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From: Simms, Patrice [psimms@nrdc.org]
 Sent: Friday, October 13, 2006 4:12 PM
 To: Filings@psc.state.fl.us
 Subject: Docket 060426: Opposition to RFP Exemption for FP&L
 Attachments: gambling_with_coal.pdf; Battelle Carbon Shadow Report.pdf; SynapsePaper.2006-05.Climate-Change-and-Power[1].pdf; PSC Letter - Docket 060426.doc

Please find attached a letter from the Natural Resources Defense Council, the Florida Consumer Action Network, and the Florida Public Interest Research Group, explaining why an exemption from the regulatory RFP requirement for FP&L is not appropriate and requesting that the PSC reconsider its decision to grant FP&L's petition.

Sincerely,

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October 13, 2006

Florida Public Service Commission
Lisa Polak Edgar, Chairman
Matthew Mark Carter II, Commissioner
J. Terry Deason, Commissioner
Isilio Arriaga, Commissioner
Katrina J. Tew, Commissioner

Division of the Commission Clerk and Administrative Services,
2540 Shumard Oak Boulevard,
Tallahassee, Florida 32399-0850,

RE: Opposition to Florida Power & Light's Petition for Exemption from RFP
Solicitation Requirements (PSC DOCKET NUMBER 060426)

Dear Commissioners,

Florida Power & Light (FPL) has petitioned the Florida Public Services Commission (PSC) for an exemption from its obligation under Florida Administrative Code Rule (FAC) 25-22.082 to issue a request for proposal (RFP) for each proposed generating unit. On September 19, 2006, the PSC proposed to grant FPL's petition. *See* Order No. PSC-06-0079-PAA-EI, Notice of Proposed Agency Action, Order Granting Exemption from Bid Rule (Sept. 19, 2006) ("Exemption Order"). The RFP process is an important part of the regulatory safeguards intended to protect Florida's consumers, and the PSC should not toss these important protections aside. In this case, FPL has failed to make an adequate showing that an exemption is appropriate, and the PSC has not thoroughly evaluated the true scope of the potential impact of such an exemption.¹ The undersigned organizations believe that granting FPL's request for exemption is a mistake that threatens the integrity of Florida's PSC process and sends a dangerous message to utility companies.

The PSC Should Not Grant FPL's Petition

The RFP process required by Florida Administrative Code Rule (FAC) 25-22.082 serves a vital function in the power plant approval process. As Florida regulations themselves express, "[t]he 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." FAC 25-22.082(1). This requirement is appropriate for every power plant proposal in order to ensure that *each individual unit* provides the electric generation capacity (where it is needed) in a manner that is *truly* most cost-effective – taking into consideration *all* relevant case-specific factors, the changing characteristics of the power industry, and relevant technological advances.

¹ Susan Glickman of the Natural Resources Defense Council offered testimony that touched on many of the issues raised in this letter at the August 29, 2006 PSC hearing on FPL's petition.

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In general, approving what amounts to an exclusive, “no-bid” contract for electric power generation is fundamentally contrary to the public interest that the PSC exists to serve. This approach undermines the regulatory mechanism that the State relies upon to ensure the competitiveness of its electricity pricing, and the tool that otherwise ensures that power generation projects accurately reflect market conditions. It is, in our view, contrary to the mission and responsibility of the PSC for it to waive the RFP requirements in this case, especially given that the power plant at issue will be the first investor-owned utility coal plant project in Florida in a decade and it will employ a technology that is not being used in the U.S. at this time and that does not offer the long-term cost benefits of other advanced coal technologies that are currently being deployed by utilities around the country.

Nonetheless, FAC 25-22.082 allows, in limited circumstances, an exemption from the RFP requirement:

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 for compliance with the rule or any part of it for which such justification is found.

Here, however, FPL has failed to make the demonstration required to receive an exemption from the RFP process. As a result, the PSC has not considered the full range of relevant factors in reaching its decision. Moreover, because FPL made its request for an exemption before it even had a power plant proposal on the table, the PSC was effectively incapable of adequately examining whether an exemption would be appropriate.

