

ORIGINAL

Timolyn Henry

From: Tim Perry [tperry@mac-law.com]
Sent: Monday, July 31, 2006 4:34 PM
To: Filings@psc.state.fl.us
Cc: JWM -- John McWhirter; tperry@mac-law.com
Subject: Docket No. 060426-EI
Attachments: FIPUG's Comments Regarding FPL's Petition to Request Exemption - 7-31-06.doc

1. Timothy J. Perry, McWhirter Reeves & Davidson, P.A., 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, tperry@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 060426-EI, In re: FPL's Petition to Request Exemption Under Rule 25-22.082(18), F.A.C., from Issuing a Request for Proposals;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 5; and
5. The attached document is The Florida Industrial Power Users Group's Comments Regarding FPL's Petition to Request Exemption Under Rule 25-22.082(18), F.A.C., from Issuing a Request for Proposals

Timothy J. Perry
 McWhirter Reeves & Davidson, P.A.
 117 S. Gadsden St.
 Tallahassee, FL 32301
 (850) 222-2525
 (850) 222-5606 - Fax
tperry@mac-law.com

CMP _____

COM _____

CTR _____

ECR _____

GCL _____

OPC _____

RCA _____

SCR _____

SGA _____

SEC 1 OTH Kump

DOCUMENT NUMBER-DATE

06842 JUL 31 8

FPSC-COMMISSION CLERK

7/31/2006

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's
Petition to Request Exemption under Rule
25-22.082(18), F.A.C., from Issuing a
Request for Proposals (RFPs)

Docket No.: 060426-EI
Filed: July 31, 2006

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
COMMENTS REGARDING FPL'S PETITION TO REQUEST EXEMPTION UNDER
RULE 25-22.082(18), F.A.C., FROM ISSUING A REQUEST FOR PROPOSALS**

The Florida Industrial Power Users Group ("FIPUG"), through its undersigned counsel, hereby files these written comments. In support thereof, FIPUG states:

1. The Commission will decide in this docket whether it should approve Florida Power & Light Company's ("FPL") request for an exemption from Rule 25-22.082, Florida Administrative Code (the "Bid Rule"), which would otherwise require FPL to issue a Request for Proposals ("RFP") in connection with FPL's proposed advanced technology coal project (the "Self-build Option").

2. The Bid Rule method is an important tool in ensuring that a public utility's selection of a proposed generation addition is the most cost-effective alternative available through the use of an RFP process.¹ In general, FIPUG supports the use of an RFP process when selecting new generation capacity because the RFP process encourages all participants to submit the most competitive price possible, thus resulting in the selection of the lowest cost proposal.

3. FIPUG agrees with and is supportive of the Commission granting FPL's request for a limited exemption from the RFP process for innovative new technology designed to diversify fuel sources, provided that adequate protections for consumers are put in place during the need determination process and beyond. The Commission has stated that when it makes a

¹ See Rule 25-22.082(1), Florida Administrative Code.

finding of need that the utility's plan to construct the proposed unit is prudent, then absent some intervening changed circumstances the Commission is obliged to allow the utility the opportunity to recover these costs.² For this reason, additional protections for consumers are necessary in light of the high cost of coal plants³ and the potential for delays resulting in increased AFUDC costs.

4. FPL has stated that no additional procedures are necessary to protect consumers because the project would remain subject to Commission approval of the costs of the project within a need determination proceeding. This would be the case if FPL replicated proved technology as it and the other investor-owned utilities (“IOUs”) have done in the recent past by building natural gas plants that utilize familiar technologies.⁴ In contrast, FPL’s Self-build Option will be the first IOU plant to employ its kind of advanced coal technology in Florida, and FPL will be the first IOU to build a coal plant in a decade.⁵ Likewise, this will be the first such IOU plant to be reviewed by the Commission, and the first coal plant to be reviewed by the Commission for cost recovery purposes in a long while.

