

ORIGINAL

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL
HAROLD A. MCLEAN
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

May 27, 2003

RECEIVED-FPSC
03 MAY 28 AM 10:50
COMMISSION
CLERK

Mr. Carroll Webb
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Dear Mr. Webb:

RE: Docket No. 020398-EQ - Rule 25-22.082, Selection of
Generating Capacity

Dear Mr. Webb:

The Commission has approved the adoption of amendments to
Rule 25-22.082 with the changes which were previously addressed
by letters to you dated January 9, 2003 and April 16, 2003.

We plan to file the rule for adoption on May 28, 2003.

Sincerely,

Jennifer S. Brubaker
Jennifer S. Brubaker
Senior Attorney

ADOPTION22.082.JSB
Enclosure

cc: Division of the Commission Clerk
and Administrative Services

AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

DOCUMENT NUMBER-DATE
04745 MAY 28 03
FPSC-COMMISSION CLERK

1 25-22.082 Selection of Generating Capacity.

2 (1) Scope and Intent. The intent of this rule is to
3 provide the Commission information to evaluate a public utility's
4 decision regarding the addition of generating capacity pursuant
5 to Section 403.519, Florida Statutes. The use of a Request for
6 Proposals (RFP) process is an appropriate means to ensure that a
7 public utility's selection of a proposed generation addition is
8 the most cost-effective alternative available.

9 (2)(1) Definitions. For the purpose of this rule, the
10 following terms shall have the following meaning:

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

14 (b)(a) Next Planned Generating Unit: the next generating
15 unit addition planned for construction by a public ~~an investor-~~
16 owned utility that will require certification pursuant to Section
17 403.519, Florida Statutes.

18 (c)(b) Request for Proposals (RFP): a document in which a
19 public ~~an investor-owned~~ utility publishes the price and non-
20 price attributes of its next planned generating unit in order to
21 solicit and screen, for potential subsequent contract
22 negotiations, competitive proposals for supply-side alternatives

CODING: Words underlined are additions; words in
struck-through type are deletions from existing law.

1 to the public utility's next planned generating unit.

2 ~~(d)(c)~~ Participant: a potential generation supplier who
3 submits a proposal in compliance with both the schedule and
4 informational requirements of a public utility's RFP. A
5 participant may include, but is not limited to, utility and non-
6 utility generators, Exempt Wholesale Generators (EWGs),
7 Qualifying Facilities (QFs), marketers, and affiliates of public
8 utilities, as well as providers of turnkey offerings, distributed
9 generation, and other utility supply side alternatives.

10 ~~(e)(d)~~ Finalist: one or more participants selected by the
11 public utility with whom to conduct subsequent contract
12 negotiations.

13 ~~(3)(2)~~ Prior to filing a petition for determination of need
14 for an electrical power plant pursuant to Section 403.519,
15 Florida Statutes, each public ~~investor-owned electric~~ utility
16 shall evaluate supply-side alternatives to its next planned
17 generating unit by issuing a Request for Proposals (RFP).

18 ~~(4)(3)~~ Each public ~~investor-owned~~ utility shall provide
19 timely notification of its issuance of an RFP by publishing
20 public notices in major newspapers, periodicals and trade
21 publications to ensure statewide and national circulation. The
22 public notice given shall include, at a minimum:

CODING: Words underlined are additions; words in
~~struck through~~ type are deletions from existing law.

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

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

6 (c) a schedule of critical dates for the solicitation,
7 evaluation, screening of proposals and subsequent contract
8 negotiations.

9 ~~(5)(4)~~ No term of the RFP shall be unfair, unduly
10 discriminatory, onerous, or commercially infeasible. Each public
11 utility's RFP shall include, at a minimum:

12 (a) a detailed technical description of the public
13 utility's next planned generating unit or units on which the RFP
14 is based, as well as the financial assumptions and parameters
15 associated with it, including, at a minimum, the following
16 information:

- 17 1. a description of the public utility's next planned
18 generating unit(s) and its proposed location(s);
- 19 2. the MW size;
- 20 3. the estimated in-service date;
- 21 4. the primary and secondary fuel type;
- 22 5. an estimate of the total direct cost;

CODING: Words underlined are additions; words in
struck through type are deletions from existing law.

- 1 6. an estimate of the annual revenue requirements;
- 2 7. an estimate of the annual economic value of deferring
- 3 construction;
- 4 8. an estimate of the fixed and variable operation and
- 5 maintenance expense;
- 6 9. an estimate of the fuel cost;
- 7 10. an estimate of the planned and forced outage rates,
- 8 heat rate, minimum load and ramp rates, and other technical
- 9 details;
- 10 11. a description and estimate of the costs required for
- 11 associated facilities such as gas laterals and transmission
- 12 interconnection;
- 13 12. a discussion of the actions necessary to comply with
- 14 environmental requirements; and
- 15 13. a summary of all major assumptions used in developing
- 16 the above estimates;
- 17 **(b) a copy of the public utility's most recent Ten-Year**
- 18 **Site Plan;**
- 19 ~~(c)(b)~~ a schedule of critical dates for solicitation,
- 20 evaluation, screening of proposals, selection of finalists, and
- 21 subsequent contract negotiations;
- 22 ~~(d)(c)~~ a description of the price and non-price

CODING: Words underlined are additions; words in struck through type are deletions from existing law.

1 attributes to be addressed by each alternative generating
2 proposal including, but not limited to:

- 3 1. technical and financial viability;
- 4 2. dispatchability;
- 5 3. deliverability (interconnection and transmission);
- 6 4. fuel supply;
- 7 5. water supply;
- 8 6. environmental compliance;
- 9 7. performance criteria;
- 10 8. pricing structure; and

11 ~~(e)-(d)~~ a detailed description of the criteria and the
12 methodology, including any weighting and ranking factors, to be
13 used to evaluate alternative generating proposals on the basis of
14 price and non-price attributes.

