

# **SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 35-27967; 70-10268)**

**Cleco Corporation**

**Order Authorizing Acquisition of Utility Subsidiary**

**May 13, 2005**

Cleco Corporation (“Cleco Corp.”), Pineville, LA, a Louisiana corporation and a holding company claiming exemption from registration under section 3(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (“Act”) by rule 2, has filed an application under sections 9(a)(2) and 10 of the Act. The Commission issued a notice of the filing of the Application on April 1, 2005 (HCAR No. 27955).

Cleco Corp. requests authorization to retain its ownership interest in Perryville Energy Partners, LLC (“Perryville”), following Perryville’s loss of its status as an exempt wholesale generator (“EWG”) under section 32 of the Act. Accordingly, Cleco Corp. requests approval of the “acquisition”<sup>1</sup> of all of the issued and outstanding membership interests stock of Perryville (“Transaction”).

Cleco Corp. is the parent company of Cleco Power LLC (“Cleco Power”), a Louisiana public-utility company that provides electric utility service in central and southeastern Louisiana. Cleco Midstream Resources LLC (“Cleco Midstream”), a wholly-owned nonutility holding company subsidiary of Cleco Corp., has subsidiaries that are engaged in energy procurement, developing, ownership and operation of

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<sup>1</sup> Cleco Corp. already owns all of the issued and outstanding membership interests stock of Perryville. However, as explained below, when Perryville loses its status as an EWG, it will become a second utility subsidiary of Cleco Corp. as if, for the purposes of section 9(a) of the Act, Cleco Corp. had newly acquired the stock.

generating projects through EWGs, natural gas pipeline operations, generation facilities operations and maintenance, and energy management services.

Perryville, an EWG, is a wholly-owned indirect subsidiary of Cleco Midstream. The immediate parent of Perryville is Perryville Energy Holdings LLC, a Louisiana limited liability company. Perryville is a Delaware limited liability company that owns the 718-megawatt Perryville generating facility (“Facility” or “Perryville generating facility”), as well as the interconnection facilities used to connect the facility to the transmission system of Entergy Louisiana, Inc. (“Entergy LA”), an electric utility subsidiary of Entergy Corporation (“Entergy”), a registered holding company.

In response to a request for proposals issued by Entergy LA in the fall of 2002, Perryville submitted a proposal to sell the Perryville generating facility to Entergy LA and was selected as one of the successful long-term resource bidders. On January 28, 2004, Perryville reached an agreement, subsequently amended (“Sale Agreement”), to sell the Perryville generating facility to Entergy LA (“Entergy Transaction”) and also entered into a power purchase agreement, subsequently amended (“Power Purchase Agreement”), with Entergy Services, Inc. (“ESI”), Entergy’s service company subsidiary, under which ESI will have exclusive rights to the output of the Perryville Facility until the earlier of (i) the closing of the sale to Entergy LA or (ii) December 31, 2005. The Sale Agreement provides for conditions customary to closing, including requisite regulatory approvals.

The Entergy Transaction involves only the generation facility; Perryville will retain the interconnection facilities that connect the generation facility to the Entergy LA

transmission system.<sup>2</sup> Following the closing of the Entergy Transaction, Perryville will continue to own, operate and maintain the interconnection facilities, and it will use them to provide transmission service from the Perryville facility (which will be owned by Entergy LA) to the Entergy LA transmission system. Under section 32(a) of the Act, to qualify as an EWG, a person must, among other things, be engaged directly, or indirectly through one more affiliates, “in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.” An “eligible facility” is defined in section 32(a)(2) as “a facility used for the generation of electric energy exclusively for sale at wholesale, or ... used for the generation of electric energy and leased to one or more public utility companies....” Following the closing of the Entergy Transaction, Perryville will no longer own generation facilities or be engaged in selling electric energy at wholesale. As a result, it will cease to qualify as an EWG and will become a “public-utility company” within the meaning of section 2(a)(5) of the Act.

Cleco Corp. is presently an affiliate of Cleco Power, a public-utility company under section 2(a)(5) of the Act. In addition, Cleco Corp. is, and will remain, the indirect owner of all of the outstanding voting securities of Perryville. As a result, following the Perryville’s loss , Cleco Corp. will be an affiliate, under section 2(a)(11)(A) of the Act, of two public-utility companies, Cleco Power and Perryville.<sup>3</sup>

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<sup>2</sup> The interconnection facilities that Perryville will retain consist primarily of generator step-up transformers, circuit breakers and generator lead lines, with a total length of approximately 2,000 feet.

<sup>3</sup> Cleco Corp. states that because it already owns the securities of Perryville, it could be argued that it will not, as a consequence of the Transaction, “acquire” the securities of a public-utility company within the meaning of section 9(a)(2) of the Act. Cleco Corp.

The Commission has reviewed the proposed acquisition and finds that the requirements of the Act are satisfied. The Commission wishes to address in particular the application of the integration requirements of section 10(c)(1) of the Act.

