

APPENDIX D

CONFIDENTIALITY AGREEMENT FORM

**2007 Long-Term RFP for
Capacity and Energy Resources**

Cleco Power LLC



**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

**CLECO POWER LLC;)
INFORMATIONAL FILING)
CONTAINING 2007 LONG-TERM)
REQUEST FOR PROPOSALS)
FOR CAPACITY AND ENERGY)**

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) shall govern the use of all information deemed confidential by a participant in the captioned informal proceeding responding to informational requests within this proceeding, unless the Louisiana Public Service Commission (“Commission”) determines that such information is not confidential pursuant to Rule 12.1 of the Commission’s Rules of Practice and Procedure (“Rules”).

1. (a) Any participant producing or filing a document, including, but not limited to, records stored or encoded on a computer disk or other similar electronic storage medium, in this proceeding may designate that document or any portion of it as confidential pursuant to this Agreement by typing or stamping on the face of the document "PROTECTED MATERIALS PURSUANT TO CONFIDENTIALITY AGREEMENT IN THE CLECO POWER 2007 Long-Term RFP" or words of similar import (hereinafter referred to as "Protected Materials").

(b) Protected Materials shall not include any information or document contained in the public files of the Commission, the Federal Energy Regulatory Commission, or any other federal or state agency. Protected Materials also shall not include documents or other information that at the time of or prior to disclosure in this proceeding are or were public knowledge or which become public knowledge other than through disclosure in violation of this Agreement.
2. When a participant in this proceeding receives or is provided access to material pursuant to this Agreement, that participant is referred to herein as a “Reviewing Party” with respect to such material.
3. When a participant in the Cleco Power 2007 Long-Term RFP produces or provides access to material pursuant to this Agreement, that participant is referred to herein as a “Responding Party” with respect to such material.

4. Except as otherwise provided in this paragraph, a Reviewing Party shall be permitted access to Protected Materials only through its authorized "Reviewing Representatives." "Reviewing Representatives" of a Reviewing Party may include its counsel in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding and, (i) in the case of the Commission and Commission Staff, the Independent Monitor for the Commission, and (ii) in the case of Cleco Power LLC, the Independent Monitor for the Commission.

The term "Highly Sensitive Protected Materials" is a subset of Protected Materials and refers to material produced by a Responding Party that the Responding Party claims is of such a highly sensitive nature that making copies of such material or providing access to such material to a Reviewing Party or the employees of the Reviewing Party would expose the Responding Party, or a person or entity to which the Responding Party owes a duty to protect the confidentiality of such materials, to an unreasonable risk of harm. Documents so classified by a Responding Party shall bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO CONFIDENTIALITY AGREEMENT IN THE CLECO POWER 2007 LONG-TERM RFP."

No copies shall be made of any Highly Sensitive Protected Materials and they shall be made available only for inspection by the Reviewing Representatives of a Reviewing Party or Parties; provided, however, that if the Responding Party believes that further protections should be afforded with respect to the manner in which, or the Reviewing Representatives to which, such materials are disclosed, such materials shall be made available for inspection by counsel for the Reviewing Party only, pending a determination of the manner in which, and the Reviewing Representatives to which, such materials will be disclosed pursuant to this Agreement, which determination shall be made on a case by case basis, depending on the level of protection that may be necessary to protect the Responding Party, and any other person or entity to which the Responding Party owes a duty to protect the confidentiality of such materials, from any unreasonable risk of harm that may result from disclosure of such information. In the event that the parties are unable to agree on the manner in which, and the Reviewing Representatives to which, such materials will be disclosed, the Responding Party reserves its right to seek from the Commission, and from the courts as may be necessary, an order providing the level of protection for the Highly Sensitive Protected Materials that the Responding Party believes is required.

5. Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification, and shall provide a copy of a signed certification in the form of that attached to this Agreement to counsel for the Responding Party asserting confidentiality:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Confidentiality Agreement in the Cleco Power 2007 Long-Term RFP, and that I have been given a copy of it and have read the Confidentiality Agreement and agree to be bound by it. I understand that the contents of the Protected Materials, and any notes, memoranda, or any other form of information regarding or derived from the Protected Materials, shall not be disclosed to anyone other than in accordance with the Confidentiality Agreement and shall be used only for the purpose of the proceeding in the Cleco Power 2007 Long-Term RFP. If, however, the information contained in the Protected Materials is publicly available or is obtained from the independent sources, the understanding stated herein shall not apply.

Any Reviewing Representative may disclose materials to any other person who is qualified to be a Reviewing Representative, provided that, if the person to whom disclosure is to be made has not executed a certification and provided a signed certification to counsel for the Responding Party asserting confidentiality, that certification shall be executed and provided prior to any disclosure. In the event that any Reviewing Representative to whom such Protected Materials are disclosed ceases to be engaged in this proceeding, access to such materials by such person shall be terminated. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Agreement, even if no longer so engaged.