15 (f) any application fees that will be required of a
16 participant. Any such fees or deposits shall be cost-based;

17 (g) best available information regarding system-specific
18 conditions which may include, but not be limited to, preferred
19 locations proximate to load centers, transmission constraints,
20 the need for voltage support in particular areas, and/or the
21 public utility's need or desire for greater diversity of fuel
22 sources.

CODING: Words underlined are additions; words in
~~struck through~~ type are deletions from existing law.

1 (6) No attribute, criterion, or methodology shall be
2 employed that is not identified in the RFP absent a showing that
3 such attribute, criterion, or methodology is necessary for and
4 consistent with the purpose of the rule.

5 (7)-(5) As part of its RFP, the public utility shall
6 require each participant to publish a notice in a newspaper of
7 general circulation in each county in which the participant~~s~~
8 proposes to build an electrical power plant ~~proposed generating~~
9 ~~facility would be located.~~ The notice shall be at least one-
10 quarter of a page and shall be published no later than 10 days
11 after the date that proposals are due. The notice shall state
12 that the participant has submitted a proposal to build an
13 electrical power plant, and shall include the name and address of
14 the participant submitting the proposal, the name and address of
15 the public utility that solicited proposals, and a general
16 description of the proposed power plant and its location.

17 (8)-(6) Within 30 days after the public utility has
18 selected finalists, if any, from the participants who responded
19 to the RFP, the public utility shall publish notice in a
20 newspaper of general circulation in each county in which a
21 finalist proposes ~~has proposed~~ to build an electrical power
22 plant. The notice shall include the name and address of each

CODING: Words underlined are additions; words in
~~struck through~~ type are deletions from existing law.

1 finalist, the name and address of the public utility, and a
2 general description of each proposed electrical power plant,
3 including its location, size, fuel type, and associated
4 facilities.

5 ~~(9)(7)~~ Each public electric utility shall file a copy of
6 its RFP with the Commission upon issuance.

7 (10) The public utility shall allow participants to
8 formulate creative responses to the RFP, such as responses which
9 employ innovative or inventive technologies or processes. The
10 public utility shall evaluate all proposals.

11 (11) The public utility shall conduct a meeting prior to the
12 release of the RFP with potential participants to discuss the
13 requirements of the RFP. The public utility shall also conduct a
14 meeting within two weeks after the issuance of the RFP and prior
15 to the submission of any proposals. The Office of Public Counsel
16 and the Commission staff shall be notified in a timely manner of
17 the date, time, and location of such meetings.

18 (12) A potential participant may file with the Commission
19 objections to the RFP limited to specific allegations of
20 violations of this rule within 10 days of the issuance of the
21 RFP. The public utility may file a written response within 5
22 days. Within 30 days from the date of the objection, the

CODING: Words underlined are additions; words in
~~struck through~~ type are deletions from existing law.

1 Commission panel assigned shall determine whether the objection
2 as stated would demonstrate that a rule violation has occurred,
3 based on the written submission and oral argument by the objector
4 and the public utility, without discovery or an evidentiary
5 hearing. The RFP process will not be abated pending the
6 resolution of such objections.

7 (13) A minimum of 60 days shall be provided between the
8 issuance of the RFP, and the due date for proposals in response
9 to the RFP.

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

19 (15) If the Commission approves a purchase power agreement
20 as a result of the RFP, the public utility shall be authorized to
21 recover the prudently incurred costs of the agreement through the
22 public utility's capacity, and fuel and purchased power cost

CODING: Words underlined are additions; words in
~~struck through~~ type are deletions from existing law.

1 recovery clauses absent evidence of fraud, mistake, or similar
2 grounds sufficient to disturb the finality of the approval under
3 governing law. If the public utility selects a self-build
4 option, costs in addition to those identified in the need
5 determination proceeding shall not be recoverable unless the
6 utility can demonstrate that such costs were prudently incurred
7 and due to extraordinary circumstance.

8 ~~(16)-(8)~~ The Commission shall not allow potential suppliers
9 of capacity who were not participants to contest the outcome of
10 the selection process in a power plant need determination
11 proceeding.

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

14 ~~(18)-(9)~~ Upon a showing by a public utility and a finding
15 by the Commission that a proposal not in compliance with this
16 rule's provisions will likely result in a lower cost supply of
17 electricity to the utility's general body of ratepayers, increase
18 the reliable supply of electricity to the utility's general body
19 of ratepayers, or otherwise will serve the public welfare, the
20 Commission shall exempt the utility from compliance with the rule
21 or any part of it for which such justification is found ~~The~~
22 ~~Commission may waive this rule or any part thereof upon a showing~~

CODING: Words underlined are additions; words in
struck through type are deletions from existing law.

1 ~~that the waiver would likely result in a lower cost supply of~~
2 ~~electricity to the utility's general body of ratepayers,~~
3 ~~increase the reliable supply of electricity to the utility's~~
4 ~~general body of ratepayers, or is otherwise in the public~~
5 ~~interest.~~

6 Specific Authority: 350.127(2), 366.01, 366.05(1), 366.05(7),
7 366.06(2), 366.07, 366.051, F.S.

8 Law Implemented: 403.519, 366.04(1), 366.04(2), 366.04(5),
9 366.06(1), 366.06(2), 366.07, 366.041, 366.051, F.S.

10 History: New 1/20/94, Amended.

CODING: Words underlined are additions; words in
struck through type are deletions from existing law.