

As a preface to the FTC questions and Cleco Corporation's (Cleco) responses, Louisiana has yet to implement deregulation of the electric industry. However, significant efforts have been made toward that end in Louisiana and within Cleco. Also, Cleco has some experience with the development of the Texas marketplace, soon to be deregulated. Here are Cleco's comments on the FTC's Notice Requesting Comments on Retail Electricity Competition Plans:

### **Specific Questions to Be Addressed**

#### *History and Overview*

1. Why did the state implement retail electricity competition? What problems of the previous regulatory regime was it trying to solve?
  - A. Louisiana initially sought to increase both choice and innovation as well as offer the best energy value through competition. However, Louisiana's is also a low-cost state. Recent events in California may forestall Louisiana move to retail competition, although Cleco remains ready to implement choice if its Commission so Orders
2. What were the expected benefits of retail competition? Were price reductions expected in absolute terms or in relation to what price levels would be absent retail competition? Were the benefits of retail competition expected to be available to consumers in urban, suburban, and rural areas? Were the benefits expected to be available for residential, commercial, and industrial customers? Were the benefits expected to be comparable for each group of customers?
  - A. As stated in 1, the benefits of choice and innovation at the best energy value. No increase in rates has been anticipated. Yes, benefits were to be provided all customers in all areas and classes. Some differences could be expected in the amount and type of benefit.
3. What factors or measures should the Commission examine in viewing the success of a state's retail electricity competition program? How should these measures be evaluated?
  - A. Real gains in choice and value, market participation by buyers and sellers, visible retail prices, consumer satisfaction. These could be determined in review of choices available, distribution of customers among providers, no market power of any one provider; consumer surveys.
4. What are the most successful and least successful elements in the state's retail competition program? Has the state taken steps to modify the least successful elements?
  - A. We have yet to experience retail choice

#### *Consumer Protection Issues*

1. What efforts were made to educate consumers about retail competition? How was the success of these efforts measured? Were the programs successful? Who funded these efforts? Who implemented the programs?

A. Educational requirements were suggested by the initial proposal. No specifics were offered. Cleco has filed extensive remarks in this area with the Louisiana Public Service Commission as part of the retail choice discovery process.

2. Do consumers have enough information to readily make informed choices among competing suppliers? Did the state coordinate its labeling requirements about the attributes of a supplier's product, if any, with neighboring states? Is there a need for federal assistance to provide standardized supplier labeling? If so, what would be the most useful federal role?

A. N/A

3. Have consumers complained about unauthorized switching of their accounts to alternative suppliers (Aslamming@) or the placement of unauthorized charges on their electric bills (Acramming@)? Were rules adopted to prevent these practices? Has the state taken enforcement action under its new authority against slamming and cramming? Have these actions been effective to curb the alleged abuses? Is there a need for federal assistance with slamming and cramming issues? If so, what would be the most useful federal role?

A. N/A

4. How did the state facilitate the ability of customers to switch to a new supplier? Have these efforts been successful? Does the state allow consumers to aggregate their electricity demand? If so, has aggregation enabled consumers to benefit from retail electricity competition? If not, why not?

A. N/A

5. Has the state established licensing or certification requirements for new suppliers to provide electricity to customers? Why? Which licensing provisions are designed to protect consumers? How do they operate? Has the state taken enforcement action against unlicensed firms? Have these actions been effective to curb unlicensed activity? Have these requirements acted as an entry barrier for new suppliers?

A. Licensing requirements have been sought, but nothing specific has been adopted for Louisiana to date. Cleco has filed extensive remarks in this area with the Louisiana Public Service Commission as part of the retail choice discovery process.

6. Did the state place any restrictions on the ability of a utility's unregulated affiliate(s) to use a similar name and/or logo as its parent utility, in order to avoid consumer confusion when the affiliate offered unregulated generation services? Why or why not? What has been the experience to date with the use of these restrictions? Are consumers knowledgeable about who their suppliers are?