FPL Has Not Shown That an Exemption Will Reduce Costs to Consumers

FPL argues that an exemption from the RFP requirements will provide it with the opportunity to “stay on schedule for the first unit’s planned 2012 in-service date.” According to FPL, this will allow “cost-saving measures to be gained from building a second unit, in 2013, at the same site.” FPL estimates its capital cost savings at between \$400 and \$600 million, assuming that FPL files a needs determination for both units by May 1, 2007. However, the PSC has concluded that if FPL does not file a need determination within the estimated time frame, there will be no benefits associated with the RFP exemption; therefore, the Commission limited the exemption to May 1, 2007.

While FPL has argued that an exemption will save the company \$400 to \$600 million in capital costs, it has provided no explanation of how this capital cost savings will translate into cost savings to consumers, and FPL and the PSC have failed entirely to address the potential saving to consumers from alternative projects that might be identified in the competitive bid process. In particular, both FPL and the PSC have

ignored the potential life cycle cost of FPL's power plant projects compared to other options that might emerge as a result of an RFP. Indeed, if capital cost savings alone were enough to justify an exemption from the RFP requirements, those requirements would quickly cease to have any meaning.

Consistent with its responsibility to place the interest of Florida's consumers first, the PSC should closely scrutinize FPL's request to bypass the existing regulatory process.² In so doing, the PSC must meaningfully evaluate not just the initial capital costs to FPL, but also the longer term life cycle costs associated with FPL's coal plant proposals, which include operating costs, fuel costs, maintenance costs and future environmental regulations – and the significant beneficial impact that a competitive bid process may have on these long-term costs.

Among other things, regulation of carbon dioxide (CO₂) emissions are virtually inevitable; the only questions that remain are when such limits will become effective and what they will look like. When these requirements emerge they will make the operation of carbon intensive power generation units – like the ones that FPL proposes to build – much more expensive (requiring either the purchase of CO₂ credits to offset emissions, or the direct control of CO₂ output).³ This eventuality means that an investment now in carbon intensive-technology, like pulverized coal, is a poor decision. The PSC should take this opportunity to explore other options through the RFP process.

It has become abundantly clear that CO₂ emissions, from sources such as coal-fired power generation, are creating a serious threat of dramatic climate disruption. The international community has already begun to take action to curb such emissions,⁴ and more recently certain States have also taken concrete steps to reduce their carbon footprint.⁵ Moreover, Congress has introduced numerous bills, amendments, and resolutions specifically addressing global warming, and the Senate last year passed a resolution finding that “mandatory steps will be required to slow or stop the growth of greenhouse gas emissions.”⁶ The general consensus is that federal CO₂ emission controls are only a matter of time – notably, the utility industry as well has begun to recognize that

² We note that the PSC rejected FPL's assertion that “an RFP for coal capacity would not result in valid bids,” observing that there is “a willingness from independent providers to participate in an RFP process for coal capacity.” Exemption Order at 2-3.

³ See *Gambling with Coal, How Future Climate Laws Will Make New Coal Power Plants More Expensive*, Union of Concerned Scientists (Sept. 2006), available at: http://www.wvecouncil.org/issues/gambling_with_coal.

⁴ 190 countries have joined the United Nation's Framework Convention on Climate Change, and most have ratified the Kyoto Protocol (the U.S. and Australia alone among the industrialized countries have not).

⁵ For example, several Northeast States have formed the Region Greenhouse Gas Initiative (RGGI) to reduce carbon emission that part of the country. See www.rggi.org. The state of California also has passed greenhouse gas legislation and taken steps to prevent importation of electricity produced at carbon intensive facilities, and several Western and Midwest States are contemplating action to limit greenhouse gases.

