PUBLIC VERSION
BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION
DOCKET NO. U-33434
CLECO POWER, LLC, EX PARTE

In re: Joint Application of Cleco Power, LLC and Cleco Partners L.P. for: (i) Authorization for the Change of Ownership and Control of Cleco Power, LLC and (ii) Expedited Treatment.

POST-HEARING REPLY BRIEF ON BEHALF OF THE LPSC STAFF

I. INTRODUCTION

This Post-Hearing Reply Brief is respectfully submitted on behalf of the Staff of the Louisiana Public Service Commission ("Commission Staff" or "Staff") in accordance with the November 19, 2015 "Notice of Post-Hearing Procedural Schedule." This Docket was initiated by the filing of a Joint Application ("Application") by Cleco Power, LLC ("Cleco Power") and Cleco Partners L.P. ("Cleco Partners" or "Purchasers") (collectively "Applicants" or "Joint Applicants") seeking approval of the Louisiana Public Service Commission (the "Commission" or "LPSC") for Cleco Partners to acquire ownership and control of Cleco Power via a purchase of all outstanding ownership shares of stock of Cleco Power's parent company, Cleco Corporation. (Cleco Power and Cleco Corporation are sometimes collectively referred to as "Cleco".) Applicants assert that the proposed transaction ("Transaction") satisfies the requirements of the Commission's 1994 General Order. (In re: Commission Approval Required of Sales, Leases, Mergers, Consolidations, Stock Transfers, and All Other Changes of Ownership or Control of Public Utilities Subject to Commission Jurisdiction, issued March 18, 1994, ("1994
General Order”). Applicants also claim that the Transaction will maintain or improve the financial condition of Cleco (General Order Factor No. 3). In addition, Applicants claim that the proposed Transaction should be approved because it does not harm ratepayers or other stakeholders, will provide net benefits to ratepayers in the short and long term and that it meets all of the eighteen-factor test of the 1994 General Order.

The decision as to whether the proposed Transaction is in the public interest (Factor No. 1 and the ultimate determination under the 1994 General Order) is, as a matter of law, a policy decision appropriately left to the sound discretion of the Commission. Pursuant to Article IV, Section 21 of the Louisiana Constitution of 1974, and the 1994 General Order adopted pursuant to that constitutional authority, the Commission has broad discretion to decide whether to approve a merger and/or acquisition and what conditions should be attached to such approval. The Commission also has wide discretion in determining how the 1994 General Order should be applied to any proposed acquisition or merger. The 18 factors set out in the General Order provides guidelines for the Commission to determine whether a particular transaction should be approved, but all 18 factors need not be met in order for the Commission to determine that a proposed transaction is in the public interest.

The $125 million in rate credits, the Applicants' agreement to adopt a Service Quality Program, their pledges to maintain Cleco's corporate headquarters, call center, storm operations and other core functions in Louisiana, the maintenance of adequate field personnel and apprenticeship programs, and the continuation of charitable giving, economic development and assistance to low income customers, among others, are all significant and valuable Commitments offered by the Applicants. The rate of return hold harmless Commitment is also a significant protection for Cleco Power customers. Should the Commission, in its sound
discretion, determine that the $125 million in rate credits, combined with the Applicants' other proposed Regulatory Commitments, are sufficient to address the risks and costs of the Transaction, the proposed purchase could be in the public interest if all of the proposed Regulatory Commitments are adopted (including the dividend traps discussed in more detail below) and the Commission adopts one of the following three alternatives to address the double-leveraging and issues: 1) the level of the rate credits should be increased to mitigate the risks associated with the double-leverage, and related issues; or 2) the Commission rules in this proceeding that ratepayers must be compensated for the double-leveraging and issues, and the Commission creates a mechanism that will be used to quantify the impact of these issues and to credit ratepayers in future proceedings (i.e. the need for mitigation of risk will be determined affirmatively in this Docket with only the quantification required at later times); or 3) the Commission requires that consideration of the double-leverage and issues be deferred for consideration in future ratemaking proceedings, preserving to the parties any of their arguments until those future ratemaking Dockets as allowed (but currently not required) by the Applicants' proposed Regulatory Commitment No. 4. It is advisable that this consideration take place no later than 2017, when Cleco Power files its next rate case and/or FRP extension.

