

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: December 7, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Moore) *GM*
 Division of Economic Regulation (McRoy; Hewitt) *JVS* *SA* *FOR* *RT* *198*

RE: Docket No. 060755-EU – Proposed amendment of Rule 25-22.081, F.A.C., Contents of Petition.

AGENDA: 12/19/06 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All

PREHEARING OFFICER: Arriaga

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060755.RCM.DOC

Case Background

Section 403.519, Florida Statutes, governing electrical power plant need determinations, was amended by Section 43, Chapter 2006-230, Laws of Florida (Senate Bill 888) to specifically address need determination proceedings for nuclear power plants. A new subsection (4) requires the Commission to “consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost” when determining whether to grant or deny a petition to determine the need for a nuclear power plant. Section 403.519(4)(a) specifies what must be included in the petition to determine the need for a nuclear power plant. Section 403.519(4)(b) requires the Commission to take into account matters within its jurisdiction that it deems relevant in making its determination, including whether the nuclear plant will provide base load capacity, enhance reliability by improving fuel diversity, and provide the most cost-effective alternative taking into

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account the need to improve the balance of fuel diversity, reduce dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the grid. The new section also exempts any utility from the requirement to issue a request for proposals pursuant to Rule 25-22.082, Florida Administrative Code, for a new nuclear power plant.

Rule 25-22.081, Florida Administrative Code, is the Commission's existing rule that prescribes the contents of a petition to determine the need for a proposed electrical power plant. Staff conducted a rule development workshop on October 18, 2006, to solicit comments on amending this rule to add provisions specific to nuclear power plant petitions. Attending the workshop were representatives of Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), and the Florida Municipal Power Agency. Staff and the workshop participants reached agreement on the changes that should be made to the rule.

The Commission has rulemaking authority pursuant to Sections 120.54, 350.127(2), and 366.05(1), and 403.519, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission propose the adoption of an amendment to Rule 25-22.081, F.A.C., Contents of Petition, to prescribe the contents of a petition to determine need for a nuclear power plant?

Recommendation: Yes.

Staff Analysis: Staff recommends amending existing Rule 25-22.081, F.A.C., to implement new provisions of section 403.519, Florida Statutes. The recommended amendments make the rule applicable to petitions for both fossil and nuclear fuel electrical power plants, add requirements specific to nuclear power plant petitions, and otherwise conform the rule to the statute as revised by Chapter 2006-230, Laws of Florida. Following is a summary of the specific rule changes, with references to made to the rule sections as renumbered.

Subsection (1): This subsection is amended to recognize that the rule applies to petitions to determine need for both fossil and nuclear fuel electric plants; and that the need for fuel diversity and supply reliability is one of the factors the Commission will take into account when considering the need for a proposed plant.

Paragraph (1) (c): Included in the information that must be submitted in a petition is documentation of the costs and benefits of the power plant when the basis for need is in addition to the need for capacity, or in lieu of capacity needs. The rule is changed to recognize that the costs and benefits are projected at this stage of the process. It is also updated to change the term "oil blackout", as an example of another basis for need, to "fuel diversity" consistent with the recent statutory changes. In addition, language is added to provide that the nonbinding estimate of cost of a proposed nuclear power plant, which is required by statute and subsection (2) of this rule, is sufficient for purposes of this paragraph.

Paragraph (1) (d): Fuel diversity and fuel supply reliability is added as a factor that must be discussed in the generating alternatives section of a petition. This paragraph also currently requires a description of the selection process used and refers to Rule 25-22.082, F.A.C. Language is added to reflect that the statute expressly excludes nuclear power plants sited after June 19, 2006 (the effective date of Chapter 2006-230, Laws of Florida), from the requirements of Rule 25-22.082, F.A.C.

Subsection (2): This subsection is added to the rule to prescribe the contents of a petition that are unique to nuclear fueled power plants, and which are required by the statute. Staff recommends adding language that merely clarifies those statutory requirements.

Statement of Estimated Regulatory Cost Summary:

The additional costs to the investor-owned, municipal and rural electric cooperative utilities subject to the changes of Rule 25-22.081, F.A.C., should be minimal. A Statement of Estimated Regulatory Costs is attached. (Attachment B.)

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Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

Staff Analysis: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments
Rule
SERC

1 **25-22.081 Contents of Petition.**

2 (1) Petition for Fossil or Nuclear Fuel Electric Plants. Petitions submitted to commence a
3 proceeding to determine the need for a proposed fossil or nuclear fuel electrical power plant or
4 responses to the Commission's order commencing such a proceeding shall comply with the other
5 requirements of Chapter 25-22, F.A.C., as to form and style except that a utility may, at its
6 option, submit its petition in the same format and style as its application for site certification
7 pursuant to Sections 403.501 through 403.517, Florida Statutes, so long as the informational
8 requirements of this rule and Chapter 25-22, F.A.C., are satisfied. The petition, to allow the
9 Commission to take into account the need for electric system reliability and integrity, the need
10 for adequate reasonable cost electricity, the need for fuel diversity and supply reliability, and the
11 need to determine whether the proposed plant is the most cost effective alternative available,
12 shall contain the following information:

13 ~~(a1)~~ A general description of the utility or utilities primarily affected, including the load
14 and electrical characteristics, generating capability, and interconnections.

15 ~~(b2)~~ A general description of the proposed electrical power plant, including the size,
16 number of units, fuel type and supply modes, the approximate costs, and projected in-service
17 date or dates.

