



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: March 24, 2003
TO: Office of the General Counsel (L. Harris, C. Keating)
FROM: Division of Economic Regulation (Haff)
RE: Docket No. 030084-EI, Petition for Determination of Need for Collier-Orange River 230 kV transmission line in Collier, Hendry, and Lee Counties, by Florida Power & Light Company

On March 19, 2003, Florida Power & Light Company (FPL) filed a Request for Confidential Classification for information contained in three prefiled documents. The documents in question are: Document No. 01963-03 (portions of Exhibit A to FPL's Petition), Document No. 01965-03 (portions of page 14 of the prefiled direct testimony of FPL witness Schoneck), and Document No. 01968-03 (portions of pages 4, 6, 7, and 8 of the prefiled direct testimony of FPL witness Mennes). All three documents contain specific details related to FPL's proposed transmission line.

FPL asserts that the above-mentioned documents contain proprietary, confidential business information, as defined in Section 366.093(3), Florida Statutes. Subsection (c) of the Statute includes "security measures, systems, or procedures" as an example of proprietary, confidential business information. Further, FPL relies on Order 630, issued by the Federal Energy Regulatory Commission (FERC) on February 21, 2003, which resulted in FERC's protection, from public disclosure, of documents related to critical energy infrastructure information. These measures were taken by FERC in the aftermath of the September 11, 2001 attacks.

Staff concurs with FPL's request to grant confidential status to Document Nos. 01963-03, 01965-03, and 01968-03. In accord with Section 366.093(4), Florida Statutes, staff recommends that the documents remain confidential for a period of eighteen months from the date of the request. Prior to the end of the eighteen month time period, it is anticipated that either FPL can renew its request for confidential status or the affected documents can be returned.

- AUS
CAF
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GCL Attachments
OPC cc: Blanca S. Bayo, Division of the Commission Clerk and Administrative Services
MMS
SEC
OTH

DOCUMENT NUMBER DATE

02863 MAR 26 8

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

M-E-M-O-R-A-N-D-U-M

DATE: March 20, 2003

TO: OFFICE OF THE GENERAL COUNSEL - L. Harris
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT
XX DIVISION OF ECONOMIC REGULATION - M. Haff
DIVISION OF AUDITING AND SAFETY

FROM: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCUMENT NO(s): 01963-03

DESCRIPTION: FPL (Hoffman) - (CONFIDENTIAL) Portions of
petition to determine need for electrical transmission
line.

SOURCE: Florida Power & Light Company

DOCKET NO(S): 030084-EI

The above material was received with a request for confidential classification. Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. Copies of your recommendation should also be provided to the Division of the Commission Clerk and Administrative Services, Bureau of Records and Hearing Services, and to the Office of General Counsel.

RECEIVED
FLORIDA PUBLIC SERVICE
COMMISSION
03 MAR 20 PM 3:10
DIVISION OF
ECONOMIC REGULATION

Please read each of the following and check if applicable.

PAGE 2

- The document(s) is (are), in fact, what the utility asserts it (them) to be.
- The utility has provided enough details to perform a reasoned analysis of its request.
- The material has been received incident to an inquiry.
- The material is confidential business information because it includes:
- (a) Trade secrets;
 - (b) Internal auditing controls and reports of internal auditors;
 - (c) Security measures, systems, or procedures;
 - (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company to contract for services on favorable terms;
 - (e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
 - (f) Tax returns or tax-related information;
 - (g) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.
- The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- The material appears not to be confidential in nature.
- The material is a periodic or recurring filing and each filing contains confidential information.

Response prepared by: Michael S. Waff

Date: 3/24/2003

cc: GCL EXT
 CMP CCA
 ECR AUS
 MMS

PSC/CCA 15 (Rev 11/02)

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
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DIVISION OF AUDITING AND SAFETY

FROM: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCUMENT NO(s): 01965-03

DESCRIPTION: FPL (Hoffman) - (CONFIDENTIAL) Page 14 to direct testimony of William Robert Schoneck.

SOURCE: Florida Power & Light Company

DOCKET NO(S): 030084-EI

The above material was received with a request for confidential classification. Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. Copies of your recommendation should also be provided to the Division of the Commission Clerk and Administrative Services, Bureau of Records and Hearing Services, and to the Office of General Counsel.

