

ORIGINAL

DOCKET NO. 020398-EQ - [Proposed Revisions to Rule
25-22.082, F.A.C., Selection of Generating Capacity]

WITNESS: **Direct Testimony of Tom Ballinger**, Appearing
On Behalf Of Staff

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FPSC-COMMISSION CLERK

DIRECT TESTIMONY OF TOM BALLINGER

1
2 Q. Could you please state your name and business address?

3 A. My name is Tom Ballinger and my business address is 2540 Shumard Oak
4 Boulevard, Tallahassee, Florida, 32399-0850.

5 Q. Could you please describe your educational background and employment
6 experience?

7 A. Yes. I graduated with a Bachelor of Science degree in Mechanical
8 Engineering from Florida State University in 1985. I began my career at the
9 Florida Public Service Commission (FPSC) in June of 1985 as an Engineer with
10 the Division of Electric and Gas. I have been associated with the regulation
11 of electric utilities since that time and have presented testimony or
12 recommendations to the FPSC on many occasions. In July of 1993, I was promoted
13 to my current position of USC Engineer Supervisor. In January, 2002, my
14 section was transferred to the Division of Economic Regulation, but my duties
15 have remained essentially the same. Basically, I am responsible for technical
16 recommendations to the FPSC concerning system planning issues, conservation
17 goals and programs, purchased power contract approval, power plant need
18 determination proceedings, and transmission line need determination
19 proceedings.

20 Q. What is the purpose of your comments in this proceeding?

21 A. My comments should provide clarification as to the intent and
22 implementation of the FPSC's proposed revision to Rule 25-22.082, Florida
23 Administrative Code. The proposed rule revision is contained in Exhibit No.
24 TEB-1.

25 Q. Could you please provide some historical background as to how the

1 original rule was adopted?

2 A. In 1992 the Commission considered the Joint Petition to Determine Need
3 filed by Cypress Energy Partners, L.P. (Cypress) and Florida Power & Light
4 Company (FPL). During the proceedings, the Commissioners expressed frustration
5 that the limited selection process used by FPL to select Cypress did not
6 facilitate the Commission's statutory responsibility under Section 403.519,
7 Florida Statutes to determine whether the proposed plant was the most cost-
8 effective generating alternative. The Commission ultimately denied the joint
9 petition and directed staff to develop a rule regarding procedures by which
10 investor-owned utilities (IOUs) select projects to provide capacity and energy.
11 Rule 25-22.082, Florida Administrative Code (F.A.C.), was originally adopted
12 by the Commission in January, 1994 and requires IOUs to issue Requests for
13 Proposals (RFPs) prior to filing a petition for Determination of Need. In
14 adopting the rule, the Commission recognized that the RFP process is a tool to
15 be used to measure the cost-effectiveness of a capacity selection.

16 Since it was adopted in 1994, Rule 25-22.082, F.A.C., has been utilized
17 once by Gulf Power Company and once by Florida Power & Light Company. Florida
18 Power Corporation has issued RFPs twice since the adoption of Rule 25-22.082,
19 F.A.C.

20 Q. Why are changes necessary to the rule at this time?

21 A. Since 1994, the Commission has observed the RFP process a number of
22 times. Based on these experiences, Rule 25-22.082, F.A.C. should be amended
23 to add clarity to the rule. For example, the number of days between the
24 issuance of the RFP and the submittal of responses should be codified in the
25 rule. In addition, an agency should periodically review its rules to see if

1 any changes can be made that will improve the administrative efficiency of the
2 process. For example, the requirement for the IOU to conduct a meeting with
3 potential participants before the RFP is released should identify concerns, if
4 any, early in the process and reduce future litigation.

5 Q. Could you please summarize your comments?

6 A. The proposed rule revision is an enhancement of the existing rule which
7 requires IOUs to issue RFPs prior to filing a petition for determination of
8 need with the FPSC. The enhancements are based upon experience gained since
9 the rule was first adopted in 1994. The majority of the revisions codify
10 current regulatory practices which adds clarity to the rule. The addition of
11 a meeting with potential participants prior to the release of the RFP was
12 added, in part, based upon the IOU's proposed stipulation presented during the
13 course of this proceeding and should enhance the overall RFP process.

