perryville Energy Partners, L.L.C.	ER01-1397-007 ER01-1397-008 ER03-1370-004
Acadia Power Partners, LLC	ER02-1406-011 ER02-1406-012 ER03-1372-004 EL06-4-000

ORDER ON MARKET-BASED RATES, TERMINATING 206 PROCEEDING AND
ON REHEARING

(Issued February 16, 2006)

1. In this order, the Commission accepts a compliance filing submitted by the Cleco Companies¹ and finds that the Cleco Companies satisfy the Commission's generation market power standard for two of the Cleco Companies' first-tier control areas. Accordingly, this order will terminate the proceeding in Docket No. EL06-4-000, which was instituted under section 206 of the Federal Power Act (FPA)² to investigate generation market power issues in these two control areas. Also in this order, the Commission denies rehearing of its October 21, 2005³ Order on the Cleco Companies' market-based rates and section 206 proceeding with regard to the Cleco Power control area.

I. Background

2. On May 25, 2005, the Commission issued an order⁴ on the Cleco Companies' updated market power analysis and instituted a proceeding under section 206 to investigate generation market power issues in the Cleco Power home control area.⁵ In the October 21 Order, the Commission, among other things, terminated the section 206 proceeding in Docket Nos. EL05-113-000 and EL05-113-001, finding that the Cleco Companies had rebutted the presumption of market power in Cleco Power's home control area and satisfied the Commission's generation market power standard in that control area.

¹ The Cleco Companies include Cleco Power LLC (Cleco Power), Cleco Evangeline LLC, Perryville Energy Partners, LLC, and Acadia Power Partners, LLC (Acadia). We note that Cleco Marketing & Trading LLC (Cleco Marketing) is not considered part of the Cleco Companies for purposes of this order because Cleco Marketing does not have market-based rate authority. *See Cleco Corp.*, 104 FERC ¶ 61,125 (2003).

² 16 U.S.C. § 824e (2000).

³ *Acadia Power Partners, LLC*, 113 FERC ¶ 61,073 (2005) (October 21 Order).

⁴ *South Point Energy Center, LLC*, 111 FERC ¶ 61,239 (2005) (May 25 Order).

⁵ In addition to our findings in the May 25 Order with respect to the Cleco Companies, we also accepted the updated power analysis filed by South Point Energy Center, LLC, Gilroy Energy Center, LLC and MEP Pleasant Hill, LLC.

3. However, in the October 21 Order the Commission instituted a separate section 206 proceeding in Docket No. EL06-4-000 due to the Cleco Companies' failure to comply with the directive in the May 25 Order to file data and work papers supporting a simultaneous transmission import capability study for two of their first-tier control areas, the City of Lafayette Power Authority (Lafayette) and the Louisiana Energy and Power Authority (LEPA) control areas. The Commission instituted the section 206 proceeding to investigate whether the Cleco Companies may continue to charge market-based rates in the Lafayette and LEPA control areas. On November 21, 2005, Acadia filed a request for rehearing of the October 21 Order with respect to the inclusion of Acadia in the section 206 proceeding in Docket No. EL06-4-000.⁶

4. On October 27, 2005, the Cleco Companies filed data and work papers supporting the Cleco Companies' simultaneous import capability study for the Lafayette and LEPA control areas.

II. Notice and Responsive Pleadings

5. Notice of the Cleco Companies' refund effective date in the section 206 proceeding in Docket No. EL06-4-000 was published in the *Federal Register*, 70 Fed. Reg. 66,373 (2005).⁷ On November 11, 2005, LEPA and the Lafayette Utilities System (LUS) filed a motion to intervene in the section 206 proceeding.

6. Notice of the Cleco Companies' October 27 compliance filing was published in the *Federal Register*, 70 Fed. Reg. 69,333 (2005), with interventions, protests or comments due on or before November 17, 2005. On November 17, 2005, LEPA and LUS filed comments. On December 19, 2005, the Cleco Companies filed an answer to LEPA's and LUS's November 17 comments.

⁶ Acadia Power Partners, LLC (Acadia) is jointly owned by Calpine Acadia Holdings LLC (an indirect wholly-owned subsidiary of Calpine Corporation) and Acadia Power Holdings LLC (an affiliate of Cleco Power LLC.)

⁷ The October 21 Order established a refund effective date to protect customers while the Commission determined whether the Cleco Companies may continue to charge market-based rates in the LEPA and Lafayette control areas. The refund effective date put in place the necessary procedural framework to promptly impose an effective remedy, in case the Commission determined that such a remedy is required.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene of LEPA and LUS serves to make them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Cleco Companies' answer and will, therefore, reject it.

B. Analysis

9. As discussed below, we will accept the Cleco Companies' compliance filing. We find that the Cleco Companies have rebutted the presumption of market power in the Lafayette and LEPA control areas and satisfy the Commission's generation market power standard in those control areas. Also, we will deny Acadia's request for rehearing of the October 21 Order.