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Response prepared by: Michael S. Wall

Date: 3/24/2003

cc: GCL EXT
 CMP CCA
 ECR AUS
 MMS

PSC/CCA 15 (Rev 11/02)

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
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Public Service Commission

M-E-M-O-R-A-N-D-U-M

DATE: March 20, 2003

TO: OFFICE OF THE GENERAL COUNSEL - L. Harris
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT
XX DIVISION OF ECONOMIC REGULATION - M. Haff
DIVISION OF AUDITING AND SAFETY

FROM: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCUMENT NO(s): 01968-03

DESCRIPTION: FPL (Hoffman) - (CONFIDENTIAL) Pages 4, 6, 7, and 8 to direct testimony of C. Martin Mennes.

SOURCE: Florida Power & Light Company

DOCKET NO(S): 030084-EI

The above material was received with a request for confidential classification. Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. Copies of your recommendation should also be provided to the Division of the Commission Clerk and Administrative Services, Bureau of Records and Hearing Services, and to the Office of General Counsel.

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Response prepared by: Michael S. Hoff

Date: 3/24/2003

cc: GCL EXT
 CMP CCA
 ECR AUS
 MMS

PSC/CCA 15 (Rev 11/02)

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

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M. LANE STEPHENS

March 19, 2003

Ms. Blanca S. Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

VIA HAND DELIVERY

RECEIVED-FPSC
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CLERK

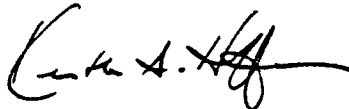
Re: Docket No. 030084-EI

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Florida Power & Light Company ("FPL") are an original and fifteen copies of FPL's Notice of Request for Confidential Classification.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman, Esq.

KAH/rl

Enclosures

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RECEIVED & FILED

FPSC-BUREAU

DOCUMENT NUMBER-DATE

02657 MAR 19 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Determination of Need for)
Collier-Orange River 230 kV Transmission)
Line in Collier, Hendry, and Lee Counties,)
by Florida Power & Light Company.)
_____)

Docket No. 030084-EI

Filed: March 19, 2003

**FLORIDA POWER & LIGHT COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.006(4), Florida Administrative Code, hereby files this Request for Confidential Classification and states the following:

1. On February 26, 2003, FPL filed its Petition to Determine Need for Electrical Transmission Line and supporting Prefiled Direct Testimony of William R. Schoneck, Jr., Vicente Ordax, Jr. and C. Martin Mennes.

2. Portions of FPL's Petition and Prefiled Direct Testimony contain proprietary confidential business information. Accordingly, contemporaneous with the filing of its Petition and Prefiled Direct Testimony, FPL filed a Notice of Intent to Request Specified Confidential Classification. The proprietary confidential business information was redacted from the Petition and Prefiled Direct Testimony of Messrs. Schoneck and Mennes. The unredacted pages of FPL's Petition and Prefiled Direct Testimony of Messrs. Schoneck and Mennes containing the proprietary confidential business information (highlighted in yellow) were provided under separate cover in envelopes marked "CONFIDENTIAL."

3. FPL maintains that the redacted portions of FPL's Petition and Prefiled Direct Testimony constitute "proprietary confidential business information" as defined under Section 366.093(3), Florida Statutes, which provides in pertinent part that:

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Proprietary confidential business information includes, but is not limited to:

* * *

(c) Security measures, systems, or procedures.

(Emphasis supplied).¹ The list of types of information protected under Section 366.093(3) is illustrative and not exhaustive.

4. In support of its position that the redacted portions of FPL's Petition and Prefiled Direct Testimony constitute proprietary confidential business information under Section 366.093(3), FPL relies on the Policy Statement and Rule issued by the Federal Energy Regulatory Commission ("FERC") in proceedings that have resulted in FERC protection from public disclosure of documents and information that constitute critical energy infrastructure information (at times referred to hereinafter as "CEII").

5. FERC embarked on this policy by issuing a Policy Statement shortly after the September 11, 2001 terrorist attacks on the United States of America. In that Policy Statement issued October 11, 2001, FERC stated that:

[t]he September 11... attacks on America have prompted the Commission to reconsider its treatment of certain documents that have previously been made available to the public through the

¹For this and all subsequent references to Section 366.093(3)(c), Florida Statutes, see also Section 281.301, Florida Statutes ("Information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure") (Emphasis supplied).

