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June 28, 2002

Blanca Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 020398-EQ - Proposed revisions to Rule 25-22.082, F.A.C., Selection of Generating Capacity.

Dear Ms. Bayo:

Attached please find the Florida Action Coalition Team's (FACT) comments on the proposed revisions to Rule 25-22.082, F.A.C., Selection of Generating Capacity for the Commission's consideration in preparation for the workshop to be held on this matter on July 19, 2002.

Sincerely,

Michael B. Twomey
Attorney for the
Florida Action Coalition Team

cc: Martha Carter Brown, Esquire
Interested Parties

AUS
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FACT comments for bidding rule workshop.wpd

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FLORIDA ACTION COALITION TEAM'S PROPOSED REVISIONS

The following are the Florida Action Coalition Team's comments for consideration at the Florida Public Service Commission's ("Commission") July 19, 2002 Workshop held in Docket No. 020398-EQ for the purpose of addressing "proposed revisions to Rule 25-22.082, F.A.C., Selection of Generating Capacity" (the "Bidding Rule").

It's all about "the Public Interest"

Much of what has gone before in promulgating the "bidding rule" has been attended by apparent misconceptions, coupled with too limited views of what the statutes require, what the legislature intended, and what the legislature and courts will tolerate from this Commission when it is attempting to fulfill its duty to protect the public interest. For example, many seem to think it an axiom that Florida's investor-owned utilities ("IOU") have a "right" to generate their own power. Or that system reliability and integrity will suffer if the IOUs are not vertically integrated and, thus, captains of their own power destinies. It is FACT's position that these axioms, to the extent they exist, are more fiction than fact, and, more importantly, that they must be subordinated to the Commission's preeminent duty of regulating public utilities "in the public interest" through "an exercise of the police power of the state for the protection of the public welfare" through a statutory scheme (Chapter 366, F.S.), the provisions of which "shall be liberally construed for the accomplishment of that purpose."[1] The IOUs , and their potential competitors, to a lesser degree, clearly have both constitutional and statutory rights, but at the end of the day the Commission is charged with protecting the public welfare and acting in the public interest, which interest is far broader and fundamentally more important than just looking out for

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[1] 366.01 **Legislative declaration.**--The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

the relative economic interests of the incumbent utilities visa-a-via the economic interests of others wanting to provide inputs to the IOU's ultimate product: electricity at retail. FACT believes the Commission should consider that the legislature intended the Commission to have the necessary tools to accomplish its mission, to include the necessary rulemaking authority.

"Fair and reasonable rates" require reliable knowledge of expenses and rate base additions

Florida's electric utilities are "monopolies" only in the sense that they have the exclusive right to provide retail service within whatever service territory has been designated as exclusively theirs, or that territory which can be credibly defended as theirs. There is no monopoly, or exclusive right, to own, or even profit from, the fuel burned to produce the energy sold. Or to own, or profit from, the generating machines burning the fuel and producing the energy, or from the transmission lines used to carry the energy from the generators to the distribution systems. They should be able to profit from their investments in generation and transmission, but only if, and to the extent, they can demonstrate that their provision of the service is the least-cost alternative. Not only should an IOU not profit from the consumables utilized in producing and delivering its product (their rates should allow the recovery of all reasonable and necessary expenses), it should ensure that these items are obtained at the lowest possible cost consistent with the required quality. Where the item or product in question is not unique, or supplied by a single source, it should be obtained as the result of a competitive bidding process. This Commission does not have the expertise or staff to ascertain whether every item expensed by an IOU is at the lowest cost consistent with the required quality, but it doesn't need that expertise or staff if it is confident that a fair and honest competitive bidding process was used to acquire the products or services. It doesn't matter if it is examining $10,000 of staples, $50 million of vehicles or $1 billion of fuel oil, the Commission can be comfortable in the price if it was the result of a fair competitive bid. The surest way to both complicate the Commission's duty to see

that goods and services are secured at the lowest reasonable cost, while immediately calling into doubt the prices paid, is to purchase an item from an affiliate when it is otherwise easily available from others.

