

124 FERC ¶ 61,264  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Cleco Power LLC

Docket No. OA08-36-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued September 18, 2008)

1. On December 7, 2007, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> Cleco Power LLC (Cleco) submitted its transmission planning process as a proposed attachment to its Open Access Transmission Tariff (OATT), in order to comply with the transmission planning principles outlined by the Commission in Order No. 890.<sup>2</sup> In this order, we accept Cleco's filing, as modified and subject to a further compliance filing, as discussed below.

**I. Background**

2. In Order No. 890, the Commission reformed the *pro forma* 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.<sup>3</sup> To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop transmission planning processes that satisfy nine

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

<sup>3</sup> The Commission, among other things, also amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC) and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity. These reforms have been or will be addressed in other orders.

principles and to clearly describe that process in a new attachment, (Attachment K) to their OATTs.

3. As discussed more fully below, the nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (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 and to build on transmission planning efforts and processes already ongoing in many regions of the country. However, the Commission also explained 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 must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.<sup>4</sup>

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

4. Cleco states that it is submitting its proposed transmission planning process as Attachment K to its OATT and that the process is based on the planning principles as set forth in Order No. 890. Cleco states that its proposed Attachment K is the result of input from stakeholders, as well as guidance from Commission staff, and was developed using the Staff White Paper<sup>5</sup> and the regional technical conference convened by Commission staff in Little Rock, Arkansas on June 6, 2007.

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<sup>4</sup> As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need to be codified in the transmission provider's OATT. Rules, standards and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission provider's website, provided there is a link to that site on its Open Access Same-Time Information System (OASIS). *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55. A transmission provider could therefore use a combination of tariff language in the Attachment K and a reference to planning manuals on its website, to satisfy its planning obligations under Order No. 890.

<sup>5</sup> FERC Staff White Paper "Order No. 890 Transmission Planning Process," August 2, 2007 (Staff White Paper) (filed in Docket Nos. RM05-17-000, RM05-25-000).

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

5. Notice of Cleco's filing was published in the *Federal Register*, 72 Fed. Reg. 71,883 (2007), with interventions and protests due on or before December 28, 2007. The Commission extended this comment period until January 7, 2008. On January 7, 2008, NRG Power Marketing Inc., Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, and NRG Sterlington Power LLC (collectively, NRG Companies); the Electric Power Supply Association; and Lafayette Utilities System (Lafayette) and Louisiana Energy and Power Authority (LEPA) filed motions to intervene. Lafayette and LEPA also filed a joint protest. On January 22, 2008, Cleco filed a motion for leave to answer and an answer to the protest.

### **IV. Discussion**

#### **A. Procedural Matters**

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

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Cleco's answer because it has provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

8. We find that Cleco's Attachment K transmission planning process, with certain modifications, complies with each of the nine planning principles and other planning requirements adopted in Order No. 890. Accordingly, we accept Cleco's Attachment K to be effective December 7, 2007, subject to a further compliance filing, as discussed below. Cleco is directed to make the compliance filing within 90 days of issuance of this order.

9. While we accept Cleco's transmission planning process in Attachment K, we nevertheless encourage further refinements and improvements to Cleco's planning process as Cleco and its customers and other stakeholders gain more experience through actual implementation of this process. Commission staff will also periodically monitor the implementation of the planning process to determine if adjustments are necessary and will inform the transmission provider and the Commission of any such recommendations. Specifically, beginning in 2009, the Commission will convene regional technical conferences similar to the conferences held in 2007 leading up to the filing of the Attachment K compliance filings. 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 stakeholder input, and discuss any areas that may need improvement.

**C. Compliance with Order No. 890's Planning Principles**

**1. Coordination**

10. In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process. The purpose of the coordination requirement, as stated in Order No. 890, is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. The planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers and other stakeholders to participate in the early stages of development. In its Attachment K planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.<sup>6</sup>

**a. Cleco's Filing**

11. Cleco states that its annual transmission planning process includes the development of base case power flow models and a construction plan, stakeholder input to base case model development and the construction plan, coordinated regional planning with adjacent transmission owners, and analysis of economic upgrades.<sup>7</sup> Cleco's Attachment K includes a timeline for major events in the annual planning process, such as model development, performance of reliability assessments, posting of information, and stakeholder meetings. Cleco proposes to coordinate its planning activities through annual summits that will inform stakeholders of planned transmission expansion, provide coordination, and allow all stakeholders to provide input into the planning process for future projects. Cleco states that interconnected neighbors, affected state authorities, customers and other stakeholders are invited to attend each summit.

12. To facilitate communication and open discussion between Cleco and registered stakeholders regarding planning-related activities, Cleco will maintain a password-protected webroom. Stakeholders will be allowed to provide input by posting comments and/or questions in the webroom. The webroom will also notify stakeholders of any

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<sup>6</sup> *Id.* P 451-54.

<sup>7</sup> Cleco's construction plan includes projects that Cleco has approved for construction either for reliability requirements or economic upgrades, as well as proposed projects for up to ten years into the future that it has not yet approved.

changes, including additions and updates, to information posted by Cleco or a stakeholder.

13. Stakeholders also may request that a stakeholder committee be formed to represent them in providing input into proposed options for transmission expansion. For purposes of organizing the committee, stakeholders would be classified as one of the following: transmission provider, regulatory entity, independent power producer, native load customer, network customer, pre-Order No. 888 transmission customer, point-to-point customer, and demand side management customer. The stakeholder committee will have one voting member for each of these groups, provided that no stakeholder may have directly or through any energy affiliate more than one representative on the committee. Stakeholder committee information, such as committee membership, the calendar of events, the release of reports, and other significant events, would be posted on Cleco's OASIS. Cleco would be the moderator at meetings of the stakeholder committee. Although the committee would be responsible for establishing its own rules and protocols, any stakeholder, even if non-voting, would have the right to request the committee to consider any planning-related issue.

**b. Protest**

14. Lafayette/LEPA state that, although Cleco has made strides towards enhancing stakeholder opportunities for participation in the planning process, Cleco's Attachment K falls short of providing the level of coordination and stakeholder participation required by Order No. 890.<sup>8</sup> Specifically, Lafayette/LEPA argue that Cleco's tariff provisions regarding the annual planning summit are not sufficiently detailed and that more detail is needed to ensure that the planning summit serves its purposes. They contend that stakeholders should be assured of having prior access to information, models and plans that will be discussed at the summit. Lafayette/LEPA also state that there should be an adequate follow-up process, such as a report on the summit prepared by Cleco. Lafayette/LEPA state that Cleco may intend for its webroom, described in section 5.2, to serve as the post-summit forum for dialogue and dissemination of information, but that the webroom is a new concept that may not suffice for that purpose.<sup>9</sup>

**c. Answer**

15. Cleco responds that its description of the annual planning summit is adequate. While the summit will be an important element of the transmission planning process, Cleco states that it is merely one element of the coordination required by the Commission in Order No. 890. Cleco further states that other elements of its proposed transmission planning process, including the use of a webroom and the stakeholder committee may be

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<sup>8</sup> Lafayette/LEPA's Protest at 5.