Commission's Internet site, the Records and Information Management System (RIMS), and the Public Reference Room.²

6. FERC's Policy Statement led to the initiation by FERC of a Notice of Proposed Rulemaking ("NOPR") in Docket Nos. RM02-4-000 and PL02-1-000. The NOPR was issued on September 5, 2002. In the NOPR, FERC proposed changes to FERC's regulations to address the appropriate treatment of CEII. FERC emphasized:

The rule proposed here would reconcile the Commission's regulatory responsibilities under its enabling statutes and federal environmental laws with the need to protect the safety and well-being of American citizens from attacks on our nation's energy infrastructure.³

On February 21, 2003, FERC issued Order No. 630 in Docket Nos. RM02-4-000 and PL02-1-000 reflecting its Final Rule addressing the appropriate treatment of CEII in the aftermath of the September 11 terrorist attacks. Following its consideration of comments submitted in response to the NOPR, FERC adopted Section 388.113, Code of Federal Regulations,⁴ regarding access to critical energy infrastructure information. Subsection 388.113(c) defines CEII as follows:

(c) Definitions. For purposes of this section:

(1) Critical energy infrastructure information means information about proposed or existing critical infrastructure that:

(i) Relates to the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

²See 66 FR 52917, 97 FERC ¶61,030.

³See 67 FR 57994, IV FERC Stats. & Regs. ¶32,564.

⁴See 18 C.F.R. §388.113.

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552;⁵ and

(iv) Does not simply give the location of the critical infrastructure.]

(2) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

7. FPL submits that Section 366.093(3) should be construed and applied in a manner consistent with Section 388.113, Code of Federal Regulations and FERC Order No. 630. The following is FPL's justification for its position that specific redacted portions of its Petition and Prefiled Direct Testimony, referenced by page and line numbers below, constitute proprietary confidential business information. The specific references to the redacted portions of the Petition and Prefiled Direct Testimony for which confidential classification is sought are as follows:

Exhibit "A" to FPL's Petition to Determine Need for the Collier-Orange River #3 Project:

- a. Page 2, lines 15-19 through page 3, line 1 (first word), line 2 (last word) and lines 3, 4 and portion of line 5;
- b. Page 5, lines 4-7;
- c. Page 15, lines 16-19;
- d. Page 16, line 18 through Page 18, line 2;
- e. Page 22, lines 7-11;
- f. Attachment 1a;]
- g. Attachment 4;
- h. Attachment 6;
- i. Attachment 8;]
- j. Appendix A (pages A.2 through A.35); and]
- k. Appendix B (pages B.1 through B.24).]

⁵In Order No. 630, Appendix B, FERC stated that its "actions in the NOPR and the final rule are based on its position that CEII includes only information that is exempt from disclosure under FOIA," noting that the exemptions most likely to apply are found at 5 U.S.C. 552(b)(2), (4) and (7).

Prefiled Direct Testimony of William Robert Schoneck: Page 14, lines 1-18

Prefiled Direct Testimony of C. Martin Mennes:

- a. Page 4, lines 7-17;
- b. Page 6, lines 18-23; and
- c. Page 7, line 21 through Page 8, line 5.

8. Much of the information for which confidential classification is sought provides details regarding the specific configuration of FPL's transmission facilities and the length and magnitude of potential outages depending on the occurrence of certain severe or catastrophic events. In light of the concerns that have arisen post-September 11, 2001, such detailed information should be protected inasmuch as it relates to the transmission of energy, could be useful to a person planning an attack on critical infrastructure, and does not simply give the location of the infrastructure. Accordingly, FPL maintains that the following redacted information constitutes proprietary confidential business information under Section 366.093(3), Florida Statutes, as "security measures, systems, or procedures," information that relates to such securing measures, systems, or procedures, and/or information that otherwise is confidential within the meaning of Section 366.093(3) for reasons consistent with the purpose and intent of Section 388.113, Code of Federal Regulations and FERC Order No. 630:

Exhibit "A" to the Petition:

- Page 2, lines 15-19 through page 3, line 1 (first word), line 2 (last word) and lines 3, 4 and portion of line 5;
- Page 5, lines 4-7;
- Page 15, lines 16-18;
- Page 16, line 18 through Page 18, line 2;
- Page 22, lines 7-11; and

- Attachments 4 and 6.

Prefiled Direct Testimony of William Robert Schoneck: Page 14, lines 1-18

Prefiled Direct Testimony of C. Martin Mennes:

- Page 4, lines 7-17;
- Page 6, lines 18-23; and
- Page 7, line 21 through Page 8, line 5.

