



Public Service Commission

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COMMISSION CLERK

DATE: SEPTEMBER 18, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (HAFF, MAUREY, SICKEL)
OFFICE OF THE GENERAL COUNSEL (C. KEATING, M. BROWN)
OFFICE OF MARKET MONITORING & STRATEGIC ANALYSIS (FUTRELL)

Handwritten initials and notes:
ALM DM
TKS
JDJ
WLB
MSA
MCB
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RE: DOCKET NO. 030884-EU - OBJECTIONS TO FLORIDA POWER & LIGHT
COMPANY'S 2003 REQUEST FOR PROPOSALS FILED AUGUST 25,
2003, BY FLORIDA PARTNERSHIP FOR AFFORDABLE COMPETITIVE
ENERGY (PACE) AND SOME INDIVIDUAL MEMBER COMPANIES.

AGENDA: 09/30/03 - REGULAR AGENDA - ORAL ARGUMENT REQUESTED -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: RULE 25-22.082, FLORIDA ADMINISTRATIVE CODE,
REQUIRES COMMISSION ACTION BY OCTOBER 6, 2003.

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030884.RCM

CASE BACKGROUND

Pursuant to Rule 25-22.082, Florida Administrative Code (the
"Bid Rule"), Florida Power & Light Company ("FPL") issued and filed
with the Commission on August 25, 2003, its 2003 Request for
Proposals for firm capacity and energy beginning in 2007 from
supply side resources ("request for proposals" or "RFP").

On September 4, 2003, Florida Partnership for Affordable
Competitive Energy ("PACE") filed its Objections to Florida Power
& Light Company's Request for Proposals ("Objections") pursuant to
Rule 25-22.082(12), Florida Administrative Code, alleging
violations of the Bid Rule.

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On September 9, 2003, FPL filed its Response to PACE's Objections ("Response") along with a Motion to Exclude PACE from Bid Rule Objection Process ("Motion to Exclude"). PACE filed its Response to FPL's Motion to Exclude ("Response to FPL's Motion") on September 16, 2003.

This case represents the first instance in which the objection process set forth in Rule 25-22.082(12), Florida Administrative Code, has been implemented. Pursuant to the rule, the Commission must determine, within 30 days of objections to an RFP being filed, whether the objections as stated would demonstrate that a violation of the Bid Rule has occurred. The rule requires that the Commission's decision be based only on the written submission and oral argument of the objector and the public utility, without discovery or an evidentiary hearing. Given the expedited and informal nature of this process, the Commission's findings concerning the objections are necessarily informal preliminary findings of an advisory nature.

This recommendation addresses PACE's Objections and FPL's Motion to Exclude and is based on the written submissions of FPL and PACE as set forth above. This recommendation is not based on oral argument because oral argument will not be heard until the recommendation is addressed by the Commission at an Agenda Conference.

The Commission has jurisdiction over this matter pursuant to Section 403.519, Florida Statutes, and the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.041, 366.05, 366.051, 366.06, and 366.07, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant FPL's Motion to Exclude PACE from Bid Rule Objection Process?

RECOMMENDATION: No. Allowing PACE to participate in the objection process is consistent with the intent of the Bid Rule and will potentially avoid a more resource-consuming, formal dispute over the same objections during FPL's upcoming need determination proceeding. PACE is in a unique position to state the concerns of independent power producers under this process in an efficient manner. (C. Keating, M. Brown)

STAFF ANALYSIS: Rule 25-22.082(12), Florida Administrative Code, provides that "[a] potential participant may file with the Commission objections to the RFP limited to specific allegations of violations of this rule within 10 days of the issuance of the RFP." A "participant" is defined in Rule 25-22.082(2)(d), Florida Administrative Code, as

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

At issue is whether PACE, as an industry trade organization rather than a potential bidder, is eligible under subsection (12) of this rule to file objections to FPL's request for proposals. Because the objection process set forth in subsection (12) has not previously been exercised, this case presents the issue to the Commission for the first time.