As discussed in detail in the Commission Staff's Initial Post-Hearing Brief, it is the position of the Staff that the Transaction as proposed, as updated through the Applicants' proposed Enhanced Regulatory Commitments ("Commitments"), plus the $125 million in nominal dollar rate credits to be flowed through to ratepayers over 15 years, does not completely satisfy all of the requirements of the 1994 General Order, may not fully mitigate the potential harm that may be caused by the Transaction, and, therefore, as proposed, may not be in the
public interest. The weight of the evidence, much of which is supported by admission in evidence offered by the Applicants, demonstrates that the proposed Transaction will have significant negative impacts on the financial integrity of Cleco Power and Cleco Corporation, and may negatively impact ratepayers. There will be costs collected from and risks imposed upon ratepayers for which they will not receive the commensurate benefits. Should the Commission exercise its broad discretion and approve the Transaction, the Commitments offered by the Applicants coupled with the additional Commitment recommended by the Staff regarding the double-leveraging and issues, should be mandated by the Commission. Those Commitments are necessary to mitigate the harms and risks that are likely to result from the Transaction.

The Commission Staff will not reiterate all of the arguments set forth in its Initial Post-Hearing Brief. There are, however, several issues, discussed primarily in the Applicants' Joint Post-Hearing Brief, that should be addressed, as the Staff believes that several of the Applicants' conclusions are not supported by the evidence in the record. Two such issues involve General Order Factor No. 3, whether the transfer will maintain or improve the financial condition of the resulting public utility or common carrier; and Factor No. 5, will the Transaction provide net benefits to ratepayers in both the short term and the long term and a ratemaking method that will ensure the forecasted benefits will be received. The Staff believes that the evidence in the record demonstrates that Cleco Power and Cleco Corporation will be worse off financially as a result of the Transaction and, absent adequate mitigation of the Transaction-related risks, ratepayers may not be fully protected.
II. SUMMARY OF THE ARGUMENT

In the Applicants' Brief, it is argued that the Cleco enterprise, and particularly Cleco Power, will not be harmed as a result of the Transaction, and Cleco Power ratepayers will not be harmed, and in fact will benefit from the proposed Transaction. The Applicants claim that: a) There is no harm to Cleco Power from [REDACTED] because it will still be [REDACTED]; b) There is no harm to Cleco Power as a result of the [REDACTED] because Cleco Power and Cleco Corporation are two totally separate entities, and what happens to the ratings at Cleco Corporation has no impact on Cleco Power; c) The hold harmless provisions in the Commitments protect Cleco Power from any harms caused by Cleco Corporation's financial condition; d) The Commission should ignore the Applicants' projections that [REDACTED] those projections are not part of a "Business Plan," and ratepayers will be better off as a result of the Transaction because $125 million in rate credits is more than Macquarie paid in the Puget transaction; and e) There is no need to mitigate the risks associated with the double-leveraging and [REDACTED] because those matters should be handled in a generic rulemaking, and ratepayers will be better off as a result of the Transaction because, post-Transaction, Cleco Partners will continue to operate Cleco Power in the manner in which it is operated today.

The Applicants' arguments are not supported by the evidence and the facts established in the record. As the evidence demonstrates, largely through the Applicants' own documentation and the testimony of the Applicants' two principal witnesses, Messrs. Olagues and Chapman:
1) As a direct result of the Transaction, [redacted] advantage of double-leveraging and [redacted] that will be used to enhance investor returns; 

2) The Purchasers have structured the Transaction to allow them to take advantage of double-leveraging and [redacted] that will be used to enhance investor returns; 

3) Despite Applicants' claims that private infrastructure investors are a better "fit" for a "forever" company like Cleco Power, Cleco Partners have made few long term commitments to retain ownership of Cleco Power. The Macquarie investment is through a closed-end fund that can end as early as eight years from now, with a possible extension of up to four additional years. Macquarie plans to liquidate its interests in that time frame, and the other investors, bcIMC and John Hancock, are not obliged to buy Macquarie's interests or even to continue as investors beyond Macquarie's departure. During that same time frame, Applicants' best projections indicate that [redacted] 

4) The vast majority of the Commitments made by Applicants are designed to continue, but not necessarily improve, current Cleco practices for the short-term. The $125 million in rate credits is a positive step in mitigating potential ratepayer impacts caused by the Transaction. It is Staff's view that these amounts may not be adequate to fully compensate ratepayers for all of those potential harms. However, it is within the discretion of the Commission to balance all interests and determine whether the package of proposed Regulatory
Commitments, including the $125 million in rate credits, coupled with the other benefits of the Transaction, are sufficient for the Commission to exercise its discretion to approve the Transaction.

