

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Documents regarding Federal Communications  
Commission Proceeding No. 20-276

Docket No. 20220120-PU

Filed: July 6, 2022

**DUKE ENERGY FLORIDA'S  
MOTION FOR PROTECTIVE ORDER**

Pursuant to Section 366.093, Florida Statutes, Rules 25-22.006 and 28-106.211, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure, Duke Energy Florida, LLC (“DEF”), hereby moves the Florida Public Service Commission (the “PSC” or the “Commission”), through the Prehearing Officer, for entry of a protective order with respect to materials designated as confidential in a Federal Communications Commission (“FCC”) proceeding recently transferred to the PSC. In support of this motion, DEF states:

1. In August 2020, Bellsouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”) filed a complaint with the Federal Communications Commission (“FCC”), alleging that the rates in the joint use agreement between DEF and AT&T were unjust and unreasonable. Before the final conclusion of the FCC matter, on June 9, 2022, the PSC, pursuant to Section 366.04(8), Fla. Stat., provided a certification to the FCC that the PSC regulates pole attachments and has issued and made effective rules and regulations to implement the State of Florida’s regulatory authority over pole attachments. *See* Order No. 2022-PSC-0200-PCO-PU. Upon receipt of that certification, the FCC relinquished jurisdiction of the matter and notified the parties that it intended to transmit the complete case file to the PSC for resolution.

2. Some of the documents submitted to the FCC by DEF contain information deemed confidential by DEF, AT&T or both. DEF, in compliance with the applicable FCC

rules, filed requests for confidential treatment to protect certain confidential information (“Designated Information”) from public disclosure. DEF identified the Designated Information by marking it with a red box on each specific document. DEF also created a public or redacted version of each document that contained Designated Information. AT&T followed the same procedure with respect to its submissions to the FCC. The FCC accepted DEF’s and AT&T’s requests for confidential treatment and at all times during the FCC proceeding, has held the Designated Information as exempt from public disclosure under the Freedom of Information Act (“FOIA”).<sup>1</sup>

3. The Designated Information, accepted by the FCC as confidential, is also confidential under the Florida confidentiality requirements. For the reasons set forth in this motion and in the supporting affidavit of DEF’s Manager of Joint Use, Scott Freeburn, Exhibit A, DEF requests that the Commission issue a protective order to protect the confidentiality of the Designated Information for which it has already received confidential treatment in connection with the FCC proceeding. Section 366.093(3), Florida Statutes, defines proprietary confidential business information in relevant part as follows:

(3) Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person’s or company’s business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

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<sup>1</sup> When a submission contained confidential information, each party would file a “PUBLIC VERSION” through the FCC’s Electronic Comment Filing System and separately submit a “CONFIDENTIAL VERSION” directly to the FCC Secretary and the FCC staff handling the case. The PUBLIC VERSION and CONFIDENTIAL VERSION were designated as such at the top each page of such submission.

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Section 366.093(3), Fla. Stat. The information included in the confidential version of FCC documents that will be transferred to the PSC contain or constitute proprietary confidential business information within the meaning of Section 366.093(3), Fla. Stat., and thus it is deserving of being treated as confidential and exempt from Section 119.07(1), Fla. Stat.

4. Specifically, the Designated Information consists of the following: (a) information concerning the objective percentage of joint use pole ownership set forth in the joint use agreement between the parties; (b) information concerning the adjustment rate within the joint use agreement, including the manner in which the adjustment rate is calculated; (c) information concerning the amount of space allocated to AT&T and DEF under the joint use agreement, as well as information concerning the amount of space on DEF's poles that is actually occupied by AT&T; (d) information concerning the average number of attaching entities on DEF poles that are jointly used by AT&T; (e) the identity of each CATV, CLEC and wireless attaching entity on DEF's poles, as well as each entity's number of attachments to DEF's poles; (f) actual, negotiated and executed license agreements between DEF and a CATV, CLEC and wireless attacher; (g) quantification of the net benefits to AT&T under the joint use agreement, including the precise inputs, as calculated by DEF's outside testifying expert; (h) calculation of AT&T's pole attachment rental rates under the FCC's formulas, including rate calculation inputs; (i) closely held internal business data and communications; and (j) confidential information and/or communications arising out of settlement negotiations with AT&T. All this Designated Information qualifies as either "information concerning bids or other contractual data the disclosure of which would impair [DEF's efforts] to

contract for goods or services on favorable terms” within the meaning of Section 366.093(3)(d) and “relate to the competitive interests, the disclosure of which would impair the competitive business of the provider of the information” within the meaning of subsection (3)(e).