Under section 10(c)(1), the Commission may not approve an acquisition that “would be detrimental to the carrying out of the provisions of section 11.” Section 11(b)(1) of the Act, with the exception discussed below, confines a registered holding company to ownership of a single integrated public utility system, as defined in section 2(a)(29) of the Act.<sup>4</sup> Section 11(b)(1) permits a registered holding company to own one or more additional integrated public utility systems if the requirements of section 11(b)(1)(A)-(C) (“ABC clauses”) are satisfied. By its terms, however, section 11(b)(1) applies only to registered holding companies. The Commission has previously determined that a holding company may acquire utility assets that will not, when combined with its existing utility assets make up an integrated system or comply fully with the ABC clauses, provided there is de facto integration of utility properties and the holding company will be exempt from registration under section 3 of the Act following

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states that in order to remove uncertainty on this question, it requests the Commission to assume, for purposes of this matter, that Cleco Corp.’s retention of the securities of Perryville, in its new status as a public-utility company, is subject to the Commission’s approval under sections 9(a)(2) and 10 of the Act, and to grant that approval.

<sup>4</sup> Section 2(a)(29)(A) defines an integrated electric public utility system to mean:

a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair ... the advantages of localized management, efficient operations,

the acquisition.<sup>5</sup> The Commission has found de facto integration of separate utility systems when: service territories are overlapping or otherwise contiguous; the separate systems are coordinated administratively; the combination of the separate systems would not give rise to abuses such as ownership of scattered utility properties, inefficient operations, lack of local management or evasion of state regulation; and there is no effect upon the ability of state ratemaking authorities to carry out their statutory duties.<sup>6</sup> In addition to the other criteria noted above, the Commission more recently determined that de facto integration of separate utility systems existed where the service territories of the primary and additional system, though not contiguous, were in close proximity to one another and both within the same state.<sup>7</sup>

Following the completion of the Transaction, the Cleco Corp. system will consist of (1) a primary system consisting of Cleco Power's integrated electric utility system comprising generation, transmission and distribution facilities located in central and southeastern Louisiana, and (2) an additional electric utility system consisting of the interconnection facilities owned by Perryville, located in northeast Louisiana. There will be de facto integration of the two systems. The two systems are in close proximity to each other<sup>8</sup> and are both located in the same state. Cleco Corp. will administratively

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and the effectiveness of regulation ....

<sup>5</sup> See, e.g., Sierra Pacific Resources, et al., HCAR No. 27054 (July 26, 1999); WPS Resources, HCAR No. 26922 (Sept. 28, 1998); BL Holding Corp., HCAR No. 26875 (May 15, 1998); TUC Holding Co., HCAR No. 26749 (Aug. 1, 1997).

<sup>6</sup> See, e.g., Sierra Pacific Resources, et al., supra, n. 5, and UniSource Energy Corp., HCAR No. 27706 (August 1, 2003).

<sup>7</sup> Sierra Pacific Resources, et al., supra, n. 5, and UniSource Energy Corp., supra, n.6.,

<sup>8</sup> Cleco Corp. states that at their closest points, the Cleco Power system and the Perryville

coordinate the activities of Cleco Power and Perryville. The Transaction will not give rise to any of the abuses, such as ownership of scattered utility properties, inefficient operations, lack of local management or evasion of state regulation, that the Act, including Section 11(b)(1), was intended to prevent. The Transaction will have no effect upon the ability of state ratemaking authorities' ability to carry out their statutory duties. Following the Transaction, Cleco Corp. will submit a revised Form U-3A-2 in accordance with rule 2 under the Act in which it will continue to claim an exemption under section 3(a)(1) of the Act.<sup>9</sup>

Fees and expenses in the estimated amount of \$60,000 are expected to be incurred in connection with the proposed transaction. Cleco Corp. states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

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system are approximately 96 miles apart.

<sup>9</sup> All utility plant owned by Cleco Power and Perryville is located in Louisiana. To determine whether a public-utility subsidiary is material, the Commission generally considers the gross operating revenues of the subsidiary. (Nipsco Industries, Inc., HCAR No. 26975 (Feb. 10, 1999)). Upon the loss of its EWG status, it is projected that, on an annual basis, Perryville's gross operating revenues will represent 0.13% of Cleco Corp.'s total gross operating revenues, based on 2003 data for Cleco Corp. Perryville will not be a material public-utility subsidiary of Cleco Corp.

Except for sales made under an energy management agreement with Mississippi Delta Energy Agency ("MDEA") entered into in 2003, which sales take place in Mississippi, all of Cleco Power's retail and wholesale sales of electric energy occur in Louisiana or at the Louisiana border. In 2003, Cleco Power derived 0.74% of its gross operating revenues from sales of electricity to MDEA. The remainder of Cleco Power's income and revenues were derived from Louisiana sales. All of Cleco Power's net utility plant is located in Louisiana. The combined gross operating revenues of Perryville and Cleco Power's MDEA energy management contract will comprise 0.73% of Cleco Corp.'s total gross operating revenues. Cleco Corp. and Cleco Power are predominantly intrastate in character and carry on their business substantially in the state of Louisiana, in which they are both organized. (Nipsco Industries, Inc., supra.)

Due notice of the filing of the Application has been given in the manner prescribed in rule 23 under the Act, and no hearing has been requested of or ordered by the Commission. On the basis of the facts in the record, it is found that the applicable standards of the Act and rules under the Act are satisfied, and no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, that the Application be, and hereby is, granted, subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland

Deputy Secretary