

State of Florida



Public Service Commission

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COMMISSION
CLERK

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DATE: MAY 9, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (BALLINGER) *JS*
DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT (FUTRELL) *JDJ*
OFFICE OF THE GENERAL COUNSEL (BROWN, BELLAK, C. KEATING) *M7* *RCB* *MB*

RE: DOCKET NO. 020398-EI - PROPOSED REVISIONS TO RULE NUMBER
25-22.082, SELECTION OF GENERATING CAPACITY

AGENDA: 05/21/02 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED
PERSONS MAY PARTICIPATE

RULE STATUS: PROPOSAL SHOULD NOT BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\020398EI.RCM

CASE BACKGROUND

Prior to the construction of a power plant with a steam cycle greater than 75 MW, a utility must receive certification from the Governor and Cabinet pursuant to Sections 403.501-.518, Florida Statutes, also referred to as the Power Plant Siting Act (PPSA). Section 403.519, Florida Statutes, requires utilities to file a petition for Determination of Need with the Florida Public Service Commission (Commission). An affirmative determination of need is a prerequisite to certification pursuant to the PPSA. Rule 25-22.082, Florida Administrative Code (F.A.C.), was originally adopted by the Commission in January 1994, requiring investor-owned electric utilities to issue Requests for Proposals (RFPs) prior to filing a petition for Determination of Need.

DOCUMENT NUMBER-DATE

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Since it was adopted, Rule 25-22.082, F.A.C., has been utilized once by Gulf Power Company and once by Florida Power & Light Company. Florida Power Corporation has issued RFPs twice since the adoption of Rule 25-22.082, F.A.C.. During this same time frame, large amounts of generating capacity were being planned and constructed without the requirement of certification under the PPSA 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, resulting in a net increase of capacity of approximately 380 MW. Since this was the first time a utility had sought cost recovery of a repowering project, in January of 2000 the staff recommended that TECO be required to issue an RFP prior to the repowering of its Gannon plants. The Commission denied staff's recommendation, but directed staff to look at the idea of revising the 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. Therefore, staff decided to put any formal changes to Rule 25-22.082, F.A.C., on hold until the Study Commission's work was complete. On December 11, 2001, the Study Commission issued its Final Report. A strategy recommended by the Study Commission was to "[P]rovide 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." Some specific task recommendations by the Study Commission 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, the Commission held a workshop to discuss a staff prepared "strawman" version of proposed changes to Rule 25-22.082, F.A.C.. The Florida Partnership for Affordable Competitive Energy (Florida PACE) also provided suggested revisions to the current capacity selection rule. On March 15, 2002, post-workshop comments were filed collectively by the four large investor-owned electric utilities and by Florida PACE. Upon consideration of the discussions at the workshop and the comments filed, staff has revised the "strawman" proposal and is now seeking guidance from

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the Commission on how to proceed. Specifically, staff is seeking guidance in the following areas: What should the rule require regarding the collocation of non-utility generation on utility-owned property? For what capacity additions should an RFP process be utilized? Should the timing of cost recovery review be mandatory or discretionary? What remedies are available to the Commission in reviewing cost recovery of generation additions? What types of bilateral contracts should be exempt from the RFP process?

DISCUSSION OF ISSUES

ISSUE 1 Should the Commission schedule a rule development workshop to discuss the potential revisions to Rule 25-22.082, Florida Administrative Code, contained in Attachment A?

RECOMMENDATION Yes. The Request For Proposals (RFP) process is a tool to be used to justify a capacity selection. The proposed revisions are an attempt to utilize this tool more effectively based upon experience gained over the past several years. Specifically, the revisions would: (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 utility's 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. [Ballinger, Brown, Bellak]

STAFF ANALYSIS The primary concern discussed at the February 7, 2002, workshop regarding the "strawman" proposal was directed towards the Commission's statutory authority. Specifically, the investor-owned electric utilities (IOUs) questioned the Commission's authority to require RFPs for non-PPSA generating facilities, allow non-utility generators to build on utility-owned sites, and select a generating project other than the utility's proposed project. The IOUs also questioned the Commission's authority regarding the existing capacity selection rule. The non-utility generating companies, represented by the Florida PACE, argued that the Commission had broad authority and that the staff proposed "strawman" did not go far enough to promote wholesale competition. The Florida PACE also provided suggested revisions to the current capacity selection rule. Upon consideration of the discussions at the workshop and the comments filed, staff has revised the "strawman" proposal to more clearly articulate the purpose of the rule and to minimize changes to current regulatory processes for review and cost recovery. As with the "strawman", the proposed revisions are designed to utilize an RFP process in order 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. (See Section (2) of the proposed revisions)