The Commission doesn't just have the "right" to expect that IOU expenses and return on investment included in rates are reasonable in their amount, it has a statutory obligation to see that no more is present. "All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable." Section 366.03, F.S. "In fixing the just, reasonable, and compensatory rates . . . charged for service within the state by any and all public utilities under its jurisdiction , the commission is authorized to give consideration , among other things, to . . . the cost of providing such service . . . ." Section 366.041(1), F.S. (Emphasis supplied.) Although the precise verbiage varies slightly from section to section in the statutes, the requirement that expenses be reasonable and prudent and rate base both "used and useful" and prudent in its amount is tied up neatly in the Commission's primary IOU rate authority, Section 366.06, F.S., which states:

> 366.06 **Rates; procedure for fixing and changing.--**
>
> (1) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property

> used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor. In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures. (Emphasis supplied.)

The ability of the Commission to succeed in its statutory task of seeing that the rates and charges of the regulated electric utilities are "fair, just and reasonable" has huge financial consequences for customers of the IOUs. The most recent consolidated figures collected by the Commission for the five Florida IOUs show total customer revenues equal to $13,365,161,000. Statistics of the Florida Electric Utility Industry 2000 (Florida PSC, Division of Economic Regulation, August 2001). A mere one percent overall reduction in the combined rates of these utilities would result in annual savings of over $133 million. The comparable 2001 numbers are even higher and the total revenues are expected to rise dramatically over the next ten to twenty years as a result of both substantial increases in the number of Florida electric consumers, as well as increasing levels of per capita consumption. These increases will necessarily require additions, and large additions, to the state's generating capacity. According to the Governor's Florida Energy 2020 Study Commission ("2020 Study Commission"), in 2001 there were 46,254 MWs of generating resources to serve firm summer peak demand. However, the 2020 Study Commission cited forecasts showing Florida's aggregate peak demand increasing by some 9,700 MWs by summer 2010 and by a total of 22,800 MWs by summer 2010, for an increase of almost 60 percent over current levels. Statewide energy consumption was projected to grow by 22.6 percent in the next ten years, and by as much as 51.8 percent by 2020. Meeting these increased capacity and energy needs will require the construction of rather massive amounts of new generation. Just for peninsular Florida alone, the 2020 Study Commission relied on forecasts

showing a requirement of 15,200 MWs of new generation by 2010 and an additional 14,200 MWs by 2020, for a total of 29,000 MWs of new capacity over the 20 year period.

As should be obvious, the actual production of electricity constitutes a major portion of the total cost of electricity sold. Generation is not only the largest single component of rate base, upon which a return must be paid, but fuel and other operations and maintenance costs associated with generation are significantly large portions of the total delivered rate.[2] Clearly, any reductions in either the cost of installed generation and/or its operating costs could result in substantial savings to IOU customers and the State of Florida as a whole. This is more obvious if long-term rates are examined in light of the new resources that are projected to be necessary to meet the state's peak demand while maintaining adequate reserve margins during the next two decades.

The rough financial value of achieving even minor savings in either the cost of new capacity or the total costs of delivered energy can be examined through a hypothetical or two. Assume the 2020 Study Commission is correct that 29,400 MWs of new generation is required by 2020 and assume, further, that this capacity will cost, on average, $450,000 per MW.[3] Total rate base additions would be $13,230,000,000. At a return of only 10 percent per year, the ROI would be $1.32 billion annually, which if expanded for taxes and other revenue factors by a factor of 1.6 would result in required revenues of $2,116,800,000 annually. If you ignored depreciation, the required revenues to support all this plant over a 30 year period would be

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[2] For example, at December 31, 2001, the electric generating, transmission, distribution and general facilities of FPL represented approximately 44%, 13%, 37% and 6%, respectively, of FPL's gross investment in electric utility plant in service. Using these figures taken from its 2001 Annual Report, FPL's generation would total something over $4.7 billion of its total asset base for 2001 of some $11.9 billion.