<sup>9</sup> *Id.* at 9, n.6.

more significant in enabling stakeholders to participate meaningfully in the process.<sup>10</sup> In any event, Cleco explains that the procedures for the summit will be developed as appropriate, rather than specified in advance and written into Cleco's OATT.

**d. Commission Determination**

16. We find that Cleco's proposed Attachment K partially complies with the coordination principle stated in Order No. 890. The annual transmission expansion planning summit will afford interconnected neighbors, affected state authorities, customers, and other stakeholders the opportunity to provide input into the development of Cleco's transmission plans. Cleco will provide further opportunities for input and coordination by posting comments and/or questions in the webroom and through the formation of stakeholder committees.

17. However, Cleco does not provide sufficient detail regarding its annual planning summit. It is not clear, for example, whether stakeholders will receive sufficiently in advance the information, models, and plans that will be discussed at the summit to allow for meaningful review. In addition, it is 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, the webroom or stakeholder committees. While the timeline in Cleco's tariff refers to an OASIS posting and stakeholder summit after Cleco's reliability assessment, there is no reference to stakeholder input during the development of the planning criteria and models to be used in that reliability assessment. In Order No. 890, the Commission found that customers must be given the opportunity to participate in the early stages of development of a transmission plan and not merely given an opportunity to comment on transmission plans that are developed without their input.<sup>11</sup> Accordingly, we direct Cleco to file, within 90 days of issuance of the issuance of this order, 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.

18. Cleco has also not provided sufficient information regarding its proposed use of a webroom to facilitate stakeholder input. Cleco states that registered stakeholders may use the webroom to provide input by posting comments and/or questions, but does not explain whether stakeholders may communicate among themselves using the webroom or whether posted comments and/or questions can be viewed by others. We direct Cleco to file, within 90 days of issuance of the issuance of this order, a further compliance filing

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<sup>10</sup> Cleco's Answer at 11.

<sup>11</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 454.

providing more detail regarding whether stakeholders may use the webroom to coordinate input regarding Cleco's planning activities.

19. In addition, we are concerned that Cleco has unreasonably limited the ability of stakeholders to participate as voting members in the stakeholder committee. Although Cleco does 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.<sup>12</sup> Moreover, Cleco does not identify the matters on which the stakeholder committee would vote. 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 does not explain whether that, or any other decision, is subject to voting and, if so, whether voting would be by majority, super-majority, or some other mechanism. The Commission directs Cleco to revise its Attachment K in a compliance filing to be made within 90 days of issuance of this order to provide the opportunity for all stakeholders to participate in the selection of a voting representative and to state more clearly how and when voting will take place.<sup>13</sup>

## 2. Openness

20. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a subregional group, the Commission emphasized that the overall development of the transmission plan and the planning process must remain open.<sup>14</sup> Transmission providers, in consultation with affected parties, must also develop mechanisms to manage

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<sup>12</sup> We also note that Cleco's proposed classification of stakeholders appears to include Cleco itself as a voting member of the stakeholder committee by referring to the "Transmission Provider" in section 5.6 of its Attachment K. To the extent Cleco intended for that reference to include neighboring transmission systems, it should revise section 5.6 to eliminate use of the defined term "Transmission Provider."

<sup>13</sup> The selection of high priority studies is discussed further in the Economic Planning section, below.

<sup>14</sup> The Commission made clear in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's Attachment K planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

confidentiality and Critical Energy Infrastructure Information (CEII) concerns, such as confidentiality agreements and password protected access to information.<sup>15</sup>

**a. Cleco's Proposal**

21. Cleco states that its transmission planning process will be open and accessible to all interested parties and that notices of the dates and times of meetings will be posted on its OASIS and sent by email. Relevant information for the planning process, such as the timeline for developing base case planning models, planning meeting agendas, and meeting locations, will also be posted on OASIS. All stakeholders are invited to attend annual transmission planning summits and meetings of the stakeholder committee, if formed.

22. Cleco proposes to require every participant in the transmission planning process to sign a confidentiality agreement governing the sharing of information between Cleco, owners of interconnection facilities, affected state authorities, customers, and other stakeholders. Cleco states that its procedures for obtaining CEII are to be followed for the execution of a confidentiality agreement, as well as for the evaluation of a request for confidential data. Cleco will not post or disseminate material classified as CEII, and will not allow access to that information, unless access is granted pursuant to the CEII procedures. Stakeholders desiring to participate in communications through the webroom also must register and consent to Cleco sharing any information provided with all other stakeholders, including the marketing and energy affiliates of Cleco or a stakeholder.

**b. Protest**

23. Lafayette /LEPA argue that it is unreasonable to make the execution of a confidentiality agreement a precondition to stakeholder participation in the planning process.<sup>16</sup> It is concerned that the prospect of executing an agreement that includes penalties of various sorts or other burdensome effects may “scare off” some stakeholders from any involvement in the planning process. Lafayette/LEPA state that Cleco should allow all interested parties to join in the process and should tailor its protections to maximize that involvement (e.g., by requiring execution of a confidentiality agreement only as necessary to protect information that is truly proprietary or commercially valuable). Lafayette/LEPA state that execution of a confidentiality agreement should be required only on an “as needed” basis when a customer seeks access to material that is actually confidential.<sup>17</sup>

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<sup>15</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

<sup>16</sup> Lafayette/LEPA's Protest at 5-6.

<sup>17</sup> *Id.* at 6.



**c. Answer**

24. Cleco states that Lafayette/LEPA do not identify any real burden associated with confidentiality agreements, which Cleco states are routinely used by the Commission under the OATT. Further, Lafayette/LEPA do not identify any stakeholder that would allegedly be “scared off” by the prospect of executing such an agreement. Cleco argues that Lafayette/LEPA request that information be posted rather than provided upon request by a stakeholder, but never explain how this is consistent with the claim that execution of a confidentiality agreement should not be required for participation in a process that is intended to be open and subject to the free exchange of information. Cleco states that its proposal will ensure that stakeholders can exchange confidential information freely and is consistent with the Commission’s concerns regarding protection of confidential information in the transmission planning process.<sup>18</sup>

**d. Commission Determination**

25. We find that Cleco’s proposed Attachment K partially complies with the openness principle stated in Order No. 890. With the modifications required above, Cleco’s Attachment K provides for a planning process that is open and accessible to all interested parties, with notices of dates and times of meetings, planning meeting agendas, and timelines for developing planning models posted on Cleco’s OASIS. We disagree, however, that it is appropriate to require every participant in the planning process to execute a confidentiality agreement that incorporates Cleco’s CEII procedures. In Order No. 890, the Commission required that transmission providers, in consultation with affected parties, develop mechanisms, such as confidentiality agreements and password-protected access to information, to manage confidentiality and CEII concerns.<sup>19</sup> While it would be appropriate for Cleco to limit access to confidential information or CEII, stakeholders should be able to obtain non-confidential information and participate in the planning process without executing confidentiality agreements. In addition, stakeholders should be able to obtain confidential information that is not CEII without being required to satisfy Cleco’s CEII procedures. Accordingly, we direct Cleco to file, within 90 days of issuance of this order, 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. It must also provide reasonable access to confidential information used in the planning process that is not CEII.