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The Florida PACE proposal would have the Commission approve an RFP prior to its release, adopt a strict scoring procedure, hire an independent third party to evaluate and score the proposals, have the utility be bound to its price proposal, and finally have the Commission approve the results of the RFP process. These same issues were discussed at length when the Commission deliberated the adoption of the current rule language. Staff recommends that the same rationale relied upon to reject these concepts in the past holds true today. Basically, the PACE proposal would have the Commission change its role from one of management review to one of direct management of the utility. In addition, the Commission is probably the only truly independent third party to evaluate the results of an RFP. In 1994, when the current rule was adopted, the Commission recognized that the RFP process is a tool to be used to justify a capacity selection. The proposed revisions are an attempt to utilize this tool more effectively based upon experience gained over the past several years.

Collocation

At the February 7, 2002 workshop, the IOUs interpreted the language referring to collocating non-utility generation at utility-owned sites as a taking of property. At the workshop, staff explained the intent of the language was to simply have utilities explore the option of collocation of non-utility generation, not summarily dismiss the option. After the clarification, it appears that there is a consensus of the willingness of utilities to evaluate proposals for non-utility generation at utility-owned sites. Mr. Gary Sasso, representing the IOUs, stated that "we can assure the Commission that currently with the current rule we explore that option. In fact, in the case of our Hines 2 proposal we offered a site to third parties." Therefore, staff has clarified the proposed revisions to state that a participant may submit proposals for non-utility generation at utility owned sites and a utility must evaluate such proposals as part of the RFP process. In this manner, the Commission can determine if the use of the utility's site is prudent. (See Sections (6) and (11) of the proposed revisions)

Capacity Additions That Require an RFP

As discussed in the background, major capacity additions have been added to the utilities' systems without the use of an RFP process to test the market. Therefore, staff sought to broaden the use of an RFP process to encompass repowerings and other major non-PPSA projects. However, the 50 MW threshold may lead to a substantial increase of administrative costs without a commensurate benefit since the capacity addition is small compared to a utility's total system. In addition, such a low threshold may reduce a utility's ability to respond to short-term reliability concerns. In consideration of these factors, staff is suggesting that the threshold be raised to 150 MW. Such a level should capture significant capacity additions, while not overwhelming the utility with having to issue an RFP for a small percentage change in overall generating capacity. A utility could still construct a relatively small capacity addition in order to maintain reliability without the lead time associated with an RFP process. (See section (1)(b) of the proposed revisions)

Timing of Cost Recovery Review

The "strawman" proposal discussed at the February 7, 2002 workshop would have required the utility to seek Commission approval for cost recovery at the conclusion of each RFP. Staff suggests that a utility have the discretion to petition the Commission for cost recovery, rather than mandating a filing at the conclusion of each RFP. The request for cost recovery could be either through the capacity and fuel recovery clauses or through a base rate proceeding. A utility would still be required to petition for a determination of need if the facility is subject to the PPSA. As a general principal, the Commission may, on its own motion, review the results of an RFP process. Consistent with the "Strawman", the Commission would also address on an expedited basis, a complaint filed by a participant to an RFP process. With this approach, the Commission would retain its current regulatory oversight and cost-recovery approval processes. (See Section (14) of the proposed revisions)

Remedies Upon Review for Cost Recovery

Staff is now recommending that the rule maintain current regulatory procedures as much as possible. As such, the review of the prudence of the utility's selection in an RFP process could be during a need determination proceeding, the annual review of fuel and purchased power costs, a base rate proceeding, a separate cost recovery petition, or the resolution of a complaint. Since the relief that can be granted varies for each proceeding, staff is recommending that the Commission take such action as it deems appropriate at the time based on the evidence submitted in the proceeding. (See Section (13) of the proposed revisions)