[3] FACT has been told that this figure is supportable in the current market, but even if you were to use $350,000 to $400,000 per MW the total potential savings are still large.

$63,504,000,000. Saving just five percent on the installed rate base cost of the new generation ($427,500 versus $450,000) would result in a rate base revenue requirement for the capacity of $60,328,800,000 over 30 years, or $3,170,000,000 in savings.

A more reasonable hypothetical might be to look at an assumed savings of just five percent of the total cost of the generation delivered to the buss. Assuming a base cost of $0.04 per kwh or $40,000 per GWH, increased energy consumption of 22,800 GWH per year by 2010, as projected by the 2020 Study Commission, will cost $912 million per year just for the energy. A five percent savings of that amount would equal a savings of $45,600,000 annually or $456 million over the ten years to 2010. Using the same assumptions for the projected increase of 111,700 GWH of energy consumption over current levels by 2020 would result in an increased annual energy bill at the buss of $4,468,000,000 per year. A five percent savings on that amount would equal $223,400,000 per year, which, assuming another ten year period from 2010, would equal another savings of $2.23 billion for the period.

The assumptions in the above illustrations are admittedly somewhat crude and the math a little rough, although the capacity and energy costs are probably reasonably representative of current costs. Nonetheless, these examples should serve to demonstrate that even modest percentage savings wrung out by the Commission when approving the construction of new generation, or when letting new generation and/or purchase power agreements flow through to customers' rates, can potentially result in dramatic savings for IOU customers and to the state's economy as a whole.

As established earlier, the Commission has a clear statutory obligation to see that the cost of generation in rate base and/or the overall cost of energy charged through customer rates is as low as is reasonably possible under the circumstances. We've discussed, if not established, that most goods and services being expensed or capitalized by IOUs are obtained through competitive

bid processes and are, therefor, arguably reasonable and prudent in their amounts. The rather glaring exception to the fair and open competitive bid process is the construction and operation of the IOU's expensive generating units. What tools has the Commission historically had for judging whether these amounts are "prudent" and "necessary."

Prior to the Bidding Rule the Commission arguably undertook little in the way of seeking external input on whether a plant proposed for a need determination finding was the "most cost-effective alternative available," per Section 403.529, F.S. Typically the petitioning IOU pronounced the unit the best of the alternatives and the Commission was forced to judge whether the unit, usually based on the type fuel to be used, was the least cost. There was seldom, if ever, input from other generators arguing the same plant could be built and/or operated less expensively. Once the plant was approved and constructed, there was little, if any, follow-up to determine whether the cost estimates given in the need determination docket were, in fact, realized when the unit in question was sought for inclusion in rate base. In short, the Commission was often forced to determine after-the-fact whether the resulting plant in service cost of the unit was "reasonable" under the circumstances. The Commission could look at the installed cost per MW of similar machines in Florida or throughout the country for other IOUs, but there was the risk of circularity error if all, or most, of those units were also constructed by the IOUs without competitive bids. The methodology left something to be desired.

Electricity is a "commodity." It is, by definition, a fungible product that has to be identical as produced by all generating companies. Whereas, IOUs once strictly planned their generation expansion on just a company basis, with little, if any, regard for the needs of the rest of the state, those days are past. Where generating units were often designed with a clean sheet of paper and with capacities that uniquely met each IOU's projected demands, new capacity, especially now with the advent of combined cycle units, is filled by somewhat standardized

capacity units and measured against total demands that are much larger than years ago. Fuel, especially the natural gas utilized by the combustion turbines, combined cycle and other units, is a fungible commodity that is capable of being used in virtually all plants. Now, more than ever, there is little reason that generation, and the actual generators themselves, cannot be considered as fungible products that should be supplied by the party able to provide the least cost.

The promulgation of the Bidding Rule appears to have had the salutary goal of ensuring that a unit whose need was approved by the Commission was, in fact, the most cost-effective alternative available as demanded by Section 403.519, F.S. However, as noted by other participants in the earlier workshops addressing the possible modification of the Bidding Rule, the rule was doomed to failure by its very wording, as well as the way in which it has been implemented.