In support of its standing to file objections, PACE asserts in its Objections that its individual member companies are "potential participants" because each is an electric capacity generation supplier that may submit a proposal in response to FPL's request for proposals. As such, PACE states, these companies are entitled to file objections to the RFP. PACE asserts that it is also a "potential participant" within the meaning of the Bid Rule on the

basis that it has previously been granted intervention to represent the substantial interests of its member companies in two recent need determination proceedings before the Commission. PACE argues that it should be permitted to participate in the objection process consistent with the express provisions and intent of the Bid Rule to encourage and accommodate participation by substantially interested entities in the RFP process.

In its Motion to Exclude, FPL argues that PACE's intervention status in two recent need determination proceedings is not relevant to the question of whether PACE is a "potential participant." Further, FPL takes issue with PACE's assertion that the Bid Rule permits participation by "substantially interested entities." FPL notes that subsection (12) of the Bid Rule is open to "potential participants" and never refers to "substantially interested entities." FPL asserts that the term "participant," as used in the Bid Rule, is limited solely to generation suppliers, a definition that does not apply to PACE. FPL further argues that PACE would have standing as an association to participate in the need determination proceeding that would result from this RFP.

In its Response to FPL's Motion, PACE asserts that it has standing to participate in the objection process regardless of whether the process is governed by the procedures for formal evidentiary proceedings set forth in Chapter 120, Florida Statutes. PACE argues that its intervention in recent need determination proceedings is relevant because the Commission determined PACE to be a "participant" in allowing it to intervene in those proceedings and must therefore treat PACE as a participant for purposes of the objection process. PACE further argues that it would have standing as an association to participate in the need determination proceeding that would result from this RFP.

The purpose of the Bid Rule's objection process is to identify and address concerns with a utility's request for proposals prior to a need determination proceeding. This process allows the Commission to provide guidance to the utility and potential need determination parties as to how it may rule on issues raised with respect to the appropriateness of the utility's RFP. The Commission's decision in this informal process is not final, but should help to streamline the need determination proceeding by addressing concerns about an RFP in a timely manner.

PACE, while not a potential generation supplier who would submit a proposal in response to FPL's RFP, is an industry trade association whose membership consists of many potential generation suppliers (independent power producers) that clearly qualify as "potential participants" under the Bid Rule. As such, a significant nexus exists between PACE and those potential participants. PACE is in a unique position to state the concerns of independent power producers under the Bid Rule's objection process in an efficient manner, without the necessity that each independent power producer file its own set of objections.

Allowing PACE to participate in the objection process is consistent with the goal of that process, which, as stated above, is to identify and address concerns with a utility's RFP prior to a need determination proceeding. By filing objections on behalf of its member companies, PACE can just as easily further that goal as its individual member companies can. As discussed in Issue 2 of this recommendation, PACE's Objections have already achieved that benefit, as FPL recently amended its RFP to address two of the concerns raised in PACE's Objections. Handling PACE's objections now potentially avoids a more resource-consuming, formal dispute over the same objections during FPL's need determination proceeding.

Although both PACE and FPL address whether PACE would have standing as an association to participate in a formal evidentiary proceeding on this subject, that is not the issue the Commission must decide. The objection process set forth in subsection (12) of the Bid Rule is clearly an informal process rather than a formal evidentiary proceeding. Subsection (12) expressly states that the Commission's resolution of a filed objection shall be based only on the written submissions and oral argument of the parties, without discovery or an evidentiary hearing. Thus, PACE's potential standing to participate in a formal evidentiary proceeding is not at issue.

