



Public Service Commission

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RECORDS AND REPORTING
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DATE: AUGUST 6, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BA)

FROM: DIVISION OF ELECTRIC AND GAS (HARLOW) *JJK TR 22*
DIVISION OF LEGAL SERVICES (C. KEATING) *RVE WOK*

RE: DOCKET NO. 980783-EI - PETITION BY GULF POWER COMPANY FOR
WAIVER OF PORTIONS OF RULE 25-22.082(4)(A), F.A.C.,
SELECTION OF GENERATING CAPACITY. *JNJ*

AGENDA: 08/18/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: SEPTEMBER 22, 1998 - PETITION DEEMED APPROVED IF
NOT GRANTED OR DENIED WITHIN 90 DAYS OF RECEIPT

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\980783.RCM

CASE BACKGROUND

On June 24, 1998, Gulf Power Company (Gulf) filed a petition for waiver of the requirements of Rule 25-22.082(4)(a), Florida Administrative Code. Pursuant to Section 120.542(6), Florida Statutes, notice of Gulf's petition was submitted to the Secretary of State for publication in the July 17, 1998, Florida Administrative Weekly. The Legal Environmental Assistance Foundation (LEAF) filed comments concerning the petition within the 14-day comment period required by Rule 28-104.003, Florida Administrative Code. In accordance with Section 120.542(8), Florida Statutes, the Commission must grant or deny the petition by September 22, 1998.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission waive the requirements of Rule 25-22.082(4)(a), Florida Administrative Code, as to Gulf Power Company (Gulf)?

RECOMMENDATION: No. Application of the rule will not create a substantial hardship for Gulf. Given the increase in wholesale competition, the possibility that bids will converge around the utility's avoided cost if this data is disclosed in the RFP is less likely today than when the RFP rule was implemented. Further, a substantial portion of the data required by subsection 4a of the RFP rule was recently published by Gulf in its 1998 revised Ten-Year Site Plan.

STAFF ANALYSIS: Prior to filing a petition for determination of need for an electrical power plant, each investor-owned electric utility is required, pursuant to Rule 25-22.082(2), Florida Administrative Code, to evaluate supply-side alternatives to its next planned generating unit by issuing a Request for Proposals (RFP). Rule 25-22.082(4)(a), Florida Administrative Code, requires that each utility's RFP include:

a detailed technical description of the 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 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

Gulf seeks a waiver of this rule so that it may avoid including this information in an RFP it anticipates issuing in the near future.

Section 120.542, Florida Statutes, mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Gulf argues that application of the rule creates a substantial hardship to Gulf. Gulf further argues that the purpose of the underlying statute will be achieved if Gulf's petition is granted.

In its petition, Gulf asserts that since January 20, 1994, when the Commission adopted Rule 25-22.082, Florida Administrative Code (the "RFP rule"), competition in the wholesale market has increased, due in large part to the Federal Energy Regulatory Commission's Order No. 888. Given this increase in competition, Gulf states that it is "not necessary nor is it in the best interest of Gulf's general body of retail ratepayers for the Commission to require that Gulf's RFP contain the detailed information set forth in subparagraph 4a of the RFP rule." Gulf asserts that the purpose of the statute underlying the RFP rule is

to enable the Commission to determine, during the need determination process, whether the proposed plant is the most cost-effective alternative available. Gulf argues that if it is required to release information about its avoided cost in an RFP, the prices offered by bidders will tend to converge around its avoided cost. Therefore, Gulf contends, the RFP may not result in the lowest cost alternative, thus frustrating the purpose of the underlying statute and creating a substantial economic hardship for Gulf and its customers in the form of increased costs for generation capacity.

Staff notes that the disclosure of utilities' avoided costs was discussed extensively at the September 29, 1993 hearing concerning the RFP rule. (TR 19-20, 30-34, 60-81) The utilities' primary objections to releasing this information dealt with the concern that utilities would be bound by these cost estimates and that bids would tend to converge around the utilities' avoided cost. The hearing transcript, however, indicates that the intent of the rule was not to hold utilities to the avoided cost estimates published in their RFPs, but rather to give the Commission information needed to continue to review additional expenditures over the life of the plant. (TR 22, 30-34, 57-81, 90-93) The utilities' avoided cost data would also provide some basic information to potential bidders and act as a sanity check when utilities file a need determination either alone or jointly with a non-utility generator. Further, it is necessary for utilities to publish avoided cost estimates to allow for the continuation of standard offer contracts with qualifying facilities. Disclosure of this information is also necessary for the Commission to evaluate the utilities' Ten-Year Site Plans and conservation programs. (TR 32-33) As shown by Attachment A, a substantial portion of the data required by subsection 4a of the RFP rule was recently published by Gulf as part of the Company's 1998 revised Ten-Year Site Plan.

The focus of Gulf's argument is that, given the increase in wholesale competition, bids will tend to converge around Gulf's avoided cost if this information is published in its RFP. In support of this position, Gulf supplied the affidavits of M. W. Howell, Transmission and System Control Manager for Gulf; John F. Young, Vice President of Southern Wholesale Energy; and Hugh A. Gower, a Certified Public Accountant. Staff notes that the Commission considered this argument during its September 29, 1993 rulemaking hearing, yet found that avoided cost data should be included in RFPs. Further, staff believes that the possibility that bids will converge around the utility's avoided cost is less likely today than when the RFP rule was implemented.