The Current Rule

Without repeating each of the flaws discussed by Florida PACE in response to the strawman proposal, FACT adopts those criticisms as its own. The rule's chief problem, however, as was highlighted by attorney Jon Moyle through a poker analogy at a recent agenda conference, is that the IOU seeking the need determination always gets to draw a few extra cards after the other player/participants have revealed their hands. In fact, the more complete poker analogy is that the IOU not only gets to take a few extra cards, it clearly gets to select the cards necessary for it to win. The Commission has done little, to date at least, to correct the problem.

That IOUs will adjust their own bids so as to ensure that they are the winners should come as no surprise to anyone. Electric utility CEOs, like all corporate executives, like to tell their shareholders that they are constantly trying to "grow" their companies, "grow' their revenues, and "grow" their profits. It's what CEOs say because it is what investors want to hear. IOU electric companies, at least the regulated aspects, make their money to pay dividends

through the return on their investment, which is their rate base. By definition, at least at the time of a rate review, expenses recovered through rates are suppose to equal the costs necessary to provide the utility service, so there is no immediate profit to be had there. Electric utilities are not suppose to make profits by keeping "expense" money, although there is always that prospect between rate cases by becoming more efficient. The bottom line, however, is that IOU CEOs want to, and need to, increase their company's investment base in order to increase cash returns on those investments. Typically the single greatest opportunity to increase their investment base is by placing a new generating unit in rate base. As noted earlier, fully 44 percent of FPL's investment base was to be found in generation, as opposed to the much smaller percentages in transmission, distribution and general plant. Allowing another generating company to win the right to build generating plant to serve his company's native load is probably viewed as a serious mistake by an IOU CEO's board of directors and shareholders. There is no profit to be made from flowing through the costs of a purchased power, dollar for dollar, through a purchased power clause. There is simply no incentive for an IOU to lose a power plant to a bidding participant so long as the rules are drawn so that they can always win. The IOU's don't sharpen their pencils and try to submit their best and lowest bid initially because they don't have to. There is no adverse consequence under the current rule for an IOU to get it wrong with the first bid. It should be noted, again, that there is apparently no reason why an IOU cannot low-ball its winning bid to self-build after examining the others' RFPs and thereafter escalate its actual costs of construction and/or costs of plant operation to levels that would have lost the bid initially. FACT has inquired and has not yet found that the Commission actively has attempted to "match" the winning self-build cost estimations to the plant in service and operating expenses sought to be recovered by the IOUs through subsequent rate cases.

The Bidding Rule, if it is ever to fairly serve the interests of the participants, and by extension the public interest, by giving them a chance to win, must be modified. Submitting a bid is clearly an expensive process for all the participants and it is interesting to note that the competitive generators continue to submit bid after expensive bid with the rather clear expectation that they will lose to the IOU's. At some point they are likely to see the futility of it all and give up. At that point there will no longer be even the illusion that the self-build alternative is "proven" the most cost-effective and the Commission will be left with devising a new methodology to convince the legislature that it is carrying out the requirements of the law. The Bidding Rule must be substantially modified if it is to serve as an effective tool in aiding this Commission in fulfilling its statutory duty to see that the most cost-effective generating alternative is approved pursuant to the Power Plant Siting Act, and to see that the least-cost generating unit is place in rate base or its costs of operation otherwise recovered through customer rates.

