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COMMISSION
CLERK

DATE: August 3, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Harlow) *10/11 TB*
Office of the General Counsel (Keating) *WCK MCK RLT 10/2*

RE: Docket No. 060426-EI – Petition for exemption under Rule 25-22.082(18), F.A.C., from issuing request for proposals (RFPs), by Florida Power & Light Company.

AGENDA: 08/15/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Tew

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060426.RCM.DOC

Case Background

Rule 25-22.082, Florida Administrative Code, (Bid Rule) requires investor-owned utilities to issue a request for proposals (RFP) for each proposed generating unit subject to a need determination under Section 403.519, Florida Statutes. On May 26, 2006, Florida Power & Light Company (FPL) filed a petition for exemption from the Bid Rule's requirement to issue an RFP for its proposed supercritical pulverized coal generating unit. According to FPL's most recent Ten-Year Site Plan, the expected in-service date for this unit is June 1, 2012.

DOCUMENT NUMBER-DATE

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Subsection 25-22.082(18) of the Bid Rule states:

Upon a showing by a public utility and a finding by the Commission that a proposal not in compliance with this 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 found.

FPL asserts that an exemption is warranted because accelerating the construction of the project will result in a more reliable supply of electricity for its ratepayers and will serve the public welfare. FPL also states that an exemption may result in cost savings for its customers.

On June 14, 2006, the Florida Industrial Power Users Group (FIPUG) filed a petition to intervene. FIPUG states that it "is not opposed to the Commission granting the relief requested by FPL if adequate protections are in place for consumers." On June 21, 2006, FPL filed a response to FIPUG's petition to intervene. On July 25, 2006, FIPUG was granted intervention by Order No. PSC-06-0630-PCO-EI. On July 28, 2006, the Office of Public Counsel filed a Notice of Intervention. On July 31, 2006, FIPUG filed comments on FPL's petition.

The Commission has jurisdiction in this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, 366.06, and 366.07, Florida Statutes, and Section 403.519, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Florida Power & Light Company's (FPL) petition for exemption from the requirements of Rule 25-22.082, Florida Administrative Code, for its next planned advanced technology coal generating unit?

Recommendation: Yes. An exemption from the RFP requirement will provide FPL with the opportunity to stay on schedule for the unit's planned 2012 in-service date. FPL has estimated that an exemption will save at least six months. If FPL does not file a need determination within the estimated six month time savings, there will be no benefits associated with the RFP exemption. Therefore, the Commission should limit the exemption to six months from the date of the consummating order. FPL should file a need determination petition for the 2012 coal plant within this timeframe, or issue an RFP for the capacity. (Harlow)

Staff Analysis: Pursuant to Rule 25-22.082(18), Florida Administrative Code, FPL seeks an exemption from the Commission's RFP requirement for its next planned advanced technology coal generating unit. FPL does not identify the expected in-service date of the coal unit discussed in its petition. FPL's most recent Ten-Year Site Plan (TYSP), however, includes two planned 850 megawatt pulverized coal generating units with in-service dates of June 2012 and June 2013.

FPL stated in its September 2005 RFP for its natural gas-fired West County Units 1 and 2 that it planned to issue an RFP for coal capacity in the Summer of 2006, in order to meet a June 2012 in-service date for its first pulverized coal unit. As FPL has not yet issued an RFP, it appears that FPL has requested an exemption in order to stay on schedule for the plant, rather than to accelerate the June 2012 in-service date.

In its petition, FPL states that recent experience demonstrates "the RFP process would significantly delay the addition of the Project and the Project's benefits, including substantial fuel diversity, and it is highly unlikely that the RFP process will result in a more cost-effective solid fuel alternative to the Project that FPL proposes to build." FPL estimates that an exemption from the RFP requirement will accelerate the project's completion by at least 6 months, and benefit FPL's customers by accelerating the use of a lower cost fuel and by increasing the supply of reliable electricity. FPL further states that an exemption will serve the public welfare by hastening the diversification of generating technologies, fuel sources and delivery methods, and reducing FPL's dependence on natural gas.

