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June 28, 2002

VIA HAND DELIVERY

Ms. Blanca S. Bayó, Director
Division of Commission Clerk and
Administrative Services
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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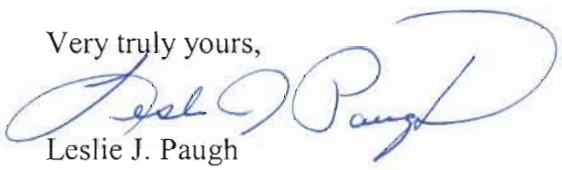
Re: Docket No. 020398-EI; Proposed revisions to Rule 25-22.082, Selection of Generating Capacity.

Dear Ms. Bayó:

Enclosed for filing please find one (1) original and fifteen (15) copies of the Pre-Workshop Comments of the Florida Partnership for Affordable Competitive Energy, submitted for filing in the above referenced docket. Please also find the enclosed diskette, containing an electronic version of the Filing in Word format.

Please acknowledge receipt of this document by time/date stamping the enclosed additional copy of the Filing, as indicated.

Very truly yours,


Leslie J. Paugh

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed revisions to Rule 25-22.082,)
Selection of Generating Capacity)
_____)

Docket No. 020398-EI
Filed June 28, 2002

**PRE-WORKSHOP COMMENTS OF THE FLORIDA
PARTNERSHIP FOR AFFORDABLE COMPETITIVE ENERGY**

Comes now, the Florida Partnership for Affordable Competitive Energy (“PACE”) and hereby files its Pre-Workshop Comments pursuant to Order Initiating Rule Development, Order No. PSC-02-0723-PCO-EQ, issued May 28, 2002, and Notice of Proposed Rule Development and Commission Workshop, issued May 29, 2002.

I. Introduction

PACE is a non-profit organization of Independent Power Producers (“IPPs”) consisting of the following companies: Duke Energy North America, LLC, Mirant Americas Development, Inc., Constellation Power, Inc., Calpine Corporation, Competitive Power Ventures, Inc., PG&E National Energy Group and Reliant Energy. PACE supports the Commission’s and staff’s efforts to effectuate the objective of enhancing the cost-effective selection of additional generating capacity by Florida’s electric utilities through the rule development process. Meeting this objective will benefit all Florida consumers.

II. Staff Proposal

Pursuant to the staff recommendation dated May 9, 2002, (“Recommendation”) and the vote of the Commission during the May 21, 2002, Agenda Conference, Selection of Generating Capacity, Rule 25-22.082, Florida Administrative Code, (“Bid Rule”) is

recommended to be revised in the following four primary ways. First, the scope of projects to which the request for proposals (“RFPs”) process is to apply is recommended to be broadened to encompass repowerings and other projects not subject to the Florida Electrical Power Plant Siting Act¹ by requiring investor-owned utilities (“IOUs”) to issue RFPs for major² capacity additions. Second, IOUs are to be required to evaluate proposals for non-utility generating facilities to be collocated on the IOU’s site. Third, while cost recovery mechanisms remain unchanged, there is proposed to be an expedited complaint review process relative to complaints filed by participants regarding the RFP process. Fourth, it is proposed that bilateral contracts of three years or less in duration be exempt from the RFP process. In addition, the staff proposal appropriately enlarges the list of information that the IOU would be required to provide in its RFP.

PACE submits that the Recommendation does not go far enough toward achieving the goal of enhancing the cost-effective selection of additional generating capacity. To further effectuate achievement of that goal, PACE offers the following additional provisions to ensure that the ratepayers of Florida have the benefit of least-cost, reliable generation additions.

III. PACE Proposal

During the February 7, 2002, Commission workshop, PACE submitted a proposal for revisions to the generation selection process that ensures that the IPPs’ proposals and the IOUs’ self-build proposals are considered on an equal basis. PACE provided a concise comparison between the existing rule and the PACE proposal that is worthy of repeating and being made part of the record in this rule development proceeding.

¹ FLA. STAT. §§ 403.501-403.518 (2001).

² 150 megawatts or greater.

A. The following summarizes the primary provisions of the present Bid Rule:

1. The IOU designs the RFP package.
2. The IOU provides a copy to the PSC when it issues the RFP. (No point of entry for objections is provided and no approval process is contemplated.)
3. The IOU receives proposals.
4. The IOU scores proposals.
5. The IOU announces a winner.
6. The IOU files a petition for determination of need. (Only RFP participants have standing to intervene.)