If the Commission wishes to further clarify the range of possible remedies, the rule language could include a list of possible remedies. For example, the Commission may include some of the following actions in Section (13) of the proposed revisions:

- 1) disallow a portion or all costs associated with the generation addition;
- 2) allow costs associated with a generation addition to be recovered through a recovery clause;
- 3) impute revenues to mitigate excess generation over a period of time;
- 4) require the utility to re-issue an RFP for the proposed capacity addition;
- 5) provide a performance incentive for the generation addition;
- 6) require the utility to select another proposal from the participants to the RFP process; or
- 7) select a participant to the RFP process as the most cost-effective alternative.

The above mentioned remedies are not meant to be all inclusive.

Exemptions from the RFP Process

One final change to the "strawman" proposal is to shorten the term of bilateral contracts that would not require an RFP. Originally, staff had proposed that contracts of less than five years could be exempted from the RFP requirement. Upon further consideration, staff would propose that a term of three years is more suitable for identifying short-term opportunities. As with the "strawman", utilities would not be able to purchase from an affiliate unless the affiliate participated in an RFP process. (See Section (15) of the proposed revisions)

Requested Guidance

Staff is not recommending that the Commission formally propose the attached revisions to Rule 25-22.082, F.A.C., at this time. Rather, staff is requesting approval to move forward with the rule making process by scheduling a rule development workshop to discuss the revisions shown in Attachment A. After the rule development workshop and subsequent comments, staff may conduct additional workshops or recommend that the Commission formally propose revisions to the existing rule.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 1, this docket should remain open for rulemaking proceedings.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should remain open for rulemaking proceedings.

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

(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) Major Capacity Addition: an capacity addition which will require certification pursuant to Section 403.519, Florida Statutes, or any capacity addition of 150 MW or more which does not require certification pursuant to Section 403.519, Florida Statutes, including but not limited to the repowering of an existing generating facility.~~

~~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 Statutes.~~

~~(c) Request for Proposal (RFP): a document in which an public investor-owned utility publishes the price and non-price attributes of its next planned major capacity addition 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 major capacity addition.~~

(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,

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

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

8 ~~(2) Prior to filing a petition for determination of need for~~
9 ~~an electrical power plant pursuant to Section 403.519, Florida~~
10 ~~Statutes, each investor-owned electric utility shall evaluate~~
11 ~~supply-side alternatives to its next planned generating unit by~~
12 ~~issuing a Request for Proposal (RFP). A Public Utility is~~
13 required to provide reasonably efficient, adequate, and efficient
14 service to the public at fair and reasonable rates. In order to
15 assure an adequate and reliable source of energy, a public utility
16 must plan and construct or purchase sufficient generating capacity.
17 To assure fair and reasonable rates and to avoid the further
18 uneconomical application of generation, transmission, and
19 distribution facilities in Florida, a public utility must select
20 the most economical and cost-effective mix of supply-side and
21 demand-side resources to meet the demand and energy requirements of
22 its end-use consumers. The Commission finds that the use of RFPs
23 to select additional generating resource requirements is an
24 appropriate means by which to ensure that a public utility meets
25 its obligation to provide an adequate, reliable, and cost-efficient

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1 supply of capacity and energy. Each public utility, therefore,
2 shall issue an RFP prior to the commencement of construction of a
3 major capacity addition. Public utilities are encouraged to issue
4 an RFP, using these rules as guidelines, prior to the construction
5 or purchase of any other generating resource addition.

6 (3) Each public investor-owned utility shall provide timely
7 notification of its issuance of an ~~RFQ~~ public notice
8 in major newspapers, periodicals and ~~other~~ publications to ensure
9 statewide and national circulation. The ~~public~~ notice given shall
10 include, at a minimum:

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

13 (b) a general description of the public utility's next
14 planned ~~generating unit~~ major capacity addition, including its
15 planned in-service date, ~~location~~ location, fuel type and
16 technology; and

17 (c) a schedule of critical dates for the solicitation,
18 evaluation, ~~screening~~ evaluation of proposals and subsequent contract
19 negotiations.

