

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: 12/23/2002
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)
FROM: OFFICE OF THE GENERAL COUNSEL (BRUBAKER, HARRIS, HELTON) [Handwritten initials: JB, NH, T, 72T]
DIVISION OF ECONOMIC REGULATION (BALLINGER, HEWITT)
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (FUTRELL)
RE: DOCKET NO. 020398-EQ - PROPOSED REVISIONS TO RULE 25-22.082, F.A.C., SELECTION OF GENERATING CAPACITY.
AGENDA: 01/03/03 - SPECIAL AGENDA - RULE ADOPTION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF
RULE STATUS: ADOPTION SHOULD NOT BE DEFERRED
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\GCL\WP\020398.RCM

CASE BACKGROUND

Prior to the construction of a power plant with a steam cycle greater than 75 MW, a utility must receive certification from the Governor and Cabinet pursuant to Sections 403.501-.518, Florida Statutes, also referred to as the Power Plant Siting Act (PPSA). Section 403.519, Florida Statutes, requires utilities to file a petition for Determination of Need with the Florida Public Service Commission (Commission). An affirmative determination of need is a prerequisite to certification pursuant to the PPSA. With the advent of federal legislation permitting non-utility generators to enter the bulk power supply market, utilities now have more alternatives to select from in order to meet their obligation to provide electrical service to the public.

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In 1992, the Commission considered the Joint Petition to Determine Need filed by Cypress Energy Partners, L.P. and Florida Power & Light Company (FPL) in Docket No. 920520-EQ. During the proceedings, the Commissioners expressed frustration that the limited selection process used by FPL did not facilitate the Commission's statutory responsibility under Section 403.519, Florida Statutes, to determine whether the proposed plant was the most cost-effective generating alternative. By Order No. PSC-92-1355-FOF-EQ, issued November 23, 1992, the Commission denied the joint petition and directed staff to develop a rule instructing utilities the procedures by which they select projects to provide capacity and energy. Rule 25-22.082, Florida Administrative Code (F.A.C.), was originally adopted by the Commission in January 1994, requiring investor-owned electric utilities (IOUs) to issue Requests for Proposals (RFPs) prior to filing a petition for Determination of Need. In adopting the rule, the Commission recognized that the RFP process is a tool to be used by a utility to measure the cost-effectiveness of its capacity selection.

Since its adoption in 1994, Rule 25-22.082, F.A.C., has been utilized once by Gulf Power Company, once by Florida Power & Light Company, and twice by Florida Power Corporation. During this same time frame, large amounts of generating capacity were planned and constructed without the requirement of certification under the PPSA, and thus without the benefit of comparative cost information obtained from an RFP process. In December 1999, in Docket No. 992014-EI Tampa Electric Company (TECO) petitioned for cost recovery of approximately \$680 million to repower the Gannon Station, resulting in a net increase of capacity of approximately 380 MW. Since this was the first time a utility had sought cost recovery of a repowering project, in January 2000 the staff recommended that TECO be required to issue an RFP prior to the repowering of its Gannon plants. By Order No. PSC-00-0270-PCO-EI issued February 8, 2000 the Commission denied staff's recommendation, but directed staff to also look at the idea of revising the current capacity selection rule to require RFPs for repowering projects.

On February 7, 2002, the Commission held a workshop to discuss a staff-prepared "strawman" version of suggested changes to Rule 25-22.082, F.A.C. The primary concern discussed by participants

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was the Commission's statutory authority for proposing rule changes, as well as for the existing rule.

On March 15, 2002, post-workshop comments were filed collectively by the four large IOUs and by the Florida Partnership for Affordable Competitive Energy (Florida PACE). Based upon the discussions at the workshop and the comments filed, the staff filed a recommendation on May 9, 2002, to schedule a rule development workshop. Pursuant to Order No. PSC-02-0273-PCO-EQ, issued May 28, 2002, the Commission initiated the rule development process and scheduled a public workshop for July 19, 2002.

At the July 19, 2002 workshop, the IOUs presented a Stipulation in lieu of continuing with the rule development process. At the conclusion of the July 19, 2002 workshop, the Commission directed the staff to facilitate negotiations among the parties to see if a consensus stipulation could be developed. Over the following weeks several meetings were held by the parties, and proposed stipulations were exchanged. On September 6, 2002, PACE and the IOUs responded separately that no mutual stipulation was reached.

By Order No. PSC-02-1420A-NOR-EQ, issued October 17, 2002, the Commission proposed amendments to Rule 25-22.082, F.A.C. Notice of the proposed rule was published in the Florida Administrative Weekly on October 25, 2002. A rule hearing was held before the Commission on December 9-10, 2002.