6. Except for Highly Sensitive Protected Materials and Protected Materials that are voluminous, the Responding Party shall provide a Reviewing Party one copy of the Protected Materials. The parties agree to make a good faith effort to limit the number of copies of Protected Materials and agree to distribute copies of Protected Materials only to Reviewing Representatives.
7. (a) Materials that are deemed "voluminous," which may include materials in excess of two hundred and fifty (250) pages in length, and Highly Sensitive Protected Materials shall be made available for inspection by Reviewing Representatives at a location in Pineville, Louisiana, specified by the Responding Party between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday (except holidays). The Protected Materials may be reviewed only during the "reviewing period," which period shall commence upon signing of this Agreement, and continue until conclusion of these proceedings. As used in this Agreement, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law.

(b) Reviewing Representatives may take handwritten notes regarding the information contained in voluminous Protected Materials made available for inspection pursuant to paragraph 7(a), and, after such inspection, may designate materials to be copied. A

charge of fifteen cents (15¢) per page shall apply to all requests for copies of voluminous materials. Only one copy of the materials designated shall be reproduced by the Responding Party. A Reviewing Party shall make a diligent, good-faith effort to limit the amount of photographic or mechanical copying requested to only that which is essential for purposes of this proceeding. The parties agree to make a good faith effort to limit the number of copies of Protected Materials and agree to distribute copies of Protected Materials only to Reviewing Representatives. Reviewing Representatives may take minimal handwritten notes regarding the information contained in Highly Sensitive Protected Materials; no copies shall be made of Highly Sensitive Protected Materials and handwritten notes shall not be used to circumvent this protection against duplication of Highly Sensitive Protected Materials.

8. All Protected Materials shall be made available to a Reviewing Party and its Reviewing Representatives solely for the purpose of this proceeding. Access to Protected Materials may not be used in the furtherance of any other purpose, including, without limitation, (i) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, or (ii) any business endeavor or competitive purpose of whatever nature. The Protected Materials, as well as the Reviewing Party's notes, memoranda, or other information regarding, or derived from the Protected Materials, are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party, except as permitted and provided in this Agreement. Information derived from or describing Protected Materials shall not be placed in the public or general files of a Reviewing Party, except in accordance with provisions of this Agreement. A Reviewing Party must take all reasonable precautions to ensure that Protected Materials, including handwritten notes and analyses made from Protected Materials, are not viewed or taken by any person other than a Reviewing Representative of the party. No provision of this Agreement shall prohibit a Reviewing Party from requesting any of the materials designated as Protected Materials or Highly Sensitive Protected Materials in another proceeding or matter, subject to applicable confidentiality agreements or orders in such proceeding or matter.
9. (a) If a party tenders for filing in any other proceeding before the Commission any written testimony, exhibit, brief, or other submission that quotes from Protected Materials or discloses the confidential content of Protected Materials, the confidential portion of such testimony, exhibit, brief, or other submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Agreement and Rule 12.1 of the Commission's Rules. Such documents shall be marked "PROTECTED MATERIALS PURSUANT TO CONFIDENTIALITY AGREEMENT IN THE CLECO POWER 2007 Long-Term RFP" and shall be filed under seal with the Secretary of the Commission and served under seal to the counsel of record for the Reviewing Party or Parties. If testimony that quotes from Protected Materials or discloses the confidential content of Protected Materials is offered by a Reviewing Representative on behalf of a Reviewing Party in such other proceeding, the Reviewing Party shall advise the presiding Administrative Law Judge of such. The Commission may subsequently, on its own motion or on motion of a party, issue a ruling respecting

whether or not the inclusion, incorporation, or reference to Protected Materials is such that the written testimony, exhibit, brief, or other submission, or transcript of testimony, should remain under seal.

(b) Any party or person giving testimony in such other proceeding may designate as Protected Materials that portion of its, his, or her testimony deemed to be confidential materials in accordance with paragraph 1 of this Agreement by advising the presiding Administrative Law Judge of such fact.

(c) All Protected Materials filed with the Commission, the Administrative Law Judge, or any other judicial or administrative body in such other proceeding in support of or as part of a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers.