A. The State has offered strict affiliate rules restricting use of utility brand as anti-competitive

7. Did the state place any restrictions on third party or affiliate use of a utility's customer information (e.g., customer usage statistics, financial information, etc.)? What were the reasons for enacting the restrictions? What has been the effect of these restrictions on new marketing activity?
  - A. Yes, as currently proposed by the Louisiana Commission Staff, affiliate transactions are required to be arms length and at lower of cost or market.
8. Has the state adopted any other measures intended to protect consumers (e.g., length of consumer contracts, automatic renewal provisions, etc.) as it implemented retail competition? What has been the effect of these measures?
  - A. N/A
9. To what extent have suppliers engaged in advertising to sell their product(s)? Do some suppliers claim that their product is differentiated (e.g., that it has environmental benefits)? Has there been any enforcement or attempts to verify these advertising claims? Do any certification organizations, such as Green-e, operate in the state? Are they used by (or at least available to) a substantial portion of consumers?
  - A. N/A

***Retail Supply Issues***

1. What difficulties have suppliers encountered in entering the market? What conditions/incentives attract suppliers to retail markets? Have suppliers exited the market after beginning to provide retail service? If so, why?
  - A. In Cleco's experience in the Texas market, and in viewing others, it seems apparent that the margin available to energy suppliers above any "standard offer" or default service is the big factor in providing, and persevering, in serving a market.
2. What are the customer acquisition costs and operational costs to service retail customers? How do acquisition and operational cost compare to profit margins for electric power generation services? Do retail margins affect entry? If so, how? Did the state harmonize the procedures suppliers use to attract and switch customers with other states' procedures, in order to reduce suppliers' costs?
  - A. This estimate will differ from Texas to Louisiana as the anticipated retail models differ. Texas should have a lower cost as they intend to assign customers to their retail provider. These costs have been estimated between \$5.00 and \$15.00, once sunk costs are excluded. Retail margins are the main determinant of a successful market. Without sufficient margin, costs cannot be covered thus the supplier's incentive is removed. Supplier procedures should be largely harmonized between jurisdictions.
3. Have customers switched to new suppliers? Why or why not? Are there greater incentives for certain customer classes (i.e., industrial, commercial, residential) than for others to switch suppliers? Why or why not? Are penalties or different rates applied to customers that switch back to the supplier of last resort? Are there other

measures to determine whether customers are actively considering switching suppliers? If so, do these indicators show different patterns than the switching rate data?

- A. In all jurisdictions with insufficient retail margins, customers have not switched and many suppliers have left the market.
4. Have suppliers offered new types of products and services (e.g., time of day pricing, interruptible contracts, green power, etc.) in states where retail competition has been implemented? If so, describe the products and what customer response has been.
  - A. Of the product options mentioned many have been offered with and without retail competition. Of those, green power has been seen to be the most successful at residential levels while time of use and interruptible rates are more successful with larger users.
5. What are the benefits or drawbacks of the different approaches to handling the supplier of last resort obligation for customers who do not choose a new supplier (e.g., allow incumbent utility to retain the obligation to provide generation services to non-choosing customers, auction the obligation, or assign the obligation to non-utility parties). What has been consumer reaction to these approaches? Is provider of last resort service necessary?
  - A. Provider of Last Resort (POLR) service presents an obligation to serve those who choose not to switch. The POLR obligation in Louisiana is contemplated to remain with the utility. Ideally the POLR should be temporary until market conditions allow all customers a valid choice of supply; however, Cleco has not advocated any forced switching for Louisiana. Also, the POLR price should not be priced under market pricing or no switching will occur. The POLR obligation could also lead to serious earnings erosion as those whose load is attractive to suppliers' switch leaving only the potentially less desirable customers with the POLR, unless POLR service is priced accordingly.

#### ***Retail Pricing Issues***

1. How is entry affected by the price for the provider of last resort service (for customers who do not choose) or for default service (for customer whose supplier exits the market)? How does the price for the provider of last resort or default service compare to prices offered by alternative suppliers? Is the price for provider of last resort service or default service capped? If so, for how long?
  - A. POLR priced at, or below, market will deter market development. Default should be at the higher of cost or market to encourage customers' entry into the marketplace. Too often the default service has been set low to facilitate initial market development. POLR should be set at COS or default, whichever is greater, for any remaining customers. Default should be market-based and indexed to market changes.
2. Has the state required retail rate reductions prior to the start of retail competition? What is the rationale for these reductions? How have state-mandated rate reductions prior to the start of retail competition affected retail competition?