As a final point, staff believes it should clarify that the Commission, in granting PACE's intervention in recent need determination proceedings, did not base its decisions on a finding that PACE was a "participant." Rather, PACE was granted intervention under applicable law governing an association's standing to intervene in a formal administrative proceeding. In its Response to FPL's Motion, PACE attempts to equate a finding of associational standing with a finding that PACE was a "participant"

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as defined in the Bid Rule. While the Bid Rule precludes intervention in need determination proceedings by potential capacity suppliers who did not participate in a utility's RFP process, it does not follow that all persons found to have standing to intervene in a need determination proceeding are therefore "participants" as that term is used in the Bid Rule. Despite this flaw in PACE's argument, the Commission should allow PACE to participate in the objection process based on staff's previously stated rationale.

In conclusion, staff recommends that the Commission deny FPL's Motion to Exclude and permit PACE to participate in the objection process set forth in subsection (12) of the Bid Rule. The Commission should be clear that allowing PACE to participate in this informal process in no way prejudices whether PACE has standing as an association to participate in the formal need determination proceeding that would take place at the conclusion of FPL's RFP process.

ISSUE 2: Do PACE's Objections to FPL's Request for Proposals indicate a violation of any portion of Rule 25-22.082, Florida Administrative Code?

RECOMMENDATION: No. PACE's Objections do not indicate that FPL's Request for Proposals violates any provision of Rule 25-22.082, Florida Administrative Code. Of the fourteen specific objections cited by PACE, three are inappropriate, two have been resolved by FPL's actions taken subsequent to PACE's filing, and nine do not appear to violate any provision of Rule 25-22.082, Florida Administrative Code. (Haff, Maurey, C. Keating, M. Brown)

STAFF ANALYSIS: Of the fourteen specific objections filed by PACE in response to FPL's RFP, three are inappropriate since PACE objects to terms contained in the draft purchased power agreement (PPA) provided in FPL's RFP. See PACE Objections B, F, and K. Rule 25-22.082, Florida Administrative Code, does not require a utility to provide a draft PPA as part of the RFP package. FPL has gone beyond the requirements of the rule in order to provide additional information to potential participants to the RFP process. Two other objections have been resolved by FPL's actions taken subsequent to PACE's filing. See PACE Objections J and L. Therefore, these two objections are moot. Staff believes that of the nine remaining objections to FPL's RFP, none appear to violate any provision of Rule 25-22.082, Florida Administrative Code. In its need determination proceeding, FPL will still have the burden of proof to show that the capacity selection made after completion of this process is the most cost-effective option for FPL's ratepayers.

As recently revised, the Bid Rule now requires utilities to disclose in an RFP, up-front, many minimum requirements that were previously used as non-economic evaluation criteria after bids were received. Many of PACE's objections relate to the minimum requirements contained in FPL's RFP pursuant to the recently revised Bid Rule.

Each of PACE's specific objections, along with a summary of PACE's argument, FPL's response, and staff's analysis of each objection, are discussed in Attachment A.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. The docket to address objections to FPL's Request for Proposals on a preliminary basis pursuant to Rule 25-22.082 (12), Florida Administrative Code, should be closed. (C. Keating, M. Brown)

STAFF ANALYSIS: This docket should be closed. Other issues related to this subject may be raised by the appropriate parties to the future need determination proceeding.

ATTACHMENT A
PACE'S OBJECTIONS TO FPL'S REQUEST FOR PROPOSALS
OBJECTIONS A-N

A. The RFP's "Geographic Preference" factor is unfair and unduly burdensome

PACE:

- PACE members had little advance knowledge of where FPL's 2007 unit would be proposed.
- RFP is unfair because PACE members have difficulty finding sites in southeastern Florida.

FPL:

- FPL's OASIS contained discussion of generation/load imbalance as far back as November, 2002. This subject should not have been a surprise to potential RFP respondents.
- Most of FPL's available plant sites are located outside of southeastern Florida, so FPL's choice of the Turkey Point site the makes self-build option potentially more costly than if another FPL site were chosen.