26. We are also concerned 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. Adequate protections should be in place to maintain

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<sup>18</sup> Cleco’s Answer at 8.

<sup>19</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

the confidentiality of sensitive information submitted to Cleco by stakeholders participating in the transmission planning process. We therefore direct Cleco to file, within 90 days of issuance of this order, 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.

### **3. Transparency**

27. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must describe in its Attachment K the method(s) it will use to disclose the criteria, assumptions and data that underlie its transmission system plans.<sup>20</sup> The Commission specifically found that simply relying on Form Nos. 714 and 715 is insufficient; these forms do not provide sufficient information for transparency in planning, because those forms were designed for different purposes. Transmission providers were also directed to provide information regarding the status of upgrades identified in the transmission plan.

28. The Commission explained that sufficient information must be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate Standards of Conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand resources in transmission planning. Where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.<sup>21</sup>

#### **a. Cleco's Filing**

29. Pursuant to section 7.1 of Cleco's Attachment K, stakeholders are allowed to request base case power flow models for verification of inputs, assumptions, and methodologies. This ensures transparency of the process to both native load and all other stakeholders. Cleco states that this information will be posted in enough detail and in a

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<sup>20</sup> In Order No. 890-A, the Commission made clear that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to understand the results reached in a transmission plan. See Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

<sup>21</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-79.

format that permits stakeholders to verify all studies and analyses, including, but not limited to, those related to the evaluation of specific projects for inclusion in its construction plan. Cleco will also post its construction plan, including updates and changes, on its OASIS. In addition, section 7.3 of Cleco's Attachment K provides that sufficient information will be made available to registered stakeholders to allow replication of planning study results not associated with Cleco's construction plan.<sup>22</sup>

**b. Protest**

30. Lafayette/LEPA contend that Cleco should not put the burden on stakeholders to request base case models in order to obtain the related inputs, assumptions and methodologies. Instead, the information should be posted, subject to the protections afforded to confidential information and consistent with CEII policy. Lafayette/LEPA state that stakeholders may be unaware of updates and new versions of the model during the course of the planning cycle.<sup>23</sup> They also raise the concern that, if information is furnished only upon request by particular stakeholders rather than being made generally available through routine postings, there may not be simultaneous disclosure.<sup>24</sup> The requesting party would get the information before other stakeholders, thus gaining an unfair advantage that conflicts with the openness and transparency requirements of Order No. 890. They propose that section 7.1 of Cleco's Attachment K be revised to require routine posting of transmission-related information.

31. Lafayette/LEPA also note that the Commission required posting of information sufficient for stakeholders to replicate the results of a transmission provider's planning studies<sup>25</sup> and, therefore, Cleco should be required further revise section 7.1 to ensure that stakeholders have sufficient information to allow them to replicate (i.e., reproduce on their own) Cleco's planning study results, not just enough information to confirm (i.e., verify) the results that Cleco itself reached.<sup>26</sup> In addition, Lafayette/LEPA note that the Commission required transmission providers to keep stakeholders apprised of the status of any projects in its transmission plan.<sup>27</sup> They contend that Cleco's Attachment K states no such obligation.

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<sup>22</sup> As noted above, stakeholders desiring to participate in communications through the webroom must register for such participation through Cleco's OASIS.

<sup>23</sup> Lafayette/LEPA's Protest at 11-12.

<sup>24</sup> *Id.*

<sup>25</sup> Lafayette/LEPA's Protest at 12 (*citing* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 195).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* (*citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 472).

**c. Answer**

32. To resolve some of the concerns raised in the protest, Cleco states that it will modify the first sentence of section 7.1 of its Attachment K to provide that it will post the base case power flow models or any changes or updates to such models in the webroom established under its Attachment K. Accordingly, the modified section 7.1 would read as follows:

Transmission Provider will post Base Case Models (including updates and/or changes in such models) in the webroom established pursuant to section 5.2 of this Attachment K for verification of inputs, assumptions, and methodologies to ensure transparency of the process to both Native Load and all other stakeholders.<sup>28</sup>

Further, Cleco states that it will modify the second sentence of section 7.1 to replace “verify” with “replicate.” Finally, Cleco agrees to modify section 7.3 to provide that Cleco will also keep stakeholders informed of the project status of upgrades identified in construction plans.<sup>29</sup>

**d. Commission Determination**

33. We find that Cleco’s proposed Attachment K partially complies with the transparency principle stated in Order No. 890. 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. Cleco, however, has committed only to make available base case power flow models and does not describe how it will disclose the criteria, assumptions, and data that underlie those models. Moreover, as Cleco acknowledges in its answer, it must provide sufficient information for stakeholders to replicate, and not merely verify, its transmission planning studies. Cleco also acknowledges that its proposed Attachment K failed to provide for the disclosure of information regarding the status of upgrades that are identified in its transmission plan. Accordingly, we direct Cleco to file, within 90 days of issuance of this order, a further compliance filing that revises its Attachment K to provide the details described above.

34. With regard to whether planning models and underlying data must be made available upon request or through webroom postings, we accept Cleco’s commitment to revise section 7.1 of its Attachment K to provide for posting of its base case power flow models.

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<sup>28</sup> Cleco’s Answer at 5.

<sup>29</sup> *Id.*

#### 4. Information Exchange

35. The information exchange principle requires network customers to submit information on their projected loads and resources (e.g., planning horizon and format) comparable to the information used by transmission providers in planning for their native load. Point-to-point customers must submit any projections they have of a need for service over the planning horizon and at what receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as actual reservations.<sup>30</sup> Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

36. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand resources if they wish to have them considered in the development of the transmission plan. The Commission stressed that information collected by transmission providers to provide transmission service to their native load customers must be transparent and that equivalent information must be provided by transmission customers to ensure effective planning and comparability. In Order No. 890-A, the Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer, and that the transmission provider must maintain the confidentiality of this information. To this end, transmission providers must clearly define in their Attachment K the information sharing obligations placed on customers in the context of economic planning.<sup>31</sup>

37. The Commission emphasized that transmission planning is not intended to be limited to the mere exchange of information and after the fact review of transmission provider plans. The planning process is instead intended to provide a meaningful opportunity for customers and stakeholders to engage in planning along with their transmission providers. To that end, the Commission clarified that information exchange relates to planning, not to other studies performed in response to interconnection or transmission service requests.<sup>32</sup>

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<sup>30</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 207.

