

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-02-1420-NOR-EQ
ISSUED: October 17, 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

NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-22.082, Florida Administrative Code, relating to selection of generating capacity.

The attached Notice of Rulemaking will appear in the October 25, 2002 edition of the Florida Administrative Weekly.

A hearing will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., Thursday and Friday, December 5-6, 2002
Betty Easley Conference Center
Room 148, 4075 Esplanade Way
Tallahassee, Florida

Written comments or testimony on the rule must be received by the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than November 15, 2002.

DOCUMENT NUMBER-DATE

11277 OCT 17 8

FPSC-COMMISSION CLERK

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By ORDER of the Florida Public Service Commission, this 17th
day of October, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

MCB

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020398-EQ

RULE TITLE:

RULE NO.:

Selection of Generating Capacity

25-22.082

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to refine the Commission's requirement that utilities issue a Request for Proposals for all generating capacity additions that must receive certification under Florida's Power Plant Siting Act, Sections 403.501-518, Florida Statutes as an effective means to ensure the cost-effectiveness of the additional generating capacity.

SUMMARY: The proposed amendments to Rule 25-22.082, F.A.C.; 1) clarify the scope and intent of the rule, 2) clarify the definitions of "public utility" and "participant", 3) require additional information to be included by the public utilities in their Requests for Proposals (RFP), 4) require pre-RFP and post-RFP meetings with participants to answer questions about and explain the terms of the RFP, 5) provide for expedited consideration of objections to RFP terms, and provide that those objections must be filed within 10 days of issuance of the RFP, 6) require public

utilities to fairly evaluate all proposals against the public utilities' next planned generating unit identified in the RFP, and 7) explicitly recognize existing regulatory processes and prudence limitations on cost-recovery of capacity additions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost was prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.05(1), 366.06(2), 366.07, 366.051, F.S.

LAW IMPLEMENTED: 403.519, 366.04(1), 366.04(2), 366.04(5), 366.06(1), 366.06(2), 366.07, 366.041, 366.051, F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., December 5-6, 2002

PLACE: Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tom Ballinger, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-22.082 Selection of Generating Capacity.

(1) Scope and Intent. A Public Utility is required to provide reasonably sufficient, adequate, and efficient service to the public at fair and reasonable rates. In order to assure an adequate and reliable source of energy, a public utility must plan and construct or purchase sufficient generating capacity. To assure fair and reasonable rates and to avoid the further uneconomic duplication of generation, transmission, and distribution facilities in Florida, a public utility must select the most economical and cost-effective mix of supply-side and demand-side resources to meet the demand and energy requirements of its end-use consumers. The intent of this rule is to provide the Commission information to evaluate a public utility's decision regarding the addition of generating capacity pursuant to Chapter 403.519, Florida Statutes. The use of a Request for Proposals (RFP) process

is an appropriate means to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available.

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

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

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

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

(~~d~~) Participant: a potential generation supplier who submits a proposal in compliance with both the schedule and informational requirements of a public utility's RFP. A participant may include,

but is not limited to, utility and non-utility generators, Exempt Wholesale Generators (EWGs), Qualifying Facilities (QFs), marketers, and affiliates of public utilities, as well as providers of turnkey offerings, distributed generation, and other utility supply side alternatives.

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

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

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

(a) No Change;

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

(c) No Change.

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

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

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

1. a description of the public utility's next planned generating unit(s) and its proposed location(s);

2. - 13. No Change;

(b) Detailed information regarding the public utility's ten year historical and ten year projected net energy for load;

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

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

1. - 6. No Change;

7. performance criteria; and

8. pricing structure~~7~~, and

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

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

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

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

(7) The public utility shall allow participants to formulate creative responses to the RFP. The public utility shall evaluate all proposals.

(85). As part of its RFP, the public utility shall require each participant to publish a notice in a newspaper of general

circulation in each county in which the participant~~s~~ proposeds to build an electrical power plant ~~generating facility would be located~~. The notice shall be at least one-quarter of a page and shall be published no later than 10 days after the date that proposals are due. The notice shall state that the participant has submitted a proposal to build an electrical power plant, and shall include the name and address of the participant submitting the proposal, the name and address of the public utility that solicited proposals, and a general description of the proposed power plant and its location.

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

(10) A potential participant who attended the public utility's post-issuance meeting may file with the Commission specific objections to any terms of the RFP within 10 days of the post-issuance meeting. Failure to file objections within 10 days shall

constitute a waiver of those objections. The Commission will address any objections to the terms of the RFP on an expedited basis.

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

(12) The public utility shall evaluate the proposals received in response to the RFP in a fair comparison with the public utility's next planned generating unit identified in the RFP.

(13~~6~~) Within 30 days after the public utility has selected finalists, if any, from the participants who responded to the RFP, the public utility shall publish notice in a newspaper of general circulation in each county in which a finalist ~~has~~ proposeds to build an electrical power plant. The notice shall include the name and address of each finalist, the name and address of the public utility, and a general description of each proposed electrical power plant, including its location, size, fuel type, and associated facilities.

(14) If the Commission approves a purchase power agreement as a result of the RFP, the public utility shall be authorized to recover the prudently incurred costs of the agreement through the

public utility's capacity, and fuel and purchased power cost recovery clauses absent evidence of fraud, mistake, or similar grounds sufficient to disturb the finality of the approval under governing law. If the public utility selects a self-build option, any 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 unforeseen and beyond its control.

~~(15)8-~~ The Commission shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Tom Ballinger

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: September 30, 2002

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DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume
28, Number 37, September 13, 2002

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).