⁶ See www.aip.org/fyi/2005/114.html. In May of this year the House Appropriations Committee approved similar language. See www.pewclimate.org/what_s_being_done/in_the_congress/index.cfm for more information on Congressional action on global warming.

national carbon emission limits are both necessary and desirable.⁷ Because power generation is the single most significant source of CO₂ in the United States (accounting for nearly 40% of U.S. emission), this industry – and coal-fired power generation in particular – is likely to feel the greatest pinch from future carbon regulation.

Given that large convention coal-fired power plants, like the one FPL plans to build, will emit in the range of 10-15 million tons of CO₂ each year over their entire 40+ year operational life (totaling at least 400 million tons), it is clear that these facilities represent the low hanging fruit when it comes to regulating carbon emissions. However, such regulation will add significantly to the cost of generating power.⁸ By some estimates, the price of coal-fired electricity could increase by some 66% for conventional coal-fired power plants, which are incapable of economically capturing their CO₂ emissions. Other technologies, however, such as integrated gasification combined-cycle (IGCC), a technology that processes coal into a fuel that can be burned in a combined-cycle power block much like natural gas,⁹ can capture CO₂ at a much lower cost than conventional coal plants.¹⁰ In a world that will soon insist upon significant reductions in carbon emissions, IGCC is a much more appropriate technology choice for coal-based power generation.¹¹

In addition to benefits related to carbon emission control, IGCC also provides additional fuel flexibility,¹² and product flexibility.¹³ Moreover, an IGCC plant can achieve greater reductions in conventional pollutants, produces less (and more manageable) solid waste, and uses less water. These collective benefits are the main

⁷ For example, executives from AEP and NRG have recently made statements strongly supporting the idea of national carbon limits, and emphasizing the responsibility of the electric power sector to take action to address global warming. See, e.g., <http://www.cleartheair.org/proactive/newsroom/release.vtml?id=25835>.

⁸ The cost of carbon credits in Europe, where CO₂ is already being regulated, has ranged from \$30 to \$60 per ton over the past year. See http://pubs.acs.org/subscribe/journals/esthag-w/2006/jul/business/mb_carbonprices.html. Estimates for CO₂ costs under expected U.S. regulations range from \$8 to about \$60 per ton. This would add considerably to the operation of a facility emitting more than 10 million ton of CO₂ per year (for example at \$12/ton it would add \$120 million per year).

⁹ For a description of IGCC see: <http://www.gasification.org/gasproc.htm>. More information is also available at: <http://www.netl.doe.gov/technologies/coalpower/gasification/index.html>. Presentations from vendors and others from the recent gasification technologies conference in Washington D.C. are available on-line at: <http://www.gasification.org/Presentations/2006.htm>.

¹⁰ CO₂ would then need to be sequestered in deep geologic formations for permanent storage. Estimates suggest that IGCC may be able to meet future CO₂ limits with an impact on electricity prices that is significantly less than that for conventional coal plants. Indeed, EPA explains that IGCC is “one of the most promising technologies in reducing environmental consequences of generating electricity from coal.” See Environmental Footprints and Costs of Coal-Based Integrated Gasification Combined Cycle and Pulverized Coal Technologies, EPA (July 2006): available at <http://www.gasification.org/Docs/News/2006/EPA%20-%20IGCC%20cf%20PC.pdf>

¹¹ One of the primary reasons for the RFP process is “to ensure that a public utility’s selection of a proposed generation addition is the most cost-effective alternative available.” This necessary should include an examination of the life-cycle cost of any given proposal.

¹² With relatively minor modifications an IGCC unit can be re-tooled to burn different coal types, petcoke, or renewables such as switchgrass.

