

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-03-0653-FOF-EQ  
ISSUED: May 28, 2003

The following Commissioners participated in the disposition of  
this matter:

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

NOTICE OF ADOPTION OF RULE

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

The rule was filed with the Department of State on May 28,  
2003 and will be effective on June 17, 2003. A copy of the rule as  
filed with the Department is attached to this Notice.

This docket is closed upon issuance of this notice.

By ORDER of the Florida Public Service Commission, this 28th  
day of May, 2003.

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 )

JSB

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25-22.082 Selection of Generating Capacity.

(1) Scope and Intent. 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 Section 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)(1) 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)(a) Next Planned Generating Unit: the next generating unit addition planned for construction by a public ~~an investor-owned~~ utility that will require certification pursuant to Section 403.519, Florida Statutes.

(c)(b) Request for Proposals (RFP): a document in which a public ~~an 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)~~(c)~~ 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.

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

(4)~~(3)~~ 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) the name and address of the contact person from whom an RFP package may be requested;

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

~~(5)(4)~~ No term of the RFP shall be unfair, unduly discriminatory, onerous, or commercially infeasible. 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. the MW size;
3. the estimated in-service date;

4. the primary and secondary fuel type;
  5. an estimate of the total direct cost;
  6. an estimate of the annual revenue requirements;
  7. an estimate of the annual economic value of deferring construction;
  8. an estimate of the fixed and variable operation and maintenance expense;
  9. an estimate of the fuel cost;
  10. an estimate of the planned and forced outage rates, heat rate, minimum load and ramp rates, and other technical details;
  11. a description and estimate of the costs required for associated facilities such as gas laterals and transmission interconnection;
  12. a discussion of the actions necessary to comply with environmental requirements; and
  13. a summary of all major assumptions used in developing the above estimates;
- (b) a copy of the public utility's most recent Ten-Year Site Plan;

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

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

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

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

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

(g) best available 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.

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

(7)(5) 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 proposes to build an electrical power plant ~~proposed 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.

~~(8)(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 proposes ~~has proposed~~ 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.

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

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

(11) 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.

(12) A potential participant may file with the Commission objections to the RFP limited to specific allegations of violations of this rule within 10 days of the issuance of the RFP. The public utility may file a written response within 5 days. Within 30 days from the date of the objection, the Commission panel assigned shall determine whether the objection as stated would demonstrate that a rule violation has occurred, based on the written submission and oral argument by the objector and the public utility, without discovery or an evidentiary hearing. The RFP process will not be abated pending the resolution of such objections.

(13) 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.

(14) 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. The public utility may modify the construction costs and/or performance parameters affecting revenue requirements in its next planned generating unit that it included in the RFP. However, if it

chooses to do so, it must inform participants of its intent, and provide the participants (limited to the remaining finalists) a corresponding opportunity to revise their bids.

(15) 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, 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 due to extraordinary circumstance.

(16)(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.

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

(18)(9) Upon a showing by a public utility and a finding by the Commission that a proposal not in compliance with this rule's

provisions will 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 otherwise will serve the public welfare, the Commission shall exempt the utility from compliance with the rule or any part of it for which such justification is found ~~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.~~

Specific Authority: 350.127(2), 366.01, 366.05(1), 366.05(7), 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.

History: New 1/20/94, Amended.