

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-02-0723-PCO-EQ
ISSUED: May 28, 2002

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

BY THE COMMISSION:

ORDER INITIATING RULE DEVELOPMENT

Prior to the construction of a power plant with a steam cycle greater than 75 MW, electric utilities must receive certification to build the plant pursuant to Florida's Power Plant Siting Act (Siting Act), sections 403.501-403.518, Florida Statutes. Section 403.519, Florida Statutes, requires utilities to file a petition for Determination of Need with the Florida Public Service Commission (Commission). A determination of need is a prerequisite to certification pursuant to the Siting Act. Commission Rules 25-22.080-25-22.082, Florida Administrative Code, govern determinations of need. Rule 25-22.082, entitled, "Selection of Generating Capacity" was adopted by the Commission in 1994, and requires investor-owned electric utilities to issue Requests for Proposals (RFPs) prior to filing a petition for determination of need.

Since Rule 25-22.082 was adopted, Gulf Power Company (Gulf) and Florida Power & Light Company (FPL) have each issued one RFP for the selection of generating capacity subject to a need determination. Florida Power Corporation (FPC) has issued RFPs twice. Tampa Electric Company (TECO) has never issued an RFP under the rule. During this time, the utilities have planned and constructed large amounts of generating capacity without the

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requirement of certification under the Siting Act, and thus without the benefit of an RFP process.

In December, 1999, Tampa Electric Company (TECO) petitioned for cost recovery of approximately \$680 million to repower the Gannon Station for a net increase in capacity of approximately 380 MW. Since this was the first time a utility had sought cost recovery of a repowering project, our staff recommended that TECO be required to issue an RFP prior to the repowering of its Gannon plants so that the utility and the Commission would have the benefit of the RFP process in measuring the cost-effectiveness of capacity additions. While we denied our staff's recommendation at that time, we directed them to consider revising our current capacity selection rule to require RFPs for repowering projects.

In May of 2000, Governor Bush created the Florida Energy 2020 Study Commission (Study Commission). The Study Commission was charged with the responsibility of proposing an energy plan and strategy for Florida, and our staff decided to delay any formal changes to Rule 25-22.082 until the Study Commission's work was complete. On December 11, 2001, the Study Commission issued its Final Report. One strategy recommended by the Study Commission was to "provide investor-owned load-serving utilities more flexibility for diversifying their energy resources by creating a competitive wholesale market and establishing a competitive acquisition process for load-serving utilities." The Study Commission's specific recommendations included: (1) "[L]oad-serving utilities should acquire new capacity through competitive bidding, negotiated bilateral contracts, or from the short term (i.e., spot) market;" and (2) "The PSC should revise its existing rule on competitive acquisition to be consistent with the recommendation made in this report."

On February 7, 2002, we held a workshop to consider revisions to our capacity selection rules and discuss a "strawman" version of proposed revisions that our staff prepared. The Florida Partnership for Affordable Competitive Energy (Florida PACE) also provided suggested revisions to our rule. On March 15, 2002, Florida PACE and the four large investor-owned electric utilities filed post-workshop comments. On the basis of the discussions at the workshop and the comments filed, our staff revised the "strawman" proposal, and at our May 21, 2002, Agenda Conference

recommended that we begin formal rule development to revise and refine the capacity selection rule.

Our experience with the RFP process over the past several years indicates that it is an effective tool to use to evaluate and justify the cost-effectiveness and prudence of a capacity selection. The draft "strawman" revisions to our current rule expand the existing RFP process. The revisions are designed to use the RFP process to assist the Commission in reviewing a utility's statutory obligation to prudently plan for and provide an adequate supply of power at a reasonable cost for the general body of ratepayers. Specifically, the revisions: (1) require investor-owned utilities to issue RFPs for major (greater than 150 MW) capacity additions; (2) allow participants to submit, and require investor-owned utilities to evaluate, proposals for generating facilities that would be collocated on the utilities' existing site; (3) maintain existing regulatory processes for cost recovery approval; and (4) allow bilateral contracts with terms less than three years to be exempt from the RFP process. The draft "strawman" proposal is attached to this Order as attachment A.

We believe it is time to proceed with the development of proposed revisions to this rule. We emphasize that the draft revisions in Attachment A are only a starting point. We welcome other suggestions and seek comment from all interested persons. We will begin the rule development process with a Commission workshop scheduled for July 19, 2002.


