

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed revisions to
Rule 25-22.082, F.A.C.,
Selection of Generating
Capacity.

DOCKET NO. 020398-EQ
ORDER NO. PSC-03-0133-FOF-EQ
ISSUED: January 27, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER ADOPTING CHANGES TO THE PROPOSED AMENDMENTS
OF RULE 25-22.082, FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

BACKGROUND

Prior to the construction of a power plant with a steam cycle greater than 75 MW, a utility must receive certification from the Governor and Cabinet pursuant to Sections 403.501-.518, Florida Statutes, also referred to as the Power Plant Siting Act (PPSA). Section 403.519, Florida Statutes, requires utilities to file a petition for Determination of Need with the Florida Public Service Commission (Commission). An affirmative determination of need is a prerequisite to certification pursuant to the PPSA. With the advent of federal legislation permitting non-utility generators to enter the bulk power supply market, utilities now have more alternatives to select from in order to meet their obligation to provide electrical service to the public.

In 1992, the Commission considered the Joint Petition to Determine Need filed by Cypress Energy Partners, L.P. and Florida Power & Light Company (FPL) in Docket No. 920520-EQ. During the proceedings, the Commission expressed frustration that the limited selection process used by FPL did not facilitate the statutory responsibility under Section 403.519, Florida Statutes, to determine whether the proposed plant was the most cost-effective

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generating alternative. By Order No. PSC-92-1355-FOF-EQ, issued November 23, 1992, the joint petition was denied and our staff was directed to develop a rule instructing utilities of the procedures by which they must select projects to provide capacity and energy. Rule 25-22.082, Florida Administrative Code, was originally adopted in January 1994, requiring investor-owned electric utilities (IOUs) to issue Requests for Proposals (RFPs) prior to filing a petition for Determination of Need. In adopting the rule, it was recognized that the RFP process is a tool to be used by a utility to measure the cost-effectiveness of its capacity selection.

Since its adoption in 1994, Rule 25-22.082, Florida Administrative Code, has been used once by Gulf Power Company, once by Florida Power & Light Company, and twice by Florida Power Corporation. During this same time, large amounts of generating capacity were planned and constructed without the requirement of certification under the PPSA, and thus without the benefit of comparative cost information obtained from an RFP process. In December 1999, in Docket No. 992014-EI, Tampa Electric Company (TECO) petitioned for cost recovery of approximately \$680 million to repower the Gannon Station, resulting in a net increase of capacity of approximately 380 MW. This was the first time a utility sought cost recovery of a repowering project, and our staff recommended that TECO be required to issue an RFP prior to the repowering of its Gannon plants. By Order No. PSC-00-0270-PCO-EI, issued February 8, 2000, we denied staff's recommendation, but directed our staff to also investigate the idea of revising the current capacity selection rule to require RFPs for repowering projects.

On February 7, 2002, we held an informal workshop to discuss a "strawman" version of suggested changes to Rule 25-22.082, Florida Administrative Code. On March 15, 2002, the four large IOUs and the Florida Partnership for Affordable Competitive Energy (Florida PACE) filed post-workshop comments. Pursuant to Order No. PSC-02-0273-PCO-EQ, issued May 28, 2002, we initiated the rule development process and scheduled a public rule development workshop for July 19, 2002.

At the July 19, 2002 workshop, the IOUs presented a Stipulation in lieu of continuing with the rule development process. At the conclusion of the July 19, 2002 workshop, we directed our staff to facilitate negotiations among the parties to

see if a consensus stipulation could be developed. Over the following weeks several meetings were held by the parties, and proposed stipulations were exchanged, but the parties were not able to reach a consensus.