9. FPL recognizes that the facilities map attached to the Petition as Attachment 1a has previously been made available to the public. However, in the FERC Policy Statement issued October 11, 2001, FERC removed from easy public access previously public documents that detail the specifications of energy facilities already licensed or certificated by FERC. Further, in Order No. 630, FERC determined that transmission system maps and breaker diagrams used by a FERC regulated utility for transmission planning that “show the interrelationship of facilities” constitute critical energy infrastructure information and should remain exempt from the Federal Freedom of Information Act.⁶ FPL submits that Section 366.093(3) should be applied in a manner consistent with the principles that have been adopted by FERC regarding accessibility of critical energy infrastructure information. Given that FERC recently has exempted transmission system maps such as Attachment 1a from public inspection under federal law, the Commission likewise should conclude that Attachment 1a constitutes “proprietary confidential business information” under Section 366.093(3), Florida Statutes, as security measures, systems, or procedures, information that relates to such measures, systems, or procedures, or information that otherwise is confidential within

⁶FERC Order No. 630, at ¶34. FERC had previously concluded in the NOPR that one or more of several Freedom of Information Act exemptions would most likely apply to Critical Energy Infrastructure Information. Order No. 630, at ¶14 citing 67 FR 57997-800, FERC Stats. & Regs. ¶32, 564 at pp. 34, 542-46.

the meaning of 366.093 for reasons consistent with the purpose and intent of Section 388.113, Code of Federal Regulations and FERC Order No. 630.

10. Attachment 4 is a map identifying the specific location of FPL's existing and future distribution substations and transmission facilities in Southwest Florida. This map shows the interrelationship of FPL's distribution and transmission facilities in Southwest Florida and could be useful to a person in planning an attack on this "critical infrastructure."⁷ Accordingly, FPL maintains that Attachment 4 constitutes proprietary confidential business information within the meaning of Section 366.093(3) consistent with the definition of CEII in Subsection 388.113(c), Code of Federal Regulations, and par. 34 of FERC Order No. 630.

11. Attachment 6 contains two documents. These documents provide detailed information concerning FPL's existing transmission facilities in Southwest Florida and the length and magnitude of potential service outages depending on the occurrence of certain severe or catastrophic events impacting the transmission facilities in the common right-of-way. FPL maintains that the documents in Attachment 6 constitute proprietary confidential business information within the meaning of Section 366.093(3) consistent with the definition of CEII in Subsection 388.113(c), Code of Federal Regulations, and par. 34 of FERC Order No. 630.

12. Attachment 8 summarizes the results of the load flow diagrams included in Appendix A to the Petition. Appendix A contains the load flow maps under different scenarios and contingencies without the Project. Appendix B contains the load flow maps under Alternatives I, III, and IV to the Project as described in FPL's Petition. FPL maintains that the information

⁷See 18 C.F.R. §388.113(c)(2).

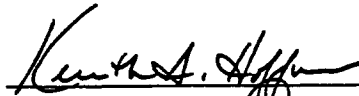
reflected in these documents should be exempt from public inspection and disclosure under the rationale of FERC Order No. 630. Specifically, these documents contain information that has been designated by FERC as critical energy infrastructure information.⁸ Such information should be determined to be proprietary confidential business information under Section 366.093(3), Florida Statutes as “security measures, systems, or procedures,” information that relates to such measures, systems, or procedures, or information that otherwise is confidential within the meaning of 366.093 for reasons consistent with the purpose and intent of Section 388.113, Code of Federal Regulations and FERC Order No. 630.

13. Although Attachment 1a to the Petition was filed at FERC by the Florida Reliability Coordinating Council, as of October 11, 2001, the document is no longer publicly available pursuant to the above-referenced FERC Policy Statement. With that caveat, the material for which confidential classification is sought is intended to and is treated by FPL as private and has not been disclosed.

WHEREFORE, based on the foregoing, and pursuant to Section 366.093(3) and (4), Florida Statutes, FPL respectfully requests that the Prehearing Officer enter an Order declaring the information and documents described above to be proprietary confidential business information that is not subject to public disclosure.

⁸Load flow maps essentially represent the same information as provided in diagrams filed in part 3 of FERC Form 715. FERC found Part 3 to be critical energy information infrastructure. Order No. 630, at ¶34.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.
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-- and --

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(561) 691-7135 (Telecopier)

Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by Hand Delivery to the following this 19th day of March , 2003:

Larry Harris, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850


KENNETH A. HOFFMAN, ESQ.