10. A Reviewing Party may release confidential information pursuant to a final order of a local, state, or federal governmental agency or authority or judicial body requiring such release; provided, however, the Reviewing Party agrees that prior to such release it shall promptly notify the Responding Party asserting confidentiality, or its counsel of record, of the order and of the intention to comply with the order and allow such party sufficient time to contest any release of the confidential information; and provided, further, the Reviewing Party shall attempt to ensure that such confidential information is not disclosed to the public and is accorded the highest level of protection possible consistent with the terms of this Agreement. In addition to the obligation to notify imposed in the foregoing provision, if prior to the issuance of such a final order, a Reviewing Party becomes aware of any proceeding to obtain such an order, then the Reviewing Party acquiring such knowledge shall promptly inform the Responding Party of such proceeding.
11. In the event the Commission, on its own motion or the motion or request of a person not a party to this Agreement, considers (1) the disclosure of Protected Materials to any person to whom disclosure is not authorized by this Agreement, or (2) a change in the designation of certain information or material, then the parties to this Agreement shall request that the Commission enter an order that the same procedures and time limits set forth in Section 12 below shall control such motion or request, and any proceeding and Commission order resulting therefrom.
12. During the pendency of the Cleco Power 2007 Long-Term RFP at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure may not be authorized by this Agreement, or wishes to have changed the designation of certain information or material as protected by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of the Protected Materials with respect to which such a disclosure or change in designation is proposed, the nature of such proposed disclosure or change in designation, and the basis therefor. In

the event that the Responding Party asserting confidentiality wishes to contest such proposed disclosure or request for change in designation, that party shall file with the Commission its objection to such proposal, with supporting sworn affidavits, if any, or a request for a prehearing conference, within five (5) working days after receiving such notice of proposed disclosure or request for change in designation. Responses to such an objection, with supporting affidavits, if any, shall be filed by the Reviewing Party within five (5) working days after receipt of the objection. By the deadline for responses to such an objection, counsel for the Responding Party shall indicate by written filing that he or she has reviewed all portions of the materials in dispute and believes in good faith that they should be held to be confidential under current legal standards. By the same date, counsel for the Reviewing Party challenging such confidentiality shall indicate by written filing that he or she has reviewed all portions of the materials in dispute and believes in good faith that they should not be held to be confidential under current legal standards, or alternatively that the Responding Party for some reason did not allow such counsel to review such materials. If either the party seeking disclosure or the party seeking to prevent disclosure wishes to submit the material in question for *in camera* inspection, it shall request such *in camera* inspection no later than five (5) working days after the filing of an objection to the proposed disclosure or change in designation or a request for a prehearing conference. If a party files such an objection or request for a prehearing conference, the Commission will determine whether the proposed disclosure or change in designation is appropriate. The burden is on the Responding Party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the Commission determines that such proposed disclosure or change in designation should not be made, the parties shall not disclose any materials affected by the determination until the expiration of time for the filing of a request for rehearing before the Commission, as provided in its Rules. In the event that rehearing is requested, the proposed disclosure or change in designation shall not then become effective until the Commission's denial of the request for rehearing. No party waives any right to seek additional administrative or judicial remedies concerning such Commission's finding.

Any party electing to challenge, in the courts of this State, a Commission determination allowing disclosure or a change in designation, or denying same, shall have a period of ten (10) days from the date on which the delay for rehearing of the unfavorable ruling expires (or if rehearing is requested, from the date on which rehearing is denied) to file a petition seeking a favorable ruling in the Louisiana 19th Judicial District Court. The effect of an order requiring disclosure or a change in designation shall be stayed pending a decision on a request for a preliminary injunction. Any party challenging the State District Court determination allowing disclosure or a change in designation, or a denial of same, shall have a period of fifteen (15) days from the date of the District Court's ruling to file a petition seeking a favorable ruling from the Louisiana Supreme Court.

13. Nothing in this Agreement shall be construed as precluding a Responding Party asserting confidentiality from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Agreement shall

be construed as an agreement by any participant in this proceeding or the Commission that the Protected Materials are entitled to confidential treatment.

14. All notices, applications, responses or other correspondence shall be made in a manner that protects the Protected Materials at issue from unauthorized disclosure.
15. Following the conclusion of this proceeding, Reviewing Parties and their Reviewing Representatives, upon request by a Responding Party, shall return or destroy all copies of Protected Materials made available by such Responding Party. Further, all notes or other documents derived from or revealing the confidential content of such Protected Materials shall, upon request, be redacted to remove permanently any confidential information, including information from which confidential information can be derived.
16. In the event of a breach of the provisions of this Agreement, the Responding Party asserting confidentiality will not have an adequate remedy in money or damages, and accordingly, shall, in addition to any other available legal or equitable remedies, be entitled to an injunction against such breach, without any requirement to post bond as a condition of such relief.

Date: _____ [COMPANY]

By: _____

Name: _____

Title: _____

Date: _____ CLECO POWER LLC

By: _____

Name: _____

Title: _____