FPL describes the benefits associated with an exemption in broad terms in its petition, and bases its argument primarily on the benefits of accelerating the addition of coal to FPL's system. Staff does not believe an exemption can be granted solely on the basis of such a broad argument. As stated above, staff does not believe an exemption will result in accelerating the unit's expected in-service date. Further, given the current market for natural gas, and the fact that over 90 percent of new capacity added since 1990 in Florida has been natural gas-fired, the benefits described in FPL's petition would apply to many utilities adding coal capacity. Staff is concerned that given the broadness of FPL's petition, other investor-owned utilities (IOUs) may interpret the Commission's approval as tacit approval of future requests for exemption from the RFP requirement for planned coal units. FIPUG shares staff's concern. In its petition to

intervene, FIPUG states that granting the petition should not foreclose application of the Bid Rule in future need determinations for technologies that are "mature and readily available." The RFP process provides the Commission with valuable information on the available capacity alternatives and is a valid tool for evaluating the cost-effectiveness of proposed coal generating units. As stated in Rule 25-22.082(1), Florida Administrative Code, "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." Therefore, staff cautions that if an exemption is approved, the Commission's approval should not be interpreted as a blanket exemption from the RFP requirement for future coal projects.

FIPUG also suggests in its comments dated July 31, 2006, that the Commission should employ an independent engineering firm to evaluate FPL's estimated plant costs. Staff does not believe this is necessary. FPL will be required to provide sufficient evidence that the proposed plant is the most cost-effective alternative at a future need determination proceeding. The discovery process also allows parties to gather information and request sensitivities to FPL's cost estimates. The Commission's staff has the experience necessary to evaluate FPL's need determination filing. Staff believes that employing an outside evaluator could delay the project further, potentially eliminating any time savings benefit to be gained from granting an exemption for a six month period as discussed further below.

In its response to FIPUG's petition to intervene, FPL states that its request for an exemption "is limited to the coal project at hand and is not applicable to other projects that may be the subject of future and separate need determinations." In FPL's petition, however, the company appears to discount the use of an RFP process to solicit coal capacity in general, stating that "the RFP process would not result in the identification of any lower cost alternative to FPL constructing and operating the Project." FPL cites its recent RFP experiences in projecting that a coal solicitation would add time to the project "without any likely benefit for customers being achieved through the process." FPL expects few valid bids to result from an RFP because of a reduction in the number of potential bidders, and the risk for bidders due to the long lead time, high capital costs, and potential uncertainty associated with coal projects.

Staff believes it is premature for FPL to conclude that an RFP for its coal capacity would not result in valid bids. FPL's recent RFP solicitations have been for natural gas-fired capacity, rather than coal capacity. Further, FPL's 2005 RFP for the West County natural gas-fired units stated that FPL expected to issue an additional RFP for coal capacity in the Summer of 2006. Ten companies responded that they would like to be notified of future meetings or solicitations regarding the proposed coal unit. Staff also notes that Seminole Electric Cooperative issued an RFP for capacity in April 2004. Seminole stated a preference in its RFP for coal capacity or non-coal resources structured to provide long-term price stability. Seminole received fourteen proposals from five bidders, including capacity from three proposed new pulverized coal units.

Notwithstanding these concerns, staff believes an exemption may be necessary for the following reasons. The Commission recently emphasized the need for additional fuel diversity on FPL's system, and obtained an agreement from FPL to accelerate its actions to install advanced technology coal capacity. By Order No. PSC-06-0555-FOF-EI, issued June 28, 2006, the Commission approved FPL's need determination for 1,219 megawatts of natural gas-fired

capacity and recognized the fuel diversity benefits of adding coal to FPL's system to meet future needs.¹ The Florida Legislature also recently highlighted the importance of fuel diversity in House Bill 888, which was signed into law by Governor Bush on June 19, 2006. The bill amended Section 403.519, Florida Statutes, to require the Commission to specifically consider "the need for fuel diversity and supply reliability" when making its determination of need for new electric generating capacity.