The Staff believes that the evidence demonstrates that, based on the Applicants' projections, both Cleco Power and Cleco Corporation will be financially impaired and that Cleco Power's customers could be worse off as a result of the Transaction.

III. ARGUMENT

A. Harms, Benefits and Mitigation of the Harm

Applicants argue that the Transaction "goes far beyond" satisfying the "no harm" requirements of the 1994 General Order and that "the Enhanced Commitments provide compelling net benefits that will strengthen Cleco Power's financial integrity, maintain Cleco Power's investment in the communities it serves, and protect Cleco's many stakeholders." (Applicants' Brief at 11). It provides a chart outlining what it believes to be the "Net Benefits of the Transaction" to each of the stakeholder groups. (Id. at 11-12). These "net benefits" fall into two main categories: 1) Commitments to maintain the status quo for limited periods; or 2) Provision of inadequate reparations for the risks and/or costs created by the Transaction. Combined, these Commitments and rate credits are unquestionably positive steps that should be required by the Commission if the Transaction is approved. However, in the view of the Staff, as currently structured, they do not succeed in fully satisfying all of the 18 factor test of the 1994 General Order.

1. Mitigation of Harm

The potential harms to the retail ratepayers of Cleco Power as a result of the Transaction are not fully mitigated. The Transaction creates several categories of potential harm
for customers. First, the financial condition of Cleco Corporation and Cleco Power will be weakened due to the projected increase in leverage of Cleco Corporation and Cleco Power, and interest-rate and tail-end risks that may occur as soon as eight years from now when Macquarie, the 54% owner, may exit the Transaction. In addition, ratepayers will be harmed through the Purchasers' use of double-leveraging and —; It is the Staff's position that the $125 million in rate credits is not sufficient to fully mitigate all of the risks and potential harms to consumers caused by the Transaction. It is for the Commission to determine whether the remaining Commitments offered by Applicants, along with the $125 million in rate credits, provide adequate protection to Cleco Power ratepayers against the potential harms of the Transaction such that on balance, it is in the public interest.

2. Purchasers admit that —
The risk is mitigated by the Applicants' proposed rate of return hold harmless Regulatory Commitment.
Applicants argue that it is an anomaly that Cleco's credit ratings are as high as they are today, which is caused by its over-equitization that has not existed historically and will not exist in the future absent the Transaction. (Applicants' Brief at 15-16). They urge that absent the Transaction, Cleco Corporation will borrow money (debt) in the future to fund a stock repurchase of $600 million, thus weakening the current credit metrics. (Id. at 16). However, the 1994 General Order requires an evaluation of the impact on Cleco as it exists now versus its financial status post-Transaction. The analysis should be about the financial status of the company being sold - not the company as it may or may not have looked 5 or 10 years ago, and not the Company as it may or may not look 5 years from now. The share price paid to stockholders is based on the financial status of the Company now. This share price is at a level that Cleco could not have achieved on its own. (Tr. 11/10/15 at 167 (Olagues)). This results in funds being transferred to shareholders that could otherwise be invested in the purchased Company.

Applicants also argue that post-Transaction, Cleco Corporation's [redacted] will not harm Cleco Power's ratepayers. (Applicants' Brief at 23).
The credit ratings at Cleco Corporation and Cleco Power are absolutely linked and financial distress at Cleco Corporation could impact the equity value at Cleco Power, leading to negative consequences for ratepayers. (Id. at 313-314). If Cleco Corporation is in financial distress, it may be less willing and less able to support needed investments in Cleco Power and may be motivated to take excessive cash distributions from Cleco Power. (Id.).

The Commission and Cleco's ratepayers must be concerned about the ability of Cleco Power to finance its ongoing capital needs.
3. **The Transaction Will Remove Equity and Add Debt to Increase the Leverage of Cleco Corporation and Cleco Power.**

Today, Cleco Power has an actual capital structure that consists of 57% equity and 43% debt. (Tr. 11/10/15 at 189 (Olagues)). Cleco Corporation has virtually no debt. (Id.). Thus, Cleco Corporation has an actual capital structure consisting of nearly 100% equity and nearly 0% debt. (Id.). The Transaction is a leveraged buyout. (Tr. 11/12/15 at 303 (Mayeaux)). In order to finance the Transaction, the Purchasers will borrow $1.35 billion in acquisition debt that will be placed on the books of Cleco Corporation and will be paid for by revenues generated by Cleco Power ratepayers. (Tr. 11/11/15 at 174 (Chapman); Tr. 11/12/15 at 304 (Mayeaux)). This acquisition debt is being used to help finance the purchase of stock from existing shareholders at $55.37 per share, a purchase price that is over two times the book value of the outstanding shares of Cleco Corporation stock. (Tr. 11/12/15 at 304 (Mayeaux)). The financial impact of this over-leveraging results in weaker credit metrics for both Cleco Corporation and Cleco Power, and significantly increased risks versus the status quo. (Id.). The are a direct result of the Transaction. (Id. at 309.)