14 Q. In your opinion, what are the revisions that require some explanation or
15 clarification?

16 A. I would say Sections (1), (6)(f), (12), and (14)

17 Q. Please clarify the language contained in Section (1) of the proposed
18 revision.

19 A. Section (1) was added to provide clarity as to the intent and scope of
20 Rule 25-22.082. In a nutshell, Section (1) affirms that the IOUs have an
21 obligation to secure the most cost-effective generation resource in order to
22 receive an affirmative determination of need from the FPSC. Section (1) also
23 codifies the FPSC's finding that an RFP process is an appropriate means to
24 ensure the most cost-effective alternative is selected.

25 Q. Please clarify the language contained in Section (6)(f) of the proposed

1 | revision.

2 | A. Section (6)(e) requires a detailed description of the methodology used
3 | to evaluate proposals. One such methodology may be to screen proposals before
4 | performing detailed economic analyses. Section (6)(f) requires the disclosure
5 | of the criteria and weighting factors to be used with the selected
6 | methodology. Evaluation criteria can be quantitative measures such as bond
7 | ratings or other indicators of financial strength, or qualitative measures such
8 | as past experiences with the host utility, location of proposed generating
9 | unit, etc. Similarly, weighting and ranking factors do not imply numeric
10 | scoring values but could be qualitative in nature, such as a preference for
11 | long-term contracts or a certain fuel type. This was explained to the
12 | Commissioners before the revision was proposed at the September 30, 2002
13 | special agenda conference. The basic premise behind these sections is that the
14 | IOU describe the evaluation methodology and criteria to the best of its
15 | knowledge as part of the RFP and not change the evaluation process without good
16 | cause.

17 | Q. Please clarify the language contained in Section (12) of the proposed
18 | revision.

19 | A. Section (12) states that "the public utility shall evaluate the proposals
20 | received in response to the RFP in a fair comparison with the public utility's
21 | next planned generating unit identified in the RFP." Again, as a basic
22 | premise, the IOU should disclose the cost and operating parameters of its next
23 | generating unit to the best of its knowledge as part of the RFP and not change
24 | these values without good cause. This does not mean that an IOU can not
25 | "sharpen its pencil" and propose the best project for the ratepayers. However,

1 | if a totally new project comes to light, the IOU should either issue another
2 | RFP, seek a waiver from the rule or allow respondents to adjust their
3 | proposals.

4 | Q. Please clarify the language contained in Section (14) of the proposed
5 | revision.

6 | A. Section (14) consists of two parts which codify existing FPSC practices
7 | and procedures. The first part, the authorization for the IOU to recover the
8 | prudently incurred costs of a purchased power contract, should limit the
9 | necessity of a regulatory out clause in such agreements. The second part, the
10 | use of the information presented during the need determination proceeding for
11 | future cost recovery proceedings, should provide an incentive for the IOU to
12 | accurately assess the cost of the self-build option. I would also like to note
13 | that an affirmative determination of need does not relieve the IOU's
14 | responsibility to prudently manage its resources and delay or cancel
15 | construction of a unit if a more cost-effective option should arise.

16 | Q. Does this conclude your comments?

17 | A. Yes.

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1 25-22.082 Selection of Generating Capacity.

2 (1) Scope and Intent. A Public Utility is required to provide
 3 reasonably sufficient, adequate, and efficient service to the
 4 public at fair and reasonable rates. In order to assure an
 5 adequate and reliable source of energy, a public utility must plan
 6 and construct or purchase sufficient generating capacity. To
 7 assure fair and reasonable rates and to avoid the further
 8 uneconomic duplication of generation, transmission, and
 9 distribution facilities in Florida, a public utility must select
 10 the most economical and cost-effective mix of supply-side and
 11 demand-side resources to meet the demand and energy requirements of
 12 its end-use consumers. The intent of this rule is to provide the
 13 Commission information to evaluate a public utility's decision
 14 regarding the addition of generating capacity pursuant to Chapter
 15 403.519, Florida Statutes. The use of a Request for Proposals
 16 (RFP) process is an appropriate means to ensure that a public
 17 utility's selection of a proposed generation addition is the most
 18 cost-effective alternative available.