<sup>31</sup> *Id.* P 206.

<sup>32</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

**a. Cleco's Filing**

38. Section 8.1.1 of Cleco's Attachment K provides that customers receiving transmission service under pre-Order No. 888 agreements and network customers (including Cleco's service to its native load) shall submit annually load and resource forecasts in spreadsheet format for each delivery point and receipt point for the following ten years by November 1 of each year. Section 8.1.2 states that information provided via the load and resource spreadsheet by network customers and customers receiving transmission service under pre-Order No. 888 agreements also shall be submitted to the Southwest Power Pool (SPP) and SERC for use in developing their planning models. Section 8.2.1 requires all other transmission service customers to submit projections regarding capacity, duration, receipt and delivery points each year by November 1. Section 8.2.2 states that information provided by these transmission customers shall also be submitted to SPP and SERC for base case power flow model development.

**b. Commission Determination**

39. We find that Cleco's proposed Attachment K complies with the information exchange principle stated in Order No. 890. All current customers have an opportunity to submit information regarding projected uses of the system for incorporation into Cleco's planning models pursuant to clearly established guidelines.

**5. Comparability**

40. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop transmission system plans that meet the specific service requests of their transmission customers and otherwise treat similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers historically have planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources must, where appropriate, be considered on a comparable basis to the service provided by generation resources.<sup>33</sup> Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, must identify how it will determine comparability for purposes of transmission planning.<sup>34</sup>

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<sup>33</sup> *Id.* P 494-95.

<sup>34</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

**a. Cleco's Filing**

41. Cleco's Attachment K states that its transmission planning process is designed to accommodate the view and inputs of all stakeholders and to ensure that all similarly situated parties are treated comparably. Cleco states that all parties can provide input to its transmission planning process. That process attempts to expand the Cleco system to reliably serve firm native load customers, long-term firm point-to-point customers, and pre-Order No. 888 contract obligations subject to applicable requirements of comparable treatment.

**b. Protest**

42. Lafayette/LEPA contend that Cleco's proposed Attachment K should be revised to better reflect the principles set forth in Order No. 890 and Order No. 890-A. Specifically, they propose the following language:

The Transmission Planning Process shall (i) ensure that the comments, data and other information provided by stakeholders is [sic] considered by the Transmission Provider in developing the expansion plan for the Transmission System, and (ii) meet the specific service requests of transmission customers and otherwise treat similarly-situated customers (*e.g.*, network and retail native load) comparably in transmission system planning.<sup>35</sup>

**c. Answer**

43. Cleco states that Lafayette/LEPA do not identify any manner in which its proposed Attachment K is inconsistent with the comparability principle.

**d. Commission Determination**

44. We find that Cleco's proposed Attachment K complies with the comparability principle stated in Order No. 890. Cleco commits to treat all similarly situated parties comparably in its transmission planning process and to accommodate the views and inputs of all stakeholders. We therefore find the modification to Cleco's Attachment K requested by Lafayette/LEPA to be unnecessary.

45. However, we note that Order No. 890-A was issued on December 27, 2007, after Cleco submitted its Order No. 890 Attachment K compliance filing. In Order No. 890-A, the Commission provided additional guidance, among other things, as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as

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<sup>35</sup> Lafayette/LEPA's Protest at 17-18.

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.”<sup>36</sup> Here, Cleco has not addressed how it will treat demand resources comparably. However, since Order No. 890-A was issued subsequent to the filing before us, Cleco did not have the opportunity to demonstrate that it complies with this requirement of Order No. 890-A. Therefore, Cleco is directed to file within 90 days of issuance of this order, a compliance filing providing the necessary demonstration required by Order No. 890-A.<sup>37</sup>

## **6. Dispute Resolution**

46. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be used, but that transmission providers seeking to rely on an existing dispute resolution process must specifically address how their procedures will address matters related to transmission planning. The Commission encouraged transmission providers, customers, and other stakeholders to use the Commission’s Dispute Resolution Service (DRS) to help develop a three-step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider’s dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under FPA section 206 to file complaints with the Commission.<sup>38</sup>

### **a. Cleco’s Filing**

47. Cleco’s Attachment K provides that, when a dispute arises in the transmission planning process between two or more parties, the party raising the issue in the dispute must initially provide written notice of the dispute and a detailed description of the issue in dispute. The parties to the dispute will then negotiate in good faith to resolve the dispute for up to ten business days after receipt of notice of the dispute or some other mutually agreed-upon time-frame. Upon the request of either party to a dispute, parties may solicit an opinion from SPP and, upon receiving a response from SPP either providing or declining to provide the solicited opinion, will continue to negotiate in good

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<sup>36</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494, and 549.

<sup>37</sup> For example, tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

<sup>38</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-03.



faith for up to five business days from the receipt of such response or some other mutually agreed-upon time-frame.<sup>39</sup>

48. If the dispute is not resolved within five business days or the agreed-upon time-frame, each party shall appoint an executive management representative who will negotiate in good faith to resolve the dispute.<sup>40</sup> If the parties are still unable to resolve the dispute, the parties will submit the matter to a mediator mutually acceptable to the parties. If the parties are still unable to resolve the dispute, then the parties may exercise their rights to file a complaint with the Commission under section 206 of the FPA or the right to make unilateral filings under section 205 of the FPA.<sup>41</sup> In addition, in the event of a conflict between Attachment K and a specific provision of the OATT or any other agreement, Cleco proposes that the specific provision of the OATT or other agreement will govern.

**b. Protest**

49. Lafayette/LEPA state that the proposal for the OATT or other contractual provisions to govern if there is a conflict with Cleco's Attachment K grew out of stakeholder discussions in which they expressed concern about overly broad dispute resolution provisions in an earlier draft of Attachment K. Lafayette/LEPA do not object to this language based on the following understanding of its meaning as applied to pre-Order No. 888 transmission agreements that remain in force. First, Lafayette/LEPA understand that the dispute resolution provisions of Attachment K do not govern disputes arising under pre-Order No. 888 agreements, and do not override the remedies available to a party under such agreements. Second, if a party to a pre-Order No. 888 agreement were to allege breach of the agreement by Cleco due to Cleco's failure to plan and construct sufficient transmission facilities to ensure performance, that dispute would not be considered a dispute arising under Attachment K, even though it might include allegations involving Cleco's transmission planning. Third, Cleco's satisfaction of its tariff obligation under Attachment K has no bearing on any dispute that may arise under a pre-Order No. 888 agreement pertaining to the sufficiency of Cleco's performance under that agreement. Lafayette/LEPA reserve the right to contest Cleco's proposed Attachment K if Cleco indicates that it does not share the foregoing understandings.