By Order No. PSC-02-1420A-NOR-EQ, issued October 17, 2002, we proposed amendments to Rule 25-22.082, Florida Administrative Code. Notice of the proposed rule was published in the Florida Administrative Weekly on October 25, 2002. A rule hearing was held on December 9-10, 2002, and we considered our staff's post-hearing recommendation at a January 3, 2003, Agenda Conference. Upon consideration of the discussion during the hearing, the written comments and exhibits identified at the hearing, and discussion held at the January 3 Agenda Conference, we have decided to adopt language for Rule 25-22.082, Florida Administrative Code, as discussed below. Changes from the rule as it was proposed in the October 25, 2002, edition of the Florida Administrative Weekly are shown in legislative format in Attachment A.

REGULATORY FRAMEWORK

The amendments to Rule 25-22.082, Florida Administrative Code, as proposed by publication in the October 25, 2002 Florida Administrative Weekly, and as further modified at the January 3 Agenda Conference, are made within the context of the existing regulatory framework. This framework confers upon the electric utility the right to be the exclusive provider of service in a given territory. In return for that exclusive right to service, the utility is charged with the obligation to serve customers in that territory. Section 366.03, Florida Statutes, states in part:

Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission.

In order to meet this obligation to serve, each electric utility must forecast the future demand and energy requirements of its customers, taking into consideration conservation, and then plan for the construction or purchase of additional generating capacity to meet those requirements at the lowest practicable cost to the ratepayers.

Given the existing regulatory framework, we find that a request for proposals continues to be a useful tool for the utility and the Commission to measure the cost-effectiveness of an IOU's capacity selection. Generation planning is an important business function of electric utilities. We review, but would not normally preempt, that function. It is the utility's job to provide adequate, reliable, safe, and economical electrical service to the public and it is our job to review the decisions made by the utility to see that they were made reasonably and prudently for the benefit of their ratepayers. The changes adopted below are designed to make the rule more effective within the existing regulatory framework.

ADOPTING CHANGES TO THE PROPOSED AMENDMENTS
TO RULE 25-22.082, FLORIDA ADMINISTRATIVE CODE

Subsection (1) provides the scope and intent of the rule. The first three sentences of the proposed rule were included to provide clarity regarding the statutory framework by which the rule is governed. The IOUs suggested that the first three sentences are superfluous and include ambiguous terms, and should be deleted, although an IOU witness agreed with the substance of these sentences when questioned at the December hearing. We disagree that the proposed language is ambiguous, but find that the first three sentences shall be deleted since, as discussed in the hearing, the statutory citations are provided at the end of the rule. Deleting the first three sentences of Subsection (1) will have no adverse impact to the intended purpose of the rule. The remaining sentences clearly articulate the intent of the proposed rule.

Subsection (5) of the rule lists the minimum information to be included in the public utility's RFP document. Language has been added requiring that no term of the RFP shall be unfair, unduly discriminatory, onerous, or commercially infeasible. This section has been added to clarify that the RFP process must be fair and nondiscriminatory for all participants and to provide a standard on which to judge any complaints on the RFP as provided in Subsection (12).

Paragraph (5)(b) is changed to require that a copy of the public utility's most recent Ten-Year Site Plan be included with the RFP. The purpose of this section is to make the process more

transparent by providing a potential respondent to the RFP with a more complete picture of the utility's need for power and of its system configuration. The proposed language, which required detailed information regarding the IOU's historical and projected net energy for load, was apparently confusing to the IOUs. Requiring a copy of the most recent Ten-Year Site Plan to be included with the RFP will meet the stated purpose of the section.

Paragraph (5)(f), as originally proposed in October 2002, would have required the disclosure of all weighting and ranking factors to be used in the evaluation of proposals. The terms "weighting and ranking factors" have created uncertainty regarding the data or information to be provided to meet the requirement. We therefore change Paragraph (5)(e) to require the public utility to describe in detail the methodology it will use to evaluate responses to the RFP, and to describe in detail any weighting and ranking factors that will be used in the evaluation. The changes to Paragraph (5)(e) and the new Subsection (6) strike a balance between allowing an IOU flexibility in the design of its RFP and evaluation of proposals, and the need for potential respondents to have better knowledge of the information the IOU will use to evaluate responses.