5. As Mr. Freeburn’s affidavit indicates, disclosure of this information would impair DEF’s efforts to contract with pole attachers on favorable terms and would cause harm to DEF’s customers and its business. This is especially true in light of the fact that Section 366.04(8)(c) encourages parties “to enter into voluntary pole attachments agreements.” This information is viewed as private as is not generally disclosed absent legal compulsion. It would also impair DEF’s ability to settle future pole attachment disputes. Pursuant to section 366.093, Fla. Stat. and Rule 25-22.0006, the Designated Information is entitled to confidential treatment and is exempt from the disclosure provisions of the public records law. Thus, once the Commission determines that the information in question is proprietary confidential business information, the Commission is not required to engage in any further analysis or review such as weighing the harm of disclosure against the public interest in access to the information. Upon a finding by the Commission that the Designated Information for which DEF seeks confidential treatment is proprietary confidential business information within the meaning of section 366.093(3), pursuant to section 366.093(4) ), such materials should not be declassified for a period of at least eighteen (18) months. Rule 25-22.006(6)(a), F.A.C. provides: “In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.” As demonstrated above, the Designated Information is entitled to

protection, thus a protective order pursuant to Rule 25-22.006, F.A.C. is appropriate. Because the Designated Information has already been determined confidential by the FCC, and the parties have already identified the Designated Information by marking it with a red box (rather than the yellow highlighting typically used when DEF submits confidential documents to the FPSC), DEF requests that the protective order specifically provide that the confidential information that has already been marked pursuant to the FCC rules be sufficient and satisfy the FPSC confidentiality designation requirements.

6. DEF is filing this Motion in advance of the FPSC's receipt of the Designated Information from the FCC. Pursuant to Rule 25-22.006(6)(b), DEF requests that the Designated Information be exempt from Section 119.07(1) while this request for a protective order is pending. DEF also requests that this protective order extend to other parties to this Docket that are subject to the public records provisions of the Florida Statutes, to the extent such parties wish to have access to the Designated Information. In the event other parties to this Docket that are not subject to the public records provisions of the Florida Statutes desire access to such confidential documents and information, such access could be accomplished through bi-lateral agreements.

7. DEF has contacted the parties to this Docket and is authorized to represent that AT&T is not opposed to the Commission granting DEF's Motion for Protective Order.

**WHEREFORE**, for the foregoing reasons and for the reasons set forth in the attached affidavit, DEF respectfully requests that the Commission enter a protective order mandating the protective measures described above.

Respectfully submitted,

*/s/ Dianne M. Triplett*

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DIANNE M. TRIPLETT  
Deputy General Counsel  
Duke Energy Florida, LLC.  
299 First Avenue North  
St. Petersburg, FL 33701  
T: 727.820.4692  
F: 727.820.5041  
E: [Dianne.Triplett@duke-energy.com](mailto:Dianne.Triplett@duke-energy.com)

MATTHEW R. BERNIER  
Associate General Counsel  
Duke Energy Florida, LLC  
106 East College Avenue  
Suite 800  
Tallahassee, Florida 32301  
T: 850.521.1428  
F: 727.820.5041  
E: [Matthew.Bernier@duke-energy.com](mailto:Matthew.Bernier@duke-energy.com)  
[FLRegulatoryLegal@duke-energy.com](mailto:FLRegulatoryLegal@duke-energy.com)

**STEPHANIE A. CUELLO**  
Senior Counsel  
106 East College Avenue, Suite 800  
Tallahassee, Florida 32301  
T: (850) 521-1425  
F: (727) 820-5041  
E: [Stephanie.Cuello@duke-energy.com](mailto:Stephanie.Cuello@duke-energy.com)  
[FLRegulatoryLegal@duke-energy.com](mailto:FLRegulatoryLegal@duke-energy.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 6<sup>th</sup> day of July, 2022, to the following:

By: /s/ Dianne M. Triplett  
Dianne M. Triplett

<p>Lee Eng Tan Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd Tallahassee, FL 32399-0850 <a href="mailto:ltan@psc.state.fl.us">ltan@psc.state.fl.us</a></p>	<p>Casey Reed AT&amp;T Florida 150 South Monroe Street, Suite 400 Tallahassee, FL 32301-1561 <a href="mailto:CR8243@ATT.COM">CR8243@ATT.COM</a></p>
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# Exhibit A