¹³ An IGCC unit can co-produce pure hydrogen, synthetic gas that can be fed into a natural gas pipeline, and other products in addition to electricity.

reasons why more and more utility companies are proposing IGCC instead of conventional coal plants.¹⁴

Finally, Florida sits on the front-lines of the battle against global warming and its potentially devastating effects, and therefore should have a particular interest in leading the charge to reduce carbon emissions. The overwhelming consensus among climate scientists is that global warming, if it remains unchecked, will cause serious climate disruption including more intense hurricanes, more frequent and more severe floods, and potentially catastrophic sea level rise – effects that the citizens of Florida are likely to feel acutely. Certainly a strong policy to facilitate reduction of CO₂ emissions would serve the public welfare in a state with 2,276 miles of tidal coastline and a mean elevation of only 100 feet above sea level. The PSC should not elect to sacrifice an opportunity to examine in detail alternative projects that might be more compatible with important efforts to address global warming – and certainly such a sacrifice is not justified by the speculative cost savings that FPL and the PSC rely on for this exemption.

In sum, the PSC's decision to excuse FPL from its regulatory obligations in this case does not adequately address long-term, life-cycle plant costs. The potential for life-cycle cost saving associated with an IGCC plant far outweighs the cost saving that FPL assumes as a result of this exemption. And a detailed examination of alternatives would serve the public interest. Accordingly, from both a cost and public welfare perspective, it is in the best interest of the ratepayers to allow the RFP process to proceed. At the very least, the PSC should evaluate more closely the broader cost implications of this exemption before it allows FPL to move forward.

We are aware that the PSC will probe additional issues regarding FPL's proposed coal facility during the needs determination;¹⁵ however, there are important issues at stake here that are uniquely related to the RFP process. In particular, this is the only opportunity to specifically compare FPL's proposed project to other projects at a meaningful level of detail.¹⁶ Relieving FPL of the obligation to solicit competitive bids means that Florida (and its energy consumers) will lose an important opportunity to benefit from proposals that may more appropriately factor in the critical considerations described above.

Florida's Interest in Fuel Diversity Does not Justify Granting an Exemption

A perceived need to diversify Florida's fuel mix is a poor excuse for setting aside important regulatory safeguards. More significantly, Florida's electricity consumers will not benefit from the PSC's effort to rush through the process a power plant project that

¹⁴ There are currently some 28 proposals for IGCC plants nationwide.

¹⁵ In particular, at that stage the PSC must thoroughly examine opportunities to improve efficiency instead of building more power plants, and the availability of alternatives involving renewable sources of energy.

¹⁶ This kind of detailed comparative examination, which is not required at the needs determination stage, is especially important here, where FPL has proposed a type of facility that is not currently in use in the U.S. (making cost assumption somewhat uncertain), and where other significantly more promising technologies are available. At the very least, FPL should be required to submit detailed facility information, including cost assumptions and analysis, for the PSC's consideration before any exemption is granted.

may ultimately prove to be an economic blunder. The PSC's rationale for granting FPL's exemption petition boils down to little more than a finding that new coal capacity should be fast-tracked regardless of the potential consequences (which, as discussed above, the PSC did not meaningfully examine). The Exemption Order states:

We believe that FPL will be unable to meet a June 2012 in-service date if an RFP is issued at this late date.... If FPL does not begin construction as planned, coal will no longer be an option for meeting FPL's 2012 capacity needs. 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. . . . We find 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. While 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 must be balanced against the benefits of keeping FPL on schedule. . . . We find in this case that 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."¹⁷

In our view, the PSC's assumption that FPL can meet its in-service target dates, even with an exemption from the RFP requirement, is speculative at best. Before FPL can even begin construction on any proposed new facility, it must complete the power plant siting and approval process, including the needs determination process and the process of obtaining applicable environmental permits (which are likely to be controversial and may be challenged administratively and in court).

Even assuming the validity of the State's desire to diversify its fuel mix because of price volatility in the natural gas market (a premise that is certainly debatable), we believe that it is a mistake for the PSC to waive the RFP process, and therefore fail to even solicit possible alternative projects for consideration.¹⁸ The *only* justification identified in the PSC's analysis for the need to keep FPL "on schedule" is the "risk of potentially higher cost alternatives" during any possible period of delay attributable to the RFP process (which would be relatively short). As discussed above, the potential long-term cost benefits of a more sensible alternative project far outweigh the speculative, short-term impacts that the PSC relies upon in its proposed decision. For these reasons, the PSC should reconsider its decision and deny FPL's petition, or at the very least suspend its decision until it has fully examine the potential for long-term cost impacts on consumers.