- A. Many states have. As a compromise to allow capture of stranded costs for savings under a rate cap. Presently, no rate reductions have been proposed by the Louisiana Staff in their retail choice plan.
- 3. Do any seasonal fluctuations in the price of wholesale generation cause some suppliers to enter the market only at certain times of the year? How have these suppliers fared?
  - A. Marketers may approach supply with this attitude, but the underlying physical supply markets (except pool-only type markets) are generally contract based and not of such a temporary seasonal nature. As with any timing based decision concerning a commodity product, there have been notable gains and losses among electric suppliers thus far in the states with competitive markets.
- 4. How has the state addressed public benefit programs (e.g., universal service requirements, low income assistance, conservation education, etc.) as it has implemented retail competition? Which of these programs are necessary as competition is introduced and why? Are public benefits available to all customers or are they restricted to customers of the supplier of last resort? How does this affect retail competition?
  - A. This issue is still under development in Louisiana, but Cleco has advocated a universal charge such that all customers retain eligibility to qualify for such programs. We do believe that public benefits programs should be taken out of rate design and proper funding through a tax or charge should be implemented for those in need of assistance.

***Market Structure Issues***

- 1. How has the development of Regional Transmission Organizations (RTOs) affected retail competition in the state?
  - A. When finally implemented, the RTO should enhance wholesale transactions and increase benefits transferable to retail competition.
- 2. Did the state require the divestiture of generation assets (or impose other regulatory conditions on the use of these assets) when retail competition was introduced? To what extent was divestiture of generation assets a component of the state's handling of a utility's stranded costs? Was divestiture used to remedy a high concentration of generation assets serving the state? Was there appreciable voluntary divestiture of generation assets? Has the state examined whether there has been appreciable consolidation of ownership of generation serving the state since the start of retail competition?
  - A. Generation divestiture is not contemplated for retail competition in Louisiana, but generation may be deregulated in an amount equal to the load that chooses alternative suppliers. Stranded costs would be addressed as generation is divested or transferred. Louisiana has not fully addressed market conditions.

3. If a utility no longer owns generation assets to meet its obligations as the supplier of last resort or default service provider, what market mechanism (e.g., spot market purchases, buy back or output contracts, etc.) does it use to obtain generation services to fulfill these obligations? What share of a utility's load is obtained via the different mechanisms? How are these shares trending? Is the market mechanism transparent? Is it necessary to monitor these market mechanisms? Why or why not? If so, what should the monitor examine?
  - A. The utility would use a combination of contracts and spot purchases to most economically meet its load. Although not deregulated, Cleco's regulated utility already fills a significant amount of its load through contract and market mechanisms. The trend industry-wide is towards more independent power supply. In Louisiana, it is likely that, even upon retail choice, that there will be contracts back to the utility for default supply that are sourced from the old regulated generating units. It will be necessary to monitor Louisiana's market developments in order to sustain reliability at the best possible price.
4. Explain the state's role in overseeing operation of the transmission grid in the state and the extent to which public power or municipal power transmission systems are integrated into this effort. What is the relationship between the state's role and the Federal Energy Regulatory Commission's role in transmission system operation in the state?
  - A. The State should have a nominal role in transmission regulation. The RTO should oversee daily operation under the auspices of the FERC. Contracts between municipalities, co-ops and the RTO would be overseen by the FERC, as they are now. Siting of new transmission or upgrades would still be under state authority, as would oversight of distribution company rates.
5. Do firms that have provider of last resort or default service obligations (formerly Anative load@ obligations in the regulated environment) receive preferential transmission treatment? If so, how does this affect wholesale electric power competition? How and by whom should retail sales of bundled transmission services (i.e., retail sales of both energy and transmission services) and retail sales of unbundled transmission be regulated? If by more than one entity, how should regulation be coordinated? What should the state's role be in overseeing wholesale transmission reliability?
  - A. POLR should receive capacity for serving the native load only for as long as the transition period out of POLR requires. Regulations of load on transmission are under the RTO rules as approved by FERC. The state should have no role in transmission reliability at wholesale except as intervenor.
6. To what extent did the state identify transmission constraints affecting access to out-of-state or in-state generation prior to the start of retail competition? Is the state capable of remedying these transmission constraints, or is federal jurisdiction necessary? How do the rationales for federal jurisdiction over electric power

transmission siting compare to the reasons underlying federal jurisdiction over the siting of natural gas pipelines?

