

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's)	Docket No. 060426-EI
Petition to Request Exemption under Rule)	
25-22.082(18), F.A.C., From Issuing a)	
Request for Proposals (RFP))	Dated: June 21, 2006
_____)	

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE
TO THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
PETITION TO INTERVENE**

Florida Power & Light Company ("FPL") files this response to the Florida Industrial Power Users Group's ("FIPUG") Petition to Intervene, dated June 14, 2006. FPL does not object to intervention by FIPUG, but wishes to respond to the three issues identified in FIPUG's Petition to Intervene, which FIPUG believes "may need to be addressed by the Commission."

I. Under Existing Procedures, the Commission is Capable of Determining that Costs Incurred are Reasonable and Prudent Without an RFP Process

1. FIPUG's Petition to Intervene expresses concern that an exemption from the Bid Rule's Request for Proposals ("RFP") process may make it difficult to ascertain whether the costs incurred in constructing the project were reasonable and prudent, and asks whether additional procedures are necessary to "ensure costs incurred . . . are reasonable and prudent." No additional procedures are necessary because the project would remain subject to a detailed Florida Public Service Commission ("Commission") review and approval within a determination of need proceeding,¹ as required by Section 403.519, Florida Statutes, and Rules 25-22.080 and 25-22.081, F.A.C. A need determination regarding this project would be held, regardless of the

¹ The need determination process is an in-depth process that goes well beyond simply determining whether a utility has complied with Rule 25-22.082, F.A.C. (the "Bid Rule"). The RFP process is one means of measuring cost-effectiveness, but not the exclusive means. The need determination proceeding remains the vehicle for the Commission to review and analyze the cost of and need for a proposed plant.

granting of FPL's Petition to Request Exemption Under Rule 25-22.082(18), F.A.C., From Issuing a Request for Proposals (RFP) ("Exemption Petition"), and the Commission would review the estimated cost of the project as part of its determination of the cost-effectiveness of the proposed plant.² As FPL's Exemption Petition stated, "[t]he Commission itself would review the overall project costs in relation to the projected benefits at the time of a proceeding to determine the need for the Project." FPL's Exemption Petition at ¶13.

2. The Commission is capable, with or without an RFP process, of determining whether costs are reasonable and prudent. Indeed, before Rule 25-22.082, F.A.C., the "Bid Rule," became effective, the Commission was competently conducting need determinations and making assessments of the reasonableness of cost estimates and the cost-effectiveness of proposed projects without having data from the RFP process.³ Granting FPL's Exemption

² In accordance with Senate Bill 888, signed by Governor Bush on June 19, 2006, the Commission would also consider the need for fuel diversity and supply reliability in a need determination proceeding, in addition to the other statutory factors relating to system reliability and reasonable cost. *See* Ch. 2006-230, Laws of Florida.

³ An example of the Commission's thoroughness in a need determination prior to the implementation of the Bid Rule is Docket No. 910759-EI, *In re: Petition for Determination of Need for a Proposed Electrical Power Plant and Related Facilities, Polk County Units 1-4, by Florida Power Corporation ("FPC")*. In its Final Order, the Commission adopted the Recommended Order in its entirety, approving two of four proposed units. Order No. 25805 (Feb. 25, 1992). The 75-page Recommended Order detailed the Commission's two day, formal hearings on the need determination. Order No. 25550 (Dec. 30, 1991). As part of its cost-effective alternative analysis, the Commission considered other reasonably available generating technologies for utility construction in lieu of the proposed project and whether the proposed project was the most cost-effective to FPC and Peninsular Florida. *Id.* Although FPC had not issued an RFP, the Commission determined that FPC had sufficiently demonstrated the reasonableness and prudence of its costs "[t]hrough a thorough economic analysis of a variety of generating alternatives." *Id.* The Commission further determined that a bidding process was not necessary due to the tight timeframe and, in fact, found that "requiring bidding . . . would be detrimental" because, in part, there was "no assurance that a bid would be successful" and "because of the delay associated with bidding." *Id.*

Petition will not thwart the Commission's ability to determine whether the costs of the project are reasonable and prudent.

