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HAND DELIVERY

November 15, 2002

Ms. Blanca S. Bayó, Director
Division of Records & Reporting
Florida Public Service Commission
Capitol Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

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NOV 15 2002
COMMISSION
CLERK

In re: **FPSC Docket No. 020398-EQ**

Proposed revisions to Rule 25-22.082, F.A.C., Selection of Generating Capacity

Dear Ms. Bayó,

Enclosed for filing in the captioned Docket please find the original and 15 copies of the Comments of the City of Tampa and the Solid Waste Authority of Palm Beach County, to which are attached a redline markup of suggested modifications to the captioned proposed rule revisions.

If you have any questions regarding this filing, or require any additional information, please do not hesitate to contact this office.

Sincerely,



Richard A. Zambo

RAZ/sn
Enclosure

5

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FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF RECORDS

DOCUMENT NUMBER-DATE

12548 NOV 15 2002

FPSC-COMMISSION CLERK

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

Filed November 15, 2002

COMMENTS
OF
THE CITY OF TAMPA
AND
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

DOCUMENT NUMBER : DATE
12548 NOV 15 02
FPSC-COMMISSION CLERK

Comments Of:

City of Tampa

Solid Waste Authority of Palm Beach County

FPSC Docket No. 020398-EQ

1 These Comments are submitted on behalf of the City of Tampa, Florida (City) and the Solid
2 Waste Authority of Palm Beach County, Florida (SWA) The City and the SWA appreciate
3 the opportunity to provide input to the Commission in this important matter, and respectfully
4 request consideration of these Comments in deliberations regarding the proposed rule
5 amendments. In accordance with the procedural order in this Docket, attached find the
6 specific "Changes Suggested" by the City and SWA in the red-line format requested.

7

8 **Proposed Rule Section (6) (f):**

9 The proposed rule language would permit a utility to modify evaluation criterion upon a
10 "showing of good cause". This leaves open the possibility that the participants in the RFP
11 process could be surprised by evaluation or ranking metrics unknown or unspecified at the
12 time proposals are submitted. Any utility conducting an RFP should be expected to be
13 sufficiently diligent to assure such omissions will not occur. The language allowing
14 modification of factors upon a showing of good cause should be deleted as suggested in the
15 attached rule markup.

16

17 However, if the Commission determines that a utility should be allowed to modify evaluation
18 criterion, such modifications should be approved by the Commission with opportunity for
19 input by RFP participants, and the RFP participants should be allowed sufficient time to
20 reconfigure and resubmit their bids. In light of the relatively short time-frames involved in
21 the RFP process, omission of a critical factor or consideration should be corrected by
22 providing information to the participants and allowing modifications of bids.

1 **Proposed Rule Section (6) (g):**

2 Local government entities are not normally equipped to participate in or respond to RFPs in
3 the way that "merchant" power plant or IPP developers are. Moreover, local governments
4 typically do not "budget" for bidding fees associated with RFP participation. Importantly,
5 from a public policy perspective, the electric capacity sold by local governments is, in the
6 vast majority of cases, from "renewable" resources of the type listed in the proposed
7 language changes suggested by the City and the Authority. Such resources offer significant
8 benefits to society in general as evidenced by the fact that they are currently encouraged by
9 both state and federal law. Bidding fees (other than the "nominal" fees proposed in the
10 attached rule markup) would act as a disincentive to local government participation in RFP
11 processes in contravention of explicit state and federal policy encouraging such resources. It
12 should also be noted that bidding fees paid by a local government would ultimately be borne
13 by the citizenry - some of whom may be ratepayers of the utility sponsoring the RFP process.

14

15 **Proposed Rule Section (14):**

16 The proposed rule language could result in an unfair situation for utility ratepayers, RFP
17 participants or both. By allowing a utility to recover certain cost "over-runs", the proposed
18 rule may unfairly deprive the utility ratepayers of a major benefit of purchasing power from
19 third parties - that is fixed, guaranteed cost and performance. In addition, if a utility in
20 negotiating with RFP participants, refused to allow recovery of those same cost over-runs,
21 the utility RFP process would be unfair to the RFP participants.

22

Comments Of:

City of Tampa

Solid Waste Authority of Palm Beach County

FPSC Docket No. 020398-EQ

1 The suggested language changes would prevent or remedy such potential unfairness. Simply
2 put, if the power purchase agreement proposed by the utility would have allowed the RFP
3 finalist to recover such costs, then the utility should be allowed to recover such costs.
4 Conversely, if the utility's proposed power purchase agreement prohibited or omitted
5 provisions for the recovery of such costs the utility should likewise not be entitled to recover
6 such costs. This provision would level the playing field and protect utility ratepayers. The
7 playing field is level if the utility is treated the same as it proposed to treat participants in the
8 RFP process. As a result, ratepayers of the utility will reap the benefits of the terms and
9 conditions imposed - or attempted to be imposed - by the utility on the RFP participants.

**CHANGES SUGGESTED
BY
CITY OF TAMPA
AND
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**

FPSC Docket No. 020398-EQ

THE FULL TEXT OF THE PROPOSED RULE IS:

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) 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.

(ba) 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 Statute.

(cb) Request for Proposals (RFP): a document in which a 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.

(de) 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.

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

(23) 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).

(34) 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) No Change;

(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) No Change.

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

(64) 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. - 13. No Change;

(b) Detailed information regarding the public utility's ten year historical and ten year projected net energy for load;

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

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

1. - 6. No Change;
7. performance criteria; and
8. pricing structure~~+~~. and

(ed) 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~~¹;

(g) Any application fees that will be required of a participant. Any such fees or deposits shall be cost-based, provided however that any local governmental entity proposing renewable fueled capacity, including but not limited to municipal solid waste, landfill gas, or sewer gas fueled capacity, shall be charged only a nominal fee, not to exceed \$500.00²;

(h) Any information regarding system-specific conditions which may include, but not be limited to, preferred locations proximate

¹ In light of the relatively short time-frames involved, omission of a critical consideration should be corrected by providing information to the participants and allowing modifications of bids. Additionally, the utility should be sufficiently diligent to assure such omissions will not occur.

² Local government entities are not in the business of responding to RFPs and typically do not "budget" for bidding fees. Moreover, the electric capacity they seek to sell is typically from "renewable" resources such as those listed, which are encouraged by state and federal law, and which benefit society in general. Bidding fees, which would be ultimately borne by the citizens (some of whom may be utility ratepayers) would act as a disincentive to local government participation in RFP processes.

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.

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

(85). 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 proposeds 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13~~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~~ proposes 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.

(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 such costs would have been recoverable by a successful finalist under the proposed power purchase agreement used in negotiations between the utility and the finalist ~~the utility can demonstrate that such costs were prudently incurred and unforeseen and beyond its control~~³.

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

³ If the power purchase agreement proposed by the utility would have allowed the RFP finalist to recover such costs, then the utility should be allowed to recover such costs. Conversely, if the utility's proposed power purchase agreement prohibited or omitted provisions for the recovery of such costs the utility should likewise not be entitled to recover such costs. This provision would level the playing field and protect utility ratepayers. The playing field is level if the utility is treated the same as it proposed to treat participants in the RFP process. As a result, ratepayers of the utility will reap the benefits of the terms and conditions imposed - or attempted to be imposed - by the utility on the RFP participants.