Upon consideration of the discussion during the hearing, and the written comments and exhibits identified at the hearing, staff is recommending changes to the Commission's proposed rule. These changes, both additions and deletions, are highlighted in Attachment A. Attachment B is a summary of the significant amendments to the rule, a description of those amendments, and the comments of parties.

This recommendation is for final adoption of changes to the rule. Any changes to the Commission's proposed rule must be based on comments filed and discussions at the hearing.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt changes to Rule 25-22.082, Florida Administrative Code, Selection of Generating Capacity?

RECOMMENDATION: Yes. The Commission should adopt changes to the rule as shown in Attachment A. These changes should improve the transparency of information available to potential participants in the RFP process. These changes ultimately should benefit the ratepayer by improving the process to ensure that the most cost-effective generating option is selected. (BRUBAKER, HARRIS, BALLINGER, FUTRELL)

STAFF ANALYSIS: The amendments to Rule 25-22.082, Florida Administrative Code, proposed by the Commission at the September 30, 2002 special agenda conference, and those changes recommended by staff are made within the context of the existing regulatory framework. This framework confers upon the electric utility the right to be the exclusive provider of service in a given territory. Conversely, the utility is charged with an obligation to serve customers in that territory. Section 366.03, Florida Statutes, states in part:

Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission.

In order to meet this obligation to serve, each electric utility must forecast the future demand and energy requirements of its customers, taking into consideration conservation, and then plan for the construction or purchase of additional generating capacity to meet those requirements at the lowest practicable cost to the ratepayers.

Given the existing regulatory framework, staff believes that a request for proposals should continue to serve as a tool to be used to measure the cost-effectiveness of an IOU's capacity selection. Generation planning is a normal business function of electric utilities. That function is reviewed by the Commission but would not normally be pre-empted by the Commission. It is the utility's job to provide adequate, reliable, safe, and economical

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electrical service to the public and it is the Commission's job to review the decisions made by the utility.

Recommended Changes to Proposed Rule

Subsection (1) provides the scope and intent of the rule. The first three sentences of the proposed rule paraphrase the existing statutory responsibilities of the IOUs and were included to provide clarity regarding the statutory framework by which the rule is governed. The IOUs suggested that the first three sentences are superfluous and include ambiguous terms, and should be deleted although Mr. Sasso agreed with the substance of these sentences when questioned. Staff disagrees that the proposed language is ambiguous, but would recommend that the first three sentences be deleted since, as discussed in the hearing, the statutory citations are provided at the end of the rule. Deleting the first three sentences of Subsection (1) will have no adverse impact to the intended purpose of the rule. The remaining sentences clearly articulate the intent of the proposed rule. (TR 113-116)

Subsection (5) of the rule lists the minimum information to be included in the public utility's RFP document. Staff recommends that Paragraph (b) be changed to require that a copy of the public utility's most recent Ten-Year Site Plan be included with the RFP. The purpose of this section is to make the process more transparent by providing a potential respondent to the RFP with a more complete picture of the utility's need for power and of its system configuration. The proposed language, which required detailed information regarding the IOU's historical and projected net energy for load, was apparently confusing to the IOUs. (TR 19) Requiring a copy of the most recent Ten-Year Site Plan to be included with the RFP will meet the stated purpose of the section.

Paragraph (5)(f), as proposed, would have required the disclosure of all weighting and ranking factors to be used in the evaluation of proposals. The terms "weighting and ranking factors" have created uncertainty regarding the data or information to be provided to meet the requirement, and could cause unwanted disputes in the future. Staff recommends that paragraph (5)(e) should be changed to require the public utility to describe in detail the methodology it will use to evaluate responses to the RFP, and to describe in detail any weighting and ranking factors that will be

used in the evaluation. Paragraph (5)(f) should be changed to a new Subsection (6). The new Subsection (6) would require that the public utility not change the the price and non-price attributes or the evaluation methodology identified in paragraphs (5)(d) and (e), absent a showing of good cause.

Staff has described "weighting and ranking factors" as being either quantitative or qualitative factors to be considered by the IOU in evaluating a proposal. (Composite EX 1) These factors may not necessarily be a part of a numeric scoring methodology. The IOUs have expressed concern that the language as proposed could imply an unneeded degree of precision which could restrict the flexibility of the utility to select the most cost-effective option. (TR 19-20, 30-2) Florida PACE supports the disclosure of all weighting and ranking factors in the RFP. (TR 193) At the hearing, Mr. Green of Florida PACE agreed that the language as proposed does not mandate a numerical weighting and ranking evaluation process, but that if a numerical process is to be used, that it should be disclosed in the RFP. (TR 214-5) The recommended changes to paragraphs (5)(e) and the new Subsection (6) are an attempt to strike a balance between allowing an IOU flexibility in its design of the RFP and evaluation of proposals, and the need for potential respondents to have better knowledge of the information the IOU will use to evaluate responses.