B. The following summarizes the primary provisions contained in the PACE proposal:

1. The IOU designs the proposed RFP package.
2. The IOU selects the proposed neutral third party to score proposals.
3. The IOU applies to the Commission for approval of the RFP package and approval of the neutral third party evaluator.
4. All potential bidders who have secured the package from the IOU have a specific time frame within which to object to the choice of third party evaluator, or to discriminatory or commercially infeasible RFP criteria. The Commission has the same opportunity to initiate a proceeding to eliminate biased or infeasible criteria on its own motion.
5. If there is no dispute, or after an expedited proceeding on objections, if any, the Commission approves the RFP package.

6. The IOU submits its own self-build proposal to the neutral third party evaluator at the same time as the other bidders.
7. The neutral third party applies the criteria previously approved by the Commission and ranks the proposals.
8. The IOU applies for approval of the proposal selected by the neutral third party evaluator. Where applicable, this request is incorporated in a petition to determine need. RFP participants can intervene, but can contest the selection only on the grounds that the neutral third party evaluator applied the Commission-approved scoring criteria incorrectly.
9. If selected, the IOU is bound by the terms of its bid.

The full text of the PACE proposal is contained in Attachment A, appended hereto.³

The fundamental purpose of the PACE proposal is to provide an objective process based on fixed, reasonable criteria. The central provisions of the PACE proposal are the impartial evaluator and the requirement that the IOU must respond to the RFP on an equal footing with other participants. These provisions will ensure that the ratepayers of Florida pay only for the most cost-effective, reliable generation resources while at the same time allowing the IOU to propose the specifications of the RFP as appropriate for its particular circumstances.

PACE accomplishes its objective through three important provisions. First, PACE has added a requirement that the IOU that proposes a major capacity addition present its RFP to the Commission for approval prior to its issuance. The preliminary approval requirement ensures that the IOU has sufficient flexibility to provide for its

³ The bilateral contract provision has been revised from 5 to 3 years to comport with the current staff recommendation.

specific needs while at the same time providing Commission oversight to protect against discrimination. Discrimination against potential respondents may occur through the inclusion of commercially infeasible terms, terms that favor the self-build option, or terms that do not properly discount the self-build or long-term power purchase agreement options appropriately for their inherent foregoing of future supply or demand opportunities. Confronted with such terms, a potential provider must either choose not to participate, or reflect the added costs and/or unwarranted risks in its bid. Regardless of the choice, the IOU gains an unfair advantage, and the ratepayers are penalized in the form of a process that does not result in the greatest number of participants offering their lowest possible bids.

Currently, respondents have the ability to submit a complaint against an IOU that is related to excesses within the RFP. For example, Reliant Energy filed such a complaint against Florida Power & Light Company in Docket No. 020175-EI. PACE's proposal to require that a potential bidder raise certain issues at this point or not at all would codify that procedural opportunity, but it would also increase the efficiency of the process by: (1) delineating precisely the grounds that can form the basis for a complaint; (2) establishing the time frame within which it can be brought; (3) providing that the RFP process shall be halted until such complaints, if any, have been resolved; and (4) establishing, at the "front end" of the process, Commission-approved parameters and criteria.

Second, as previously stated, PACE strongly endorses a requirement that the bid evaluation be performed by a neutral third party. As the Bid Rule is currently written, the IOU, which has a monetary stake in the outcome of the bid process, evaluates and selects the winning bids under a cloak of secrecy. The IOUs can and do use this provision to

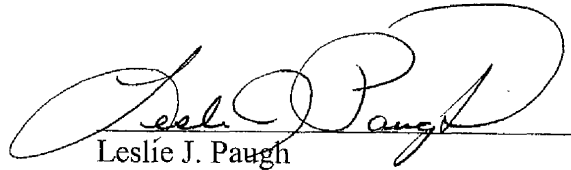
their advantage. It is well known that since its effective date, the Bid Rule has been used three times by IOUs and in each instance, the IOU selected a self-build option over all other proposals. During that same period, other Florida utilities, Seminole Electric Cooperative, the Kissimmee Utility Authority, the Orlando Utilities Commission and the Florida Municipal Power Agency have all conducted RFP processes that have resulted in vastly different outcomes - power purchase agreements with IPPs. This glaring inconsistency can be readily cured by requiring that all participants, including the IOU, be evaluated equally, fairly and objectively by a neutral third party.