Cleco Partners has no plan to invest more equity in Cleco Power or Cleco Corporation. (Commission Staff Exh. 12, Dir. Test. McGuckin at 18).
that Macquarie plans to divest its interests in Cleco. (Tr. 11/11/15 at 224-226 (Chapman)).

Applicants argue that the increased leverage at Cleco Corporation will not harm Cleco Power's ratepayers because, and has the ability to borrow what it will need to provide safe and reliable service. (Applicants' Brief at 27). However, as stated above, the Transaction creates risks that could cause further financial deterioration and both Cleco Corporation and Cleco Power will be at a higher risk post-Transaction than today. Additional leveraging will result in lower financial metrics. (Tr. 11/12/15 at 310 (Mayeaux)). As the leverage increases, existing cash flows must service the existing and new Cleco Power and Cleco Corporation debt, causing credit metrics to further deteriorate. (Id.). High leverage also has the effect of multiplying gains and losses. If Cleco Power's revenues do not meet projections, debt must be paid first and the distributions to the new owners from Cleco Corporation will diminish, impairing the value of Cleco Corporation. (Id. at 315).

Applicants argue that their Commitments restrict Cleco's ability to incur excessive debt. (Applicants' Brief at 28). They argue that Commitment No. 49 provides that Cleco may not make any distributions to its upstream owners unless it meets specified criteria and Cleco Corporation's debt/EBITDA ratio is no more than 6.5. (Id.). However, as demonstrated at the hearing, the Purchasers' own analyses provide that (Commission Staff Exh. 6; Tr. 11/11/15 at 196...
(Chapman)). That [REDACTED] will be allowed under the distribution traps in the Commitments, including [REDACTED] date of Macquarie's planned exit from the Transaction. (Tr. 11/12/15 at 223-234 (Mayeaux)). The debt/EBITDA ratio will not be exceeded. (Id.).

Applicants also attempt to discourage reliance on their own financial modeling spreadsheets [REDACTED] arguing that such reliance would be "an exercise in speculation" and the projections are "not a business plan." (Applicants' Brief at 78). However, those financial models were provided to the FTC to support the Applicants' Hart-Scott-Rodino Act ("HSR") filing; they were relied upon by the Purchasers themselves to value Cleco to see what a fair bid price would be, and were relied upon to determine the method of financing the Purchasers could accept for the prospective purchase. (Tr. 11/11/15 at 184-186 (Chapman)). In addition, Applicants admitted that these financial projections were based on the best assumptions that they had at the time they were made, and they remain the best information available for future expectations. (Id. at 186-196). These results should not be ignored, and it is appropriate that the Commission consider this information in making its evaluation. (Id. at 198).

Finally, Applicants urge that any excessive leveraging would not restrict the pool of potential Purchasers at the time Cleco Partners attempts to sell their interests. (Applicants' Brief at 29). They urge that it merely would reduce the purchase price paid to Macquarie and "no proof" was presented that the pool of purchasers would be smaller. (Id.). First, Staff did present evidence that the higher leveraged status of Cleco Corporation [REDACTED] will make Cleco a far less attractive target for any prospective purchaser, limiting potential suitors, limiting the size of purchase offers with fewer ratepayer benefits, or it could cause the need for rate increases to attract an adequate buyer. (Tr. 11/12/15 at 346 (Lane Sisung)). Purchasers have not
presented evidence to rebut that Staff testimony. (Applicants' Brief at 129). Further, Applicants claim that bcIMC will likely remain an owner when Macquarie exits the Transaction. However, neither bcIMC nor John Hancock have committed and are under no obligation to continue as owners. (Tr. 11/11/15 at 260-261 (Webb)). The over-leveraging of Cleco is a real risk, is part of the Applicants' plans and projections, and the Applicants' proposed Regulatory Commitments and rate credits must be carefully considered and balanced by the Commission, with other factors, to determine whether or not they adequately mitigate the harm.