Subsection (12) of the recommended rule provides potential RFP participants with a point of entry to file with the Commission specific objections to a utility's RFP. Under the proposed rule, objections would have to be filed within ten days of the post-issuance meeting. At the rule hearing, the IOUs expressed concern that this subsection could cause unnecessary delays to the need determination process, and may kill some projects. In particular, the IOUs were concerned that participants would want a "full-blown hearing" on their objections. (TR 69) To eliminate this concern, staff recommends this subsection be changed to set a specific time frame for filing objections, for the utility's response, and for the Commission's ruling. In addition, the recommended changes limit objections "to specific allegations of violations" of the RFP rule. This change should keep the focus on the appropriateness of the RFP on its face, and not the application of the RFP to the individual participants, which was another concern raised by the IOUs. (Tr 37)

If adopted, the changes would require a participant to file objections within 10 days of the issuance of the RFP. The utility has the option of filing a response within 5 days of an objection being filed. Finally, the Commission must "declare the existence or nonexistence of any alleged rule violation within 10 days from the date of the objection" A change has also been added to make it clear that the Commission's ruling will be made "without discovery or an evidentiary hearing," although oral argument is contemplated. These recommended changes to the proposed rule should ensure that the objection process does not cause unnecessary delays.

Subsection (14) of the proposed rule codifies the Commission's existing procedures regarding cost recovery of a power purchase agreement or a self-build option resulting from the RFP process. Staff recommends that the proposed rule amendment be deleted so as not to limit the Commission's flexibility when addressing cost-recovery at a future date. Deletion of this section would not impact the Commission's longstanding authority to review the prudence of utility decisions regarding power purchase contracts or self-build options, and to decide the manner and extent to which cost-recovery should be granted. The existing rule requires RFPs, as a tool by which IOUs gather information, to determine the most cost-effective alternative generating option. An affirmative determination of need is not a guarantee of future cost-recovery. In the order approving a power purchase agreement, the Commission may address the manner and extent of cost-recovery based on the facts presented at that time.

The IOUs proposed deletion of the first sentence of Subsection (14) addressing cost-recovery of power purchase agreements. They argued that it is inappropriate to marry the need determination proceeding with a cost-recovery proceeding in the rule. The IOUs also suggested modifying the last sentence by deleting "... and unforeseen and beyond control..." and inserting "taking into account that the self-build option was based on lower cost estimates." Florida PACE suggests modifying the last sentence to limit the IOUs cost-recovery to that amount listed in the RFP. As discussed above, it is inappropriate to limit the Commission's flexibility regarding cost-recovery in a rule designed to be a tool to gather information to determine the most cost-effective generating option. Florida PACE's argument to require "binding

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bids" is addressed below in the summary of parties' comments/positions.

Staff recommends that Subsection (16) of the proposed rule should be amended to recognize that the IOU may use an auction process in implementing the rule. This language was agreed to by the parties at the hearing. (TR 352) This language is permissive and does not require an IOU to use an auction, only that it is an option available that could be used to meet the requirements of the rule.

Summary of Parties' Comments/Positions

Florida PACE, Calpine, FIPUG, FACT

During the hearing and throughout this docket, Florida PACE has advanced three principles which should be incorporated in the rule. Those are 1) that all terms and conditions of the RFP, including all scoring factors and weighting criteria, should be disclosed in the initial RFP package; 2) that all bidders, including the IOUs, should submit their bids at the same time and should be held to the terms they propose; and 3) that if an IOU submits a self-build proposal, the scoring of proposals should be placed in the hands of a qualified and neutral independent evaluator. (TR 170, 174, 177) These principles are supported by the Florida Industrial Power Users Group (FIPUG), Calpine Eastern Corporation (Calpine), and the Florida Action Coalition Team (FACT).

Florida PACE's first principle on weighting and ranking factors has been addressed earlier in the recommendation. To reiterate, Staff recommends that paragraphs (5)(e) and new Subsection (6) of the proposed rule should be modified to recognize that any weighting and ranking factors to be used should be divulged in the RFP, and should not be changed absent a showing of good cause. The term "weighting and ranking factors," however, does not bind the utility to using a numerical scoring methodology, and the term could encompass both quantitative and qualitative factors.

The second Florida PACE principle is the notion that the IOU should submit a "binding bid" at the same time as other

participants to the RFP. Also, the IOU should be held to the amount bid throughout the RFP process, and, if selected as the most cost-effective alternative, should be held to the amount bid at the time the Commission considers cost-recovery of the self-build option. As discussed previously, this principle should not be incorporated into the rule, as it would place the Commission beyond the existing regulatory framework. It has been made abundantly clear in this docket at the Commission workshops, at the September 30, 2002 Special Agenda, and at the hearing that IOUs and respondents to RFPs are not identical entities. Parties, such as those represented by Florida PACE and Calpine, respond to RFPs by submitting a price or pricing structure which may or may not have any basis in the cost to construct generation and/or provide electricity to the IOU. If selected to be the most cost-effective alternative, the pricing terms of a power purchase contract are not necessarily fixed over the term of the contract. The Commission has extensive experience with changes to the pricing of cogeneration contracts over the last ten years.