Necessary Changes

As stated above, it is clear that the Bidding Rule is fundamentally unfair and that, consequently, it cannot possibly meet the Commission's goal of ensuring that the most cost-effective generation is built and included in customer rates. Changes that must be made if the rule is be successful are:

Standardized RFP

By and large, generating units, especially with the advent of relatively low capital cost and highly efficient combined cycle units, are now as much "commodities" as the fuel that they burn and the electricity they generate. The "foot print" of these units is tiny by comparison to units of comparable capacity, but powered by coal, nuclear, or natural gas or fuel oil firing standard steam units. Their water consumption is not as great, nor is the noise they produce

comparable to other types. In a word, they are easier and less controversial to physically site. Consequently, the location of the unit should, within reason compared to load centers, be reasonably variable so that a participant has great latitude in siting it. All other RFP requirements should be as straightforward as possible, objective to the greatest extent possible, as opposed to highly subjective, and reasonably related to the siting of any generating unit. There should be no subjective or other unrelated factors that would necessarily bias a decision in favor of the IOU self-build option. Information that is available to affiliates and to those preparing the self-build bid must be available to all. While FACT concedes that there are obvious "taking" questions if an IOU were compelled to allow a participant to use an IOU's existing plant site, as opposed to a green field site, FACT does not think that such problems are insurmountable. Clearly, there are often times when the entire state would be better served by a winning participant being allowed to lease available space at an existing plant site as opposed to industrializing other land. Given the extremely small foot print of the new units for the capacity they produce, the problem seems to be more apparent than real. The Commission should address how this problem could be resolved fairly to all parties.

While compelling an IOU to take generation from another entity appears to seem suspect or even controversial to too many associated with the review of this rule, there is nothing especially exotic about the concept. There are a host of non-generating electric utilities throughout the United State, and, indeed, in the State of Florida. For years these utilities have prepared RFPs for their future capacity needs, taken sealed bids and thereafter awarded the contract to the compliant participant submitting the lowest bid. Not surprisingly, they have operated successfully under these arrangements, meeting reliability and system integrity standards. Of course, some utilities that generate a portion, or most, of their native load have also sought bids and contracted for purchased power of varying durations and amounts. The 500

kilovolt transmission lines that run the length of Florida were constructed for the purpose of transmitting huge amounts of energy contracted from the Southern Company. If they are municipal systems bidding for power, then their customer/constituents can feel comfortable that the generation was obtained at the lowest cost. If cooperatives, then the members can enjoy the same confidence that their rates reflect the lowest possible cost of generation. If an IOU, then the respective regulatory agencies can feel confident that they have fulfilled their statutory obligations to see that rates are as low as reasonably possible. History, coupled with decent contracts, reveal that system reliability and integrity don't have to suffer when utilities contract for a portion, or even all, of their energy supply.

Like the RFPs, the actual purchase power contracts should be standardized with all bidders, including the IOU, expected to execute the same document. Again, based on the extensive use of these type arrangements for many years, there is no reason to fear that contracts cannot be drawn tightly enough to ensure reasonable delivery of power, availability, quality and price.

Bid Evaluation

The notion that the IOU should be allowed to judge the beauty contest in which it, too, is a participant and, then, after-the-fact, metaphorically improve its makeup or modify its talent presentation is nothing short of incredible. How can any reasonable person think this is fair? It quite simply is not fair, cannot be made fair, and the suggestion that such a practice can result in even lower cost generation for customers is simply not believable, especially where there is no statutory, rule or Commission policy to ensure that the IOU's winning self-build bid is not subsequently escalated after the victory and before the unit's inclusion in rate base and customer rates for "changed circumstances" and the like.

Allowing the IOU to determine the winner when it is a bid participant is simply wrong. The RFPs should be uniform and objectively gradable to the fullest extent possible. The RFP should receive a review and confirmation of its acceptability by the Commission prior to its use. There should also be a "drop dead" closing date for receipt of all RFPs, to include the self-build option, if one is submitted, as well as by the IOU's affiliates, if any. There can be no "extra" cards drawn by the IOU to ensure that it holds the winning hand after the RFP submission deadline.

To ensure impartiality and to remove any possibility of IOU abuse of the process, it is imperative that there be an independent third party evaluator of the bids. That evaluator, whether it be the Commission or an independent, third party panel composed of experts in power plant construction and operations must be empowered to select a bid winner and without the receipt of additional conditions from any participant, specifically including the IOU. FACT would have no problem with there being some avenue of appeal of the fairness of the winning bid, whether it be to the Commission itself, if the Commission is not the evaluator, or some other third party, such as another firm, an administrative law judge or court, as is deemed most appropriate.