4. **Customers May be Harmed by Interest Rate Risks and Tail-End Risk**

The combination of lower credit ratings, far higher debt to equity ratios and the plan to finance [redacted], along with the short-term nature of Macquarie investment, creates interest rate risks and tail-end risks for Cleco's customers that do not exist today. The $1.35 billion of new acquisition debt of Cleco Corporation [redacted] (Id. at 11/12/15 at 303 (Mayeaux)). This will result in [redacted], weaker credit metrics and increased financial and interest rate risks versus the status quo. (Id. at 304). If Cleco's leverage is further increased, as is the plan of the Purchasers, or if the cost of debt is significantly increases in the future, then a further deterioration in the credit metrics could result, leading to [redacted] (Id. at 310). The increased risks may not directly translate into harm to ratepayers, but these increased risks are a product of the Transaction and need to be considered by the Commission when it determines the adequacy of the offered mitigation and whether the Transaction is in the public interest.

The $1.35 billion in acquisition debt is short term debt, at a variable interest rate, and it needs to be refinanced. As long as that debt is outstanding, there is interest rate exposure,
and if interest rates increase before the debt is refinanced, that interest rate risk will become an
interest cost. Applicants argue that this interest rate risk is *de minimus* because their objective is
to refinance this acquisition financing within one year of the closing. (Applicant's Brief at 26).
They also urge that their Commitment to [redacted] eliminate interest rate risk. While it is true that these steps may reduce the interest rate risk, Commitment
No. 53 does not obligate Joint Applicants to [redacted]; it only states that they
would like to do so "if practical under the current market conditions." (Ex. A to Applicants' 
Brief, No. 53, p. 26). Until there is an actual refinancing under market conditions similar to
those existing today, the interest rate risk remains. The likelihood of higher interest rates and the
financial impact of those potentially higher rates are matters that must be weighed by the
Commission. The promise to stagger the maturity dates of the re-financed debt does nothing to
eliminate the interest rate risk, but could reduce the tail-end risk, as discussed below.

Applicants also argue that Commitment Nos. 52 and 53 eliminate any concern
over interest rate risk. (Applicants' Brief at 26). These Commitments do have value but may not
eliminate all of the interest rate risk. Commitment No. 53 provides that Cleco Partners will bear
the increased interest costs of the refinancing and Commitment No. 52 provides that the Cleco
Corporation debt costs will not impact Cleco Power's cost of debt for ratemaking purposes. (Ex.
A, Applicants' Brief at 26-27, No. 52 & 53). Neither totally eliminates the interest rate risk. On
top of the additional cost of the refinanced debt, higher interest rates could further negatively
impact the credit metrics that are already impacted by the addition of the acquisition debt in the
first instance. (Tr. 11/12/15 at 312 (Mayeaux)). Further, large amounts of debt on Cleco
Power's books will need to be refinanced in addition to all of the new debt of Cleco Corporation. (Id. at 311).

The staggered re-financing mitigates but does not completely eliminate the tail-end risks created by the Transaction. (Applicants' Brief at 26). This Commitment (No. 53) prevents all of the refinanced debt from coming due during the time period when Macquarie plans to exit its Cleco investment. However, it does not prevent a substantial portion of that debt coming due during that time frame. It is the plan of Macquarie, the 54% owner of the Purchasers, to sell its interests in the next 8-10 years. It has an absolute obligation to sell within about 12 years. The combination of too much debt and higher interest rates that could exist during that future time period could limit the pool of potential purchasers of Cleco when Macquarie goes away. (Tr. 11/12/15 at 240 (Lane Sisung)). These tail-end risks may not result in harm to ratepayers, but the risks and the need to mitigate those risks are real. The Commission must make a policy decision to determine whether the Applicants' proposed Regulatory Commitments, including the $125 million in rate credits, are adequate measures to mitigate these risks and determine whether the proposed Transaction is in the public interest.

5. Double-leveraging and

Applicants have not provided an immediate remedy for the double-leveraging and issues raised by Staff in evidence and in briefing. Applicants do not deny that the double-leverage and the issue exists. (Applicants' Brief at 30-31). They did not present any evidence at the hearing addressing these issues, only argument. (Id.). They urge that both of these matters are ratemaking issues that should not be considered in a change-of-control proceeding. (Applicants' Brief at 30-31). Applicants also suggest that requiring additional rate credits now for double-leveraging would represent a change in Commission
policy that should be addressed in a generic ratemaking docket applicable to all jurisdictional utilities. *(Id. at 31).* The Commission Staff disagrees. It is Staff's position that these issues should be addressed in this Docket in one of the three alternative manners set forth below.