II. Granting FPL's Petition Would Not Foreclose the Consideration of Other Advanced Coal Technologies in Future Proceedings

3. FIPUG's Petition to Intervene indicates that the Commission should "reserve its power to evaluate and approve in future proceedings" an alternative advanced coal technology project. Specifically, FIPUG states that if the exemption is granted, this should not foreclose the consideration of such technologies in future proceedings.

4. If by "future proceedings," FIPUG means proceedings unrelated to the subsequent proceedings necessary to determine the need for and site of the project for which this exemption is sought (the supercritical pulverized coal plant), such consideration is clearly not foreclosed. It would be another case for another day. Further, FPL's generation planning process includes the identification and exploration of various technologies for the benefit they can provide to the generating fleet, including cost, reliability, and environmental benefits. FPL's Exemption Petition did not include any suggestion that the granting of the Exemption Petition would or should foreclose the Commission's ability to consider other advanced coal technologies in future projects by FPL or by any other utility. FPL has not requested that an exemption from the Bid Rule for this project apply to all coal projects in the future.

5. If by "future proceedings," FIPUG means future proceedings regarding the need this project is intended to meet, FPL recognizes that as part of a need determination, it may be requested or required to explain the choice of the proposed supercritical pulverized coal technology over other technologies. FPL remains open and interested in other advanced coal

technologies, provided the technologies are sufficiently mature.⁴ Using any technology that is unproven, immature, and/or not widely accepted in the industry presents potentially unacceptable cost, schedule and reliability risks to FPL and its customers.⁵ FPL's request for an exemption from the Bid Rule does not seek or purport to foreclose the Commission's consideration of other technologies in the need determination associated with FPL's proposed coal project, or in future need determination proceedings.

III. Granting FPL's Petition Would Not Foreclose Application of the Bid Rule to Future Need Determinations

6. FIPUG's Petition to Intervene indicates that the Commission should reserve its power to continue to use the Bid Rule in future need determinations when evaluating generation capacity additions that use technologies that are "mature and readily available" in the marketplace. There is no need for the Commission to do so, either as a matter of law or based on any aspect of FPL's Exemption Petition. On its face, FPL's Exemption Petition 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.

⁴ For example, FPL's continuing interest in integrated gasification combined cycle ("IGCC") technology is demonstrated in FPL's 2006 Ten Year Power Plant Site Plan. In the Plan, FPL stated that it continues to maintain an interest in pursuing IGCC technology and that it has been working "with the industry's leading IGCC developers to explore creative means that might bring this technology to FPL's customers." FPL's Ten Year Power Plant Site Plan, April 2006, p. 56. FPL's effort is focused on resolving concerns with "reliability and cost uncertainty and demonstrating that addition of the [IGCC] technology will benefit our customers." *Id.*

⁵ IGCC technology has been looked at as a technology that could potentially mitigate environmental effects, but IGCC is still a somewhat immature technology requiring further technological and operating performance improvements. *Cf. Coal-Fired Generation: Proven and Developing Technologies*, Florida Public Service Commission, Office of Market Monitoring and Strategic Analysis, p. 16 (Dec. 2004).

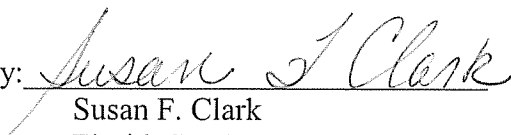
IV. Conclusion

While FPL is not opposed to FIPUG's Petition to Intervene, as illustrated above, the issues identified by FIPUG need not be addressed by the Commission in granting FPL's Petition either because there is an adequate opportunity to address them in the need determination proceeding or because they are not issues that need to be addressed in connection with FPL's Exemption Petition.

Respectfully submitted this 21st day of June 2006.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Power & Light's Response to the Florida Industrial Power Users Group's Petition to Intervene has been furnished by electronic mail and/or U.S. Mail this 21st day of June 2006, to the following:

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