It is, therefore,

ORDERED by the Florida Public Service Commission that the Commission will begin rule development to revise Rule 25-22.082, Florida Administrative Code. It is further,

ORDERED that this Docket shall remain open to conduct rulemaking proceedings.

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By ORDER of the Florida Public Service Commission this 28th
day of May, 2002.



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

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric,

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gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. -Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

4 ATTACHMENT A

5 25-22.082 Selection of Generating Capacity. (DRAFT 5/01/02)

6 (1) Definitions. For the purpose of this rule, the following
7 terms shall have the following meaning:

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

11 ~~(ba) Major Capacity Addition: any capacity addition which will~~
12 ~~require certification pursuant to Section 403.519, Florida~~
13 ~~Statutes, or any capacity addition of 150 MW or more which does not~~
14 ~~require certification pursuant to Section 403.519, Florida~~
15 ~~Statutes, including but not limited to the repowering of an~~
16 ~~existing generating facility. ~~Next Planned Generating Unit: the~~~~
17 ~~next generating unit addition planned for construction by an~~
18 ~~investor-owned utility that will require certification pursuant to~~
19 ~~Section 403.519, Florida Statute.~~

20 (cb) Request for Proposals (RFP): a document in which an
21 public investor-owned utility publishes the price and non-price
22 attributes of its next planned major capacity addition generating
23 unit in order to solicit and screen, for potential subsequent
24 contract negotiations, competitive proposals for supply-side

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4 alternatives to the public utility's next planned ~~generating unit~~
5 major capacity addition.

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

14 (ed) Finalist: one or more participants selected by the public
15 utility with whom to conduct subsequent contract negotiations.

16 ~~(2) Prior to filing a petition for determination of need for~~
17 ~~an electrical power plant pursuant to Section 403.519, Florida~~
18 ~~Statutes, each investor-owned electric utility shall evaluate~~
19 ~~supply-side alternatives to its next planned generating unit by~~
20 ~~issuing a Request for Proposals (RFP). A Public Utility is~~
21 required to provide reasonably sufficient, adequate, and efficient
22 service to the public at fair and reasonable rates. In order to
23 assure an adequate and reliable source of energy, a public utility
24 must plan and construct or purchase sufficient generating capacity.
25 To assure fair and reasonable rates and to avoid the further

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4 uneconomic duplication of generation, transmission, and
5 distribution facilities in Florida, a public utility must select
6 the most economical and cost-effective mix of supply-side and
7 demand-side resources to meet the demand and energy requirements of
8 its end-use consumers. The Commission finds that the use of RFPs
9 to select additional generating resource requirements is an
10 appropriate means by which to ensure that a public utility meets
11 its obligation to provide an adequate, reliable, and cost-efficient
12 supply of capacity and energy. Each public utility, therefore,
13 shall issue an RFP prior to the commencement of construction of a
14 major capacity addition. Public utilities are encouraged to issue
15 an RFP, using these rules as guidelines, prior to the construction
16 or purchase of any other generating resource addition.

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

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

24 (b) a general description of the public utility's next
25 planned ~~generating unit~~ major capacity addition, including its

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4 planned in-service date, MW size, location, fuel type and
5 technology; and

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

9 (47) Each public electric utility shall file a copy of its RFP
10 with the Commission upon issuance.

11 (54) Each public utility's RFP shall include, at a minimum:

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

- 18 1. a description of the public utility's next planned major
19 capacity addition ~~generating unit(s)~~ and its proposed
20 location(s);
- 21 2. the MW size;
- 22 3. the estimated in-service date;
- 23 4. the primary and secondary fuel type;
- 24 5. an estimate of the total direct cost;
- 25 6. an estimate of the annual revenue requirements;

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- 4 7. an estimate of the annual economic value of deferring
5 construction;
- 6 8. an estimate of the fixed and variable operation and
7 maintenance expense;
- 8 9. an estimate of the fuel cost;
- 9 10. the costs of common facilities at the site allocated to
10 the major capacity addition, including, but not limited
11 to land, improvements, transmission facilities, cooling
12 water facilities, fuel transportation and handling
13 facilities, and other infrastructure.
- 14 ~~10~~1. an estimate of the planned and forced outage rates, heat
15 rate, minimum load and ramp rates, and other technical
16 details;
- 17 ~~11~~2. a description and estimate of the costs required for
18 associated facilities such as gas laterals and
19 transmission interconnection;
- 20 ~~12~~3. a discussion of the actions necessary to comply with
21 environmental requirements; and
- 22 ~~13~~4. a summary of all major assumptions used in developing the
23 above estimates;
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4 (b) Detailed information regarding the public utility's ten
5 year historical and ten year projected net energy for load, and
6 summer and winter peak demand by class of customers;