5. The Bid Rule provides for significant cost information in the development of the Commission approved request for bid proposals. The Commission should still require the filing of this and other pertinent information as a condition to granting FPL’s petition. For example, rule 25-22.082(5), Florida Administrative Code requires the utility to provide significant detail about the utility’s proposed plant, including detailed cost estimates. There is no requirement that this information be provided if FPL is exempted from this rule. In contrast, the other rules related

² See Order No. PSC-00-1933-PCO-EI; Rule 25-22.082(15) Florida Administrative Code.

³ See *FPL’s Report on Clean Coal Generation* at 49 (March 10, 2005)(FPL’s clean coal plan is estimated to incur \$2.039 Billion higher capital and fixed O&M costs on a net present value basis for 1700MW of coal generation relative to an all gas plan).

⁴ See FPL’s Petition at 9.

⁵ See Order No. PSC-96-1300-S-EI.

to need determinations — rules 25-22.080 and 25-22.081, Florida Administrative Code — require little information about the project cost. The problem of the lack of required information is compounded by the fact that innovative technology by its nature will include costs that are new and not commonly understood. In the absence of the RFP process, public interest would be well served if the Commission, as a condition to granting FPL's exemption, required significant cost estimate detail with the petition. Further, the Commission should employ an independent engineering firm experienced in the construction of such plants to evaluate the estimated costs for the benefit of the Commission and the public in general.

6. FIPUG believes that prudent regulatory oversight would reasonably include detailed information about the innovative project, its costs and include a method for reasonable independent verification of the costs that will protect the trade secrets of FPL and its selected manufacturers. Such protections are important because (as stated above) when the Commission makes a finding of need that the utility's plan to construct the proposed unit is prudent, then absent some intervening changed circumstances, the Commission is obliged to allow the utility the opportunity to recover these costs.⁶

7. In summary FIPUG believes that the circumstances require additional protections for consumers if the Commission chooses to exempt FPL's Self-build Option from the Bid Rule. Specifically, FIPUG believes that the Commission should employ an independent evaluator with expertise in the construction of advanced technology coal projects to assist the Commission in developing the plant details that should accompany the need petition and to monitor the cost of construction as it progresses. This safeguard mechanism will provide the Commission with the information it needs to properly oversee the prudence of the cost of FPL's Self-build Option and give the Commission comfort that the plant is indeed the most cost effective means to meet the

⁶ See Order No. PSC-00-1933-PCO-EI; Rule 25-22.082(15), Florida Administrative Code.

need for supplemental generation in the FPL rate base. Such an independent evaluator would act as a proxy for the competitive RFP process by using his or her experience to compare the cost of the Self-build Option to similar plants that have been proposed and/or constructed. Further, the independent evaluator would leverage the Commission Staff's already considerable experience in reviewing proposed generation capacity additions.

WHEREFORE, FIPUG requests that the Commission consider employing the above provisions as a condition to granting FPL's request in this docket.

s/ Timothy J. Perry

John W. McWhirter
McWhirter, Reeves, & Davidson, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Telephone: (813) 224-0866
Fax: (813) 221-1854
E-mail: jmcwhirter@mac-law.com

Timothy J. Perry
McWhirter, Reeves, & Davidson, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525
Fax: (850) 222-5606
E-mail: tperry@mac-law.com

Attorneys for the Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Comments Regarding FPL's Petition to Request Exemption Under Rule 25-22.082(18), F.A.C., from Issuing a Request For Proposals has been furnished by electronic mail and U.S. Mail this 31st day of July 2006, to the following:

Cochran Keating
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

R. Wade Litchfield
Bryan Anderson
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408

Susan F. Clark
Radey Thomas Yon & Clark, P.A.
P.O. Box 10967
Tallahassee, FL 32302

Harold McLean
Charles J. Beck
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

s/ Timothy J. Perry
Timothy J. Perry
FL Bar No. 0496391