Third, PACE added the requirement that the IOU submit its self-build proposal to the third party evaluator in the form of a binding bid at the same time as the other bidders. This requirement is critical to avoid after-the-fact cost increases and unnecessary delay and administrative litigation.⁴ In addition, the binding bid requirement will avoid the chilling effect anti-competitive *ex post facto* bid revision has on potential participants. If potential participants believe that their competitive information will be used to their disadvantage by the IOU, participants may opt to submit only summary bid information or, more likely, refrain from bidding altogether thus reducing the field of competing participants to the detriment of ratepayers. The prohibition against a “winning” IOU from increasing the amount it seeks to recover from customers after winning the RFP is intended to prevent the IOU from gaming the system by “lowballing” its bid to obtain the award and increasing costs to ratepayers afterwards. Respondents must be prepared to live with their bids; it is only fair that the IOU be required to do likewise.


⁴ See In Re: Petition for Determination of Need for an Electrical Power Plant in Martin County by Florida Power & Light Company, Docket No. 020262-EI, and In Re: Petition for Determination of Need for an Electrical Power Plant in Manatee County by Florida Power & Light Company, Docket No. 020263-EI.

In sum, the PACE proposal is designed to establish a truly competitive process for identifying the most cost-effective generating resources for Florida's electric customers. The PACE proposal provides equal access for all potential participants to the generation selection process. The ratepayers of Florida can only gain from increased power supply options because only the most cost-effective, reliable provider from the field of competent suppliers will be selected under the PACE proposal. The IOUs argue, in the main, that the Bid Rule should not be revised because it is functioning as intended. PACE submits that the facts do not support this conclusion and encourages the Commission to adopt the PACE proposal. By this reference, PACE incorporates herein and reasserts all of the positions taken in its Post-Workshop Memorandum of Florida PACE, filed March 15, 2002, as directed by the Chairman of the Florida Public Service Commission at the conclusion of the February 7, 2002, workshop.

Respectfully submitted this 28th day of June, 2002.



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Attachment A

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

- (a) “Public Utility” means all electric utilities subject to the Florida Public Service Commission’s retail ratemaking authority, as defined in Section 366.02(1), Florida Statutes.
- (b) “Capacity Addition” means any generating unit addition of 50 megawatts (MW) or more gross generating capacity, or modification to an existing generating unit resulting in a net addition of 50 MW or more gross generating capacity planned for construction by utility.
- (c) Request for Proposals (RFP): a document in which a public utility publishes the price and non-price attributes of its next planned Capacity Addition or Additions in order to solicit and to enable an Independent Evaluator to screen, for subsequent contract negotiations, competitive proposals for supply-side alternatives to the public utility’s next planned 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, 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 supply side alternatives.
- (e) Independent Evaluator: A firm that is qualified, by virtue of its impartiality and its experience and expertise in the economics, technological, and commercial aspects of the power generation industry, to apply criteria and scoring factors that have been

approved by the Commission to the proposals submitted in response to the RFP of a public utility and the competing proposal, if any, of the public utility; score and rank all of the proposals; and identify the proposal or combination of proposals that constitutes the most cost effective of the public utility's generation supply options.

(2) A public utility shall conduct an RFP and complete an RFP proceeding prior to the commencement of construction of a Capacity Addition. Penalties for violation of this section shall include, without limitation:

- (a) A rebuttable presumption, to be applied in all regulatory proceedings, including earnings surveillance reviews, general rate cases, and Fuel and Purchased Power Cost Recovery proceedings, that all capital, operating, maintenance, and other expenditures on or associated with the Capacity Addition were unreasonable and imprudent, and therefore subject to disallowance in part or in their entirety; and
- (b) Fines of \$5,000 per day from the date upon which construction of the Capacity Addition commenced through and including the last day of the useful life of the Capacity Addition.

(3) A public utility that conducts an RFP pursuant to this rule shall engage an Independent Evaluator to compare and score proposals submitted to the public utility in response to the RFP. The Commission shall establish and maintain a list of approved Independent Evaluators. Firms wishing to be added to the approved list shall submit their qualifications to the Commission for its consideration. The Commission shall review a request to ensure that the firm has demonstrated broad experience and professional expertise in the economic, technological and commercial aspects of the power generation industry. A public utility shall choose one of the Independent Evaluators from the approved list. A public utility shall not engage the same Independent Evaluator in

consecutive RFPs.