Staff:

- Subsection (5)(g) of the Bid Rule requires that a utility's RFP disclose the "best available information regarding system-specific factors such as preferred locations and transmission constraints." FPL's geographic preference factor complies with this requirement.
- FPL's RFP does not preclude a respondent from building a new unit outside of southeastern Florida.
- After analyzing the RFP responses, if FPL chooses the self-build option at the Turkey Point site, FPL will have to justify this decision at the subsequent need determination hearing.
- FPL's geographic preference factor does not appear to violate subsection (5) of the Bid Rule.

B. The RFP's "Regulatory Out" provisions are unfair, unduly discriminatory, and commercially infeasible

PACE:

- The regulatory out provision is a minimum requirement.
- The regulatory out provision causes problems with financing and shifts all risks of cost disallowance from FPL to the bidders.

FPL:

- The risk of disallowance ultimately should go to the entity with performance accountability and an opportunity to earn a return - the seller.
- Regulatory out provision also advantages the bidder by allowing the bidder, not FPL, to terminate the contract if FPL reduces capacity payment due to regulatory disallowance.
- The risk of Commission disallowance is small absent management imprudence, and the Commission has never disallowed recovery of costs under a PPA.

Staff:

- The draft PPA, attached to FPL's RFP, contains the regulatory out provision.
- Subsection (15)(g) of the Bid Rule allows the utility to recovery prudently incurred costs of a PPA "absent evidence of fraud, mistake, or similar grounds sufficient to disturb the finality of the approval under governing law." The rule does not preclude FPL from including a regulatory out provision in a PPA.
- No part of the Bid Rule requires utilities to include a draft PPA in its RFP. FPL attached a draft PPA to its RFP, which goes beyond the minimum requirements of the Bid Rule.
- The regulatory out provision, contained in the draft PPA attached to FPL's RFP, does not appear to violate subsection (5) of the Bid Rule.

C. The RFP's "Financial Viability and Security Requirements" are unfair, onerous, and unduly discriminatory

PACE:

- The financial viability and security minimum requirement will limit the number of respondents to FPL's RFP.
- The financial viability and security minimum requirement was not included by FPL in the Martin/Manatee RFP.

FPL:

- The financial viability requirement provision applies only to proposals which contain new generating plants. Entities with existing generation are exempt, since the risk of financing and construction completion are no longer at issue.
- Where the bidder does not meet the minimum debt rating requirement, the bidder can partner with an investment-grade parent company or affiliate.
- In the Martin/Manatee RFP, FPL accepted and evaluated proposals from below investment-grade entities, although FPL clearly indicated the unlikelihood of executing a long-term PPA with one of these entities.

Staff:

- Subsection (5)(d)1 of the Bid Rule requires that a utility's RFP contain a description of price and non-price attributes for a bidder, such as financial viability. FPL's financial viability provision complies with this requirement.
- While FPL's financial viability requirement will limit the number of bidders, given the financial state of the merchant industry, FPL needs some protection against default. A rating of BBB or higher is reasonable.
- FPL's financial viability requirement does not appear to violate subsection (5) of the Bid Rule.

D. The RFP's "Security Package Requirements" provisions are unfair, unduly discriminatory, and onerous

PACE:

- Completion security in this RFP is \$188,000 per MW, an amount much greater than the Martin/Manatee RFP and other recent RFPs.
- Performance security in this RFP is \$95,000 per MW, an amount much greater than other recent RFPs.
- Draft PPA allows FPL "step-in" rights to take over troubled projects and, therefore, large amounts of completion security and performance security are not required.

FPL:

- FPL could step-in; however, in that case FPL would still have to complete the project, likely incurring cost overruns and schedule delays.
- Amount of security in this RFP is higher than that in FPL's Martin/Manatee RFP. However, rather than set an arbitrary value like in that case, FPL computed a conservative estimate of replacement capacity and energy costs in the event of non-completion of a bidder project and/or non-performance.