The IOU should provide its best estimate of the cost of the self-build option in its RFP. In order to ensure that the ratepayer ultimately benefits from this process, the IOU should be allowed to "sharpen its pencil" by potentially improving the cost parameters of its self-build option. Likewise, bidders should be allowed to improve the terms or pricing structure of its bid, if selected for further negotiations in the RFP process. Subsection (12) of the Commission's proposed rule requires a fair comparison of the responses to the RFP against the utility's next planned generating unit(s) identified in the RFP. The Commission would be provided with the information necessary to evaluate the extent to which the IOU "sharpened its pencil," if at all.

The third Florida PACE principle would require a third-party independent evaluator to score the proposals, including the IOUs, and determine the most cost-effective alternative. This provision would take the rule outside the existing regulatory framework discussed earlier. This issue has been discussed at the Commission workshops, at the September 30, 2002 Special Agenda, and at the hearing. The use of a third-party evaluator, as proposed by Florida PACE, is linked to the concept of a strict scoring mechanism and binding bids. Florida PACE would have the third-party evaluator select a proposal based on pre-defined criteria,

require the execution of a power purchase agreement between the respondent and IOU, and dictate the level of cost-recovery. In any RFP evaluation process, there should be some subjectivity involved. An IOU, with its statutory obligation to serve, should decide how it will meet the needs of its customers. It is not appropriate to give that decision making authority to an entity that is not accountable to customers or this Commission. The Commission has statutory authority to evaluate the decisions of IOUs, and that authority should be retained.

IOUs

The IOUs suggested several changes to the proposed rule, some of which have been discussed previously. The IOUs suggested deleting part of proposed paragraph (5)(g), that application fees should be cost-based. It is appropriate to use cost-based application fees to ensure that such fees are reasonable and will not deter a potential participant from submitting a proposal. The IOUs suggested modifying proposed paragraph (5)(h), which requires more detailed information on a utility's system from "any" information to "best available" information. This change is appropriate as it would limit the information to that pertinent to the evaluation of proposals.

Calpine

Calpine, in addition to supporting the comments of Florida PACE, advocated a reference in the rule to an auction process in meeting the requirements of the rule. That suggestion has been incorporated in Subsection (16) of the recommended rule and was discussed earlier.

The City of Tampa and the Solid Waste Authority of Palm Beach

The City of Tampa and the Solid Waste Authority of Palm Beach advocated that the RFP application fee be limited to \$500 for local governments. These parties also support the concept of a "binding bid" for IOU self-build options. This concept is addressed above as part of the discussion of Florida PACE's principles. The IOUs agreed at the hearing that they would be receptive to reduced application fees for governmental entities on renewables projects and would work with the entities on that issue. Any such reduced

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application fees could be discussed at the pre-RFP meeting and would be reflected in the RFP. (TR 163)

Florida Crystals

Florida Crystals is concerned that it is subject to the rule, and supports expanding the rule to major capacity additions 75 MW or greater, and exempting from the rule purchases of three years or less. It was clarified at the hearing that Florida Crystals is exempt from the rule as it is not a rate regulated utility pursuant to Section 366.02(1), Florida Statute. (TR 343-9) The issue of expanding the application of the rule to non-PPSA projects was considered and not accepted at the September 30, 2002 Special Agenda.

Matters Raised in the Order Establishing Procedure

The Order Establishing Procedure (Order No. PSC-02-1514-PCO-EQ, issued November 4, 2002), solicited comments on four topics which were discussed at the September 30, 2002 Special Agenda.

1. Bid Protest and Dispute Resolution - This topic is addressed in greater detail in the recommendation for Subsection (12) of the recommended rule. The IOUs state that the Subsection should be deleted because the provision is unworkable. Florida PACE states that if its principles and proposed language is adopted, proceedings on bid protests would be streamlined.

2. The Need for an Equity Penalty or Adjustment - No rule language on this topic is proposed. The IOUs stated in their written comments that they would identify in the RFP how an equity adjustment would be applied to proposals. Florida PACE and FACT stated in written comments that an equity penalty or adjustment should not be imposed on proposals. At the hearing the IOUs and Florida PACE agreed that if an equity penalty or adjustment is to be used by the IOU in its evaluation of proposals, the IOU would disclose in the RFP the methodology to be used to calculate the equity penalty or adjustment. (TR 332-3)

3. Utility Staffing of Bid Proposal Evaluation - No rule language is proposed to address this topic. In written comments, the IOUs stated that different teams develop power plant proposals

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and conduct RFPs, but there may be instances where some intersection occurs. They also state that it may be expensive or impractical to insist upon greater separation. Florida PACE stated in written comments that adoption of its principle on a third-party evaluator would obviate potential conflict of interest among utility personnel.