OR

(3) *A public utility that conducts an RFP pursuant to this rule shall engage an Independent Evaluator to compare and score proposals submitted to the public utility in response to the RFP. The public utility shall demonstrate the qualifications of the proposed Independent Evaluator at the time it seeks approval of its proposed RFP package pursuant to subsection _____. A public utility shall not engage the same Independent Evaluator in consecutive RFPs.*

(4) Each public utility that is required to issue an RFP pursuant to this rule shall first submit its proposed RFP to the Commission for approval.

(5) The proposed RFP shall include, at a minimum:

(a) a detailed technical description of the public utility's next planned Capacity Addition or Additions on which the RFP is based, all costs that are associated with the Capacity Addition or Additions, 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 planned Capacity Addition or Additions and it's (their) 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 market value of land, improvements, or

infrastructure for the site on which the public utility proposes to build the Capacity Addition, if the site was acquired prior to the issuance of the RFP, or if improvements were made or infrastructure placed prior to the issuance of the RFP;

11. an estimate of the planned and forced outage rates, heat rate, minimum load and ramp rates, and other technical details;
 12. a description and estimate of the costs required for associated facilities such as gas laterals and transmission interconnection;
 13. a discussion of the actions necessary to comply with environmental requirements; and
 14. a summary of all major assumptions used in developing the above estimates.
- (b) Detailed information regarding the public utility's ten year historical and ten year projected net energy for load, and summer and winter peak demand by class of customers;
- (c) a schedule of critical dates for solicitation, evaluation, screening of proposals, selection of finalists, subsequent contract negotiations, and submission for Commission approval;
- (d) 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; and
 8. pricing structure;
- (e) The name of the Independent Evaluator that the public utility proposes to engage to score proposals received in response to the RFP, together with information sufficient to demonstrate that no relationship exists between the public utility and the proposed Independent Evaluator that would create the appearance of bias, favoritism, or a conflict of interest.
- (f) A detailed description of the methodology proposed by the public utility to be used by the Independent Evaluator to evaluate alternative generating proposals on the basis of price and non-price attributes.
- (g) 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. No adjustment to purchase power proposals due to the imputation of an increase to the public utility's cost of capital shall be made. The RFP shall be structured to allow a participant to propose to supply all or a portion of the capacity represented by the Capacity Addition or Additions, and for the Independent Evaluator to identify one or a combination of proposals as the most cost-effective means of meeting the specified need;
- (h) Any application fees that will be required of a participant. Any such fees or deposits shall be cost-based but shall not exceed \$10,000 in the aggregate, with no more than \$500 required to obtain the RFP. The public utility shall apply the monies received from participants toward the fees and costs incurred for the services of the Independent Evaluator.

- (i) 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.
- (j) A provision stating the public utility will allow participants to construct an electric generating facility on the public utility's property. Any fees to be paid by the participant to the public utility for constructing on the public utility's property shall be included as a benefit to the public utility's ratepayers in the cost-effectiveness analysis of the participant's proposal, and shall be credited to the public utility's capacity recovery clause.

(6) Each public utility shall provide timely notification of the filing of its proposed RFP with the Commission 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, at a cost not to exceed \$500;
- (b) a general description of the public utility's planned Capacity Addition or Additions, including its (their) planned in-service date(s), MW size, location(s), fuel type and technology; and
- (c) a schedule of critical dates for the solicitation, evaluation, screening of proposals and subsequent contract negotiations.

(7) Within 30 days of the filing of the proposed RFP or the publication of the notice required by subsection ____, whichever date is later, any potential participant who has obtained the proposed RFP may file a complaint with the Commission alleging that one or more provisions of the proposed RFP package, including, but not limited to, the selection of the Independent Evaluator, are discriminatory, anticompetitive, or commercially infeasible, or that the informational contents of the RFP package are insufficient to meet the requirements of this rule. Within the 30 day period, the

Commission may issue an order proposing to modify the RFP on its own motion. The complaint or order initiating the proceeding shall identify with specificity the provisions of the proposed RFP that are asserted to be discriminatory, anticompetitive, commercially infeasible, technically inappropriate, or insufficient. Any potential participant may intervene; however, the Commission will consider only the provisions of the proposed RFP that were specifically identified in the complaint(s) or order. If requested, the Commission shall conduct an expedited hearing on the issues so presented and shall render its decision and issue its order within 100 days of the date the complaint was filed or the order was issued. Any motion for reconsideration must be filed within 5 days of the issuance of the order. If no complaint is filed and no order initiating proceeding is issued within the 30 day time frame of this subsection, the proposed RFP shall be deemed to have been approved and the public utility shall issue its RFP in its original form. In the event a complaint is filed or an order is issued, the public utility shall not issue the RFP until the Commission has rendered its decision and the public utility has made any modifications needed to conform the proposed RFP to the Commission's final order.

