

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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1 published rule amendments represent the Commission's latest intentions
2 concerning revisions to rule 25-22.082 and that these proposed amendments will
3 be the subject of the noticed public hearing on December 5 and 6, 2002.

4 In contrast, the Partnership for Affordable Competitive Energy ("PACE")
5 and Calpine Eastern Corporation ("Calpine") devote most of their comments to
6 rearguing issues that have been thoroughly aired in this docket and that have been
7 largely rejected by the Commission in the published proposed amendments to rule
8 25-22.082. Similarly, the prefiled testimony of Michael C. Green on behalf of
9 PACE is not primarily focused on the proposed rule amendments, but on issues
10 that have been exhaustively covered in previous comments and at multiple
11 Commission meetings. *See, e.g.,* Testimony of Michael C. Green at p. 1, lines
12 16-22 and p. 2, lines 1-3.²

13 Recognizing that the issues raised by PACE, Calpine, and Mr. Green are
14 not new, the IOUs respond only briefly here. We continue to rely on and
15 incorporate by reference the IOU comments filed in this docket on March 15,
16 2002, and June 28, 2002, and on the letter sent to Chairman Lila Jaber on

² The Florida Industrial Power Users Group (FIPUG) and the Florida Action Coalition Team (FACT) filed comments on November 15, 2002, adopting the positions and proposed rule amendments of PACE and the testimony of Mr. Green. Comments of Florida Crystals also attempt to reargue issues apparently already settled by the Commission. Florida Crystals opposes using capacity additions covered by the Power Plant Siting Act ("PPSA") as a triggering mechanism for issuance of an RFP. Earlier drafts of proposed amendments to the bid rule used other benchmarks for the RFP requirement; however, as the published proposal reflects, the Commission has since decided to limit the scope of the proposed rule amendments to the PPSA.

1 September 6, 2002. Those documents are attached as Exhibits 1, 2, and 3 to the
2 IOU Comments filed on November 15, 2002.

3 Mr. Green and PACE reiterate the “three principles” that they believe the
4 bid rule should incorporate:

- 5 • All of the criteria, terms, conditions, and scoring factors of the investor-
6 owned utility’s RFP package should be provided to potential respondents in
7 the RFP package and established at the outset of the RFP process;
- 8 • All proposals, including that of the investor-owned utility, should be scored
9 by an independent evaluator; and
- 10 • All participants, including the utility if it proposes a self-build option,
11 should submit binding bids at the same time and in the same manner as
12 other potential sources.

13 Testimony of Michael C. Green, at 1, lines 16-22, and 2, line 1.

14 As the IOUs noted in their September 6, 2002, letter to Chairman Jaber,³ all
15 three of these issues have been discussed at meetings and on telephone
16 conference calls among the IOUs and Independent Power Producers (IPPs). The
17 principles also have been the subject of numerous comments -- both written and
18 oral -- in this docket. The IOUs, through a Stipulation proposed in late August,

³ Exhibit 3 to IOU Comments of November 15, 2002.

1 attempted to address the concerns of the IPPs.⁴ Ultimately, however, the
2 Stipulation was not accepted, and the proposed rule was published in the Florida
3 Administrative Weekly.

4 Concerning providing “scoring factors” factors in an RFP, the IOUs oppose
5 establishing specific weights for various criteria. Weighting is highly influenced
6 by the circumstances surrounding the need for power, and the relative importance
7 of a given criterion may change with time and circumstance. Requiring IOUs to
8 include weighting and ranking factors in an RFP would be inconsistent with the
9 Florida Supreme Court’s decision in *Panda Energy Int’l v. Jacobs*, 813 So. 2d 46
10 (Fla. 2002) (discussed in previous IOU comments), which recognized the need for
11 creativity in bids. As noted in the IOU comments of November 15, 2002, the
12 IOUs believe it is impossible to anticipate at the front end everything that will be
13 evaluated in deciding which capacity additional option to select. Nonetheless, the
14 IOUs do not object to providing general information about criteria that will be
15 used to select finalists; rather, the objection is to a formulaic approach that limits
16 the flexibility of both bidders and the IOUs in their efforts to arrive at the most
17 cost-effective alternative. For this reason, the IOUs have suggested that the

⁴ The Stipulation is attached as Exhibit A to the letter to Chairman Jaber. See Comments of Investor-Owned Utilities, November 15, 2002, Exhibit 3 at A.