Paragraph (5)(f) is changed to a new Subsection (6). The new Subsection (6) prohibits a public utility from changing the price and non-price attributes, criterion, or evaluation methodology of the RFP, absent a showing of good cause. The word "expressly" has been deleted. Our staff described "weighting and ranking factors" as being either quantitative or qualitative factors to be considered by the IOU in evaluating a proposal. These factors may not necessarily be a part of a numeric scoring methodology. The IOUs expressed concern that the language as proposed imposed an unneeded degree of precision that could restrict the flexibility of the utility to select the most cost-effective option. Florida PACE supports the disclosure of all weighting and ranking factors in the RFP. At the hearing, Florida PACE agreed that the language as proposed does not mandate a numerical weighting and ranking evaluation process, but requires disclosure if a numerical process is to be used. As discussed above, the changes to Subsection (5)(e) and the new Subsection (6) strike a balance between allowing an IOU flexibility in its design of the RFP and evaluation of proposals, and the need for potential respondents to have better

knowledge of the information the IOU will use to evaluate responses.

Paragraph (5)(g) has been changed to require a utility to provide in the RFP the best information available regarding system-specific conditions, recognizing that absolute certainty or knowledge as to those conditions may not be available.

Subsection (12) of the rule provides potential RFP participants with an opportunity to file specific objections to a utility's RFP with this Commission. Under the rule as proposed October 25, 2002, objections would have to be filed within ten days of the post-issuance meeting. At the rule hearing, the IOUs expressed concern that this subsection could cause unnecessary delays to the need determination process, and may kill some projects. In particular, the IOUs were concerned that participants would want a "full-blown hearing" on their objections. To eliminate this concern, this subsection has been changed to set a specific time for filing objections, for the utility's response, and for our ruling on the objections. In addition, the changes limit objections to specific allegations of violations of the rule. This change should keep the focus on the appropriateness of the RFP terms, and not the application of the RFP to the individual participants, which was another concern raised by the IOUs.

The changes approved herein require a participant to file objections within 10 days of the issuance of the RFP. Language has been deleted which would have required an objector to have attended the utility's post-issuance meeting, and which would have required waiver of untimely-filed objections. Language has been added which provides the utility with the option of filing a response within 5 days of an objection being filed. Within 30 days from the date of the objection, the Commission panel assigned shall determine whether the objection as stated would demonstrate that a rule violation has occurred. A change has also been added to make it clear that the Commission's ruling will be made without discovery or an evidentiary hearing, although oral argument is contemplated. We believe these changes will ensure that the objection process does not cause unnecessary delays to the RFP process. These changes should also provide greater clarity and certainty early on in the RFP process, and should help streamline and reduce the number of similar objections in the need determination process. The changes to Subsection (14) strike a balance between allowing an

IOU flexibility in its design of the RFP and evaluation of proposals, and the need for potential respondents to have better knowledge of and an opportunity to respond fully and fairly to the information the public utility will use to evaluate responses.

Subsection (14) requires the public utility to evaluate the proposals received in response to the RFP in a fair comparison with the utility's next planned generating unit identified in the RFP. Language was added to Subsection (14) to clarify that the utility may modify the construction costs or performance parameters affecting revenue requirements in the next planned generating unit that it included in the RFP. However, if it chooses to do so, it must inform participants of its intent, and provide the participants (limited to the remaining finalists) a corresponding opportunity to revise their bids. Further, this modification does not contemplate that the public utility will be entitled to make an unlimited number of such revisions; it is reasonably expected that the costs and parameters must be finalized at some point in order for the bidding process to move forward in a timely and cost-effective manner. These changes strike a balance between allowing an IOU flexibility in the design of its RFP and evaluation of proposals, and the need for potential respondents to have better knowledge of and an opportunity to respond fully and fairly to the information the public utility will use to evaluate responses.