4. Sharing of Benefits Flowing from Under-budget Self-build Projects - This topic is discussed in the recommendation for deleting Subsection (14). While no rule language is proposed for this topic, the Commission retains the authority to recognize and reward an IOU for building a generating facility under budget. In written comments, the IOUs stated that this topic should not be in the rule, but explored in individual cases. Florida PACE and FACT supported allowing the Commission to reward an IOU for under-budget self-build projects.

In summary, the proposed rule should be modified as shown in Attachment A. These changes should improve the transparency of information available to potential respondents. It also provides for more opportunities for parties to formally meet to discuss the RFP, and resolve any questions or issues prior to the submission of proposals. The changes require the IOU to disclose in detail its evaluation methodology and the factors it will consider in evaluating proposals, and to not change the methodology or factors without good cause. The IOU also must evaluate all proposals in a fair comparison with the generating unit(s) identified in the RFP. These changes ultimately should benefit the ratepayer by improving the process to ensure that the most cost-effective generating option is selected.

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ISSUE 2: Should the rule as approved by the Commission be filed for adoption with the Secretary of State and the docket be closed?

RECOMMENDATION: Yes, the rule as approved by the Commission should be filed for adoption with the Secretary of State after the changes are published in the Florida Administrative Weekly. (BRUBAKER, HARRIS)

STAFF ANALYSIS: After a Notice of Change is published in the Florida Administrative Weekly, the rule may be filed with the Secretary of State for adoption and the docket may be closed.

(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 Section 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

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

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

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

21 ~~(3)(2)~~ Prior to filing a petition for determination of need
22 for an electrical power plant pursuant to Section 403.519, Florida
23 Statutes, each ~~investor-owned electric~~ public utility shall
24 evaluate supply-side alternatives to its next planned generating

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1 unit by issuing a Request for Proposals (RFP).

2 ~~(4)(3)~~ Each public ~~investor-owned~~ utility shall provide
3 timely notification of its issuance of an RFP by publishing public
4 notices in major newspapers, periodicals and trade publications to
5 ensure statewide and national circulation. The public notice given
6 shall include, at a minimum:

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

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

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

15 ~~(5)(4)~~ Each public utility's RFP shall include, at a
16 minimum:

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

- 21 1. a description of the public utility's next planned
22 generating unit(s) and its proposed location(s);
- 23 2. the MW size;
- 24 3. the estimated in-service date;

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

19 (b) a copy of the public utility's most recent Ten-Year Site
20 Plan; Detailed information regarding the public utility's ten year
21 historical and ten year projected net energy for load;

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

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1 ~~(d)~~(e) a description of the price and non-price attributes
2 to be addressed by each alternative generating proposal including,
3 but not limited to:

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

12 ~~(e)~~(d) a detailed description of the methodology, including
13 any weighting and ranking factors, to be used to evaluate
14 alternative generating proposals on the basis of price and non-
15 price attributes~~;~~;

16 ~~(f) All criteria, including all weighting and ranking factors~~
17 ~~that will be applied to select the finalists. Such criteria may~~
18 ~~include price and non price considerations, but no criterion shall~~
19 ~~be employed that is not expressly identified in the RFP absent a~~
20 ~~showing of good cause;~~

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

23 ~~(h)~~(g) Any best available information regarding system-
24 specific conditions which may include, but not be limited to,

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1 preferred locations proximate to load centers, transmission
2 constraints, the need for voltage support in particular areas,
3 and/or the public utility's need or desire for greater diversity of
4 fuel sources.

5 (6) No attribute or methodology pursuant to Subsections (5) (d)
6 and (e) shall be employed that is not expressly identified in the
7 RFP absent a showing of good cause;

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

20 (8) (7) (6) Within 30 days after the public utility has
21 selected finalists, if any, from the participants who responded to
22 the RFP, the public utility shall publish notice in a newspaper of
23 general circulation in each county in which a finalist ~~has~~
24 proposeds to build an electrical power plant. The notice shall

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1 include the name and address of each finalist, the name and address
2 of the public utility, and a general description of each proposed
3 electrical power plant, including its location, size, fuel type,
4 and associated facilities.

5 ~~(9)(8)(7)~~ Each public electric utility shall file a copy of
6 its RFP with the Commission upon issuance.

7 ~~(10)(9)~~ The public utility shall allow participants to
8 formulate creative responses to the RFP. The public utility shall
9 evaluate all proposals.

