

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for exemption under Rule 25-22.082(18), F.A.C., from issuing request for proposals (RFPs), by Florida Power & Light Company.

DOCKET NO. 060426-EI
ORDER NO. PSC-06-0779-PAA-EI
ISSUED: September 19, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING EXEMPTION FROM BID RULE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose substantial interests are affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Rule 25-22.082, Florida Administrative Code, (the "Bid Rule") requires investor-owned electric utilities ("IOUs") to issue a request for proposals ("RFP") for each proposed generating unit subject to a need determination under Section 403.519, Florida Statutes. Subsection (18) of the Bid Rule allows utilities to seek an exemption from the requirements of the Bid Rule:

Upon a showing by a public utility and a finding by the Commission that a proposal not in compliance with this rule's provisions will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or otherwise will serve the public welfare, the Commission shall exempt the utility from compliance with the rule or any part of it for which such justification is found.

On May 26, 2006, Florida Power & Light Company ("FPL") filed a petition for exemption from the Bid Rule's requirement to issue an RFP for its proposed supercritical pulverized coal generating plant (the "Project"). On August 9, 2006, FPL filed comments clarifying that the proposed coal plant will consist of two electrical generating units and that FPL seeks an exemption from the Bid Rule for both units.

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The Florida Industrial Power Users Group (“FIPUG”) and the Office of Public Counsel (“OPC”) have been granted intervention in this docket. On July 31, 2006, FIPUG filed comments in response to FPL’s petition.

We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, 366.06, and 366.07, Florida Statutes, and Section 403.519, Florida Statutes.

Analysis

In its petition, FPL asserts that an exemption is warranted because accelerating the construction of the Project will result in a more reliable supply of electricity for its ratepayers and will serve the public welfare.¹ FPL also states that an exemption may result in cost savings for its customers. In its petition, FPL states that recent experience demonstrates “the RFP process would significantly delay the addition of the Project and the Project’s benefits, including substantial fuel diversity, and it is highly unlikely that the RFP process will result in a more cost-effective solid fuel alternative to the Project that FPL proposes to build.” FPL estimates that an exemption from the RFP requirement will accelerate the Project’s completion by at least 6 months and will benefit FPL’s customers by accelerating the use of a lower cost fuel and increasing the supply of reliable electricity. FPL further states that an exemption will serve the public welfare by hastening the diversification of generating technologies, fuel sources, and fuel delivery methods and by reducing FPL’s dependence on natural gas.

In its petition to intervene, FIPUG states that granting the petition should “not foreclose application of the bid rule to future need determinations involving generation technology that is mature and readily available in the marketplace.” In its response to FIPUG’s petition to intervene, FPL states that its request for an exemption “is limited to the coal project at hand and is not applicable to other projects that may be the subject of future and separate need determinations.” In its petition, however, FPL appears to discount the use of an RFP process to solicit coal capacity in general, stating that “the RFP process would not result in the identification of any lower cost alternative to FPL constructing and operating the Project.” FPL cites its recent RFP experiences in projecting that a coal solicitation would add time to the project “without any likely benefit for customers being achieved through the process.” FPL also states that it expects few valid bids to result from an RFP because of a reduction in the number of potential bidders, and the risk for bidders due to the long lead time, high capital costs, and potential uncertainty associated with coal projects.

We believe it is premature to conclude that an RFP for coal capacity would not result in valid bids. FPL’s recent RFP solicitations have been for natural gas-fired capacity, rather than

¹ FPL’s most recent Ten-Year Site Plan (“TYSP”) includes two planned 850 megawatt pulverized coal generating units with in-service dates of June 2012 and June 2013. The original site for FPL’s proposed coal units was in St. Lucie County. FPL planned to issue an RFP for coal capacity in the Summer of 2006 in order to meet a June 2012 in-service date for its first pulverized coal unit. However, in November 2005, the St. Lucie County Commission denied FPL’s requests for land use and zoning requirements. Because another site had not yet been secured, FPL has not yet issued an RFP for coal capacity. Therefore, it appears that FPL has requested an exemption from the RFP process in order to stay on schedule for the plant rather than to accelerate the June 2012 in-service date.

coal capacity. Further, FPL's 2005 RFP for natural gas-fired units stated that FPL expected to issue an additional RFP for coal capacity in the Summer of 2006. Ten companies responded that they would like to be notified of future meetings or solicitations regarding the proposed coal unit. We also note that Seminole Electric Cooperative issued an RFP for capacity in April 2004. Seminole stated a preference in its RFP for coal capacity or non-coal resources structured to provide long-term price stability. Seminole received proposals for capacity from three proposed new pulverized coal units which demonstrates a willingness from independent providers to participate in an RFP process for coal capacity.

Further, we recognize that the benefits associated with an exemption are described in broad terms in FPL's petition and FPL's argument is based primarily on the benefits of accelerating the addition of coal to FPL's system. As noted in footnote 1, we do not believe an exemption will result in accelerating the unit's expected in-service date. Further, given the current market for natural gas, and the fact that over 90 percent of new capacity added since 1990 in Florida has been natural gas-fired, the benefits described in FPL's petition would apply to many utilities adding coal capacity. Thus, we are concerned that given the broadness of FPL's petition, other IOUs may interpret approval of the petition as tacit approval of future requests for exemption from the RFP requirement for planned coal units. The RFP process provides us with valuable information on the available capacity alternatives and is a valid tool for evaluating the cost-effectiveness of proposed generating units. As stated in Rule 25-22.082(1), Florida Administrative Code, "[T]he use of a Request for Proposals (RFP) process is an appropriate means to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available." Therefore, our disposition of this petition should not be viewed as a blanket exemption from the RFP requirement for future coal projects.