1. Compliance Filing

10. The Cleco Companies' October 27 compliance filing includes the data and work papers supporting the Cleco Companies' simultaneous import transmission capability study for the Lafayette and LEPA control areas. The Cleco Companies explain that the required supporting data and work papers were inadvertently omitted when they made their filing in compliance with the directive in the May 25 Order. They state that the methodology and operational practices used in the study are consistent with the Cleco Companies' methodology for calculation of Available Transmission Capacity (ATC) and posting of ATC in administration of their Open Access Transmission Tariff.

a. Responsive Pleadings on Compliance Filing

11. LEPA and LUS argue that the data and studies in the Cleco Companies' compliance filing show that the Cleco Companies have both generation and transmission market power over LUS and LEPA because the weakened transmission system prevents them from gaining access to competitive sources of generation. LUS and LEPA argue that the Cleco and Entergy transmission systems are so weak that it is incorrect for Cleco to measure import capability as zero for the winter season in its screen analysis. They state that the Cleco Companies' compliance filing shows that import capability into the LEPA control area is actually negative 205.5 MW and negative 451.4 MW into the LUS control area. LEPA and LUS argue that this data shows that there is not enough

generation inside the LUS and LEPA control areas to support outward flows of this magnitude and that the Cleco grid cannot transmit alternative sources into LUS and LEPA unless Cleco redispatches. Cleco can redispatch its system to sell Cleco's power to LUS and LEPA, or simply block access to cheaper independent power producer generation, "as it already has done."⁸ LEPA and LUS also state that Cleco has refused to consider LUS as a network customer, thus denying LUS payments for its costs to redispatch to relieve transmission loading on the Cleco system.

12. LEPA and LUS further argue that Cleco, which was once a member of the Southwest Power Pool (SPP), has reneged on its promise to rejoin SPP. This isolates LEPA and LUS from other SPP members, preventing LUS from submitting its own transmission system to the control of SPP.

b. Commission Determination

13. In light of the Cleco Companies' compliance filing, the Commission determines that the Cleco Companies satisfy the Commission's generation market power standard for the LEPA and Lafayette control areas. We note that our concern at this stage of the proceeding is whether the Cleco Companies' compliance filing provides data that supports the import limitation study and screen analyses addressed in our prior order. LEPA and LUS raise arguments regarding the strength of the transmission grid. The import capability studies consider the current condition of the grid (*i.e.*, the strength of the grid is reflected in the study). Also, where the Cleco Companies' import capability study indicates negative import capability, it is reasonable for the Cleco Companies to use zero imports as a simplifying assumption in conducting the competitive screen analysis. The purpose of the import capability study is to estimate the level of supply from suppliers outside of a control area that could be imported and discipline a potential exercise of market power. The level of imports available to discipline a price increase cannot be less than zero. The assertions by LUS and LEPA of potential anticompetitive behavior on the Cleco Companies' part are vague and unsupported.

14. In addition, we find that LEPA's and LUS's arguments regarding the Cleco Companies' membership in SPP and consideration of LUS as a network customer to be outside the scope of this proceeding.

2. Docket No. EL06-4-000

15. The Commission terminates Docket No. EL06-4-000. That proceeding was established to investigate generation market power issues in the Cleco Companies'

⁸ LEPA and LUS November 17, 2005 Comments at 14.

first-tier control areas, LEPA and Lafayette. Based on the above findings, the Commission finds that there is no further need for the proceeding in this docket.

3. Request for Rehearing

a. Arguments Raised

16. Acadia requests rehearing of the October 21 Order with respect to Acadia's inclusion in the section 206 proceeding in Docket No. EL06-4-000. Acadia states that it was included in the Cleco Companies' updated market power analysis only because of the Cleco Companies' ownership interest in Acadia and that Acadia's capacity was not included in the market power screens because Calpine Energy Services, L.P. (Calpine Services), an unaffiliated entity, controls the output of the Acadia Facility. Acadia states that although the Cleco Companies listed Acadia in their market power screen, they included zero megawatts of Acadia's capacity in their generation market power analysis because Commission policy relies on control, not ownership, in determining what company to attribute a facility's capacity. Acadia states that in the Commission's July 8 Order⁹ on procedures for implementing a new generation market power analysis, and in Order No. 652,¹⁰ the Commission affirmed that, when assessing whether a public utility has generation market power, it looks at whether the public utility *controls* the capacity from a generation facility, not whether it also *owns* the facility. Acadia argues that any generation market power analysis for the Acadia capacity should be conducted for only Calpine Services and its affiliates, and since the Commission recently found that neither Calpine Services nor its affiliates can exercise market power, the Commission has already concluded that Acadia cannot exercise generation market power.

17. Acadia also argues that it is not required to provide generation market power screens for the Cleco Power control area under section 35.27 of the Commission's regulations¹¹ because construction on the Acadia Facility began after July 9, 1996 and no other Calpine-affiliated generation is located in the Cleco Power control area.

⁹ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

¹⁰ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

¹¹ 18 C.F.R. 35.27(a) (2005).

Docket No. ER01-1099-010, *et al.*

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18. Finally, Acadia argues that although the Commission terminated the section 206 proceeding related to the Cleco Power control area in Docket No. EL05-113-000, the issue of Acadia's inclusion among the Cleco Companies must still be addressed because of the initiation of the section 206 proceeding related to the Cleco Companies' first-tier control areas in Docket No. EL06-4-000.

b. Commission Determination

19. In light of the Commission's determination to terminate the section 206 proceeding in Docket No. EL06-4-000, and based on our conclusion that the Cleco Companies satisfy our concerns regarding generation market power in the LEPA and Lafayette control areas, we find that Acadia's request for rehearing is moot. Thus, it is no longer necessary to address the issue of Acadia's inclusion in the section 206 proceeding.

The Commission orders:

(A) The Cleco Companies' compliance filing (consisting of data and work papers supporting their simultaneous import capability study for the Lafayette and LEPA control areas) is hereby accepted, as discussed in the body of this order.

(B) The section 206 proceeding in Docket No. EL06-4-000 is terminated, as discussed in the body of this order.

(C) Acadia's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.