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November 15, 2002

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
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Re: Docket No.: 020398-EI

Dear Ms. Bayo:

On behalf of the Florida Industrial Power Users Group's, (FIPUG), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ The Florida Industrial Power Users Group's Comments on the Proposed Bid Rule.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,



Timothy J. Perry

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Proposed Revisions to Rule  
25-22.082, Selection of Generating  
Capacity

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Docket No. 020398-EI

Filed: November 15, 2002

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S  
COMMENTS ON THE PROPOSED BID RULE**

The Florida Industrial Power Users Group (FIPUG), pursuant to Order No. PSC-02-1420-NOR-EQ, hereby files its comments on the proposed bid rule attached to the Commission's Notice of Rulemaking.

1. FIPUG's principal concern and interest in this matter is to ensure that when a utility determines that it has a need to add generating capacity to its system that it vigorously explore all options for securing the most cost-effective option(s) to meet that need. FIPUG is generally unconcerned with whether the identified need is filled by the utility itself or by a competitive provider, so long as the best alternative is chosen. Nevertheless, without independent merchant plants it is highly unlikely that a competitive wholesale market will develop, and the massive expenditure projected to form and operate the GridFlorida RTO would seem fruitless.

2. Until a genuine competitive market is in place, it is crucial that the Commission, as the surrogate for market competition and the entity charged with protecting the interests of captive retail customers, get the process right for the selection of major capital additions to the rate base. The Commission must ensure that the capacity selection process is impartial and unsullied to preserve public confidence in a system that is presently under fire from allegations of abuse.

3. FIPUG strongly agrees with the Commission's view, expressed in ¶ 1 of the proposed rule, that a process that uses a Request for Proposals (RFP) is the appropriate way to ensure that a utility's proposed selection of additional generation is the most cost-effective alternative available. But it is the structure of such a process that will ensure that the most cost-effective alternative, that this Commission and consumers seek, is selected.

4. In FIPUG's view, certain critical parameters must be included in a bid rule to meet the Commission's stated goals.<sup>1</sup> First, the criteria that will be used to evaluate all bids must be known at the outset of the process. The Commission addresses this concern in ¶ 6(f) of the proposed rule. FIPUG supports this provision.

5. Second, to make the selection process impartial, the rule should mandate an independent evaluator and should be transparent to the other bidders and general public when bids are opened. Only if an impartial third party evaluates the bids can ratepayers have confidence in the process. This principle should be incorporated into the rule.

6. However, the proposed rule retains the status quo in this regard and permits the utility to evaluate the bids it receives. Thus, the utility is a bidder *and* the judge of the bids – a situation fraught with conflict. Clearly, it is in the utility's self-interest to declare itself the winner when the new investment will preserve or enhance the rate base upon which it is entitled to a return after operating cost are deducted. An impartial selection is virtually impossible when conducted by managers burdened with both the responsibility to maximize profits for the utility, and a fiduciary duty to achieve the lowest rates for the consumers they have the exclusive right to serve. Further, the profit beneficiaries, not the compliant customers, set the managers' salaries.

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<sup>1</sup> Such parameters are discussed in more detail in the comments filed by PACE and the testimony of Michael Green. FIPUG supports those submittals.

7. Third, the utility must be held to its bid. In the bidding scenarios familiar to most consumers, all parties or persons interested in being selected for a project submit contemporaneous bids. The selection is based on the lowest and best bid submitted. Bidders (including the utility in this case) should not be permitted to change their bid after they have learned what others have bid, nor should they be permitted to shape their proposal using the information supplied by other bidders. This creates an inherently unfair situation. Further, consider that after choosing itself to build the project, by merely delaying the project, a regulated utility can improve its investment by the addition of AFUDC soft costs – an alien concept to competitive enterprise. A highly leveraged utility holding company can further enhance its profits by tilting the utility capital structure with an infusion of equity capital, upon which it is entitled to earn a return after the deduction of phantom income taxes in addition to the phantom AFUDC earnings. Using this device, phantom income taxes can add 60% to an authorized return ceiling of 12.2 to 12.75% on the equity component of a utility’s capital structure, thus creating a utility cash cow for investment by the unregulated holding company. Under these circumstances, it is difficult, if not impossible, for a utility manager serving the dual masters of profit need and low cost service to navigate the minefield of temptation. It would seem that under the integrity burden of serving dual masters, utility managers would welcome the approbation of an independent observer. A regulatory Commission loath to micromanage its charges should require it.

8. While it appears that the proposed rule attempts to address this concern in ¶ 14, this revision misses the certainty mark. It allows a utility to recover costs above its bid price if they are “prudently incurred and unforeseen and beyond its control.” This language should be deleted. Clearly, the utility will argue that cost overruns meet those criteria, and consumers will

have to attempt to prove otherwise from the utility's trade secret information after the plant is in commercial operation. If a utility bid is selected, the utility should be bound by its bid.

9. To help utility managers with their fiduciary obligation to protect consumers in this state, the Commission should take the action necessary to put in place a bid rule that will ensure that the most cost-effective project is chosen. FIPUG's suggested changes – known criteria at the outset of the process, evaluation of bids by a third party independent evaluator, and holding a utility to its bid – to the proposed rule will help accomplish that worthy goal.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Florida Industrial Power Users Group's Comments on the Proposed Bid Rule, was on this 15<sup>th</sup> day of November 2002 served via (\*) hand delivery or U.S. Mail to the following:

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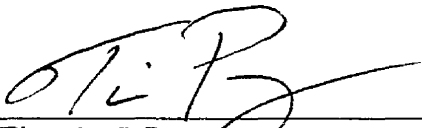
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