The opportunities for excessive double-leveraging are unique to this Transaction and provisions should be made in this Docket as to how the issue will be addressed. The actual capital ratio for Cleco Power today is 57% equity and 43% debt, and for ratemaking purposes Cleco Power is treating it as though it has 51% equity and 49% debt. This 51%/49% is similar to the ratios utilized by the Commission for other regulated utilities in Louisiana. However, Purchasers have reserved for themselves the ability to draw *(Commission Staff Exh. 12, Dir. Test. McGuckin at 18).* Cleco Power has never had a debt level that *(Tr. 11/10/15 at 190 (Olagues)). Staff is not aware of any other Louisiana utility that has a plan to reduce equity investment as *(Commission Staff Exh. 15, Dir. Test. Lane Sisung at 51; Tr. 11/12/15 at 348 (Lane Sisung)).* These floors were not accepted by the Applicants, and the double-leverage problem that is unique to this Transaction was thereby created. *(Tr. 11/12/15 at 348 (Lane Sisung)).* Commitment No. 49 allows Cleco Power's equity capitalization to *(Tr. 11/11/15 at 239-240 (Chapman)). This makes the double-leveraging issue unique to this Transaction, makes it appropriate to address the double-leveraging issue in this proceeding, and makes the $125 million in rate credits inadequate compensation for the double-leverage risk. *(Tr. 11/12/15 at 348 (Lane Sisung)).*
Likewise, Applicants' arguments that the [REDACTED] should be considered in a generic docket and that it would be a change in Commission policy to require [REDACTED] should be rejected. These [REDACTED] are unique to this Transaction, and the Commission has not required generic proceeding when other utilities have proposed [REDACTED] issues.

These circumstances do not exist for other major Louisiana regulated utilities, that are all publicly owned (or are cooperatives). Second, the Louisiana Public Service Commission has historically dealt with issues unique to mergers in the merger docket. For example, in the Entergy business combination there were unique issues that were resolved within the business combination docket. (Tr. 11/12/15 at 342 (Lane Sisung); Order No. U-33244-A (2015)).

Applicants have now offered rate credits of $125 million and argue that those amounts are sufficient to resolve any lingering perceived risks. (Applicants' Brief at 32). First, the $125 million is in nominal dollars to be paid over 15 years. On a net present value basis (utilizing a 10 percent discount factor) that number is about $63 million in value. That payment does not mitigate the remaining risks of the Transaction.
(Commission Staff Exh. 15, Dir. Test. Lane Sisung at 51).

Should the Commission, in its sound discretion, determine that the $125 million in customer rate credits along with the Applicants' other proposed Regulatory Commitments are sufficient to address the risks and potential harm that may be caused by the Transaction, this acquisition could be in the public interest if all of those Regulatory Commitments (including the dividend traps) are adopted and the Commission adopts a mechanism to address the double-leveraging and _issues_. As discussed extensively in the Commission Staff's Initial Post-Hearing Brief, the only commitment that the Applicants have made regarding the double-leveraging and _issues_ is to remove language that would have prohibited the Commission from _ever_ considering those issues either in this Docket or anytime in the future. The result would be that the Commission could, but would not be required to consider these two issues in a future rate proceeding. It is the position of the Commission Staff that these issues should affirmatively be addressed in this Docket in one of three ways: 1) The amount of the rate credits could be increased to a level satisfactory to the Commission to mitigate the risks associated with the double-leveraging and _issues_; 2) Alternatively, the Commission could determine in this Docket, that ratepayers must be compensated for the double-leveraging _issues_. The Commission could then create a mechanism to be used to quantify the impacts of these issues and a means to credit ratepayers, dollar for dollar, in future proceedings. In this manner, the issue of the need for mitigation would be determined definitively and only the quantification would be left for future proceedings; or 3) The Commission could require that consideration of the double-leverage and _issues_ be deferred for analysis in a future ratemaking proceeding. For this third alternative, it would be advisable that the Commission
require such consideration no later than 2017 when Cleco Power files its next rate case and/or FRP extension. In this manner, the Commission would ensure that these matters will be addressed in a timely manner in the future, but the parties' rights to make any of the arguments in those future ratemaking proceedings would be preserved. This is more than is required in the Applicants' proposed Regulatory Commitment No. 4, but should be required should the Commission decide that the proposed Transaction is in the public interest.