The PSC Made Its Determination Without the Benefit of a Concrete Proposal

Even aside from the cost implications of upcoming carbon legislation, FPL petition in this case is contrary to language and intent of the governing regulations. FAC 25-22-082 requires competitive proposals "to provide the Commission information to

¹⁷ Exemption Order at 4.

¹⁸ In particular, the PSC should specifically request submission of bids for IGCC proposals.

evaluate a public utility's decision regarding the addition of generating capacity” and “to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available.” The RFP must address “the *next generating unit* addition *planned for construction* by a public utility,” and the RFP itself must contain “the *price and non-price attributes* of its next planned generating unit in order to solicit and screen . . . competitive proposals.”

Among other things, the RFP must include “A general description of the public utility's next planned generating unit, including its planned in-service date, *MW size, location, fuel type and technology*,” as well as a “*detailed technical description* of the public utility's next planned generating unit or units on which the RFP is based, as well as the *financial assumptions* and parameters associated with it,” including thirteen enumerated items of information. Not surprisingly, much of the required information is *site-specific*, bearing on the particular characteristics of the proposed plant that will influence its initial and ongoing costs. See FAC 25-22.082(5).

In this case, however, FPL did not even have a detailed power-plant proposal on the table when it requested an exemption from the RFP process. Only after the hearing on FPL's petition did FPL announce publicly that it planned to build a 1960 megawatt ultra super critical pulverized coal plant in Glades County. Even now, however, FPL has provided precious few details about that proposed plant – such as those specifically required in connection with an RFP – and such details are essential to the PSC's evaluation of costs and potential impacts on ratepayers. Thus, in essence, FPL's petition asked for the PSC to issue a blank-check for it to build some *unspecified* future power plant (identified only by fuel-type and size) without any obligation to do so in a competitive environment.

Clearly, Florida's regulations contemplate the existence of an *actual proposal* – a specific project that can be scrutinized and compared with competitive alternatives based on site-specific factors. FPL's request to skip the competitive process for a project that exists only as a nebulous hypothetical was not only inappropriate, but inconsistent with applicable regulations. Consequently, the PSC should, at the very least, specifically examine the implications of the specific project that FPL is proposing, and fully evaluate the potential costs and other potential impacts on consumers of waiving the RFP process.¹⁹

¹⁹ We note in this regard that FPL has proposed to build a type of unit (an ultra super critical coal boiler) that is even less tested in the U.S. than IGCC, and that no other utility in the country is proposing to build. In this case, IGCC is an even more attractive option, as that technology will advance very rapidly as many of the currently proposed IGCC projects move forward. See, Jonathan Hunt, *AEP seeking permits for clean coal plant in both Ohio, W.Va.*, Athens NEWS (Oct. 9th, 2006), available at: http://athensnews.com/index.php?action=viewarticle§ion=news&story_id=26136.

Conclusion

Thank you for your serious consideration of the issues we raise in the above discussion. We hope that your commitment to act in the best interest of the people of Florida prevails, and that you will reconsider your decision to allow FPL to sidestep an important part of the power plant approval process. We look forward to working with you in the future to ensure the brightest energy future for the people of Florida.

s/ Patrice Simms

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ATTACHEMENTS

1. *Current Carbon Emissions in Context: Final Report to the National Commission on Energy Policy*, Battelle Memorial Institute
2. *Gambling with Coal, How Future Climate Laws Will Make New Coal Power Plants More Expensive*, Union of Concerned Scientists (Sept. 2006)
3. *Climate Change and Power: Carbon Dioxide Emissions Costs and Electricity Resource Planning*, Synapse Energy Economics, Inc (May 18, 2006)