19
 20 (2) Definitions. For the purpose of this rule, the following
 21 terms shall have the following meaning:

22 (a) Public Utility: all electric utilities subject to the
 23 Florida Public Service Commission's ratemaking authority, as
 24 defined in Section 366.02(1), Florida Statutes.

25 (ba) Next Planned Generating Unit: the next generating unit

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1 addition planned for construction by an investor-owned utility that
 2 will require certification pursuant to Section 403.519, Florida
 3 Statute.

4 (~~cb~~) Request for Proposals (RFP): a document in which an
 5 public investor-owned utility publishes the price and non-price
 6 attributes of its next planned generating unit in order to solicit
 7 and screen, for potential subsequent contract negotiations,
 8 competitive proposals for supply-side alternatives to the public
 9 utility's next planned generating unit.

10 (~~de~~) Participant: a potential generation supplier who submits
 11 a proposal in compliance with both the schedule and informational
 12 requirements of a public utility's RFP. A participant may include,
 13 but is not limited to, utility and non-utility generators, Exempt
 14 Wholesale Generators (EWGs), Qualifying Facilities (QFs),
 15 marketers, and affiliates of public utilities, as well as providers
 16 of turnkey offerings, distributed generation, and other utility
 17 supply side alternatives.

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

20 (~~23~~) Prior to filing a petition for determination of need for
 21 an electrical power plant pursuant to Section 403.519, Florida
 22 Statutes, each investor-owned electric utility shall evaluate
 23 supply-side alternatives to its next planned generating unit by
 24 issuing a Request for Proposals (RFP).

25 (~~34~~) Each public investor-owned utility shall provide timely

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1 notification of its issuance of an RFP by publishing public notices
2 in major newspapers, periodicals and trade publications to ensure
3 statewide and national circulation. The public notice given shall
4 include, at a minimum:

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

7 (b) a general description of the public utility's next
8 planned generating unit, including its planned in-service date, MW
9 size, location, fuel type and technology; and

10 (c) a schedule of critical dates for the solicitation,
11 evaluation, screening of proposals and subsequent contract
12 negotiations.

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

15 (64) Each public utility's RFP shall include, at a minimum:

16 (a) a detailed technical description of the public utility's
17 next planned generating unit or units on which the RFP is based, as
18 well as the financial assumptions and parameters associated with
19 it, including, at a minimum, the following information:

- 20 1. a description of the public utility's next planned
21 generating unit(s) and its proposed location(s);
- 22 2. the MW size;
- 23 3. the estimated in-service date;
- 24 4. the primary and secondary fuel type;
- 25 5. an estimate of the total direct cost;

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- 1 | 6. an estimate of the annual revenue requirements;
- 2 | 7. an estimate of the annual economic value of deferring
- 3 | construction;
- 4 | 8. an estimate of the fixed and variable operation and
- 5 | maintenance expense;
- 6 | 9. an estimate of the fuel cost;
- 7 | 10. an estimate of the planned and forced outage rates, heat
- 8 | rate, minimum load and ramp rates, and other technical
- 9 | details;
- 10 | 11. a description and estimate of the costs required for
- 11 | associated facilities such as gas laterals and
- 12 | transmission interconnection;
- 13 | 12. a discussion of the actions necessary to comply with
- 14 | environmental requirements; and
- 15 | 13. a summary of all major assumptions used in developing the
- 16 | above estimates;

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

19 | (cb) a schedule of critical dates for solicitation,
 20 | evaluation, screening of proposals, selection of finalists, and
 21 | subsequent contract negotiations;

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

- 25 | 1. technical and financial viability;

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- 1 2. dispatchability;
- 2 3. deliverability (interconnection and transmission;
- 3 4. fuel supply;
- 4 5. water supply;
- 5 6. environmental compliance;
- 6 7. performance criteria; and
- 7 8. pricing structure~~7.~~ and