Staff agrees with Gulf's statement that competition in the wholesale market has increased since the RFP rule was implemented in 1994. However, staff believes that this increase in competition will **lessen** the possibility that potential bidders will not present their lowest price. Pursuant to the RFP rule, utilities may select finalists from the list of bidders and negotiate a final price. As noted on page 14 in the November 22, 1993 staff recommendation concerning adoption of the RFP rule, staff believes that even if a utility publishes its avoided cost estimates, potential bidders will compete with each other to make it to the negotiating table. Staff believes that the increased number of potential bidders in today's market provides more incentive for bidders to present their lowest price to make it to final negotiations. Thus, staff believes that Gulf has not shown that a waiver of the requirements of subparagraph 4a of the RFP rule will more likely result in a lower cost supply of electricity to Gulf and its general body of ratepayers. Accordingly, staff believes that Gulf has not demonstrated that the purpose of the underlying statute, absent the requested rule waiver, will be frustrated or that application of the RFP rule will create a substantial hardship on Gulf or its customers.

In its comments, LEAF notes that while Gulf's apparent concern is with the financial information required by the RFP rule, Gulf has asked for a waiver from all the information requirements of the rule. LEAF argues that it is not necessarily harmful to Gulf to release these financial assumptions. Staff agrees. As stated above, a substantial portion of this information is already publicly available through Gulf's 1998 revised Ten-Year Site Plan, and staff believes that its release will not likely result in a higher cost supply of power.

LEAF also notes that Gulf will be the first utility to issue an RFP under the requirements of the RFP rule. Thus, LEAF expressed concern that waiver of the RFP rule in this case will set a precedent that may "carve out" the use of the rule in the future. Staff shares this concern. If such a broad waiver is granted, a precedent would be set that would require persons to look not only to the RFP rule but also to the waiver in order to determine the state of the law on RFPs.

In conclusion, staff recommends that Gulf's request for a waiver of the requirements of Rule 25-22.082(4)(a), Florida Administrative Code, be denied. Given the increase in wholesale competition, the possibility that bids will converge around the utility's avoided cost if this data is disclosed in the RFP is less likely today than when the RFP rule was implemented. Further, a

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substantial portion of the data required by subsection 4a of the RFP rule was recently published by Gulf in its 1998 revised Ten-Year Site Plan. Therefore, staff believes that Gulf has not demonstrated that application of the RFP rule will create a substantial hardship on Gulf or its customers. In addition, it is not clear whether the purpose of the underlying statute will be achieved by the means suggested by Gulf.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: This docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period.

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed.

Schedule 9
Status Report and Specifications of Proposed Generating Facilities

Page 1 of 3

(1)	Plant Name and Unit Number:	Lansing Smith
(2)	Capacity a. Summer: b. Winter:	532 MW 532 MW
(3)	Technology Type:	Combined Cycle
(4)	Anticipated Construction Timing a. Field construction start - date: b. Commercial in-service date:	03/01 06/02
(5)	Fuel a. Primary fuel: b. Alternate fuel:	Natural Gas None
(6)	Air Pollution Control Strategy:	Dry low NOx combustor
(7)	Cooling Method:	Cooling Tower
(8)	Total Site Area:	1340 acres (total plant site)
(9)	Construction Status:	This facility is planned but not authorized
(10)	Certification Status:	Not applied
(11)	Status with Federal Agencies:	Not applied
(12)	Projected Unit Performance Data Planned Outage Factor (POF): Forced Outage Factor (FOF): Equivalent Availability Factor (EAF): Resulting Capacity Factor (%): Average Net Operating Heat Rate (ANOHR):	5.80% 3.20% 91.20% 70% - 90% 6,527
(13)	Projected Unit Financial Data Book Life (Years): Total Installed Cost (In-Service Year \$/kW): Direct Construction Cost (\$/kW): AFUDC Amount (\$/kW): Escalation (\$/kW): Fixed O&M (\$/kW - Yr): Variable O&M (\$/MWH): K Factor:	40 495 395 66 34 3.08 2.09 1.5371

Utility: Gulf Power Company

Schedule 10
Status Report and Specifications of Proposed Directly Associated Transmission Lines

- (1) Point of Origin and Termination:
- (2) Number of Lines:
- (3) Right-of-Way:
- (4) Line Length: None
- (5) Voltage:
- (6) Anticipated Construction Timing:
- (7) Anticipated Capital Investment:
- (8) Substations:
- (9) Participation with Other Utilities:

Utility: Gulf Power Company

Nominal, Delivered Distillate Oil and Natural Gas Prices
Base Case

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Year	Distillate Oil			Natural Gas		
	\$/BBL	c/MBTU	Escalation %	c/MBTU	c/Therm	Escalation %
1998	27.66	470	----	242	24	----
1999	29.20	495	5.3	223	22	-7.9
2000	30.23	512	3.4	223	22	0.0
2001	31.01	525	2.5	223	22	0.0
2002	31.97	541	3.0	223	22	0.0
2003	32.82	556	2.8	223	22	0.0
2004	33.91	574	3.2	239	24	7.2
2005	35.04	593	3.3	270	27	13.0
2006	36.20	613	3.4	282	28	4.4
2007	37.56	636	3.8	291	29	3.2