Staff:

- Subsection (5)(d)1 of the Bid Rule requires that a utility's RFP contain a description of price and non-price attributes for a bidder, such as technical and financial viability. FPL's completion security and performance security provisions comply with this requirement.
- FPL quantified a cost estimate for replacement capacity and energy in its RFP as a basis for the completion security and performance security requirements.
- FPL's completion security and performance security provisions do not appear to violate subsection (5) of the Bid Rule.

E. The RFP's site certification application submittal schedule is unfair, onerous, and commercially infeasible

PACE:

- It is difficult for a bidder to file a site certification application if a winning bid has not yet been chosen.

FPL:

- Serious bidders would have known about the tight schedule. It was well known, from the Ten-Year Site Plan, that FPL planned a generating unit in 2007 that required certification.
- Building a power plant requires "substantial commitment of resources up front, with no certainty that they will be recovered."

Staff:

- Subsections (4)(c) and (5)(c) of the Bid Rule require that a utility's RFP contain a schedule of critical dates for soliciting, evaluating, and screening proposals. FPL's schedule for submitting a site certification application complies with this requirement. Including a critical date for filing a site certification application is an extension of the requirement.
- FPL, like the RFP respondents, also has to meet the site certification application submittal schedule, although FPL will not at that time have made a final decision on whether to self-build or buy from an RFP respondent.
- FPL's RFP does not require bidders to submit a proposal requiring certification under the Power Plant Siting Act. The bidder could submit combustion turbine units, small (less than 75 MW steam cycle) combined cycle units, sales from an existing unit, or system sales.
- FPL's schedule for submitting a site certification application does not appear to violate subsection (5) of the Bid Rule.

F. FPL's attempt to impose a Power Purchase Agreement on bidders, without the benefit of negotiation, is unfair, onerous, and commercially infeasible

PACE:

- FPL does not disclose how it will evaluate a bidder's exceptions to the draft PPA. Objects to taking exceptions prior to submitting a bid, prior to any negotiation.

FPL:

- FPL attached a draft PPA to have a "starting point" for potential negotiations with bidders. This enables meaningful comparison between bidders who may state different objections to the draft PPA.
- FPL did not impose the draft PPA on bidders. FPL simply told bidders to state any known objections to the draft PPA up-front.

Staff:

- No part of the Bid rule requires utilities to include a draft PPA in its RFP. FPL attached a draft PPA to its RFP, which goes beyond the minimum requirements of the Bid Rule.
- The inclusion of a draft PPA, attached to FPL's RFP, does not appear to violate subsection (5) of the Bid Rule.

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G. The RFP's Transmission Loss Factor and Power Flow Cost Adder provisions are onerous and unduly discriminatory

PACE:

- Recent capacity RFPs from Progress Energy Florida and Tampa Electric Company did not contain this provision.
- FPL's 1100 MW need is a system need, not a southeastern Florida need.
- Transmission loss factor and power flow cost adder weren't concerns expressed by FPL in the Martin/Manatee RFP.

FPL:

- FPL's OASIS contained discussion of generation/load imbalance as far back as November, 2002. This subject should not have been a surprise to potential bidders.
- Without additional generation in southeastern Florida, there will be an increasing need to incur higher costs in the dispatch of southeastern Florida generation to maintain reliability.

Staff:

- Subsection (5)(d)3 of the Bid Rule requires that a utility's RFP contain a description of price and non-price attributes for a bidder, such as deliverability (interconnection and transmission). FPL's transmission loss factor and power flow cost adder comply with this requirement.
- Subsection (5)(g) of the Bid Rule requires that the utility's RFP disclose the "best available information regarding system-specific factors such as preferred locations and transmission constraints." FPL's transmission loss and power flow cost adders comply with this requirement.
- After analyzing the bidder proposals, if FPL chooses the self-build option at the Turkey Point site, FPL will have to justify this decision at the subsequent need determination hearing.
- FPL's transmission loss factor and power flow cost adder do not appear to violate subsection (5) of the Bid Rule.