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

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

23 (a) a detailed technical description of the public utility's
24 next planned major capacity addition ~~generating unit or units~~ on
25 which the RFP is based, all costs that are associated with the

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1 major capacity addition, as well as the financial assumptions and
 2 parameters associated with it, including, at a minimum, the
 3 following information:

- 4 1. a description of the public utility's next planned major
 5 capacity addition ~~generating unit(s)~~ and its proposed
 6 location(s);
- 7 2. the MW size;
- 8 3. the estimated in-service date;
- 9 4. the primary and secondary fuel type;
- 10 5. an estimate of the total direct cost;
- 11 6. an estimate of the annual revenue requirements;
- 12 7. an estimate of the annual economic value of deferring
 13 construction;
- 14 8. an estimate of the fixed and variable operation and
 15 maintenance expense;
- 16 9. an estimate of the fuel cost;
- 17 ~~10. the costs of common facilities at the site allocated to~~
 18 the major capacity addition, including, but not limited
 19 to land improvements, transmission facilities, cooling
 20 water facilities, fuel transportation and handling
 21 facilities, and other infrastructure.
- 22 ~~11. an estimate of the planned and forced outage rates, heat~~
 23 ~~rate, minimum load and ramp rates, and other technical~~
 24 details;

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1 12. a description and estimate of the costs required for
2 associated facilities such as gas laterals and
3 transmission interconnection;

4 13. a discussion of the actions necessary to comply with
5 environmental requirements; and

6 14. a summary of all major assumptions used in developing the
7 above estimates;

8 (b) Detailed information regarding the public use of ten
9 year historical and ten year projected net energy for load, and
10 summer and winter peak demand by class of customers;

11 (c) a schedule of critical dates for solicitation,
12 evaluation, screening of proposals, selection of finalists, and
13 subsequent contract negotiations, and submission for Commission
14 approval, if necessary;

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

- 18 1. technical and financial viability;
- 19 2. negotiability;
- 20 3. deliverability (interconnection and transmission;
- 21 4. fuel supply;
- 22 5. water supply;
- 23 6. environmental compliance;
- 24 7. performance criteria; and
- 25 8. pricing structure, and

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

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 adjustments 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 registration fees that will be required of a
 16 participant. Any such fees or deposits shall be cost-based but
 17 shall not exceed \$20,000 in the aggregate, with no more than \$500
 18 required to obtain a permit.

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

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

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

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

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

6 (11) The public utility shall evaluate the proposals received
7 in response to the RFP in a fair comparison with the public
8 utility's next planned major capacity addition identified in the
9 RFP.

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

19 (127) The Commission, upon its own motion, or a participant may
20 challenge the results of an RFP. A participant may file a
21 complaint with the Commission or intervene in a subsequent need
22 determination or cost recovery proceeding. Any complaint will be
23 processed by the Commission on an expedited basis. In resolving a
24 challenge to the results of an RFP, the Commission may take such
25 action as it deems appropriate.

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1 (14) Upon conclusion of an RFP process, the public utility may
 2 petition the Commission for approval of the public utility's
 3 selection. If the Commission approves a purchase power agreement
 4 as a result of the RFP, the public utility shall be authorized to
 5 recover the prudently incurred costs of the agreement through the
 6 public utility's capacity, and fuel and purchased power cost
 7 recovery clauses absent evidence of fraud, mistake, or similar
 8 grounds sufficient to disturb the validity of the approval under
 9 governing law.

10 (15) Nothing in this rule shall prohibit a public utility from
 11 entering into short-term bilateral contracts having a term of
 12 three years or less, for the purchase of capacity and energy. If
 13 the public utility chooses this option, it must justify the
 14 prudence of its decision prior to recovering the costs of the
 15 contract from its retail customers. A public utility, however,
 16 shall not enter into a bilateral contract for the purchase of
 17 capacity and energy with an affiliate outside of the RFP process.

18 ~~the Commission shall not allow potential suppliers of~~
 19 ~~capacity who were not participants to contest the outcome of the~~
 20 ~~selection process and power plant need determination proceeding.~~

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

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1 Specific Authority 350.127(2), 366.05(1), 366.06(2), 366.07,
2 366.051 FS. Law Implemented 403.519, 366.04(1), 366.06(2), 366.07,
3 366.051 FS. History.
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