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

11 (f) All criteria, including all weighting and ranking factors
 12 that will be applied to select the finalists. Such criteria may
 13 include price and non-price considerations, but no criterion shall
 14 be employed that is not expressly identified in the RFP absent a
 15 showing of good cause;

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

18 (h) Any information regarding system-specific conditions
 19 which may include, but not be limited to, preferred locations
 20 proximate to load centers, transmission constraints, the need for
 21 voltage support in particular areas, and/or the public utility's
 22 need or desire for greater diversity of fuel sources.

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

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

13 (9) The public utility shall conduct a meeting prior to the
14 release of the RFP with potential participants to discuss the
15 requirements of the RFP. The public utility shall also conduct a
16 meeting within two weeks after the issuance of the RFP and prior to
17 the submission of any proposals. The Office of Public Counsel and
18 the Commission staff shall be notified in a timely manner of the
19 date, time, and location of such meetings.

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

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1 basis.

2 (11) A minimum of 60 days shall be provided between the
3 issuance of the RFP, and the due date for proposals in response to
4 the RFP.

5 (12) The public utility shall evaluate the proposals received
6 in response to the RFP in a fair comparison with the public
7 utility's next planned generating unit identified in the RFP.

8
9 (13~~6~~) Within 30 days after the public utility has selected
10 finalists, if any, from the participants who responded to the RFP,
11 the public utility shall publish notice in a newspaper of general
12 circulation in each county in which a finalist ~~has~~ proposeds to
13 build an electrical power plant. The notice shall include the name
14 and address of each finalist, the name and address of the public
15 utility, and a general description of each proposed electrical
16 power plant, including its location, size, fuel type, and
17 associated facilities.

18 (14) If the Commission approves a purchase power agreement as
19 a result of the RFP, the public utility shall be authorized to
20 recover the prudently incurred costs of the agreement through the
21 public utility's capacity, and fuel and purchased power cost
22 recovery clauses absent evidence of fraud, mistake, or similar
23 grounds sufficient to disturb the finality of the approval under
24 governing law. If the public utility selects a self-build option,
25 any costs in addition to those identified in the need determination

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1 proceeding shall not be recoverable unless the utility can
 2 demonstrate that such costs were prudently incurred and unforeseen
 3 and beyond its control.

4 ~~8-(15)~~ The Commission shall not allow potential suppliers
 5 of capacity who were not participants to contest the outcome of the
 6 selection process in a power plant need determination proceeding.

7 ~~9-(16)~~ The Commission may waive this rule or any part
 8 thereof upon a showing that the waiver would likely result in a
 9 lower cost supply of electricity to the utility's general body of
 10 ratepayers, increase the reliable supply of electricity to the
 11 utility's general body of ratepayers, or is otherwise in the public
 12 interest.

13
 14 *Specific Authority 350.127(2), 366.05(1), 366.06(2), 366.07,*
 15 *366.051 FS. Law Implemented 403.519, 366.04(1), 366.04(2),*
 16 *366.04(5), 366.06(2), 366.07, 366.041, 366.051 FS.*
 17 *History: New 1/20/94, Amended _____*

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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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony of Tom Ballinger was furnished to the following, by U.S. mail, on this 15th day of November, 2002.

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PAGE 2

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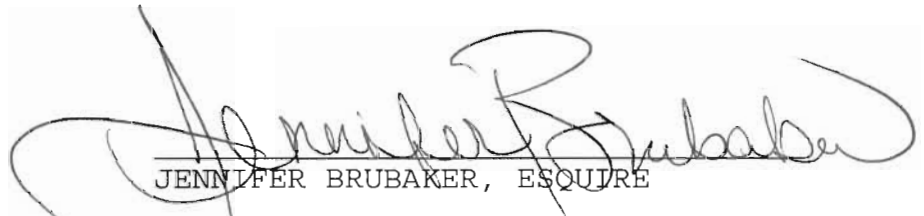
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