

# ORIGINAL

DOCKET NO. 020398-EQ

CERTIFICATION OF  
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES  
FILED WITH THE  
DEPARTMENT OF STATE

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I do hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

(2) There is no administrative determination of this subsection 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

(a) Are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending;

or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but

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not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

  / (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

  / (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

  x/ (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

  / (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

  / (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-22.082

Under the provision of subparagraph 120.54(3)(e)6., F.S.,  
the rules take effect 20 days from the date filed with the  
Department of State or a later date as set out below:

Effective: \_\_\_\_\_  
(month) (day) (year)

Blanca S. Bayó  
BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

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Number of Pages Certified

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25-22.082 Selection of Generating Capacity.

(1) Scope and Intent. 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 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 unit addition planned for construction by a public ~~an investor-owned~~ utility that will require certification pursuant to Section 403.519, Florida Statutes.

(c)(b) Request for Proposals (RFP): a document in which a public ~~an investor-owned~~ utility publishes the price and non-price attributes of its next planned generating unit in order to solicit and screen, for potential subsequent contract negotiations, competitive proposals for supply-side alternatives

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1 to the public utility's next planned generating unit.

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

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

13 ~~(3)(2)~~ Prior to filing a petition for determination of need  
14 for an electrical power plant pursuant to Section 403.519,  
15 Florida Statutes, each public ~~investor-owned electric~~ utility  
16 shall evaluate supply-side alternatives to its next planned  
17 generating unit by issuing a Request for Proposals (RFP).

18 ~~(4)(3)~~ Each public ~~investor-owned~~ utility shall provide  
19 timely notification of its issuance of an RFP by publishing  
20 public notices in major newspapers, periodicals and trade  
21 publications to ensure statewide and national circulation. The  
22 public notice given shall include, at a minimum:

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

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

6 (c) a schedule of critical dates for the solicitation,  
7 evaluation, screening of proposals and subsequent contract  
8 negotiations.

9 ~~(5)-(4)~~ No term of the RFP shall be unfair, unduly  
10 discriminatory, onerous, or commercially infeasible. Each public  
11 utility's RFP shall include, at a minimum:

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

- 17 1. a description of the public utility's next planned  
18 generating unit(s) and its proposed location(s);
- 19 2. the MW size;
- 20 3. the estimated in-service date;
- 21 4. the primary and secondary fuel type;
- 22 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,
- 8 heat 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 transmission
- 12 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
- 16 the above estimates;
- 17          **(b) a copy of the public utility's most recent Ten-Year**
- 18                **Site Plan;**
- 19          **(c)**~~(b)~~    a schedule of critical dates for solicitation,
- 20 evaluation, screening of proposals, **selection of finalists,** and
- 21 subsequent contract negotiations;
- 22          **(d)**~~(e)~~    a description of the price and non-price

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1 attributes to be addressed by each alternative generating  
2 proposal including, but not limited to:

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

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

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

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

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

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

17        (8)-(6)        Within 30 days after the public utility has  
18 selected finalists, if any, from the participants who responded  
19 to the RFP, the public utility shall publish notice in a  
20 newspaper of general circulation in each county in which a  
21 finalist proposes ~~has proposed~~ to build an electrical power  
22 plant. The notice shall include the name and address of each

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

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

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

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

18 (12) A potential participant may file with the Commission  
19 objections to the RFP limited to specific allegations of  
20 violations of this rule within 10 days of the issuance of the  
21 RFP. The public utility may file a written response within 5  
22 days. Within 30 days from the date of the objection, the

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1 Commission panel assigned shall determine whether the objection  
2 as stated would demonstrate that a rule violation has occurred,  
3 based on the written submission and oral argument by the objector  
4 and the public utility, without discovery or an evidentiary  
5 hearing. The RFP process will not be abated pending the  
6 resolution of such objections.

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

10 (14) The public utility shall evaluate the proposals  
11 received in response to the RFP in a fair comparison with the  
12 public utility's next planned generating unit identified in the  
13 RFP. The public utility may modify the construction costs and/or  
14 performance parameters affecting revenue requirements in its next  
15 planned generating unit that it included in the RFP. However, if  
16 it chooses to do so, it must inform participants of its intent,  
17 and provide the participants (limited to the remaining finalists)  
18 a corresponding opportunity to revise their bids.

19 (15) If the Commission approves a purchase power agreement  
20 as a result of the RFP, the public utility shall be authorized to  
21 recover the prudently incurred costs of the agreement through the  
22 public utility's capacity, and fuel and purchased power cost

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1 recovery clauses absent evidence of fraud, mistake, or similar  
2 grounds sufficient to disturb the finality of the approval under  
3 governing law. If the public utility selects a self-build  
4 option, costs in addition to those identified in the need  
5 determination proceeding shall not be recoverable unless the  
6 utility can demonstrate that such costs were prudently incurred  
7 and due to extraordinary circumstance.