- A. The Louisiana Commission is currently assessing transmission constraints in the state. The state can implement solutions in some instances but may have to appeal to FERC, as well. The issues are similar to those of pipelines in that the electric transmission grid is one of interstate commerce. Power flows follow contract paths even less than pipeline flows. For siting purposes, the interest of one or more states is affected directly by decisions made in another, which is why the RTO, with Federal oversight, is needed.
7. How have state siting regulations for new generation and transmission facilities been affected by the onset of retail competition? Has new generation siting kept pace with demand growth in the state? If not, why not? Is federal jurisdiction necessary for siting of electric power generation facilities? Has the state actively monitored and reported the relationship between in-state capacity and peak demand in the state? What incentives do suppliers have to maintain adequate reserve capacity? What are the ways to value capacity in competitive markets? Is reserve sharing still important in competitive markets? Do other institutions/market processes provide a reasonable substitute for reserve sharing?
- A. Louisiana siting regulations are being formed now at the RTO level. New generation, as announced and if built, will make Louisiana a net power exporter placing constraints on the transmission system that will have to be relieved. Federal jurisdiction for generation siting is unnecessary in Louisiana. The state requires reporting of generation capacity and forecast peaks. Currently, reserve requirements are set by the Southwest Power Pool as required to interconnect. Capacity on the market should be bid upon contractually. Reserve Sharing should lower overall cost and improve dispatch. Reserve Sharing should be priced as an RTO component and capacity for reserve maintained by contract with the RTO. Other processes could include bidding in reserve requirements on daily auction bases.
8. Since the start of retail competition, what has been the rate of generation plant outages (scheduled and unscheduled)? To what extent has the state monitored these outages and examined their causes?

A. N/A

***Other Issues***

- 1. What measures has the state taken to make customer demand responsive to changes in available supply? Has the state provided utilities incentives to make customers more prices responsive? Has the state moved away from average cost pricing? What effect have these measures had on demand and on demand elasticity?
- A. Can't yet evaluate this in Louisiana or Texas.
- 2. Has the state provided mechanisms and incentives for owners of co-generation capacity to offer power during peak demand periods? Has the state identified,

reported, and facilitated development of pumped storage facilities or other approaches to arbitraging between peak and off-peak wholesale electricity prices?

A. No, the state has not.

3. What issues have arisen under retail competition that have required cooperation or coordination with other states? What approach was taken to securing this cooperation or coordination? Are there other issues requiring cooperation that have not yet been addressed? Which of these issues are the most significant?

A. RTO issues and system sharing agreements for Louisiana's multi-state electric holding companys have been and are being addressed with neighboring states. Similarly, stranded costs have been addressed for these multi-jurisdictional companies

4. How prevalent is the use of distributed resources (e.g., distributed generation) within the state? What barriers do customers face to implementing distributed resources?

A. Currently, there is very little distributed generation in Louisiana. The relative low price of central station generation in the state and Louisiana's ready access to natural gas has traditionally precluded distributed generation from being an economic alternative for most customers. Other states have struggled with interconnect and net metering issues.

5. Which specific jurisdictional issues prevent state retail competition programs from being as successful as they might be?

A. N/A

6. Which specific technological developments are likely to substantially affect retail or wholesale competition in the electric power industry that may alter the manner in which states structure retail competition plans? Why? What time frame is associated with these developments?

A. Continued advances in generation technology and related innovation in information technology that improves dispatch, pricing and consumer behavior related to the delivery of electricity.

7. What are the lessons to be learned from the retail electricity competition efforts of other countries? Are there other formerly-regulated industries in the U.S. (e.g., natural gas) that allow customer choice and provide useful comparisons to retail electricity competition? If so, what are the relevant insights or lessons to be learned?

A. Much the same as here, without proper pricing signals to end-users in a fair market, the market failure will manifest in short supply, poor reliability and high prices. Natural gas provides a good wholesale and partial retail deregulation model demonstrating that by slowly lowering limits to market gas, customers can benefit from competition. Another insight is that, without approval of proper transmission and supply upgrades, demand growth will result in undue upward pressure on prices.

This can, as with California, result in retail electricity competition being blamed for these higher prices when, in fact, insufficient infrastructure investment is also partly to blame.