B. Many of Applicants' Commitments Retain the Status Quo But Do Bring Some Positive Value to the Transaction.

Applicants argue that the "Enhanced Commitments provide compelling net benefits that will strengthen Cleco Power's financial integrity, maintain Cleco Power's investment in the communities it serves, and protect Cleco's many stakeholders." (Applicants' Brief at 11). As discussed in Part A above, the Transaction, even after the Commitments and rate credits, harms Cleco's financial integrity and, in Staff's estimation, does not meet the requirements of the 1994 General Order. The non-financial commitments are helpful and positive promises that help mitigate the potential harms and risks of the Transaction, and they should be required by the Commission, along with the rate credits, if the Commission chooses to exercise its discretion and approve the Transaction. However, the Staff believes that they do not provide overwhelming net benefits as argued by the Applicants.

As outlined in Staff's Initial Post-Hearing Brief, the proposed Transaction is a transfer of ownership that does not create significant synergies or savings. (Application at 42). Cleco currently is a well-managed and reliable utility that does not have problems that the acquisition is designed to correct. Applicants readily admit that Cleco Power is financially sound, well-run, profitable for shareholders, and provides excellent service to customers. (Tr. 11/10/15 at 168-172 (Olagues)). Post-acquisition, the management and employees of Cleco
Power will largely remain the same and no significant changes are needed or planned. (Application at 50).

While it is the Commission Staff's position that the Transaction, as currently structured, does not fully mitigate all of the risks associated with this potential acquisition, the Applicants' proposed Regulatory Commitments do provide value for ratepayers. The $125 million in rate credits represent serious movement by the Applicants from their initial offer of $0 in rate credits. These rate credits could be seen to represent at least a partial mitigation of the upfront interest rate and tail-end risks associated with the Transaction. Second, the rate of return hold harmless Commitment will help to protect Cleco Power ratepayers from adverse impacts associated with

Third, the Commitments by the Applicants to maintain the low income assistance program, the annual charitable giving and the economic development funding at current levels for a minimum of five years is important. While these programs all exist today, the affirmative commitment to extend them for at least five years into the future does provide value and there are no requirements today that these payments will continue. Similarly, the Commitments to maintain Cleco's headquarters in Pineville, Louisiana, continue to maintain operational management in Louisiana, as well as retaining the call center in Louisiana are valuable. Once again, although all of these functions and activities are currently in Louisiana, there is value to these affirmative commitments.

Further, as discussed in the Commission Staff's Initial Post-Hearing Brief, the Applicants' Commitment to adopt the Staff's recommendation for Commitment No. 1, regarding the availability of injunctive relief for the Commission, is an important tool given the manner in which the Applicants have structured the Transaction. Finally, the Commitment to adopt and
maintain a Service Quality Program for ten years will help to ensure that adequate field personnel and the apprenticeship program will remain in place and will help formalize Cleco's commitment to maintain the highest service quality possible. Although the Staff believes that additional Commitments should be required, these pledges by the Applicants are valuable and should be considered by the Commission when it makes its public interest determination.

These Commitments are all positive and all needed. They should be required by the Commission if the Transaction is approved within the Commission's discretion. However, in the opinion of the Staff they do not fully mitigate the risks and harms of the Transaction. As discussed immediately above, Staff believes that at a minimum an additional commitment is required, in this Docket, to address the double-leveraging and irradiation issues. In the view of Staff, they are insufficient, as written, to meet the requirements of the 1994 General Order.

C. The Intervenor Arguments

1. Sierra Club Request for Commitments Related to Renewable Energy and Coal Generation Are Beyond the Scope of this Proceeding

Sierra Club requests that any approval of the Transaction should be conditioned on "a robust commitment to renewable energy" and "rigorously scrutinizing the company's reliance on coal-fired generation." (Sierra Club Brief at 22-23). It urges that a commitment to invest in renewable energy would help to offset future environmental compliance costs related to Cleco's coal units and could create additional jobs in Louisiana. (Id.) However, the environmental issues raised by the Sierra Club are beyond the scope of this proceeding.

The 1994 General Order requires the Commission to consider eighteen factors in its review of an application for a transfer of ownership or control. None of those factors require a commitment to renewable energy or to decrease reliance on existing coal units. The Purchasers seek to acquire ownership of Cleco, which includes the ownership of the existing Cleco
generating assets. Whether Cleco should invest more in renewable energy, and whether it is cost-effective to continue operating coal units in the future due to changes that may or may not be required by environmental laws are very important questions. However, those questions should be addressed in other or future proceedings when those issues are ripe for review and based on evidence specifically directed to those issues. There was no evidence submitted herein on environmental compliance requirements or costs, or on renewable energy-related issues. Such policy decisions are beyond the scope of this docket.