Contract Compliance Essential

It is essential that RFPs be complete and thorough and that any winner, especially the IOU self-build bidder, be compelled to strictly comply with the terms of the RFP/purchase power contract. There cannot be loopholes or other "outs" that will allow an IOU to intentionally underbid with the confidence, that there is apparently some perceived measure of now, that it can escalate costs beyond those agreed to in its bid and still manage to recover them later through its customers' rates. To ensure that such lowballing does not occur, the Commission should adopt provisions in its Bidding Rule making clear that such escalations, if any, will be rebuked through rate base denials, if appropriate, denial of cost recovery through purchased power, fuel or other

flow-through adjustment clauses, or other financial disincentives sufficient to insure that a violation of the fair bidding process cannot result in any monetary gain to the offending IOU.

Expansion of Scope of Rule

It is clear from recent need determinations before the Commission, those anticipated, and the list of extensive unit repowerings that are indicated in the most recent Ten-Year Site Plan that the Bidding Rule should be expanded in its scope to include repowering generation additions. The rule should be so expanded because the capacity generations are extensive in their size and their collective cost over the next ten to twenty years will run in the billions of dollars. Since the cost of these capacity additions will be sought to be included in rate base and, thereafter, in customer rates, the Commission has the same inherent statutory duty of needing to ensure that the amounts included in rates reflect the most cost-effective generating option available. The value a fair Bidding Rule will provide in giving confidence to all concerned, including the Commission, the legislature and the IOU's customers that the best "deal" has been obtained on their behalf in the selection of generation to serve them is every bit as obvious in generating additions lying outside the Power Plant Siting Act, as for those falling within its scope.

Legal Authority

FACT supports the conclusions reached by PACE in its March 15, 2002 Post-Workshop Memorandum that the phrase "practices," as found in Sections 366.06(2) and 366.07, F.S., is one of the specific powers and duties the Legislature has conferred on the Commission, which, in conjunction with the general rulemaking authority found in Section 366.05(1), F.S., is sufficient to uphold the current Bidding Rule, as well as the proposed modifications to the rule, as being consistent with the 1999 revisions to the APA and the subsequent case law interpreting those amendments. However, as is described below, FACT believes that there are clearer and more fundamentally essential aspects of the Commission's stated statutory duties that would support

the requested Bidding Rule modifications, even if the Commission did not find the "practices" argument persuasive.

As cited to at the beginning of this document, there are numerous statutory provisions compelling the Commission to fix "fair, just and reasonable rates," "just, reasonable and compensatory rates," or "fair and reasonable rates." It is not only logical and necessary (recall that some 44 percent of FPL's investment is in generation alone) that the Commission must be able to ascertain the cost of capital plant to be included in rates, it is specifically required in statute. While the "efficiency, sufficiency, and adequacy of the facilities provided and the services rendered," as well as the "value of such service to the public" may be considered in setting IOU rates, the core matter examined by this Commission is always "the cost of providing such service." Section 366.041(1), F.S. That "no public utility shall be denied a reasonable rate of return upon its rate base" necessarily demands that the Commission know what that rate base is, as required by the provision of Section 366.06(1)F.S., which states, part:

> The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public . . . . (Emphasis supplied.)

Trying to examine the amount that should have been prudently been spent on a generating unit costing hundreds of millions of dollars isn't necessarily a completely wasted effort during a rate case when the already completed plant is sought for inclusion in rate base, but the statutes require that the least-cost determination be made much earlier in the need determination hearing.

