

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-28061; 70-10318)

Cleco Corporation and Cleco Midstream Resources LLC

Order Authorizing Acquisition of Utility Subsidiary

November 14, 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, and its wholly owned-subsidiary Cleco Midstream Resources, LLC (“Cleco Midstream”) (“Applicants”) have filed an application (“Application”) under sections 9(a)(2) and 10 of the Act. The Commission issued a notice of the filing of the Application on September 16, 2005 (HCAR No. 28030).

Applicants seek approval of their proposed acquisition of all of the issued and outstanding membership interests of Attala Transmission, LLC (“Attala”). Attala is a Louisiana limited liability company that will acquire transmission facilities from Central Mississippi Generating Company, LLC (“Central Mississippi”), an exempt wholesale generator under section 32 of the Act (“EWG”), and thus become a public-utility company. Central Mississippi is currently the owner of a generating plant (“Attala Generating Plant”) located in Attala County, Mississippi, as well as interconnection facilities used to transmit electric energy from the Attala Generating Plant to the transmission system of Entergy Mississippi, Inc. (“Entergy Mississippi”), a public utility subsidiary of Entergy, Inc., a registered holding company. Central Mississippi has proposed to sell the Attala Generating Plant to Entergy Mississippi and to sell the

interconnection facilities to Attala, which will be formed as a wholly-owned indirect subsidiary of Cleco Corp. and as a direct subsidiary of Cleco Midstream (“Transaction”). Following the closing of the Transaction, Attala will own, operate and maintain the interconnection facilities, and it will use them to provide interconnection service from the Attala Generating Plant to the Entergy Mississippi transmission system, in accordance with a Federal Energy Regulatory Commission (“FERC”) filed rate schedule.

Cleco Corp. is the parent company of Cleco Power LLC (“Cleco Power”), a Louisiana limited liability public-utility company that provides electric utility service in central and southeastern Louisiana.

Cleco Midstream is the parent company of Perryville Energy Holdings LLC which owns Perryville Energy Partners, LLC (“Perryville”), an EWG. Perryville owns a 718-megawatt generating facility as well as interconnection facilities used to connect the facility to the transmission system of Entergy Louisiana (“Entergy LA”). Perryville has entered into an agreement to sell the generating facility to Entergy LA (although it will retain ownership of the interconnection facilities). Following the sale, Perryville will no longer own generating facilities, will cease to qualify as an EWG, and will become a public-utility company, as defined in section 2(a)(5) of the Act. Consequently, when the Transaction is completed, Cleco Midstream will be a holding company with respect to two public-utility companies, Perryville and Attala.

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.¹ 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 the acquisition.² 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

¹ 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, and the effectiveness of regulation

² 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).

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.³

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, (2) an additional electric utility system consisting of the interconnection facilities owned by Perryville, located in northeast Louisiana, and (3) an additional electric utility system consisting of the transmission facilities owned by Attala. There will be de facto integration of the three systems. The systems are in close proximity to each other,⁴ and Cleco Corp. will administratively coordinate the activities of Cleco Power, Perryville and Attala. 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. Applicants assert that following the Transaction, Cleco Corp. and Cleco Midstream will both qualify as exempt holding companies under section 3(a)(1) of the Act.⁵

³ See, e.g., Sierra Pacific Resources, et al., supra, n. 5, and UniSource Energy Corp., HCAR No. 27706 (August 1, 2003).

⁴ Applicants state that at their closest points, the Cleco Power system and the Perryville system are approximately 185 miles and 130 miles, respectively, from the Attala system..

⁵ 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

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.

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

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.

To determine if a company is "predominantly intrastate in character" and operates "substantially in a single State," the Commission considers a variety of quantifiable factors, in particular the combined figures for out-of-state utility operations as a percentage of the pro-forma post-acquisition consolidated system figures. 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. Except for sales made pursuant to an energy management agreement with Mississippi Delta Energy Agency ("MDEA") entered into in 2003, which 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 2004, Cleco Power derived 0.90% of its gross operating revenue, 0.90% of its net operating revenue, and 0.83% of its net utility income from sales of electricity to MDEA. The remainder of Cleco Power's income and revenue were derived from Louisiana sales. All of Cleco Power's net utility plant is located in Louisiana, and Cleco Power is not engaged in the sale of natural or manufactured gas.

It is projected that, on an annual basis, the combined gross operating revenue, net revenue, and net income of Attala, Perryville Partners and those from Cleco Power's MDEA energy management contract will comprise 1.18%, 1.18%, and 1.43% of Cleco Corp.'s total gross operating revenue, net revenue, and net income, respectively, based on 2004 data for Cleco Corp. Moreover, 99.60% of the utility plant owned by the Cleco Corp. subsidiary utility companies Cleco Power, Attala and Perryville Partners is located in Louisiana. Similarly, it is projected that, on an annual basis, the combined gross operating revenue, net revenue, and net income of Attala and Perryville Partners will comprise 13.18% of Cleco Midstream's total gross operating revenue, 13.18% of its net revenue, and 2.81% of its net income based on 2004 data for Cleco Midstream. Cleco Corp., Cleco Power and Cleco Midstream are predominantly intrastate in character and carry on their business substantially in the state of Louisiana, in which they are

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 of Cleco Corporation and Cleco Midstream Resources LLC (70-10318) 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.

Jonathan G. Katz

Secretary

organized. (Nipsco Industries, Inc., supra.)