7 (cb) a schedule of critical dates for solicitation,
8 evaluation, screening of proposals, selection of finalists, and
9 subsequent contract negotiations, and submission for Commission
10 approval, if necessary;

11 (dc) 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, and

22 (ed) a detailed description of the methodology to be used to
23 evaluate alternative generating proposals on the basis of price and
24 non-price attributes.

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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. No adjustment to purchase power proposals
9 due to the imputation of an increase to the public utility's cost
10 of capital shall be made absent a showing of good cause. The RFP
11 shall be structured to allow a participant to propose to supply all
12 or a portion of the major capacity addition, and for the public
13 utility to select one or a combination of proposals as the most
14 cost-effective means of meeting the specified need;

15 (g) Any application fees that will be required of a
16 participant. Any such fees or deposits shall be cost-based but
17 shall not exceed \$10,000 in the aggregate, with no more than \$500
18 required to obtain the RFP;

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

24 (6) A participant may submit and the public utility shall
25 evaluate proposals to collocate the participant's proposed

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4 generating facility and to utilize the common facilities at a
5 public utility's existing power plant site. The public utility may
6 require compensation for such collocation and use of its common
7 facilities.

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

20 (8) A pre-bid meeting shall be conducted by the public
21 utility within two weeks after the issuance of the RFP. Each
22 participant which obtains the RFP, the Office of Public Counsel,
23 and the Commission staff shall be notified in a timely manner of
24 the date, time, and location of the meeting.

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

7 (10) Any potential participant in the RFP may file comments
8 with the Commission regarding any aspect of the RFP prior to the
9 due date for proposals specified in the RFP. The Commission may
10 take such action with respect to any comments filed as it deems
11 appropriate.

12 (11) The public utility shall evaluate the proposals received
13 in response to the RFP in a fair comparison with the public
14 utility's next planned major capacity addition identified in the
15 RFP.

16 (12~~6~~) Within 30 days after the public utility has selected
17 finalists, if any, from the participants who responded to the RFP,
18 the public utility shall publish notice in a newspaper of general
19 circulation in each county in which a finalist ~~has proposed~~ to
20 build an electrical power plant. The notice shall include the name
21 and address of each finalist, the name and address of the public
22 utility, and a general description of each proposed electrical
23 power plant, including its location, size, fuel type, and
24 associated facilities.

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4 (13) The Commission, upon its own motion, or a participant may
5 challenge the results of an RFP. A participant may file a
6 complaint with the Commission or intervene in a subsequent need
7 determination or cost recovery proceeding. Any complaint will be
8 processed by the Commission on an expedited basis. In resolving a
9 challenge to the results of an RFP, the Commission may take such
10 action as it deems appropriate.

11 (14) Upon conclusion of an RFP process, the public utility may
12 petition the Commission for approval of the public utility's
13 selection. If the Commission approves a purchase power agreement
14 as a result of the RFP, the public utility shall be authorized to
15 recover the prudently incurred costs of the agreement through the
16 public utility's capacity, and fuel and purchased power cost
17 recovery clauses absent evidence of fraud, mistake, or similar
18 grounds sufficient to disturb the finality of the approval under
19 governing law.

20 (15) Nothing in this rule shall prohibit a public utility from
21 entering into short-term bilateral contracts, having a term of
22 three years or less, for the purchase of capacity and energy. If
23 the public utility chooses this option, it must justify the
24 prudence of its decision prior to recovering the costs of the
25 contract from its retail customers. A public utility, however,

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4 shall not enter into a bilateral contract for the purchase of
5 capacity and energy with an affiliate outside of the RFP process.

6 ~~8. The Commission shall not allow potential suppliers of~~
7 ~~capacity who were not participants to contest the outcome of the~~
8 ~~selection process in a power plant need determination proceeding.~~

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

14 Specific Authority: 350.127(2), 366.05(1), 366.06(2), 366.07,
15 366.051 F.S.

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

18 History:
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