The IOUs proposed deletion of the first sentence of Subsection (15) addressing cost-recovery of power purchase agreements. They argued that it is inappropriate to marry the need determination proceeding with a cost-recovery proceeding in the rule. The IOUs also suggested modifying the last sentence by deleting "and unforeseen and beyond control" and inserting "taking into account that the self-build option was based on lower cost estimates." Florida PACE suggests modifying the last sentence to limit the IOUs cost-recovery to the amount listed in the RFP.

We disagree that inclusion of this provision is inappropriate or would limit the Commission's flexibility regarding cost-recovery. Rather, Subsection (15) of the rule codifies the Commission's existing procedures regarding cost recovery of a power purchase agreement or a self-build option resulting from the RFP process. The words "unforeseen and beyond its control" have been modified so that if the public utility selects a self-build option, costs in addition to those identified in the need determination

proceeding shall not be recoverable unless the utility can demonstrate that such costs were prudently incurred and due to extraordinary circumstances.

New Subsection (17) recognizes that the public utility may use an auction process in implementing the rule. This language was agreed to by the parties at the hearing, and does not require a public utility to use an auction. It only clarifies that it is an option available that could be used to meet the requirements of the rule.

CONCLUSION

The Legislature has granted the Commission broad authority over Florida's investor-owned electric utilities to ensure that (1) the rates charged for the provision of electric service are fair, just, and reasonable; (2) the service provided is reliable and efficient; and (3) the electric generating capacity necessary to provide the service - a major component of the rates charged - is reasonable, efficient, and acquired in a cost-effective manner. The revisions to Rule 25-22.082, Florida Administrative Code, adopted herein, give the Commission an effective tool and an objective standard by which to review and measure the cost-effectiveness of capacity additions. These changes will ultimately benefit the ratepayers by increasing the efficiency and effectiveness of the regulatory process to ensure that the most cost-effective generating option is selected.

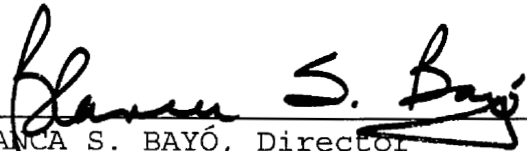
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the amendments to Rule 25-22.082, Florida Administrative Code, as set forth in Attachment A, incorporated herein by reference, are adopted as set forth herein. It is further

ORDERED that after a Notice of Change is published in the Florida Administrative Weekly, Rule 25-22.082, Florida Administrative Code, as approved herein, shall be filed for adoption with the Department of State and the docket shall be closed.

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By ORDER of the Florida Public Service Commission this 27th
day of January, 2003.



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

(S E A L)

JSB

DISSENT BY COMMISSIONER RUDOLPH "RUDY" BRADLEY:

I respectfully dissent from the adoption of the amendments to Rule 25-22.082, Florida Administrative Code, with several specific concerns. First, I am concerned that several of the modifications, such as those in Subsection (14), combined with the objection process in Subsection (12), and our failure to specify a specific application fee, will allow the costs of need determination proceedings to escalate and that these additional costs will ultimately be borne by Florida's ratepayers. It appears that the majority has created a potentially costly point of entry in the administrative process which Florida law does not require. In addition, I am concerned that the criteria by which RFP's are to be judged in the objection process are vague and do not afford affected parties notice as to what is expected in the RFP itself. In that same vein, I am further concerned that the Florida Legislature has not delegated authority to this agency to judge RFP's based upon the criteria enumerated in the rule to be adopted.

Next, I am concerned because, given the extent of the substantive changes made at the special agenda conference, I believe the Commission should have allowed additional comments and/or participation from affected persons and parties at the special agenda conference before it voted to adopt the rule amendment.

I am also concerned that this Rule fosters an impermissible link between the figures presented in a need determination proceeding and the subsequent cost recovery proceeding which will occur when the unit is placed in service.