FACT, preferring to take the "liberal construction" of Chapter 366, F.S., believes that the legislature gave this Commission its duties in establishing fair and reasonable rates with the

expectation that it would use the tools necessary to meet its responsibilities. In addition to its other powers, the Commission is expressly given statutory authority to adopt rules to implement and enforce the provisions of Chapter 366. Section 366.05(1), F.S. The statutory law specifically states that the power and authority conferred in Section 366.041(1), F.S. "shall be construed liberally to further the legislative intent that adequate service be rendered by public utilities in the state in consideration for the rates, charges, fares, tolls, and rentals fixed by said commission and observed by said utilities under its jurisdiction. Section 366.041(2), F.S. Moreover, the legislature's initial legislative declaration contained in Section 366.01, F.S. is that Chapter 366's provisions "shall be liberally construed for the accomplishment" of the chapter's purposes. While FACT appreciates that arguments can be made both for and against the Commission's ability to engage in extensive "bidding rule" rulemaking in light of the legislature's recent attempts to curb excessive agency rulemaking, FACT believes that the case law clearly supports Commission jurisdiction to make the amendments FACT and Florida PACE have requested. The rather recent Florida Supreme Court case supporting rulemaking authority in connection with a telephone case appears to argue for rather broad Commission latitude. Even were it a narrow question on having the jurisdiction to engage in the necessary rulemaking, FACT would urge the Commission to err on the side of a liberal interpretation of Chapter 366, F.S. supporting rulemaking. It is better to act in this case and be told by the court that additional legislation is required to cure the problem. If the Commission is reversed for taking the necessary action, then it will have a basis for seeking additional authority from the legislature. FACT will not repeat any of the specific legal arguments of Florida PACE or any other party arguing for an expansive Commission rulemaking authority, but will adopt those arguments as its own.

Conclusion

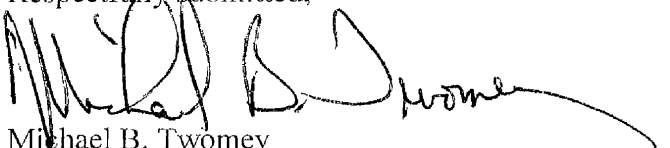
Fundamental statutory duties of this Commission are to ensure that the retail rates approved for IOU electric utilities to charge to their customers are "fair, just and reasonable," to ensure that the approved rate bases include only investments necessary to the provision of the electric service and that those necessary investments be included in rate base in amounts that are "reasonable." During the next 20 years it appears that the Commission may be called upon to approve for recovery through rates something on the order of $13 billion of new generating capacity, with something over half of that amount likely to be subject to the Commission's review in the next 8 years. The total cost of the energy to be produced by these units, including the fuel and other operations and maintenance costs will total close to $1 billion a year. Even a small percentage of savings in either the acquisition costs of the new generating units or the costs of their annual operations will result in dramatic and immediate savings to Florida consumers through lower electric rates. Over the course of these units' effective operating lives, any savings achieved at the outset in "need determination" proceedings will expand exponentially. A dollar saved today, could equal hundreds saved over the service lives of the units that will be considered. The Commission must find a tool to assist it in making sure that the rate dollars approved for recovery associated with these plants are the least-cost possible and result from the most cost-effective generation, as mandated by Florida Law. Fair competitive bidding procedures can give the Commission, the IOU's customers and the public in general the greatest assurance that the "best" price has been obtained on any product or service the Commission includes for recovery in customer rates, including the obviously most expensive inputs, the generating units and the cost associated with operating them.

The current Bidding Rule was a theoretical step in the right direction, but was fundamentally and fatally flawed from the outset because it allows the IOU's to "game" the

bidding so that they always win and without the remotest assurance that the customers obtain the full protection of the laws the Commission is charged with enforcing. The modifications requested in this document, those fundamentally essential modifications suggested by your Staff in its most recent recommendation and more adequately in its "strawman," and those previously recommended by Florida PACE are all generally beneficial. If adopted, these modifications will compel IOU behavior that will benefit all Floridians, especially those served by electric utilities regulated by this Commission.

The Commission has the clear statutory authority to adopt the rule modifications requested, these modifications are essential to the fulfillment of the Commission's statutory duties and they should be promulgated.

Respectfully submitted,



Michael B. Twomey
Attorney for Florida Action Coalition Team