**c. Answer**

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<sup>39</sup> See Cleco, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 136F, at section 10.2 (Dispute Resolution by Representatives).

<sup>40</sup> *Id.* at section 10.3 (Dispute Resolution by Executive Management Representatives).

<sup>41</sup> *Id.* at section 10.5 (Appeal to the Commission).

50. Cleco states that its proposal for other OATT or contractual provisions to govern in the event of a conflict with Cleco's Attachment K speaks for itself. It will not address hypothetical disputes that could foreclose its ability to assert arguments at a later date. Cleco explains that its Attachment K does not modify rights arising elsewhere, and the specific provision of any other agreement or the OATT governs in the case of inconsistency.

**d. Commission Determination**

51. We find that Cleco's proposed Attachment K partially complies with the dispute resolution principle stated in Order No. 890. Cleco's dispute resolution provision requires the use of negotiation and mediation. We encourage parties to seek the resolution of issues relating to transmission planning through this dispute resolution process. However, during the dispute resolution process affected parties should retain any rights they may have under FPA section 206 to file a complaint with the Commission.<sup>42</sup> 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, we direct Cleco to file, within 90 days of issuance of this order, a compliance filing revising its dispute resolution provision to preserve the rights of a party to exercise its rights under section 206 of the FPA.

52. With regard to concerns about the enforceability of terms in pre-Order No. 888 contracts, we accept Cleco's commitment that its proposed Attachment K is not intended to modify any rights contained in those agreements. Disputes under such agreements can be resolved as appropriate under each agreement.

**7. Regional Participation**

53. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider is required to coordinate with interconnected systems to: (i) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data; and (ii) identify system enhancements that could relieve congestion or integrate new resources. The Commission stated that the regional planning effort must consider and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical practices. The Commission declined to mandate the geographic scope of particular planning regions, instead stating that the geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and subregions. The Commission also made clear that reliance on existing NERC planning processes may not be sufficient to meet the

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<sup>42</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-03.

requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. If a transmission provider's implementation of the North American Electric Reliability Corporation (NERC) processes is not appropriate for such economic issues, individual regions or subregions must develop alternative processes.<sup>43</sup>

54. In Order No. 890-A, the Commission clarified that while the obligation to engage in regional coordination is imposed on transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested customers and stakeholders.<sup>44</sup> In Order No. 890-A, the Commission also emphasized that effective regional planning must include coordination among regions and subregions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.<sup>45</sup>

**a. Cleco's Filing**

55. Cleco states that it will coordinate its planning activities with those of SPP, Southeast Reliability Council (SERC), and other regional reliability organizations for development and consistency of the models, databases, and assumptions used in making reliability determinations. Cleco states that it participates in the annual development of base case power flow models by SPP and SERC and provides appropriate base case model updates to the SPP and SERC regions during their respective regional planning cycles. Cleco also participates in SPP regional planning activities, including its Transmission Working Group, and in regional studies as requested by SPP or other regional reliability organizations.

56. In addition, Cleco coordinates with SPP in performing annual assessments of its transmission system. Cleco states that these assessments assist in developing mitigation plans for submittal to NERC to ensure reliable operation of the transmission system while complying with planning criteria. Cleco also notifies the owner of a directly interconnected facility if a transmission-related study produces results that could have a material adverse effect on that entity's system and that would result in a violation of Cleco's planning criteria if it were on Cleco's system. Such affected systems will be provided the opportunity to be fully involved through Cleco's planning process and in negotiations relating to the effects on the affected system of construction of projects by Cleco. Cleco states that it also participates and coordinates joint planning efforts with the owners of interconnected transmission systems, sharing system plans to ensure they are simultaneously feasible while assumptions and data are consistent.

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<sup>43</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

<sup>44</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

<sup>45</sup> *Id.*

**b. Protest**

57. Lafayette/LEPA recommend that the Commission require the creation of a standing regional planning committee to serve as a platform for ongoing coordination of planning activities by transmission owners and stakeholders in the Cleco-Entergy-SPP region.<sup>46</sup> They contend that such a standing committee would address weaknesses in Cleco's described process, such as the limitation of Cleco's coordinated planning to directly interconnected entities, a lack of opportunities for stakeholders to participate in coordinated multi-system planning in the Cleco-Entergy-SPP region, and limited opportunities for identifying and optimizing upgrades that would reduce generation dispatch costs over multiple systems in the region.

58. Regarding the development of base case power flow models by SPP and SERC, Lafayette/LEPA argue that those models are a key building block in the planning process, yet non-transmission owner stakeholders have historically not been offered opportunities to participate in the SERC modeling processes.<sup>47</sup> Lafayette/LEPA therefore argue that Cleco's reliance on SERC models is problematic.

59. Similarly, Lafayette/LEPA are concerned that stakeholders will not be permitted to participate in the development of the planning criteria used by Cleco in performing transmission studies. Lafayette/LEPA note that Cleco defines the term "planning criteria" as including applicable NERC reliability standards, SPP planning criteria or Cleco planning criteria.<sup>48</sup> Lafayette/LEPA contend that stakeholders will not be permitted to participate in the development of that criteria and, thus, will be precluded from participating in formulation of one of the key building blocks in the planning process.

60. Lafayette/LEPA also state that Cleco's identification of affected systems is too narrow and depends upon Cleco's determination as to whether its planning criteria are violated by conditions on another party's system. Lafayette/LEPA state, for example, that the owners of interconnected facilities may be affected in ways that would not create a violation of Cleco's planning criteria, but that nevertheless would be adverse to the affected system; for example, by imposing out-of-merit dispatch or reconfiguration costs. Lafayette/LEPA state that Cleco's approach effectively holds the affected system to the Cleco planning criteria.<sup>49</sup>

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<sup>46</sup> Lafayette/LEPA's Protest at 19.

<sup>47</sup> *Id.* at 7-8.

<sup>48</sup> Cleco, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 136A, at section 3.5 (Planning Criteria).

<sup>49</sup> Lafayette/LEPA's Protest at 9.