8 ~~(16)(8)~~ The Commission shall not allow potential suppliers  
9 of capacity who were not participants to contest the outcome of  
10 the selection process in a power plant need determination  
11 proceeding.

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

14 ~~(18)(9)~~ Upon a showing by a public utility and a finding  
15 by the Commission that a proposal not in compliance with this  
16 rule's provisions will likely result in a lower cost supply of  
17 electricity to the utility's general body of ratepayers, increase  
18 the reliable supply of electricity to the utility's general body  
19 of ratepayers, or otherwise will serve the public welfare, the  
20 Commission shall exempt the utility from compliance with the rule  
21 or any part of it for which such justification is found ~~The~~  
22 ~~Commission may waive this rule or any part thereof upon a showing~~

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1 ~~that the waiver would likely result in a lower cost supply of~~  
2 ~~electricity to the utility's general body of ratepayers,~~  
3 ~~increase the reliable supply of electricity to the utility's~~  
4 ~~general body of ratepayers, or is otherwise in the public~~  
5 ~~interest.~~

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

8 Law Implemented: 403.519, 366.04(1), 366.04(2), 366.04(5),  
9 366.06(1), 366.06(2), 366.07, 366.041, 366.051, F.S.

10 History: New 1/20/94, Amended.

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**SUMMARY OF RULE**

The proposed amendments to Rule 25-22.082, F.A.C.; 1) clarify the scope and intent of the rule, 2) clarify the definitions of "public utility" and "participant", 3) require additional information to be included by the public utilities in their Requests for Proposals (RFP), 4) require pre-RFP and post-RFP meetings with participants to answer questions about and explain the terms of the RFP, 5) provide for expedited consideration of objections to RFP terms, and provide that those objections must be filed within 10 days of issuance of the RFP, 6) require public utilities to fairly evaluate all proposals against the public utilities' next planned generating unit identified in the RFP, and 7) explicitly recognize existing regulatory processes and prudence limitations on cost-recovery of capacity additions.

**SUMMARY OF HEARINGS ON THE RULE**

A rule hearing was held on December 9-10, 2002. Presentations were made by several parties and Commission staff, followed by discussion by the parties and Commission regarding the proposed rule. The Commission considered its staff's recommendation at a January 3, 2003, Agenda Conference. Upon consideration of the discussion during the hearing, the written comments and exhibits identified at the hearing, and the

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discussion held at the January 3 Agenda Conference, the Commission decided to adopt language for Rule 2522.08s, Florida Administrative Code, by Order No. PSC-03-0133-FOF-EQ, issued December 12, 2002.

Pursuant to that Order, a Notice of Change was filed for publication in the January 17, 2003, edition of the Florida Administrative Weekly (FAW). Pursuant to comments subsequently raised by the Joint Administrative Procedures Committee, a second Notice of Change was filed for publication in the April 25, 2003 edition of the FAW. Due to a minor scrivener's error on the part of the FAW, a Notice of Correction was filed for publication in the May 16, 2003, edition of the FAW.

#### **FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE**

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. Under Section 403.519, the Commission is directed to take into account, "the need for electric system reliability and integrity, and the need for adequate electricity at a reasonable cost, and

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whether the proposed plant is the most cost-effective alternative available." 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.

In 1992 the Commission considered the Joint Petition to Determine Need filed by Cypress Energy Partners, L.P. and Florida Power & Light Company (FPL). During the proceedings, the Commissioners expressed frustration that the limited selection process used by FPL to select Cypress 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. The Commission ultimately denied the joint petition and directed its staff to develop a rule instructing utilities in the procedures by which they select projects to provide capacity and energy. Rule 25-22.082, Florida Administrative Code, was originally adopted by the Commission in January 1994, requiring investor-owned electric utilities 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 useful tool to measure the cost-effectiveness of a capacity selection. The information obtained through the RFP process improves the



efficiency of the regulatory process by providing an objective standard to measure cost-effectiveness and by making information available on a more timely basis as opposed to utilizing a potentially contentious discovery process during the relatively short time frame of a need determination proceeding.

Since it was adopted in 1994, Rule 25-22.082 has been utilized once by Gulf Power Company and once by Florida Power & Light Company. Florida Power Corporation has issued RFPs twice since the Rule's adoption. In each instance the utility has chosen to build, and requested a determination of need for, its own power plant, giving rise to complaints from non-utility wholesale generators that the RFP process is unfair and not likely to result in the most cost-effective alternative for new generating capacity to serve Florida's electric utility customers.

The proposed rule helps ensure that the RFP process is fair and nondiscriminatory to all participants, and results in the most cost-effective alternative for new generating capacity.