H. The RFP provisions addressing "Reservation of Transmission Capacity" are unfair and unduly discriminatory

PACE:

- Bidders should not have to pay now (by siting a project in southeastern Florida) to free up transmission capacity later for FPL's future solid-fueled units.
- FPL should assign future transmission upgrade costs to the project that causes those costs.

FPL:

- RFP did not state that FPL would reserve transmission capacity for future solid fuel-fired units. FPL only stated its desire for more fuel diversity beyond the 2007 need, such as a solid fuel-fired generating unit built by FPL, another utility, or an independent power producer.
- RFP says only that a solid fuel-fired unit may be difficult to site in southeastern Florida. Therefore, siting the 2007 unit outside of southeastern Florida will hamper future attempts to use the existing transmission system to deliver solid fuel-fired power to the area beyond 2007.
- The only transmission costs that FPL will quantify in its RFP economic analysis will be those costs related to the generating options it will be evaluating.

Staff:

- Subsection (5)(g) of the Bid Rule requires that a utility's RFP disclose the "best available information regarding system-specific factors such as preferred locations and transmission constraints". FPL's identification, in its RFP, of transmission constraints in southeastern Florida complies with this requirement.
- The RFP does not preclude a bidder from building a new unit outside of southeastern Florida.
- FPL's RFP recognizes that additional capacity in 2007 located in southeastern Florida is more desirable because it will mitigate the increasing burden to transmit power into the region.
- FPL's identification, in its RFP, of transmission constraints in southeastern Florida does not appear to violate subsection (5) of the Bid Rule.

I. The RFP's Equity Penalty provisions are unfair, onerous, and unduly discriminatory

PACE:

- Equity penalty fails to recognize the value that long-term PPA confers to FPL.
- In the Martin/Manatee need case, staff testified that the equity penalty was not necessary in that instance.

FPL:

- In Martin/Manatee need case, the Commission determined that the equity penalty should be evaluated on "case-by-case" basis.
- Equity penalty only applies to purchase power obligations of more than three years.

Staff:

- Subsection (5)(e) of the Bid Rule requires that a utility's RFP disclose 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." FPL's identification, in its RFP, of the equity penalty provision complies with this requirement.
- Subsection (6) of the Bid Rule states in part that "no attribute, criterion, or methodology shall be employed that is not identified in the RFP..." FPL's identification, in its RFP, of the equity penalty provision complies with this requirement.
- Equity penalty was a major issue in the Martin/Manatee need case. In that case, the Commission again determined that equity penalty should be evaluated on "case-by-case" basis.
- The Commission made no finding in the Martin/Manatee need case on whether the equity penalty was an unfair, onerous, or discriminatory requirement.
- FPL's identification, in its RFP, of the equity penalty provision does not appear to violate subsection (5) of the Bid Rule.

J. The RFP's dual fuel requirements are unfair and onerous

PACE:

- Dual-fuel capability was not required in Martin/Manatee need case.

FPL:

- FPL had oil capability at the Martin site and separate pipelines from two gas transportation companies adjacent to the Manatee site.
- FPL agreed to revise its RFP on September 12, 2003 to recognize proposals which have two independent, reliable sources of natural gas transportation as complying with the dual-fuel requirement.

Staff:

- Subsection (5)(d)4 of the Bid Rule requires that a utility's RFP contain a description of price and non-price attributes for a bidder, such as fuel supply. FPL's dual fuel provision complies with this requirement.
- This objection is now moot, as FPL will now accept proposals which have two independent, reliable sources of natural gas transportation.

K. The PPA's requirement that cash deposits be held in accounts that accrue interest for FPL's benefit is onerous, unfair, and unduly discriminatory

PACE:

- FPL should not get to keep interest on cash deposits made by bidders for Completion Security and Performance Security.

FPL: "

- The draft PPA did not state that FPL would keep the interest, only that the security account will benefit FPL. Nowhere in the draft PPA does it state that FPL keeps the cash interest earned on the security account.
- This is a non-mandatory, negotiable provision included in a draft PPA.