61. Lafayette/LEPA argue that allowing Cleco to be solely responsible for determining whether an interconnected system would be affected enough to become an affected system is a potential conflict of interest. For example, if Cleco were contemplating a system improvement that would affect an interconnected system, Lafayette/LEPA state that Cleco's commercial interests would lie in not treating the other system as an affected system. They argue that doing so would expose Cleco to cost responsibility to mitigate the effects of its project, such as costs of transmission reinforcements or off-cost dispatch on the affected system.<sup>50</sup>

62. Lafayette/LEPA further contend that the definition of affected system is not consistent with the Commission's use of that term in the Commission's Large Generator Interconnection Procedures (LGIP).<sup>51</sup> Lafayette/LEPA state that section 1 of the LGIP defines "affected system" as "an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection." However, Lafayette/LEPA state that since the definition Cleco proposes in section 5.4 of its Attachment K would apply to generator interconnection requests, adoption of section 5.4 would greatly restrict the obligation to coordinate with affected systems imposed by the LGIP.<sup>52</sup> Lafayette/LEPA argue that coordination with affected systems is a self-limiting process in that system only modestly affected by Cleco's planned actions will not want to spend the time and money required for intensive coordination; therefore, consistent with the LGIP they contend that Cleco should leave open-ended the definition of an affected system in the context of the transmission planning process.

**c. Answer**

63. Cleco asserts that a standing regional planning committee is not necessary.<sup>53</sup> Cleco states that it has long engaged in regional planning through the applicable SPP planning committees and that Lafayette/LEPA have not established that additional processes are necessary.

64. Regarding the development of base case power flow models, Cleco states that it is interconnected with two Entergy operating subsidiaries and that Entergy participates in

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<sup>50</sup> *Id.* at 10.

<sup>51</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 29 n. 32 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>52</sup> Lafayette/LEPA's Protest at 10.

<sup>53</sup> Cleco's Answer at 16.

the SERC Regional Entity for reliability purposes. Because Cleco and Entergy are so integrated, Cleco states that it must consider power flow models developed by SERC in the development of its own base case model and that any concerns regarding SERC's process should be addressed elsewhere.<sup>54</sup> Cleco further states that there are ample opportunities for stakeholder participation in coordinated regional planning at SPP, both in SPP's capacity as regional entity and as Entergy's Independent Coordinator of Transmission (ICT). Cleco states that stakeholders should pursue existing opportunities to participate in coordinated transmission planning before they seek to create duplicative processes.<sup>55</sup>

65. Regarding the development of planning criteria, Cleco states that it bears the responsibility, as transmission provider, for transmission planning and for the reliable operation of the transmission system, consistent with reliability standards. Stakeholders may offer suggestions throughout the process on any subject, including planning criteria, and stakeholders may also use the dispute resolution process under the OATT to resolve disagreements.<sup>56</sup>

66. Cleco states that it provides straightforward guidelines for identifying affected systems. If an interconnected system believes that it should be classified as an affected system in a given instance, it may raise the issue with Cleco through the dispute resolution process in Cleco's OATT.<sup>57</sup> Further, Cleco notes that its Attachment K makes clear that rights and obligations arising elsewhere in its OATT are not modified, so any conflict between the LGIP definition of affected system and the definition in Attachment K would be resolved in favor of the LGIP definition.<sup>58</sup>

#### **d. Commission Determination**

67. We find that Cleco's proposed Attachment K partially complies with the regional participation principle stated in Order No. 890. Cleco generally describes commitments to coordinate its planning activities with those of SPP, SERC, and other regional reliability organizations. However, Cleco has 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 SPP and SERC. For example, Cleco's proposed Attachment K does not provide timelines and milestones for the coordination of power flow models with SPP and SERC and system plans with its interconnected neighbors, including

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<sup>54</sup> *Id.* at 10.

<sup>55</sup> *Id.* at 17.

<sup>56</sup> *Id.* at 9.

<sup>57</sup> *Id.* at 12-13.

<sup>58</sup> *Id.* at 13.

opportunities for stakeholders to provide input and comment in each process. It is also unclear how each of the regional processes referred to by Cleco will interact with the others when coordinated with Cleco's own planning activities, including development of the construction plan. Accordingly, we direct Cleco to file, within 90 days of issuance of this order, a 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.

68. With regard to the development of Cleco's planning criteria, we agree with Cleco that the transmission provider has the ultimate obligation for the reliable operation of the transmission system. However, the transmission provider also is obligated under Order No. 890 to implement an open, coordinated, and transparent planning process that allows stakeholders to provide input regarding the development of assumptions, models, and criteria used by the transmission provider. Cleco's Attachment K defines the term "planning criteria" to include NERC reliability standards, SPP planning criteria, and Cleco planning criteria. As noted in the Coordination section above, Cleco fails to identify in its Attachment K how stakeholders can review and comment on Cleco's planning criteria before they are finalized. This applies equally to planning criteria developed by regional entities, such as SPP, that Cleco intends to incorporate into its own planning criteria. We direct Cleco to file, within 90 days of issuance of this order, a 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.

69. Cleco's Attachment K also fails to identify any process for coordinating economic studies on a regional basis. Cleco states that it participates in SPP regional planning activities, including the Transmission Working Group, and in regional studies, as requested by SPP and other regional reliability organizations, but does not explain the scope of those activities and whether economic planning studies are included. In Order No. 890, the Commission directed transmission providers to develop open and coordinated regional processes that address both reliability and economic considerations.<sup>59</sup> The Commission concluded that customers must be allowed to request that economic upgrades be studied. We therefore required transmission providers to coordinate on those issues as necessary in sub-regional or regional planning processes.<sup>60</sup> We direct Cleco to file, within 90 days of issuance of this order, a compliance filing that revises its Attachment K to address this obligation.

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<sup>59</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528.

<sup>60</sup> *Id.*

70. We find that Lafayette/LEPA's request that we require a standing regional planning committee between Cleco, Entergy and SPP is premature, pending further development of Cleco's Attachment K. Lafayette/LEPA and other interested stakeholders should work with Cleco in developing its revised Attachment K to address their concerns regarding Cleco's participation in regional planning activities.

71. With regard to Lafayette/LEPA's arguments regarding Cleco's identification of affected systems through its transmission planning studies, we agree with Cleco that stakeholders can raise any concerns regarding the identification of affected systems during review of those studies. Disagreements regarding whether a system is affected can be addressed through the dispute resolution provisions of Cleco's Attachment K, discussed above. Further, as Cleco notes in its answer, any conflict between the remainder of the OATT and the Attachment K will be resolved in favor of the OATT. Therefore, we find that Cleco's identification of affected systems during the transmission planning process does not conflict with use of that term in the LGIP.

## **8. Economic Planning Studies**

72. The economic planning studies principle requires transmission providers to account for economic, as well as reliability, considerations in the transmission planning process. The Commission explained in Order No. 890 that good utility practice requires vertically integrated transmission providers not only to plan to maintain reliability, but also to consider whether transmission upgrades can reduce the overall cost of serving native load. The economic planning principle is designed to ensure that economic considerations are adequately addressed when planning for OATT customers as well. The Commission emphasized that the scope of economic studies should not just be limited to individual requests for transmission service. Customers must be given the opportunity to obtain studies that evaluate potential upgrades or other investments that could reduce congestion or integrate new resources and loads on an aggregated or regional basis.