Finally, and most importantly, I believe that the Majority's adoption of this rule, although well-intentioned, may inadvertently encourage wholesale competition beyond the intention of the Florida Legislature, from whom we must derive all of our authority.

In summary, I believe that the Commission has increased the costs of power plant siting without an identified benefit to Florida Ratepayers who will ultimately bear the increased costs, I believe that affected parties were not given a fair chance to respond to changes adopted by the Commission at the special agenda conference at which it voted to amend the rule, and I believe that in specifying indefinite criteria for RFP's and in inadvertently encouraging wholesale competition, the Commission has exceeded its legislative authority.

25-22.082 Selection of Generating Capacity.

4 (1) Scope and Intent. ~~A Public Utility is required to~~
5 ~~provide reasonably sufficient, adequate, and efficient service to~~
6 ~~the public at fair and reasonable rates. In order to assure an~~
7 ~~adequate and reliable source of energy, a public utility must plan~~
8 ~~and construct or purchase sufficient generating capacity. To~~
9 ~~assure fair and reasonable rates and to avoid the further~~
10 ~~uneconomic duplication of generation, transmission, and~~
11 ~~distribution facilities in Florida, a public utility must select~~
12 ~~the most economical and cost-effective mix of supply-side and~~
13 ~~demand-side resources to meet the demand and energy requirements of~~
14 ~~its end-use consumers.~~ The intent of this rule is to provide the
15 Commission information to evaluate a public utility's decision
16 regarding the addition of generating capacity pursuant to Section
17 Chapter 403.519, Florida Statutes. The use of a Request for
18 Proposals (RFP) process is an appropriate means to ensure that a
19 public utility's selection of a proposed generation addition is the
20 most cost-effective alternative available.

21 (2) Definitions. For the purpose of this rule, the following
22 terms shall have the following meaning:

23 (a) Public Utility: all electric utilities subject to the
24 Florida Public Service Commission's ratemaking authority, as
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3 defined in Section 366.02(1), Florida Statutes.

4 (b) Next Planned Generating Unit: the next generating unit
5 addition planned for construction by a public ~~an investor-owned~~
6 utility that will require certification pursuant to Section
7 403.519, Florida Statutes.

8 (c) Request for Proposals (RFP): a document in which a public
9 utility publishes the price and non-price attributes of its next
10 planned generating unit in order to solicit and screen, for
11 potential subsequent contract negotiations, competitive proposals
12 for supply-side alternatives to the public utility's next planned
13 generating unit.

14 (d) Participant: a potential generation supplier who submits
15 a proposal in compliance with both the schedule and informational
16 requirements of a public utility's RFP. A participant may include,
17 but is not limited to, utility and non-utility generators, Exempt
18 Wholesale Generators (EWGs), Qualifying Facilities (QFs),
19 marketers, and affiliates of public utilities, as well as providers
20 of turnkey offerings, distributed generation, and other supply side
21 alternatives.

22 (e) Finalist: one or more participants selected by the public
23 utility with whom to conduct subsequent contract negotiations.

24 (3) Prior to filing a petition for determination of need for
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4 an electrical power plant pursuant to Section 403.519, Florida
5 Statutes, each public ~~investor-owned electric~~ utility shall
6 evaluate supply-side alternatives to its next planned generating
7 unit by issuing a Request for Proposals (RFP).

8 (4) Each public utility shall provide timely notification of
9 its issuance of an RFP by publishing public notices in major
10 newspapers, periodicals and trade publications to ensure statewide
11 and national circulation. The public notice given shall include,
12 at a minimum:

13 (a) the name and address of the contact person from whom an
14 RFP package may be requested;

15 (b) a general description of the public utility's next
16 planned generating unit, including its planned in-service date, MW
17 size, location, fuel type and technology; and

18 (c) a schedule of critical dates for the solicitation,
19 evaluation, screening of proposals and subsequent contract
20 negotiations.