FIPUG also suggests in its comments that this Commission should employ an independent engineering firm to evaluate FPL's estimated plant costs. We do not find this to be necessary. FPL will be required to provide sufficient evidence that the proposed plant is the most cost-effective alternative at a future need determination proceeding. The discovery process will allow parties to that proceeding to gather information and request sensitivities to FPL's cost estimates. Our staff has ample experience to evaluate FPL's need determination filing. Employing an outside evaluator could delay the project further, potentially eliminating any time savings benefit to be gained from granting an exemption for a specified time period as discussed further below.

Notwithstanding our comments above, we find that granting the requested exemption for the 2012 unit is appropriate. We recently emphasized the need for additional fuel diversity on FPL's system and obtained an agreement from FPL to accelerate its actions to install advanced technology coal capacity. By Order No. PSC-06-0555-FOF-EI, issued June 28, 2006, in Docket No. 060225-EI, In re: Petition for determination of need for West County Units 1 and 2 electrical power plants in Palm Beach County, by Florida Power & Light Company, we approved FPL's need determination for natural gas-fired capacity and recognized the fuel diversity benefits of adding coal to FPL's system to meet future needs. The Florida Legislature also recently highlighted the importance of fuel diversity in House Bill 888, which was signed into law by Governor Bush on June 19, 2006. The bill amended Section 403.519, Florida Statutes, to require

this Commission to specifically consider “the need for fuel diversity and supply reliability” when making its determination of need for new electric generating capacity.

We also note that FPL appears to have the most to gain among all Florida’s IOUs by adding coal capacity to its system. FPL relies more heavily on natural gas to meet its load than any other Florida IOU. According to FPL’s 2006 TYSP, FPL’s net energy for load served by natural gas will be 59.0 percent in 2015, even with the addition of two proposed coal units. If FPL continues to build all natural gas-fired capacity, over 73 percent of FPL’s net energy for load will be served by natural gas in 2015. Further, FPL’s proposed 2012 coal unit will provide FPL’s customers with much needed capacity given FPL’s higher than expected load growth.

We believe that FPL will be unable to meet a June 2012 in-service date if an RFP is issued at this late date. FPL estimates that construction must begin no later than June 1, 2008, to meet a June 2012 in-service date. If FPL does not begin construction as planned, coal will no longer be an option for meeting FPL’s 2012 capacity need. FPL’s customers will be exposed to the risk of potentially higher-cost alternatives with shorter lead times, such as purchased power or additional natural gas-fired capacity. This has been the case in FPL’s last three need determinations for natural gas-fired capacity, in which FPL has stated that longer lead time coal technology was not an option for meeting FPL’s upcoming capacity need.

We find that removing the administrative hurdle of an RFP will provide FPL with the opportunity to stay on schedule to meet a June 2012 in-service date. While an RFP would be a valid tool for obtaining information on the availability and cost of capacity alternatives to FPL’s proposed coal unit, the usefulness of this information must be balanced against the benefits of keeping FPL on schedule to meet the 2012 in-service date of its proposed plant. We find in this case that the interests of FPL’s customers and the public welfare will best be served by granting FPL’s request for an exemption from the RFP requirement.

In support of its request for an exemption for its planned 2013 unit, FPL has indicated that it can secure significant cost savings if the 2013 unit is built in conjunction with the June 2012 unit on the same site. For example, FPL would achieve cost savings associated with joint facilities, such as fuel handling and storage facilities as well as reducing engineering, design, and construction costs. FPL estimates these savings to be between \$400 million and \$600 million. While many of the examples of cost savings claimed by FPL would be applicable to other back-to-back construction projects, the capital intensive nature of a coal-fired power plant magnifies the savings, and hence the advantage FPL would enjoy in any subsequent RFP. Thus, we believe it is unlikely that an RFP process would identify even greater savings.

By granting FPL’s requested exemption, we do not relieve FPL from its burden to demonstrate in a future need determination proceeding that construction of the proposed units is the appropriate action. As noted above, FPL will be required to provide sufficient evidence on the proposed unit’s cost-effectiveness in such a proceeding, and interested persons with proper standing may also intervene and propose alternatives to the proposed unit.

For the reasons discussed above, we grant FPL’s petition for an exemption from Rule 25-22.082, Florida Administrative Code, for both its proposed 2012 and 2013 coal units. We find

that the exemption will serve the public welfare and will likely result in reliability and cost benefits to the utility's general body of ratepayers. FPL should move forward with construction of the generating units as expeditiously as possible and has stated that a need determination filing could be made, for both units, no later than May 1, 2007. If FPL does not file a need determination petition within this time period, there will be no reliability or public welfare benefits associated with an RFP exemption. Therefore, as an incentive to preserve the time savings associated with this exemption, the exemption will expire on May 1, 2007, if FPL has not filed a need determination petition for the exempted units by that date.

Based on the foregoing, it is

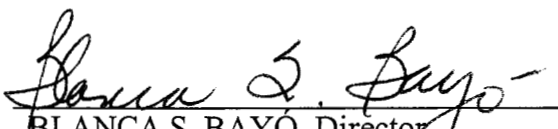
ORDERED by the Florida Public Service Commission that Florida Power & Light Company's petition for an exemption from Rule 25-22.082, Florida Administrative Code, is granted as set forth in the body of this Order. It is further

ORDERED that the exemption granted herein will expire on May 1, 2007, if FPL has not filed a need determination petition for the exempted units by that date. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 19th day of September, 2006.


BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 10, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.