73. All transmission providers, including RTOs and ISOs, were directed to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies will be recovered as part of the transmission provider's overall OATT cost of service, while the cost of additional studies will be borne by the stakeholder(s) requesting the study.<sup>61</sup>

74. In Order No. 890-A, the Commission made clear that the transmission provider's Attachment K must clearly describe the process by which economic planning studies can

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<sup>61</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-51.



be requested and how they will be prioritized.<sup>62</sup> In Order No. 890-A, the Commission also made clear that a transmission provider's affiliates must be treated like any other stakeholder; therefore, their requests for studies should be considered comparably, under the process outlined in the transmission provider's Attachment K.<sup>63</sup>

**a. Cleco's Filing**

75. Cleco's proposed Attachment K allows transmission customers, native load customers, generator interconnection customers, state regulatory authorities, or other stakeholders to request economic upgrade studies evaluating specific potential upgrades or other specific investments that could improve import capabilities, reduce congestion, or integrate new resources and loads. Cleco states that customer requests for economic upgrade studies will be in a separate queue from requests for transmission and interconnection service. Customers must supply data defining the scope of the study, such as points of receipt and delivery, consistent with the information required when making a transmission delivery service request under Cleco's OATT. Study results will be posted in the webroom for stakeholder review, input and feedback.

76. Cleco states that the stakeholder committee may request that Cleco perform the three highest priority economic studies within a calendar year. Requests for such studies should be submitted by December 31 for the upcoming year and, by March 1 of the following year, the committee will select the three highest priority studies to be performed. If more than three studies are performed based on the committee's recommendation, costs shall be recovered pro rata from the entities requesting the excess studies. Cleco will use its best efforts to complete studies selected by the committee by the end of each year and will promptly inform the committee of the status and expected completion date when Cleco will not be able to complete the studies by the end of such year.

**b. Protest**

77. Lafayette/LEPA contend that Cleco's Attachment K is ambiguous regarding the mechanism for requesting studies of economic upgrades. Lafayette/LEPA request that the Commission direct Cleco to modify its Attachment K to clarify: (i) whether all requests for economic upgrade studies must pass through the stakeholder committee and, if so, would such a requested study be included in the three-per-year studies accorded rolled-in cost treatment only if selected by the committee as high-priority or, alternatively, whether individual customers are permitted to submit economic study requests directly to Cleco; (ii) if the former, what mechanism will be used to resolve

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<sup>62</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

<sup>63</sup> *Id.* P 237.

disputes as to which studies should be included in the three-per-year group; and (iii) if the latter, how the costs of individually requested studies will be recovered.<sup>64</sup>

78. Lafayette/LEPA also request clarification of the information that must be provided by a customer when requesting an economic upgrade study. They note that the second sentence of section 12.2 of Cleco's proposed Attachment K states that the customer "must supply data and scope of study consistent with the information required when making a transmission delivery service request pursuant to Part II or Part III of the Tariff." Lafayette/LEPA state their understanding that Cleco intends to flexibly apply this requirement based on the nature of the information available to a customer at the time it submits its request. To reflect this understanding, Lafayette/LEPA propose that the second sentence of section 12.2 begin with the phrase "To the extent available to the Customer at the time of its request."

**c. Answer**

79. In response, Cleco clarifies that all requests for economic upgrade studies must pass through the stakeholder committee, which will determine the high priority group to receive rolled-in cost treatment. If an economic upgrade study request is not included in the high priority group, the stakeholder submitting the request may request that Cleco perform the study anyway. Cleco states that the stakeholder committee will develop a mechanism to resolve disputes among stakeholders as to which studies should be included in the high priority group. If Cleco performs a study that is not in the high-priority group, Cleco states that costs will be recovered under section 12.5 on a *pro rata* basis from the entities that requested the study in excess of the three studies recommended by the committee.<sup>65</sup>

80. Cleco also agrees to preface the second sentence of section 12.2 with the phrase, "To the extent available to the Transmission Customer at the time of its request," as suggested by Lafayette/LEPA. However, Cleco emphasizes that the data provided by the stakeholder requesting the economic upgrade study must be sufficient, and of sufficient quality, to enable Cleco to perform the study. Cleco states that it will be flexible, but will not waste resources attempting to perform studies where the requesting stakeholder does not provide adequate data for a meaningful study.

**d. Commission Determination**

81. We find that Cleco's proposed Attachment K partially complies with the economic planning studies principle stated in Order No. 890. Customers, regulatory authorities and other stakeholders may request studies for potential economic upgrades, and Cleco will

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<sup>64</sup> Lafayette/LEPA's Protest at 21.

<sup>65</sup> Cleco's Answer at 6.

perform up to three economic studies each year that will receive rolled-in rate treatment. Additional studies will be performed if requested, at the cost of the requesting parties. However, Cleco fails to specify adequate procedures for selecting those high priority studies that will receive rolled-in rate treatment. Cleco states in its answer that all requests must pass through the stakeholder committee, which will develop a mechanism to resolve disputes as to which studies are high priority. As noted in the Coordination section above, Cleco's Attachment K provides certain members of the stakeholder committee with voting rights, yet Cleco fails to explain whether the committee's selection of economic planning studies will be subject to a vote and, if so, whether voting would be by majority, super-majority or some other mechanism. In addition, sections 12.3 and 12.5 of Cleco's Attachment K state that the committee will "request" and "recommend" that Cleco perform the high priority studies, implying that Cleco can decline to do so. Cleco's Attachment K also fails to state whether stakeholders, the committee or Cleco can cluster or batch study requests to streamline processing. Therefore, we direct Cleco to file, within 90 days of the date of the issuance of this order, 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.

82. Cleco's Attachment K also fails to provide adequate opportunity for stakeholder input in the development of its economic planning studies. Cleco states that it will post study results in the webroom for stakeholder review, input and feedback, which appears to preclude stakeholder review and comment on study assumptions, methodologies, and draft results prior to being finalized. As with any planning study, stakeholders must have the opportunity to comment on the data and assumptions used in economic planning studies in the early stages of study development. Accordingly, we direct Cleco to file, within 90 days of the date of the issuance of this order, a further compliance filing that provides for stakeholder comment and input regarding the assumptions, methodologies, and results of economic planning studies.

83. Finally, as noted in the Regional Participation section above, Cleco also fails 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. 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.<sup>66</sup> We direct Cleco to file, within 90 days of issuance of this order, a compliance filing that revises its Attachment K to address this obligation.

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<sup>66</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528.

## 9. Cost Allocation

84. The cost allocation principle requires that transmission providers address in their planning processes the allocation of costs of new facilities that do not fit under existing rate structures. In Order No. 890, the Commission suggested that such new facilities might include regional projects involving several transmission owners or economic projects that are identified through the study process, rather than individual requests for service. The Commission did not impose a particular allocation method for such projects and, instead, permitted transmission providers and stakeholders to determine the criteria that best fits their own experience and regional needs. Transmission providers therefore were directed to identify the types of new projects that are not covered under existing cost allocation rules and that, as a result, would be affected by the cost allocation proposal.

