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Public Service Commission

April 16, 2003

Mr. Carroll Webb
Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, Florida 32399

Re: Docket No. 020398-EQ - Selection of Generating Capacity

Dear Mr. Webb:

Enclosed is the notice of change, which will be published in the Florida Administrative Weekly on April 25, 2003, and the statement of changes for the proposed Rule 25-22.082.

We plan to file the rule for adoption on May 16, 2003.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer S. Brubaker".

Jennifer S. Brubaker,
Senior Attorney

JAPC22-082.JSB

Enclosure

cc: Division of the Commission Clerk
and Administrative Services

DOCUMENT NUMBER DATE
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FLORIDA PUBLIC SERVICE COMMISSION

OFFICE OF THE GENERAL COUNSEL

DOCKET NO. 020398-EQ

RULE NO:

RULE TITLE:

25-22.082

Selection of Generating Capacity

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rules in accordance with subparagraph 120.54(3)(d)1., F.S., published in Volume 28, No. 43, October 25, 2002, issue of the Florida Administrative Weekly. The Notice of Rule Development was published in Volume 28, Number 23, June 7, 2002, issue of the Florida Administrative Weekly.

25-22.082 Selection of Generating Capacity.

(1) Scope and Intent. ~~A Public Utility is required to provide reasonably sufficient, adequate, and efficient service to the public at fair and reasonable rates. In order to assure an adequate and reliable source of energy, a public utility must plan and construct or purchase sufficient generating capacity. To assure fair and reasonable rates and to avoid the further uneconomic duplication of generation, transmission, and distribution facilities in Florida, a public utility must select the most economical and cost-effective mix of supply-side and demand-side resources to meet the demand and energy requirements of its end-use consumers.~~ The intent of this rule is to provide

the Commission information to evaluate a public utility's decision regarding the addition of generating capacity pursuant to Section Chapter 403.519, Florida Statutes. The use of a Request for Proposals (RFP) process is an appropriate means to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available.

(2) - (a) No change.

(b) Next Planned Generating Unit: the next generating unit addition planned for construction by a public ~~an investor-owned~~ utility that will require certification pursuant to Section 403.519, Florida Statutes.

(c) - (e) No change.

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

(4) - (c) No change.

(5) No term of the RFP shall be unfair, unduly discriminatory, onerous, or commercially infeasible. Each public utility's RFP shall include, at a minimum:

(a) - 13. No change.

(b) a copy of the public utility's most recent Ten-Year Site Plan ~~Detailed information regarding the public utility's ten year~~

~~historical and ten year projected net energy for load;~~

(c) - 8. No change.

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

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

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

~~(g)(h) best available~~ Any 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.

(6) No attribute, criterion, or methodology shall be employed that is not identified in the RFP absent a showing that such attribute, criterion, or methodology is necessary for and consistent with the purpose of this rule.

(6) through (8) renumbered as (7) through (9) No change.

~~(10)(9)~~ The public utility shall allow participants to formulate creative responses to the RFP, such as responses which employ innovative or inventive technologies or processes. The public utility shall evaluate all proposals.

(10) renumbered as (11) No change.

~~(12)(11)~~ 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.~~

(12) renumbered as (13) No change.

~~(14)(13)~~ 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. The public utility may modify the construction costs and/or performance parameters affecting revenue requirements in its next planned generating unit that it included in the RFP. However, if it chooses to do so, it must inform participants of its intent, and provide the participants (limited to the remaining finalists) a corresponding opportunity to revise their bids.

(15)-(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 due to extraordinary circumstances unforeseen and beyond its control.

(15) renumbered as (16) No change.

(17) In implementing an RFP under this rule, the public utility may use or incorporate an auction process.

(18)-(16) Upon a showing by a public utility and a finding by the Commission that a proposal not in compliance with the rule's provisions will 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 otherwise will serve the public welfare, the Commission shall exempt the utility from compliance with the rule or any part of it for which such justification is foundThe 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.

Specific Authority: 350.127(2), 366.01, 366.05(1), 366.05(7), 366.06(2), 366.07, 366.051, F.S.

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

History: New 01/20/94, Amended_____.

STATEMENT OF CHANGES

The following changes have been made to the proposed rule:

25-22.082(1)

Language has been deleted from Subsection (1) because it essentially restates the statute, and the statutory citations are provided at the end of the rule. Deleting this language from 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.

25-22.082(5)

Language has been added requiring that no term of the Request for Proposals (RFP) shall be unfair, unduly discriminatory, onerous or commercially infeasible. This section has been added to ensure the RFP process is fair and nondiscriminatory to all participants.

25-22.082(5)(b)

Subsection (5) of the rule lists the minimum information to be included in the public utility's RFP document. Paragraph (b) was 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 originally proposed language, which required detailed information regarding the IOU's historical and projected net energy for load, was apparently confusing to the public utilities. 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.

25-22.082(5)(e)

Paragraph (5)(e) was 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. The changes to Paragraph (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.

25-22.082(5)(f); 25-22.082(6)

Former Subsection (5)(f) was changed to a new Subsection (6). Subsection (6) requires that the public utility not change the price and non-price attributes, criterion or evaluation methodology, absent a showing of good cause. The word "expressly" has been deleted. The changes to Paragraph (5)(e) and the new Subsection (6) are an attempt to strike a balance between allowing a public utility 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 public utility will use to evaluate responses.

25-22-082(5)(g)

Language has been changed to require a utility to provide in the RFP the best information available regarding system-specific conditions, recognizing that absolute certainty or knowledge as to those conditions may not be available.

25-22.082(12)

Subsection (12) of the rule provides potential RFP participants with a point of entry to file with the Commission specific objections to a utility's RFP. Language has been deleted which would have required an objector to have attended the utility's post-issuance meeting, and which would have required waiver of untimely-filed objections. Language has been added which provides the utility with the option of filing a response within 5 days of an objection being filed, and that, 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. 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 changes should ensure that the objection process does not cause unnecessary delays to the RFP process.

25-22.082(14)

The changes to Subsection 14 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 and an opportunity to respond fully and fairly to the information the public utility will use to evaluate responses.

25-22.082(15)

The change to Subsection (15) of the 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.

25-22.082(17)

Subsection (17) of the rule recognizes that the public utility may use an auction process in implementing the rule. This language was agreed to by the parties at the hearing, and does not require a public utility to use an auction, only that it is an option available that could be used to meet the requirements of the rule.

25-22.082(18)

Subsection (18) of the rule has been modified to clarify that the Commission shall exempt, rather than waive, a public utility from compliance with the rule or any part of the rule, upon an appropriate factual showing by the public utility and a finding by the Commission that justification is found for such exemption.