21 (5) No term of the RFP shall be unfair, unduly
22 discriminatory, onerous, or commercially infeasible. Each public
23 utility's RFP shall include, at a minimum:

24 (a) a detailed technical description of the public utility's
25 next planned generating unit or units on which the RFP is based, as

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4 well as the financial assumptions and parameters associated with
5 it, including, at a minimum, the following information:

- 6 1. a description of the public utility's next planned
7 generating unit(s) and its proposed location(s);
- 8 2. the MW size;
- 9 3. the estimated in-service date;
- 10 4. the primary and secondary fuel type;
- 11 5. an estimate of the total direct cost;
- 12 6. an estimate of the annual revenue requirements;
- 13 7. an estimate of the annual economic value of deferring
14 construction;
- 15 8. an estimate of the fixed and variable operation and
16 maintenance expense;
- 17 9. an estimate of the fuel cost;
- 18 10. an estimate of the planned and forced outage rates, heat
19 rate, minimum load and ramp rates, and other technical
20 details;
- 21 11. a description and estimate of the costs required for
22 associated facilities such as gas laterals and
23 transmission interconnection;
- 24 12. a discussion of the actions necessary to comply with
25 environmental requirements; and

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3 13. a summary of all major assumptions used in developing the
4 above estimates;

5 (b) a copy of the public utility's most recent Ten-Year Site
6 Plan ~~Detailed information regarding the public utility's ten year~~
7 ~~historical and ten year projected net energy for load;~~

8 (c) a schedule of critical dates for solicitation,
9 evaluation, screening of proposals, selection of finalists,
10 subsequent contract negotiations;

11 (d) a description of the price and non-price attributes to be
12 addressed by each alternative generating proposal including, but
13 not limited to:

- 14 1. technical and financial viability;
- 15 2. dispatchability;
- 16 3. deliverability (interconnection and transmission;
- 17 4. fuel supply;
- 18 5. water supply;
- 19 6. environmental compliance;
- 20 7. performance criteria; and
- 21 8. pricing structure.

22 (e) a detailed description of the criteria and the
23 methodology, including any weighting and ranking factors, to be
24 used to evaluate alternative generating proposals on the basis of
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price and non-price attributes:-

4 ~~(f) All criteria, including all weighting and ranking factors~~
5 ~~that will be applied to select the finalists. Such criteria may~~
6 ~~include price and non-price considerations, but no criterion shall~~
7 ~~be employed that is not expressly identified in the RFP absent a~~
8 ~~showing of good cause;~~

9 ~~(f)(g)~~ aAny application fees that will be required of a
10 participant. Any such fees or deposits shall be cost-based;

11 ~~(g)(h)~~ best available Any information regarding system-
12 specific conditions which may include, but not be limited to,
13 preferred locations proximate to load centers, transmission
14 constraints, the need for voltage support in particular areas,
15 and/or the public utility's need or desire for greater diversity of
16 fuel sources.

17 (6) No attribute, criterion, or methodology shall be employed
18 that is not identified in the RFP absent a showing of good cause;

19 ~~(7)(6)~~ As part of its RFP, the public utility shall require
20 each participant to publish a notice in a newspaper of general
21 circulation in each county in which the participant proposes to
22 build an electrical power plant. The notice shall be at least one-
23 quarter of a page and shall be published no later than 10 days
24 after the date that proposals are due. The notice shall state that
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4 the participant has submitted a proposal to build an electrical
5 power plant, and shall include the name and address of the
6 participant submitting the proposal, the name and address of the
7 public utility that solicited proposals, and a general description
8 of the proposed power plant and its location.

9 (8)~~(7)~~ Within 30 days after the public utility has selected
10 finalists, if any, from the participants who responded to the RFP,
11 the public utility shall publish notice in a newspaper of general
12 circulation in each county in which a finalist proposes to build an
13 electrical power plant. The notice shall include the name and
14 address of each finalist, the name and address of the public
15 utility, and a general description of each proposed electrical
16 power plant, including its location, size, fuel type, and
17 associated facilities.