85. The Commission did not prescribe any specific cost allocation methodology in Order No. 890. The Commission instead suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal must fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal must provide adequate incentives to construct new transmission. Third, the cost allocation proposal must be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.<sup>67</sup> In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation in order to pursue that investment.<sup>68</sup>

### a. Cleco's Filing

86. Cleco's draft Attachment K distinguishes between reliability upgrades and economic upgrades for cost allocation purposes. The costs of facilities that meet Cleco's planning criteria and that are approved by the Louisiana Public Service Commission (LPSC) are recovered through existing rate structures. Expenditures for facilities that are not required in order to meet the planning criteria or that are not approved by the LPSC are allocated to and recovered from the entity proposing the construction of the facilities for which such expenditures are made, except to the extent that the LPSC or the Commission approves such expenditures for full recovery through existing rate structures. Cleco states that the stakeholder committee shall consider and may propose

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<sup>67</sup> *Id.* P 557-61.

<sup>68</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

methods of allocating costs to any beneficiary of expenditures for economic upgrades other than the entity proposing such expenditure.

**b. Protest**

87. Lafayette/LEPA express concern that development of Cleco's planning criteria will not involve stakeholder participation, yet that the planning criteria will be one of the two bases for classifying upgrades for purposes of cost allocation. They also note that Cleco controls what transmission project expenditures are submitted for LPSC approval and when the expenditures are submitted, allowing Cleco to manipulate approval by the LPSC.<sup>69</sup> Lafayette/LEPA assert that Cleco has unilateral control over the classification of upgrades as reliability or economic and will cause an unjustified number of projects to be directly assigned to transmission customers. Lafayette/LEPA state that any direct assignment of costs to transmission customers will ensure that upgrades will not get built and that needed system improvements will not occur. Moreover, they state that the distinction between "reliability" and "economic" upgrades has been discredited and should no longer be accepted as the linchpin of cost allocation.<sup>70</sup>

88. Lafayette/LEPA also raise concerns related to Cleco's definition of construction plan in section 3.4 of the proposed Attachment K. That provision refers to projects that have been approved for construction by Cleco through its internal processes for capital additions or betterments either for reliability or economic reasons, as well as proposed projects, for up to ten years into the future that have not yet been approved by Cleco.<sup>71</sup> Lafayette/LEPA state that, while a ten-year planning window would be satisfactory, they object to the vagueness of an indefinite "up to" ten-year period in Cleco's definition of construction plan, stating that this language deprives stakeholders of the cost allocation certainty they are entitled to under Order No. 890.<sup>72</sup> Given the importance of the period encompassed by the construction plan, Lafayette/LEPA argue that the period should be fixed at ten years or that the determination should be made through an open and inclusive process in which stakeholders provide input and feedback.<sup>73</sup>

**c. Answer**

89. Cleco states that its determination of planning criteria is valid as part of its obligation as the transmission provider and, therefore, it is appropriate to consider those

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<sup>69</sup> Lafayette/LEPA's Protest at 15-16.

<sup>70</sup> *Id.* at 17.

<sup>71</sup> Cleco, FERC Electric Tariff, Third Revised Volume No. 1, Original Sheet No. 136A.

<sup>72</sup> Lafayette/LEPA's Protest at 15.

<sup>73</sup> *Id.*

planning criteria when determining how costs should be allocated for particular transmission projects. Cleco dismisses Lafayette/LEPA's concerns regarding LPSC approval as a determining factor in whether an upgrade is related to reliability, arguing that Lafayette/LEPA have provided no support for their assertion that Cleco will game the system.<sup>74</sup> Further, Cleco notes that its proposed Attachment K specifically provides that the stakeholder committee may propose to allocate the costs of economic upgrades to any beneficiary of expenditures for economic upgrades other than the entity proposing such expenditure. Cleco states that the dispute resolution procedures of its Attachment K can be used to resolve disagreements as to classification of upgrades for purposes of cost allocation.

90. With regard to the term of the construction plan, Cleco states that it will delete the words "up to" from the definition of construction plan, thereby fixing the length of the construction plan at ten years.

**d. Commission Determination**

91. We find that Cleco's proposed Attachment K partially complies with the cost allocation principle stated in Order No. 890. With regard to reliability upgrades, Cleco explains that it will roll the costs of those upgrades into rates using existing rate structures. As the Commission made clear in Order No. 890, it is not our intention to disturb existing rate structures.<sup>75</sup> We disagree with Lafayette/LEPA that it is unreasonable to allocate the construction costs of facilities that have not been approved by the LPSC to the entity proposing the upgrade. If Lafayette/LEPA believe that Cleco is failing to seek rolled-in rate recovery for facilities that meet its planning criteria, it may file a complaint with the appropriate regulatory body raising that concern. We agree with Lafayette/LEPA, however, that stakeholder input regarding Cleco's planning criteria is critical given that Cleco uses the planning criteria to define reliability upgrades. As discussed in the Coordination section above, Cleco must provide more detail regarding the specific opportunities stakeholders will have to provide input during the development of Cleco's planning criteria.

92. With respect to economic upgrades, Cleco fails to provide sufficient detail regarding how its proposal to allocate costs to entities proposing construction will be applied. The details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty.<sup>76</sup> It is unclear, however, how costs for economic projects will be allocated among multiple parties requesting an upgrade. Accordingly, we direct Cleco to file,

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<sup>74</sup> Cleco's Answer at 13-14.

<sup>75</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 558.

<sup>76</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

within 90 days of issuance of this order, 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.

93. With regard to the term of the construction plan, we accept Cleco's commitment to fix that term at 10 years. Cleco must include this revision to its Attachment K in the compliance filing directed above.

**D. Recovery of Planning Costs**

94. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically, addressing that issue after discussing the nine principles that govern the planning principles. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals that allow all relevant parties, including state agencies, recover the costs of participating in the planning process. The Commission also suggested that transmission providers consider whether mechanisms for regional cost recovery are appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.<sup>77</sup>

95. Cleco's proposed Attachment K provides that Cleco's planning-related costs will be recovered through existing rate structures, except for those costs associated with economic planning studies other than the three high priority requests identified by the stakeholder committee. The stakeholder committee may also propose methods of cost recovery associated with participation in regional planning activities. We find that Cleco's proposed Attachment K complies with Order No. 890 with regard to the recovery of planning costs.

The Commission orders:

(A) Cleco's compliance filing is hereby accepted, as modified, effective December 7, 2008, as discussed in the body of this order.

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<sup>77</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

(B) Cleco is hereby directed to submit a compliance filing, within 90 days of the date of the issuance of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.