2. **The Transaction is More than Fair to Cleco's Shareholders**

In the post-hearing brief of Intervenors Helen Moore, Calvin Trahan and Lawrence E. L'Herisson ("Shareholders"), the Shareholders argue that the Transaction is not in the best interest of the Company's shareholders. (Shareholders Brief at 3). Shareholders argue that the $55.37 per share offer from Macquarie was obtained through an unfair process that included competing bids at prices as high as $59 per share. (Id. at 5). The 1994 General Order requires the Commission to take into account eighteen factors, and factor No. 9 requires consideration of "whether the transfer will be fair and reasonable to the majority of all affected public utility or common carrier shareholders." (1994 General Order at 2). The Transaction will be fair to Cleco's shareholders.

The shares of Cleco are being acquired for $55.37 per share. (Commission Staff Exh. 9, Dir. Test. Chastant at 11). That price was a 15 percent premium over Cleco's closing price of $48.27 per share on October 17, 2014, the last trading date prior to the announcement of the Macquarie Merger Agreement. (Id.). That purchase price is at over twice the book value of those outstanding shares, creating approximately $1.7 billion in goodwill on the balance sheet of Cleco Partners. (Commission Staff Exh. 13, Dir. Test. Mayeaux at 5). Cleco testified that this
share price is higher than any share price Cleco could have achieved absent the acquisition. (Tr. 11/10/15 at 167 (Olagues)). It is clear that shareholders are receiving significant value. In addition, shareholders voted to approve the Transaction, as required by La R.S. § 12:112(c)(2) (at least two-thirds of the voters present). (Tr. 11/10/15 at 78-79 (Olagues)). There is no basis for the Commission to determine that the Transaction would not be fair to shareholders, and the pendency of the shareholder derivative suits should not delay the Commission's consideration of the request for approval of the Transaction. (Commission Staff Exh. 15, Dir. Test. Lane Sisung at 55).

3. The 1994 General Order Does Not Authorize Allocation of Mr. Hempling's Control Premium

The Alliance argues that if the acquisition is approved, the "control premium" should be allocated between shareholders and ratepayers. (Alliance Brief at 36). It argues that Cleco's value derives from the value of Cleco Power's franchise that is granted by the government. (Id.). The Alliance also argues that the control premium should be allocated 50-50 between shareholders and ratepayers. (Id.). The requirement of this allocation should be rejected.

First, the LPSC did not grant Cleco any franchises, and the Commission has no authority to grant franchises to utilities under the Louisiana Constitution. (La. Const. Art. IV, § 21 (1974)). Furthermore, the 1994 General Order recognizes the right of utilities to sell its assets subject to approval under the 18 factor test in the 1994 General Order. That General Order states that Commission approval of transfers of ownership and control are "vital" so that the Commission is "able to ensure safe, efficient and reliable service at reasonable rates, and that ratepayers will not be harmed as a result of [a] change in ownership or control. (1994 General
Order at 1). Those 18 factors do not mandate consideration of the ownership or sharing of control premiums.

IV. CONCLUSION

It is the position of the Staff that the proposed Transaction with the Commitments and $125 million in rate credits does not meet the requirements of the 1994 General Order. These Commitments and rate credits are not sufficient to fully mitigate the negative risks and impacts of the Transaction. As previously discussed, pursuant to the Commission's Constitutional authority, the decision as to whether to approve an acquisition, and how to condition it is a policy matter and the Commission has broad discretion in making that decision. If the Commission exercises its discretion to approve the Transaction, all of the Applicants' December 17 Commitments should be required, along with one of the three alternatives presented by Staff to address the double-leveraging and

/s/ Lauren M. Temento
Lauren M. Temento
Staff Counsel
Louisiana Public Service Commission
602 N. Fifth Street
Galvez Building
12th Floor
Baton Rouge, Louisiana 70802
Telephone: 225-342-9888

Respectfully submitted,

[Signature]
Paul L. Zimmering
Noel J. Darce
Justin A. Swaim
OF
STONE PIGMAN WALther WITTmANN L.L.C.
546 Carondelet Street
New Orleans, Louisiana 70130
Telephone: 504-581-3200

Counsel for the Louisiana Public Service Commission
CERTIFICATE

I hereby certify that a copy of the above and foregoing Post-Hearing Brief has been served upon all counsel of record by e-mail this 12th day of January, 2016.

[Signature]

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