10 ~~(11)(10)~~ The public utility shall conduct a meeting prior to
11 the release of the RFP with potential participants to discuss the
12 requirements of the RFP. The public utility shall also conduct a
13 meeting within two weeks after the issuance of the RFP and prior to
14 the submission of any proposals. The Office of Public Counsel and
15 the Commission staff shall be notified in a timely manner of the
16 date, time, and location of such meetings.

17 ~~(12)(11)~~ A potential participant who attended the public
18 utility's post issuance meeting may file with the Commission
19 specific objections to any terms of the RFP limited to specific
20 allegations of violations of this rule within 10 days of the post-
21 issuance of the RFP meeting. The public utility may file a written
22 response within 5 days. Within 30 days from the date of the
23 objection, the Commission panel assigned shall determine whether
24 the objection as stated would demonstrate that a rule violation has

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1 occurred, based on the written submission and oral argument by the
2 objector and the public utility, without discovery or an
3 evidentiary hearing. The RFP process will not be abated pending
4 the resolution of such objections. Failure to file objections
5 within 10 days shall constitute a waiver of those objections. The
6 Commission will address any objections to the terms of the RFP on
7 an expedited basis.

8 ~~(13)~~(12) A minimum of 60 days shall be provided between the
9 issuance of the RFP, and the due date for proposals in response to
10 the RFP.

11 ~~(14)~~(13) The public utility shall evaluate the proposals
12 received in response to the RFP in a fair comparison with the
13 public utility's next planned generating unit identified in the
14 RFP.

15 ~~(14)~~ If the Commission approves a purchase power agreement as
16 a result of the RFP, the public utility shall be authorized to
17 recover the prudently incurred costs of the agreement through the
18 public utility's capacity, and fuel and purchased power cost
19 recovery clauses absent evidence of fraud, mistake, or similar
20 grounds sufficient to disturb the finality of the approval under
21 governing law. If the public utility selects a self build option,
22 any costs in addition to those identified in the need determination
23 proceeding shall not be recoverable unless the utility can
24 demonstrate that such costs were prudently incurred and unforeseen

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1 and beyond its control.

2 ~~(15)(8)~~ The Commission shall not allow potential suppliers of
3 capacity who were not participants to contest the outcome of the
4 selection process in a power plant need determination proceeding.

5 ~~(16)(9)~~ In implementing an RFP under this rule, the public
6 utility may use or incorporate an auction process. The Commission
7 may waive this rule or any part thereof upon a showing that the
8 waiver would likely result in a lower cost supply of electricity to
9 the utility's general body of ratepayers, increase the reliable
10 supply of electricity to the utility's general body of ratepayers,
11 or is otherwise in the public interest.

12 Specific Authority: 350.127(2), 366.05(1), 366.06(2), 366.07,
13 366.051, F.S.

14 Law Implemented: 403.519, 366.04(1), 366.04(2), 366.04(5),
15 366.06(1), 366.06(2), 366.07, 366.041, 366.051, F.S.

16 History: New 01/20/94, Amended.

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Attachment B

Summary of Comments on Proposed Changes to Rule 25-22.082, F.A.C.

Rule 25-22.082, F.A.C.	Description of Proposed Changes	Comments by Parties
<p><u>(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 Section 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.</u></p>	<p>The first three sentences of the proposed rule should be deleted. These sentences provide a framework for the rule by paraphrasing the statutory responsibilities of the IOUs. As discussed in the hearing, the statutory citations are provided at the end of the rule which would lead the reader of the rule to the obligations of the IOU. Deleting these sentences will have no adverse impact to the intended purpose of the rule.</p>	<p>IOUs: Majority of section should be deleted; much of the language is superfluous; some language is ambiguous.</p> <p>PACE: Section assumes IOU evaluation of bids; PACE supports third-party evaluator. Delete third sentence; amend fourth sentence to restate intent of rule is to ensure the selection of the most economical and cost-effective mix of resources.</p> <p>FIPUG: (p 2) Supports language, but it is the structure of the RFP process that will ensure that the most cost-effective alternative is selected.</p>
<p><u>(2)(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.</u></p>	<p>Clarifies that the rule is applicable to rate-regulated utilities.</p>	
<p>(2)(b) Next Planned Generating Unit...PACE and Florida Crystals proposes to expand applicability of the rule to Major Capacity Additions.</p>	<p>A form of the suggested changes was considered at the 9/30 Special Agenda, but the Commission voted to retain the rule's applicability to Power Plant Siting Act projects.</p>	<p>PACE: Delete existing language, insert "Major Capacity Addition" exceeding 75 MW.</p> <p>Florida Crystals: Delete existing language, insert "Major Capacity Addition" of 75 MW or more; capacity commitments of less than 3 years are excluded from the rule.</p>