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In re: Documents regarding FCC Proceeding  
No. 20-276

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Docket No. 20220120-PU

Dated: July 6, 2022

**AFFIDAVIT OF SCOTT FREEBURN IN SUPPORT OF  
DUKE ENERGY FLORIDA'S MOTION FOR PROTECTIVE ORDER**

STATE OF FLORIDA

COUNTY OF SEMINOLE

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Scott Freeburg, who being first duly sworn, on oath deposes and says that:

1. My name is Scott Freeburn. I am over the age of 18 years old, and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Motion for Protective Order (the "Motion") regarding the materials designated as confidential in a Federal Communications Commission ("FCC") proceeding recently transferred to the Florida Public Service Commission ("FPSC"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Manager of the Joint Use Department. I am responsible for program development and governance of the joint use operations. My major duties and responsibilities include the management and oversight of more than 4 million existing joint use attachments on distribution and transmission poles across all of Duke Energy's jurisdictions. The joint use program encompasses negotiated agreements with pole attachment users (telecommunication

providers, telephone companies, private and governmental entities), meeting state and federal requirements including FCC mandated timelines, providing field engineering and work order guidance, meeting company and NESC specifications including design for new types of attachments, billing and collecting for pole rent, conducting attachment audits, maintaining a GIS joint use data base, and overseeing the more than 800 existing joint use agreements.

3. DEF is seeking confidential classification for materials designated as confidential in the FCC Proceeding No. 20-276. DEF is requesting a protective order of this information because it contains sensitive business information, the disclosure of which would impair the Company's competitive business interests and ability to contract for goods and services on favorable terms.

4. The confidential information at issue relates to proprietary contractual third-party information by DEF, AT&T or both to include information concerning the objective percentage of joint use pole ownership set forth in the joint use agreement between the parties; (b) information concerning the adjustment rate within the joint use agreement, including the manner in which the adjustment rate is calculated; (c) information concerning the amount of space allocated to AT&T and DEF under the joint use agreement, as well as information concerning the amount of space on DEF's poles that is actually occupied by AT&T; (d) information concerning the average number of attaching entities on DEF poles that are jointly used by AT&T; (e) the identity of each CATV, CLEC and wireless attaching entity on DEF's poles, as well as each entity's number of attachments to DEF's poles; (f) actual, negotiated and executed license agreements between DEF and a CATV, CLEC and wireless attacher; (g) quantification of the net benefits to AT&T under the joint use agreement, including the precise inputs, as calculated by DEF's outside testifying expert; (h) calculation of AT&T's pole attachment rental rates under the FCC's formulas, including rate calculation inputs; (i) closely held internal business data and communications; and (j) confidential

information and/or communications arising out of settlement negotiations with AT&T, the disclosure of which could impair the Company's competitive business interests and efforts to contact for goods or services on favorable terms. In order to contract with third-party vendors on favorable terms, DEF must keep proprietary information confidential.

5. Further, if DEF cannot demonstrate to its third-party vendors and others that may enter into contracts with DEF in the future, that DEF has the ability to protect confidential and proprietary business information, vendors will be less likely to contract with DEF – harming DEF's ability to prudently operate its business. DEF has not publicly disclosed the information. Without DEF's measures to maintain the confidentiality of this sensitive business information, DEF's ability to contract with vendors could detrimentally impact DEF's ability to negotiate favorable contracts, as vendors may begin to demand a "premium" to do business with DEF to account for the risk that its confidential information will become a matter of public record, thereby harming DEF's competitive interests and ultimately its customers' financial interests.

6. Upon receipt of its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information and contracts. At no time since receiving the information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information at issue as confidential.

7. This concludes my affidavit.

Further affiant sayeth not.

Dated the 1st day of July, 2022.

Scott Freeburn

(Signature)

Scott Freeburn

Manager – Joint Use Department

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 1 day of July, 2022 by Scott Freeburn. He is personally known to me or has produced his ✓ driver's license, or his FLDL as identification.

Steve Comeau

(Signature)

Steve Comeau

(Printed Name)

NOTARY PUBLIC, STATE OF Florida

10/9/2025

(Commission Expiration Date)

(Serial Number, If Any)

(AFFIX NOTARIAL SEAL)