18 ~~(c3)~~ A statement of the specific conditions, contingencies or other factors which indicate
19 a need for the proposed electrical power plant including the general time within which the
20 generating units will be needed. Documentation shall include historical and forecasted summer
21 and winter peaks, number of customers, net energy for load, and load factors with a discussion of
22 the more critical operating conditions. Load forecasts shall identify the model or models on
23 which they were based and shall include sufficient detail to permit analysis of the model or

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

1 models. If a determination is sought on some basis in addition to or in lieu of capacity needs,
2 such as fuel diversity ~~oil blackout~~, then detailed analysis and supporting documentation of the
3 projected costs and benefits is required. Where a determination is sought for a nuclear power
4 plant, the nonbinding estimate provided for in paragraph (2)(b) below shall be considered to be
5 sufficient for purposes of this paragraph.

6 (d4) A summary discussion of the major available generating alternatives which were
7 examined and evaluated in arriving at the decision to pursue the proposed generating unit. The
8 discussion shall include a general description of the generating unit alternatives, including
9 purchases where appropriate; and an evaluation of each alternative in terms of economics,
10 reliability, long-term flexibility and usefulness and any other relevant factors such as fuel
11 diversity and fuel supply reliability. These major generating technologies generally available and
12 potentially appropriate for the timing of the proposed plant and other conditions specific to it
13 shall be discussed. In addition, each investor-owned utility shall include a detailed description of
14 the selection process used and a detailed description of the generating unit alternatives proposed
15 by each finalist, if any, selected to participate in subsequent contract negotiations pursuant to
16 Rule 25-22.082, F.A.C. No provision of Rule 25-22.082, F.A.C., shall be applicable to a nuclear
17 power plant sited after June 19, 2006.

18 (e5) A discussion of viable nongenerating alternatives including an evaluation of the
19 nature and extent of reductions in the growth rates of peak demand, KWH consumption and oil
20 consumption resulting from the goals and programs adopted pursuant to the Florida Energy
21 Efficiency and Conservation Act both historically and prospectively and the effects on the timing
22 and size of the proposed plant.

23 (f6) An evaluation of the adverse consequences which will result if the proposed

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1 electrical power plant is not added in the approximate size sought or in the approximate time
2 sought.

3 (g7) If the generation addition is the result of a purchased power agreement between an
4 investor-owned utility and a nonutility generator, the petition shall include a discussion of the
5 potential for increases or decreases in the utility's cost of capital, the effect of the seller's
6 financing arrangements on the utility's system reliability, any competitive advantage the
7 financing arrangements may give the seller and the seller's fuel supply adequacy.

8 (2) In addition to complying with (1)(a) through (g) above, a nuclear power plant petition
9 shall contain the following information:

10 (a) The description required by section 403.519(4)(a)2, F.S., including a discussion about
11 how the proposed nuclear power plant will enhance the electric supply reliability by reducing the
12 exposure to fossil fuel supply disruptions;

13 (b) A description of and a nonbinding estimate of the cost of the proposed nuclear power
14 plant, including associated transmission facilities;

15 (c) The annualized base revenue requirement for the first 12 months of operation of the
16 proposed nuclear power plant, based on the nonbinding estimate of the cost provided pursuant to
17 (2)(b) above; and

18 (d) A summary of any discussions with other electric utilities regarding ownership of a
19 portion of the plant by such electric utilities.

20 Specific Authority 350.127(2), 366.05(1) FS.

21 Law Implemented 403.519 FS.

22 History--New 12-22-81, Formerly 25-2.133, 25-22.81, Amended 1-10-94, _____.

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-M-E-M-O-R-A-N-D-U-M-

DATE: November 6, 2006
TO: Office of General Counsel (Moore)
FROM: Division of Economic Regulation (Hewitt) *PC* *CSA* *HW* *JS*
RE: Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-22.081, F.A.C., Contents of Petition

SUMMARY OF THE RULES

Rule 25-22.081, F.A.C., Contents of Petition, contains the procedures for filing a petition with the Commission for a determination of need for a proposed electrical power plant or for responses to the Commission's order commencing such a proceeding.

The proposed rule amendments would make the rule consistent with Section 403.519(4), F. S., as revised by Senate Bill 888. The changes would explicitly require information concerning fuel diversity and fuel supply reliability. No nuclear power plant sited after June 19, 2006 would be subjected to any provision of Rule 25-22.082, F.A.C. (bid rule). However, more detailed information would explicitly be required in the petition for a nuclear power plant.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

All five electric investor owned utilities (IOUs) would be affected by the proposed rule changes as well as the 34 municipal electric utilities and the 18 electric cooperatives.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Commission would benefit because there should be less time spent seeking additional information through the discovery process. There should be no impact on agency revenues. There should be no negative impact on other state and local government entities.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Petitioners for new power plants currently develop information about the need for additional capacity as part of their annual ten year site plans. The avoided costs of the next unit are also regularly determined. Therefore, there should be minimal additional costs from the proposed rule changes to submit the information in the need petition. Avoiding some of the discovery process should benefit all parties.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

The rule applies to large utility businesses but could have an indirect benefit to the small businesses, small cities, and small counties that are customers of the petitioners if there are fewer discovery costs and more efficiency in the need determination process. There should be no negative impacts on small businesses, cities, or counties.

CH:kb

cc: Mary Andrews Bane
Chuck Hill
James McRoy
Hurd Reeves