18 (9)~~(8)~~ Each public utility shall file a copy of its RFP
19 with the Commission upon issuance.

20 (10)~~(9)~~ The public utility shall allow participants to
21 formulate creative responses to the RFP. The public utility shall
22 evaluate all proposals.

23 (11)~~(10)~~ The public utility shall conduct a meeting prior to
24 the release of the RFP with potential participants to discuss the
25 requirements of the RFP. The public utility shall also conduct a

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4 meeting within two weeks after the issuance of the RFP and prior to
5 the submission of any proposals. The Office of Public Counsel and
6 the Commission staff shall be notified in a timely manner of the
7 date, time, and location of such meetings.

8 (12)~~(11)~~ A potential participant ~~who attended the public~~
9 ~~utility's post-issuance meeting~~ may file with the Commission
10 specific objections to any terms of the RFP limited to specific
11 allegations of violations of this rule within 10 days of the post-
12 issuance of the RFP meeting. The public utility may file a written
13 response within 5 days. Within 30 days from the date of the
14 objection, the Commission panel assigned shall determine whether
15 the objection as stated would demonstrate that a rule violation has
16 occurred, based on the written submission and oral argument by the
17 objector and the public utility, without discovery or an
18 evidentiary hearing. The RFP process will not be abated pending
19 the resolution of such objections. ~~Failure to file objections~~
20 ~~within 10 days shall constitute a waiver of those objections. The~~
21 ~~Commission will address any objections to the terms of the RFP on~~
22 ~~an expedited basis.~~

23 (13)~~(12)~~ A minimum of 60 days shall be provided between the
24 issuance of the RFP, and the due date for proposals in response to
25 the RFP.

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4 ~~(14)~~(13) The public utility shall evaluate the proposals
5 received in response to the RFP in a fair comparison with the
6 public utility's next planned generating unit identified in the
7 RFP. The public utility may modify the construction costs and/or
8 performance parameters affecting revenue requirements in its next
9 planned generating unit that it included in the RFP. However, if
10 it chooses to do so, it must inform participants of its intent, and
11 provide the participants (limited to the remaining finalists) a
12 corresponding opportunity to revise their bids.

13 ~~(15)~~(14) If the Commission approves a purchase power
14 agreement as a result of the RFP, the public utility shall be
15 authorized to recover the prudently incurred costs of the agreement
16 through the public utility's capacity, and fuel and purchased power
17 cost recovery clauses absent evidence of fraud, mistake, or similar
18 grounds sufficient to disturb the finality of the approval under
19 governing law. If the public utility selects a self-build option,
20 ~~any~~ costs in addition to those identified in the need determination
21 proceeding shall not be recoverable unless the utility can
22 demonstrate that such costs were prudently incurred and due to
23 extraordinary circumstances unforeseen and beyond its control.

24 ~~(16)~~(15) The Commission shall not allow potential suppliers
25 of capacity who were not participants to contest the outcome of the

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4 selection process in a power plant need determination proceeding.

5 (17) In implementing an RFP under this rule, the public
6 utility may use or incorporate an auction process.

7 (18)~~(16)~~ The Commission may waive this rule or any part
8 thereof upon a showing that the waiver would likely result in a
9 lower cost supply of electricity to the utility's general body of
10 ratepayers, increase the reliable supply of electricity to the
11 utility's general body of ratepayers, or is otherwise in the public
12 interest.

13 Specific Authority: 350.127(2), 366.05(1), 366.05(7), 366.06(2),
14 366.07, 366.051, F.S.

15 Law Implemented: 403.519, 366.04(1), 366.04(2), 366.04(5),
16 366.06(1), 366.06(2), 366.07, 366.041, 366.051, F.S.

17 History: New 01/20/94, Amended _____.

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