Staff:

- FPL should be afforded the opportunity to clarify its expectations regarding the interest earned on cash deposits.
- The "to the benefit of FPL" language is contained in the draft PPA attached to FPL's RFP.
- No part of the Bid Rule requires utilities to include a draft PPA in its RFP. FPL attached a draft PPA to its RFP, which goes beyond the minimum requirements of the Bid Rule.
- The inclusion of a draft PPA, attached to FPL's RFP, does not appear to violate subsection (5) of the Bid Rule.

L. The RFP's Schedule of Milestones cutoff date for submitting questions regarding the RFP is unfair

PACE:

- FPL's September fuel price forecast is expected in mid-September. Cutoff date for RFP questions is currently September 23, 2003. It is unfair that FPL will not accept fuel-related questions after this date.

FPL:

- FPL agreed to revise its RFP on September 12, 2003 to extend the cutoff date for questions to 14 days after publication of the September fuel price forecast, or until September 30, 2003, whichever is later.

Staff:

- Subsections (4)(c) and (5)(c) of the Bid Rule require that a utility's RFP contain a schedule of critical dates for soliciting, evaluating, and screening proposals. FPL's schedule of critical dates, contained in its RFP, complies with this requirement.
- This objection is now moot, as FPL extended the cutoff date for questions to 14 days following publication of the September fuel price forecast, or until September 30, 2003, whichever is later.

M. The RFP's evaluation fee provisions are unfair, onerous, and unduly discriminatory

PACE:

- FPL collects a \$10,000 fee for each bid received. RFP states that variations in any key term constitute a separate project with an additional \$10,000 fee.
- FPL may keep 25% of the bid evaluation fee, even if the proposal is non-responsive or ineligible.
- The RFP evaluation fees are exorbitant and unjustified, and may discourage variations of proposals.

FPL:

- FPL's cost to evaluate each specific proposal is \$10,000, an amount which includes only the cost of outside consultants and attorneys, computer software, and notices necessary to develop and administer the RFP. This amount excludes staff salaries, overtime, or time that could be spent on other work.
- FPL's keeping 25% of the evaluation fee for ineligible or unresponsive bids is not consistent with past actions in the Martin/Manatee need case. FPL's past practice would be to contact the bidder to attempt to gather the missing information.

Staff:

- Subsection (5)(f) of the Bid Rule requires that a utility's RFP contain any applicable fees required of a participant, and that the fees be cost-based. FPL's identification, in its RFP, of a proposal evaluation fee complies with this requirement.
- In the Martin/Manatee RFP, FPL accepted and evaluated numerous variations of proposals from the same bidder without charging a \$10,000 fee for each variation. However, FPL learned that the true cost to evaluate variations of a proposal warrants a separate fee.
- FPL's proposal evaluation fee does not appear to violate subsection (5) of the Bid Rule.

N. The RFP's Developer Experience requirements are unfair, onerous, and unduly discriminatory

PACE:

- Developer experience is among seven new minimum requirements that were not part of FPL's Martin/Manatee Supplemental RFP.
- Newly created, wholly-owned subsidiaries would not qualify under this requirement.

FPL:

- While developer experience was not a minimum requirement with Martin/Manatee RFP, FPL has learned from that experience, given the financial state of the merchant industry.
- The five-year minimum experience requirement applies to the operating entity, which can be either the proposer or any other entity engaged to operate the plant.
- FPL rightfully wants to deal with an entity with experience in the construction and operation of power plants.

Staff:

- Subsection (5)(e) of the Bid Rule requires that a utility's RFP disclose 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." FPL's minimum developer experience provision complies with this requirement.
- Subsection (6) of the Bid Rule states in part that "no attribute, criterion, or methodology shall be employed that is not identified in the RFP". FPL's minimum developer experience provision complies with this requirement.
- FPL's minimum developer experience provision does not appear to violate subsection (5) of the Bid Rule.