Rule 25-22.082, F.A.C.	Description of Proposed Changes	Comments by Parties
(2)(c)(b) Request for Proposals (RFP): a document in which an <u>public investor-owned</u> utility publishes the price and non-price attributes of its next planned generating unit in order to solicit and screen, for <u>potential</u> subsequent contract negotiations, competitive proposals for supply-side alternatives to the <u>public</u> utility's next planned generating unit.	Includes "potential" to clarify that contract negotiations are not required by rule.	
(2)(d)(e) Participant: a potential generation supplier who submits a proposal in compliance with both the schedule and informational requirements of a <u>public</u> utility's RFP. A participant may include, <u>but is not limited to</u> , utility and non-utility generators, <u>Exempt Wholesale Generators (EWGs), Qualifying Facilities (QFs), marketers, and affiliates of public utilities</u> , as well as providers of turnkey offerings, <u>distributed generation</u> , and other <u>utility</u> supply side alternatives.	Provides more specificity of potential participants by referencing EWGs, QFs, marketers, IOU affiliates, and distributed generation projects.	
(2)(f) Independent evaluator - PACE and FIPUG proposes including a provision on third party evaluator	Third party evaluator was discussed at the 9/30 Special Agenda and not proposed for inclusion in the rule. The Commission retains its authority as the evaluator of IOU decisions regarding capacity procurement practices.	PACE: Proposes language on third-party evaluator to apply RFP criteria and weighting factors to proposals and rank per cost-effectiveness. FIPUG: Supports third-party evaluator.
(5)(a)5-8, 11 Each RFP shall include... - PACE proposes to delete provisions requiring cost data related to the IOU's self-build option	The current rule requires cost data to assist the Commission in evaluating the appropriateness of the IOU's selection in the need hearing and in a ratemaking proceeding.	PACE: Delete requirements of cost data of the IOUs self-build option.
(b) a copy of the public utility's most recent Ten-Year Site Plan; <u>Detailed information regarding the public utility's ten year historical and ten year projected net energy for load;</u>	Proposed language changed to more clearly require IOU to provide complete information on the identified need for power.	IOUs: Language should be deleted; information available in ten-year site plans.

Rule 25-22.082, F.A.C.	Description of Proposed Changes	Comments by Parties
<p>(5)(c)(b) a schedule of critical dates for solicitation, evaluation, screening of proposals, <u>selection of finalists</u>, and subsequent contract negotiations;</p>	<p>Requires IOU to identify when finalists would be selected.</p>	
<p>(e)(d) a detailed description of the methodology, <u>including any weighting and ranking factors</u>, to be used to evaluate alternative generating proposals on the basis of price and non-price attributes-;</p> <p>(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;</p> <p><u>(6) No attribute or methodology pursuant to Subsections (5)(d) and (e) shall be employed that is not expressly identified in the RFP absent a showing of good cause.</u></p>	<p>Proposed language changed to require IOU to describe any weighting and ranking factors to be used in evaluating proposals. Subsection (6) requires the evaluation methodology, and price and non-price attributes identified in paragraph (d) are not to be changed without good cause.</p>	<p>IOUs: Delete “including all weighting and ranking factors” Fixing such factors limits flexibility and is at odds with section (9) which allows creativity on the part of bidders.</p> <p>PACE: Delete “absent a showing of good cause”</p> <p>FIPUG: Supports this provision.</p> <p>Tampa/Palm Beach: Delete “absent a showing of good cause” However, if language included, modifications to criterion should be approved by the PSC with opportunity for input by RFP participants.</p>
<p><u>(5)(f) Any application fees that will be required of a participant. Any such fees or deposits shall be cost-based;</u></p>	<p>Requires participants be notified of any fees up front; fees are to be limited to cover the cost of the RFP. Requires fees to be cost-based.</p>	<p>IOUs: Delete second sentence. Difficult to determine cost of process at front end without knowing number of participants and extent of analysis.</p> <p>PACE: Insert language that fees will not exceed \$10,000 in the aggregate.</p> <p>Tampa/Palm Beach: Include language that local governments proposing renewable projects would limited to \$500.</p>