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

(10) 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. If the public utility proposes to construct and operate the Capacity Addition that is the subject of the RFP, it shall submit a detailed proposal conforming to the requirements of the RFP to the Independent Evaluator prior to the deadline for responses to the RFP. The issuing utility's proposal may not vary from the information regarding the utility's proposed Capacity Addition or Capacity Additions, as applicable, required by subsection (4) (a) above. Violation of this section shall result in automatic disqualification of the utility's proposal.

(11) The Independent Evaluator shall score the proposals submitted in response to the RFP, including the proposal of the public utility, if applicable, in accordance with the criteria and parameters of the approved RFP. The Independent Evaluator shall submit its evaluations to the public utility and to the Commission. The public utility shall announce the names of the participants or participants that were selected by the Independent Evaluator.

(12) Within 30 days after the Independent Evaluator has submitted its rankings, the public utility shall publish notice in a newspaper of general circulation in each county in which the participants named by the Independent Evaluator proposes to build an electrical power plant. The notice shall include the name and address of the participant, the name and address of the public utility, and a general description of the proposed electrical power plants, including location, size, fuel type, and associated facilities.

(13) At the conclusion of the RFP process, the public utility shall petition the Commission for confirmation that the Independent Evaluator's selection of either one or a combination of the proposals is the public utility's most cost-effective option. If the proposed Capacity Addition requires review under the Florida Electrical Power Plant Siting Act, the request shall be embodied in the associated petition for a determination of need. Any participant in the RFP may intervene and oppose the Independent Evaluator's selection, but only on the grounds that the criteria and ranking factors of the approved RFP were applied incorrectly. If the Commission determines that the approved criteria of the RFP were correctly applied, it shall confirm that the proposal selected by the Independent Evaluator is the most cost-effective option. If the Commission determines

that the approved criteria were applied incorrectly, it shall revise the scoring of the proposal selected by the Independent Evaluator and of the proposals of intervening participants. In the event the corrected evaluations result in a different winner, the Commission shall direct the public utility to negotiate a power purchase agreement with the different winner of the RFP. Where applicable, the Commission shall also deny the petition for a determination of need associated with the rejected proposal. If the Commission approves a power purchase agreement that results from the RFP, the Commission shall not preclude the public utility from seeking recovery of the 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 Commission approves the public utility's self-build option as the most cost-effective alternative, the public utility shall thereafter not place in rate base any amount for capital expenditures associated with its Capacity Addition that exceeds the amount identified in the proposal that it submitted to the Independent Evaluator, nor shall the public utility be allowed cost recovery for any expenses associated with its Capacity Addition that exceed the corresponding amounts identified in the proposal that it submitted to the Independent Evaluator.

(14) Nothing in this rule shall prohibit a public utility from entering into one or more contracts for the purchase of capacity and energy with terms of three years or less through bilateral negotiations with one or more wholesale providers rather than through an RFP process. If the public utility chooses this option, it must obtain Commission approval to recover the costs of the contract from its retail customers prior to including such costs in the public utility's capacity and fuel cost recovery clauses. A public utility shall not enter into a bilateral contract for the purchase of capacity and energy with an affiliate outside of the RFP process.

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

**CERTIFICATE OF SERVICE
DOCKET NO. 020398**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand-delivery (*), and U.S. Mail to the following parties on this 28th day of June, 2002.

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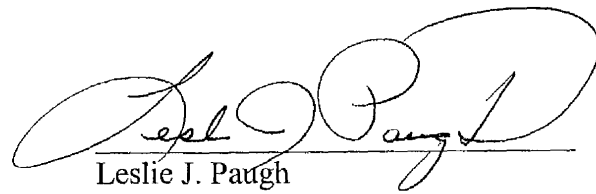
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