1 proposed rule be revised to eliminate any reference to weighting and ranking
2 factors.⁵

3 Second, to address the IPPs' concerns about independent evaluation, the
4 IOUs have been open to efforts to increase the transparency of the bidding
5 process. For example, the IOUs have encouraged involvement of the
6 Commission Staff at significant milestones in the process to observe the fairness
7 of the process and the selection. Nonetheless, the IOUs have consistently
8 opposed -- and continue to oppose -- any effort to delegate to an unregulated
9 entity the power to select the winning bid. Any such delegation would be
10 contrary to the statutory obligation of the IOUs to provide adequate and reliable
11 service to their customers. Part of an IOU's statutory obligation to serve is to be
12 responsible for and to justify its selection in the bidding process.

13 Finally, the IOUs continue to believe that the IPPs' focus on a "binding
14 bid" by all parties as the means to place all bidders on equal footing is misplaced.

⁵ The IOUs' proposed amendment provides the following concerning the matters to be included in an RFP:

(5)(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 material criterion shall be employed that is not expressly identified in the RFP absent a showing of good cause;

See Comments of November 15, 2002, at 5-6.

1 In fact, none of the initial bids are “binding,” even those of the IPPs. Under the
2 current rule and in the course of recent RFPs, bidders have not been precluded
3 from “sharpening their pencils” and improving their bids after their initial
4 submissions. This process facilitates the ultimate selection of the least-cost
5 alternative. The IOUs and the IPPs are not identically situated in the bidding
6 process; thus, issues relating to equal footing should be considered in the context
7 of Florida’s statutory scheme of utility regulation. The IOUs, not the IPPs, have
8 the statutory obligation to serve Florida’s customers. IPP projects, unlike IOU
9 projects, are not subject to regulatory oversight.

10 Calpine, while endorsing the comments of PACE, additionally advocates
11 that rule 25-22.082 include an explicit provision permitting the use of an
12 “auction” process to satisfy the rule’s requirements. *See* Comments of Calpine
13 Eastern Corporation at 1-2. Calpine has addressed its “auction” idea in previous
14 comments and at a Commission workshop, but the Commission has not included
15 the concept in the proposed rule. Thus, the IOUs only briefly address the auction
16 idea in these comments. Should the Commission desire additional information
17 from the IOUs on the concept, we will be prepared to answer questions about it at
18 the public hearing.

19 Including the auction language in the proposed rule is inappropriate
20 because the auction represents just one method by which an IOU could comply

1 with the bid rule. Specifically listing this method could create a presumption that
2 any other means of selecting generating capacity is imprudent. Moreover, an
3 auction may not result in the selection of the most cost-effective alternative. For
4 long-term power purchase agreements related to generating units that are yet to be
5 permitted -- let alone built -- many factors are not reflected in the bid price and
6 should be considered by the utility during the evaluation process. The auction
7 proposal requires that the utility narrow the parameters of the RFP so that only
8 the bid price is different among the bidders. This limits the creativity of bidders
9 and is not in the best interest of customers.

Respectfully submitted,



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I certify that a true copy of these Responsive Comments of Investor-Owned Utilities was served by hand delivery (*) or U.S. Mail this 2nd day of December, 2002, on the following:

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A handwritten signature in black ink, appearing to read "Donna E. Blanton". The signature is written in a cursive style with a horizontal line underneath it.

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