Rule 25-22.082, F.A.C.	Description of Proposed Changes	Comments by Parties
<p>(5)(g) <u>Any best available 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.</u></p>	<p>Proposed language changed to narrow the information required. This language is included to provide greater transparency for potential participants, in order to better understand the utility's need for power, and the operational characteristics of the system.</p>	<p>IOUs: Amend section to state "Best available" as opposed to "Any" information; clarifying language requiring IOU to only divulge information it has identified as likely having a material impact on its evaluation of proposals and could affect the composition of proposals.</p>
<p>(5)(i) PACE - proposes new language requiring third-party evaluator to be listed in the RFP.</p>	<p>Third party evaluator was discussed at the 9/30 Special Agenda and not proposed for inclusion in the rule. The Commission retains its authority as the evaluator of IOU decisions regarding capacity procurement practices.</p>	<p>PACE: Information to be included in the RFP: <u>(5)(i) If the public utility intends to propose a self-build option or consider a transaction with an affiliate, the identity and qualifications of the proposed independent evaluator.</u></p>
<p>(7)(5) As part of its RFP, the <u>public utility shall require each participant to publish a notice in a newspaper of general circulation in each county in which the participant's proposed to build an electrical power plant generating facility would be located....</u></p>	<p>Clarifies that a participant is required to publish a notice for new a new power plant and not for an existing facility.</p>	
<p>(9)(7) Each <u>public electric utility shall file a copy of its RFP with the Commission upon issuance.</u></p>	<p>Included "upon issuance" to specify when the IOU is to provide the RFP to the Commission.</p>	<p>PACE: Insert requirement that the PSC shall publish notice of receipt of the RFP in the FAW.</p>

Rule 25-22.082, F.A.C.	Description of Proposed Changes	Comments by Parties
<p><u>(10) The public utility shall allow participants to formulate creative responses to the RFP. The public utility shall evaluate all proposals.</u></p>	<p>Requires IOU to evaluate all RFP responses, and not preclude an option which could be cost-effective to ratepayers.</p>	<p>IOUs: Replace “evaluate” with “consider”. Proposed language would require the same analysis of all proposals; IOUs must have ability to screen proposals prior to full economic evaluation.</p> <p>PACE: Insert language that the IOU shall evaluate proposals unless it intends to offer a self-build option, when it shall engage a third-party evaluator.</p>
<p><u>(11) 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.</u></p>	<p>Included to provide greater transparency for potential participants, the IOU, FPSC, etc. to answer questions and address issues prior to due date for RFP responses.</p>	<p>IOUs: Delete “within two weeks” Proposal is too inflexible, IOU should set time frame.</p> <p>PACE: Delete “...with potential participants to discuss the requirements of the RFP.”</p>
<p><u>(12) 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 limited to specific allegations of violations of this rule within 10 days of the post-issuance of the RFP meeting. The public utility may file a written response within 5 days. Within 30 days from the date of the objection, the Commission panel assigned shall determine whether the objection as stated would demonstrate that a rule violation has occurred, based on the written submission and oral argument by the objector and the public utility, without discovery or an evidentiary hearing. The RFP process will not be abated pending the resolution of such objections. 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.</u></p>	<p>Proposed rule should be changed so as to set a specific time frame for filing objections, for the utility’s response, and for the Commission’s ruling and to limit objections “to specific allegations of violations” of the RFP rule. These recommended changes to the proposed rule should bring closure to the objection process.</p>	<p>IOUs: Delete section. Provision could delay need process.</p> <p>PACE: Proposes to amend language to develop a point of entry and the mechanism for processing related complaints on an expedited basis. See pp 7-8 of Exhibit 9.</p>

Rule 25-22.082, F.A.C.	Description of Proposed Changes	Comments by Parties
<p><u>(13) 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.</u></p>	<p>Included to provide consistency and certainty regarding due date.</p>	<p>IOUs: Delete section. This has not been an issue in the past; time frame for responding will vary with circumstances.</p> <p>PACE: Amend proposed minimum to 75.</p>
<p><u>(14) 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.</u></p>	<p>This Subsection was added to explicitly require the IOU to fairly evaluate the proposals received against the utility's proposed addition.</p>	
<p><u>(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.</u></p>	<p>Proposed language deleted as this it would not impact the Commission's longstanding authority to review the prudence of utility decisions regarding purchased power contracts and the construction of generating facilities, and the manner and extent to which cost-recovery should be granted.</p>	<p>IOUs: First sentence should be deleted; inappropriate attempt to marry need proceeding with cost recovery proceeding. Amend last sentence by deleting "...and unforeseen and beyond control" inserting "taking into account that the self-build option was based on lower cost estimates.</p> <p>PACE: Strike portion of last sentence beginning with "utility selects" and insert language that would limit the IOUs ability to recover any costs above those identified in the winning proposal. See p 8 of Exhibit 9.</p> <p>FIPUG: Delete "...prudently incurred and unforeseen and beyond its control." IOU must be held to its bid.</p> <p>Tampa/Palm Beach: Delete "the utility can demonstrate that such costs were prudently incurred and unforeseen and beyond its control."</p>

Rule 25-22.082, F.A.C.	Description of Proposed Changes	Comments by Parties
<p>(16)(9) <u>In implementing an RFP under this rule, the public utility may use or incorporate an auction process.</u> 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.</p>	<p>Proposed rule changed to recognize the optional use of an auction process in implementing the rule.</p>	<p>Calpine: Proposes language recognizing use of electronic auction for capacity solicitations.</p> <p>PACE: Delete this section as unnecessary given statutory provisions governing rule waivers.</p>