

FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

JANUARY 7, 1993

TO :DIRECTOR OF RECORDS AND REPORTING

FROM :DIVISION OF APPEALS (RULE)
DIVISION OF LEGAL SERVICES (PALECKI)
DIVISION OF ELECTRIC AND GAS (FLOYD, BALLINGER)
DIVISION OF RESEARCH AND REGULATORY REVIEW (HOPPE, HEWITT)

RE :DOCKET NO. 921288-EU, PROPOSED NEW RULE 25-22.082, F.A.C.,
BIDDING.

AGENDA:JANUARY 19, 1993 - CONTROVERSIAL AGENDA - PARTIES MAY
PARTICIPATE

PANEL:FULL COMMISSION

CRITICAL DATES:NONE

SPECIAL INSTRUCTIONS: I:\PSC\APP\921288.RCM

CASE BACKGROUND

The Commission recently considered the joint petition to determine need filed by Cypress Energy Partners, L.P. and Florida Power & Light Company ("FPL"). During the proceedings, the Commissioners expressed frustration with the process used by FPL to evaluate proposed power projects did not facilitate the Commission's statutory responsibility to determine the most cost-effective generating unit under Section 403.519, Florida Statutes. The Commissioners were particularly concerned about the need for closure of the selection process, and therefore directed staff to develop a rule instructing utilities in the procedures by which they select between competing providers of capacity and energy.

Staff has developed a draft of a rule proposal for discussion purposes. This recommendation discusses the draft.

DISCUSSION OF ISSUE

ISSUE 1: Should staff hold a workshop on its preliminary draft of new Rule 25-22.082, Florida Administrative Code, Bidding?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Staff has developed a preliminary draft of a rule requiring utilities to solicit bids for their new generating capacity.

Utilities are not presently required to solicit bids before filing a petition to determine need for new generating units. However, the Commission may wish to change this policy in order to ensure a fair selection procedure which would facilitate the Commission's review of power plant siting petitions and offer closure to the parties.

The rule would require solicitation of bids for new generating units and would allow utilities to participate in the bid process.

If the utility did not submit a bid, it could still reject all bids and build the project itself for a total price at least 3% lower than the lowest bid. Persons who did not submit a bid would not have standing to intervene in a need determination proceeding. Payments pursuant to a contract would be recovered through fuel and purchased power cost recovery. The Commission could excuse a utility from soliciting bids if bidding is not in the ratepayers' best interests.

A bidding rule would affect some of the Commission's cogeneration rules, which should be changed as follows if the Commission eventually adopts a bidding rule similar to the attached draft:

25-17.080 Definitions and Qualifying Criteria. **(No change)**

25-17.081 Reserved. **(No change)**

25-17.082 The Utility's Obligation to Purchase; Customer's Selection of Billing Method. **(No change)**

25-17.0825 As-Available Energy. **(No change)**

25-17.083 Firm Energy and Capacity.-- Repealed 10/25/90 **(No change)**

25-17.0831 Contracts.-- Repealed 10/25/90 **(No change)**

25-17.0832 Firm Capacity and Energy Contracts.

Recommendation: Repeal existing rule and substitute: Firm capacity and energy are capacity and energy produced and sold by a qualifying facility and purchased by a utility pursuant to a contract resulting from a bid proceeding

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pursuant to Rule 25-22.082.

25-17.0833Planning Hearings.

Recommendation: Move this rule to section of procedural rules governing power plant and transmission line siting.

25-17.0834Settlement of Disputes in Contract Negotiations.

Recommendation: Repeal.

25-17.0835 Wheeling.--Repealed 10/4/85 (No change)

25-17.084The Utility's Obligation to Sell. (No change)

25-17.085Reserved. (No change)

25-17.086 Periods During Which Purchases are not Required. (No change)

25-17.087 Interconnection and Standards. (No change)

25-17.088Transmission Service for Qualifying Facilities.--Repealed 10/25/90 (No change)

25-17.0882Transmission Service Not Required for Self-Service.-- Repealed 10/25/90 (No change)

25-17.0883Conditions Requiring Transmission Service for Self-service. (No change)

25-17.0889Transmission Service for Qualifying Facilities. (No change)

25-17.089Contractual Rights.-- Repealed 9/4/83 (No change)

25-17.090Governmental Solid Waste Energy and Capacity. (No change)

25-22.080 Electrical Power Plant Permitting Proceedings. (No change)

25-22.081Contents of Petition. **Recommendation:** insert provision requiring utilities to include in their petitions for determination of need a complete description of the bidding process used pursuant to 25-22.082 and the results of the bidding process.

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Staff does not recommend that the Commission formally propose a bidding rule at this time. The draft rule is presented for discussion purposes only, and does not represent a staff consensus on the best selection procedure. Further investigation is necessary before proposing a rule. However, staff believes that the attached preliminary draft is a good starting point for discussion, and would like to hold a staff workshop on it. Staff requests direction from the Commission because the draft rule embodies a significant change of policy.

Attachments:

Rule 25-22.082

25.22 C.S.2 Bidding

(1) After a utility identifies a need for additional generating capacity it shall solicit bids on the project. The utility shall complete the bid process before petitioning for the certification of need for any proposed electrical power plant.

(2) To the extent possible, the utility's bid process shall be structured to allow evaluation of projects on a price-only basis. The utility shall furnish participants with the actual contract for the type of resource required by the utility, which shall contain all terms and conditions applicable to the purchase of power. The utility shall publish, as part of the bid process, the minimum characteristics or criteria that a project must meet or exceed to qualify for consideration, which shall include, at a minimum:

(a) details on how the project is intended to affect the utility's quality of service and ability to provide power; and

(b) all non-price specifications of the proposed plant such as a total MW size, dispatchability, performance requirements and guarantees, fuel escalators, the degree to which the utility can control or schedule maintenance at the plant, general transmission requirements, security provisions, and other financial, technical and engineering data.

The utility need not specify fuel type.

(3) The utility may participate in the bid process by submitting a bid. However, if the utility participates, it shall notify participants of its intent to bid and must use a sealed bid process with all bids received, opened and published by an independent third party. If the utility does not submit a bid, it may, at the conclusion of the bid process, reject all bids and itself elect to build and operate the proposed project under the terms of the bid solicitation contract, with costs recovered as described in paragraph (4).

However, the utility shall then be required to demonstrate, and the Commission must find, that the total price prepared by the utility is at least 3% lower than the lowest bid considering all fixed and variable costs, including forecasted fuel, over the life of the contract. The Commission shall calculate all variable costs at the need determination proceeding in order to decide whether the utility's price is at least 3% lower than the lowest bid.

(4) Payments made by an investor-owned utility pursuant to a contract shall be recovered through fuel and purchased power cost recovery, regardless of whether the contract is awarded to a utility or non-utility. Once the contract is approved for cost recovery purposes, the Commission will not reopen the contract to increase cost recovery, regardless of whether the contract is awarded to a utility or a non-utility generator.

(5) Competing providers of generating capacity who did not submit a bid shall have no standing to intervene in a proceeding to determine need for an electrical power plant under Section 403.519, Florida Statutes.

(6) The Commission may grant a utility's request to be excused from soliciting bids if the utility demonstrates, and the Commission finds, that bidding is not in the best interest of the utility's ratepayers.

Specific Authority: 350.01(6) F.S., 366.05(7) F.S.

Law Implemented: 403.519, F.S.

1 History. New

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*COPIES: Words underlined are additions; words in
struck through type are deletions from existing law.*