FPL appears to have the most to gain among all Florida's IOUs by adding coal capacity to its system. FPL relies more heavily on natural gas to meet its load than any other Florida IOU. According to FPL's 2006 TYSP, FPL's net energy for load will be served by 46.1 percent natural gas in 2006, increasing to 59.0 percent in 2015, even with the addition of two proposed coal units. If FPL continues to build all natural gas-fired capacity, over 73 percent of FPL's net energy for load will be served by natural gas in 2015. Further, FPL's proposed 2012 coal unit will provide FPL's customers with much needed capacity given FPL's higher than expected load growth.

Staff believes that FPL will be unable to meet a June 2012 in-service date if an RFP is issued at this late date. FPL estimates that construction must begin no later than June 1, 2008, to meet a June 2012 in-service date. If FPL does not begin construction as planned, coal will no longer be an option for meeting FPL's 2012 capacity need. FPL's customers will be exposed to the risk of potentially higher-cost alternatives with shorter lead times, such as purchased power or additional natural gas-fired capacity. This has been the case in FPL's last three need determinations for natural gas-fired capacity, in which FPL has stated that longer lead time coal technology was not an option for meeting FPL's upcoming capacity need.

It should also be noted that FPL's capacity need may occur prior to the plant's estimated June 2012 in-service date. FPL calculated the June 2012 need for the plant as a result of its planning process for its 2006 TYSP. As discussed in FPL's recent need determination proceeding, FPL increased its load forecast subsequent to its 2006 TYSP planning process. As a result, FPL may need the plant's capacity sooner than the estimated June 2012 in-service date. This gives FPL more incentive to accelerate construction if possible, and to remain on schedule at the very least.

Staff believes that removing the administrative hurdle of an RFP will provide FPL with the opportunity to stay on schedule to meet a June 2012 in-service date. An RFP would be a valid tool for obtaining information on the availability and cost of capacity alternatives to FPL's proposed coal unit. The usefulness of this information, however, must be balanced against the benefits of keeping FPL on schedule to meet the 2012 in-service date of its proposed plant. Staff believes that in this case, the interests of FPL's customers and the public welfare will best be served by granting FPL's request for an exemption from the RFP requirement. Staff cautions FPL that an exemption will not relieve the company's burden of proof that construction of the proposed unit is the appropriate action. FPL will be required to provide the Commission sufficient evidence on the proposed unit's cost-effectiveness in a future need determination proceeding.

¹ See Docket No. 060225-EI, In re: Petition for determination of need for West County Units 1 and 2 electrical power plants in Palm Beach County, by Florida Power & Light Company.

Staff believes that if the Commission approves FPL's request for an exemption on the 2012 unit, FPL should issue an RFP for its second planned coal unit, the 2013 unit. This will provide the Commission with information on the cost and availability of alternatives and preserve the opportunity for others to bid on FPL's coal capacity. Staff notes that FPL will have a significant cost advantage in an RFP for the second plant if it is built on the same site as the 2012 unit. For example, FPL would enjoy cost savings associated with joint facilities, such as fuel handling and storage facilities.

For the reasons discussed above, staff recommends that FPL's petition for an exemption from Rule 25-22.082, Florida Administrative Code, should be approved. The exemption should apply only to FPL's 2012 coal unit. Further, FPL should move forward with construction of the 2012 plant as expeditiously as possible. FPL has estimated that an exemption will save at least six months. If FPL does not file a need determination petition within this six month time period, there will be no reliability or public welfare benefits associated with an RFP exemption. As an incentive to preserve the time savings, the Commission should limit the exemption to six months from the date of the consummating order. FPL should file a need determination petition for an advanced technology coal generating unit within this timeframe, or issue an RFP for the capacity.

Docket No. 060426-EI

Date: August 3, 2006

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Keating)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.