

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-02-1514-PCO-EQ  
ISSUED: November 4, 2002

ORDER ESTABLISHING PROCEDURES TO BE FOLLOWED  
AT RULEMAKING HEARING

I. Background

The Commission has proposed amendments to Rule 25-22.082, Florida Administrative Code, regarding utilities' requests for proposals (RFP) for new generating capacity additions that are subject to determinations of need under the Power Plant Siting Act, sections 403.501, et.seq., Florida Statutes. The rule proposal was published in the Florida Administrative Weekly on October 25, 2002.

II. Rulemaking Hearing

A rulemaking hearing is scheduled before the full Commission at the following time and place:

9:30 a.m., December 5 and 6, 2002  
Room 148, Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida

The rulemaking hearing shall be governed by section 120.54, Florida Statutes, and by Chapters 28-103 and 25-22, Part II, Florida Administrative Code.

III. Prehearing Procedures

Interested persons may prefile comments or testimony no later than November 15, 2002. Each filing must clearly identify the issue(s) and applicable rule section(s) being addressed. Pursuant to discussion at the September 30, 2002, Agenda Conference, the Commission also solicits comments regarding the following additional matters: (1) bid protest and dispute resolution; (2) the need for an equity penalty or adjustment; (3) utility staffing of bid proposal evaluation; and (4) sharing of benefits flowing from under-budget self-build projects. Prior to hearing, a list of

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issues and order of presentation will be issued by the prehearing officer. This procedure will aid the Commission in its consideration of the rules and possible alternatives and will save time at the hearing.

Prefiled comments and testimony shall be typed on 8-1/2-inch by 11-inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

All alternative rule proposals must be made in writing, with copies attached to prefiled comments or testimony. Changes or additions to the proposed rule text should be shaded, and explanations of those changes or additions with cross-references to page numbers of prefiled comments or testimony should be included in footnotes to the rule text.

Each exhibit intended to support prefiled comments or testimony shall be attached to that person's comments or testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1.

An original and 15 copies of all comments, testimony, and exhibits must be filed with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m. on the date due.

Any person may prefile responsive comments or responsive testimony to the comments and testimony that are filed by November 15, 2002. The responsive comments and testimony must be filed no later than November 28, 2002, in the format described above.

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain persons.

Service on persons who filed notices of intent to participate is required. The names and addresses of those persons are:

John W. McWhirter, McWhirter Reeves, McGlothlin, Davidson, Decker, Kaufman & Arnold, P.A., 400 North Tampa Street, Suite 3350, Tampa, FL 33602, representing Florida Industrial Power Users Group

Vicki Gordon Kaufman, Timothy J. Perry, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman, & Arnold, P.A., 117 South Gadsden Street, Tallahassee, FL 32301, representing Florida Industrial Power Users Group

William B. Graham, Mcfarlain & Cassedy, P.A., 305 S. Gadsden Street, Tallahassee, FL 32301, representing Florida Crystals

Gustavo Cepero, Okeelanta Corporation, P. O. Box 86, South Bay, FL 33493, representing Florida Crystals

John Orr, Reliant Energy, 1111 Louisiana Street, Houston, Texas 77002, representing Reliant Energy Power Generation, Inc.

Joseph A. McGlothlin, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman & Arnold, P.A., 117 South Gadsden Street, Tallahassee, FL 32301, representing Reliant Energy Power Generation, Inc.

#### IV. Hearing Procedures

The Commission staff will present a summary of the proposed rule.

The first exhibit introduced into the record will be a composite exhibit prepared by staff, which will consist of the following documents: Florida Administrative Weekly notice and proposed rule; materials provided to the Joint Administrative Procedures Committee, which include the statement of facts and circumstances justifying rule, statement on federal standards, and notice of rulemaking; and any material, including prefiled comments and attachments, that may be submitted pursuant to Section 120.54, Florida Statutes. It shall not be necessary for participants to insert their prefiled comments and testimony into the record at the hearing. Copies of the first exhibit will be available at the hearing.

Following the staff presentation, participants will have the opportunity to present evidence and argument on the issues and in the order identified by the prehearing officer. It may be necessary to impose time limits for presentations, depending upon

the number of participants. Persons with similar presentations should combine to make one presentation. If time permits, persons making presentations will be subject to questions from other persons. Such questions shall be limited only to those necessary to clarify and understand the presenter's position.

Persons who wish to participate at the hearing must register at the beginning of the hearing. The general order of presentation will be as follows:

Members of the Public  
Electric Utilities  
Office of the Public Counsel  
Special Interest Groups

The specific order of presentation will be determined by the presiding officer the first morning of the hearing.

V. Posthearing procedures

A transcript of the proceedings will be made available to the public on or about December 12, 2002, at cost.

The Commission will decide whether participants may file posthearing comments, and when they will be due, at the hearing. If posthearing comments are permitted they shall be typed on 8-1/2-inch by 11-inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

An original and 15 copies of all posthearing comments shall be filed with the Director, Division of the Commission Clerk and Administrative Services, by the close of business which is 5:00 p.m. on the date due.

Based on the foregoing, it is

ORDERED that this order shall govern the conduct of these proceedings, as set forth above, unless modified by the Commission.

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BY ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 4th day of November, 2002.



BRAULIO L. BAEZ, Commissioner  
and Prehearing Officer

(S E A L)

MCB/JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

25-22.082 Selection of Generating Capacity.

(1) Scope and Intent. A Public Utility is required to provide reasonably sufficient, adequate, and efficient service to the public at fair and reasonable rates. In order to assure an adequate and reliable source of energy, a public utility must plan and construct or purchase sufficient generating capacity. To assure fair and reasonable rates and to avoid the further uneconomic duplication of generation, transmission, and distribution facilities in Florida, a public utility must select the most economical and cost-effective mix of supply-side and demand-side resources to meet the demand and energy requirements of its end-use consumers. 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 Chapter 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 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 an public 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 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) 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) Detailed information regarding the public utility's ten year historical and ten year projected net energy for load;

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

(d)(e) 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~~7~~, and

~~(e)(d)~~ a detailed description of the methodology to be used to evaluate alternative generating proposals on the basis of price and non-price attributes.

(f) 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 absent a showing of good cause;

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

(h) 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.

~~(6)(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~~s~~ proposes to build an electrical power plant 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.

~~(7)(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 ~~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.

~~(8)(7)~~ Each public electric utility shall file a copy of its RFP with the Commission upon issuance.

(9) The public utility shall allow participants to formulate creative responses to the RFP. The public utility shall evaluate all proposals.

(10) 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.

(11) A potential participant who attended the public utility's post-issuance meeting may file with the Commission specific objections to any terms of the RFP within 10 days of the post-issuance meeting. Failure to file objections within 10 days shall constitute a waiver of those objections. The Commission will address any objections to the terms of the RFP on an expedited basis.

(12) 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.

(13) 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.

(14) 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, any 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 unforeseen and beyond its control.

(15)~~(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.

(16)~~(9)~~ 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

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utility's general body of ratepayers, or is otherwise in the public interest.

Specific Authority: 350.127(2), 366.05(1), 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 01/20/94, Amended\_\_\_\_\_.