

06/26/06

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light)
Company for Determination of)
Need for Bobwhite-Manatee)
230 kV Transmission Line)
_____)

Docket No. 060424-EI

Filed: June 26, 2006

**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 June 26, 2006, FPL filed its Petition to Determine Need for Electrical Transmission Line and supporting Prefiled Direct Testimony of Vicente Ordax, Jr.

2. Portions of FPL's Petition and the Prefiled Direct Testimony of Mr. Ordax contain proprietary confidential business information. The proprietary confidential business information was redacted from the Petition and Prefiled Direct Testimony of Mr. Ordax. The unredacted pages of FPL's Petition and the Prefiled Direct Testimony of Mr. Ordax 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 of Mr. Ordax constitute "proprietary confidential business information" as defined under Section 366.093(3), Florida Statutes, which provides in pertinent part that:

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

* * *

(c) Security measures, systems, or procedures.

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(Emphasis supplied).¹ The list of types of information protected under Section 366.093(3) is illustrative and not exhaustive. FPL further avers that the material for which confidential classification is sought is intended to be and is treated by FPL as private and has not been disclosed.²

4. In support of its position that the redacted portions of FPL's Petition and Prefiled Direct Testimony of Mr. Ordax 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"), and prior Commission orders granting confidential classification to similar CEII information.

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 (2005), see also Section 281.301, Florida Statutes (2005) ("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).

²See Fla.Admin.Code Rule 25-22.006(4)(d).

Commission's Internet site, the Records and Information Management System (RIMS), and the Public Reference Room.³

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.⁴

On February 21, 2003, following its consideration of comments submitted in response to the NOPR, 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. Pursuant to Order No. 630, FERC adopted Section 388.113, Code of Federal Regulations,⁵ regarding access to critical energy infrastructure information.⁶ Subsection 388.113(c) defines CEII as follows:

(c) Definitions. For purposes of this section:

³See 66 FR 52917, 97 FERC ¶¶61,030.

⁴See 67 FR 57994, IV FERC Stats. & Regs. ¶¶32,564.

⁵See 18 CFR 388.113.

⁶FERC's CEII procedures were established by Order Nos. 630 and 630-A (Order on Rehearing). See Critical Energy Infrastructure Information, Order No. 630, 68 Fed. Reg. 9,857 (Mar. 3, 2003), FERC Stats. & Regs. ¶¶31,147 (2003). After soliciting public comment on the effectiveness of the rules in February 2004, on August 3, 2004, FERC issued a final rule in Order No. 649, supplementing Order No. 630 and amending 18 CFR 388.113(d) regarding gaining access to CEII. On March 3, 2005, in its effort to remain committed to examining the effectiveness of its CEII rules, FERC issued a "Notice Soliciting Public Comment." Thereafter, on June 21, 2005, FERC issued Order No. 662 providing further amendments and clarification to subsection (d) of Rule 388.113 regarding access CEII.

(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;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552;⁷ 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), Florida Statutes, should continue to be construed and applied in a manner consistent with Section 388.113, Code of Federal Regulations, FERC Order Nos. 630, 649 and 662, and prior Commission orders.⁸ Based on these authorities, FPL maintains that confidential classification is appropriate for the following redacted portions of FPL's Petition and the Prefiled Direct Testimony of Mr. Ordax:

(a) Exhibit "A" to FPL's Petition to Determine Need for the Bobwhite-Manatee 230 kV Project:

1. Redacted words on pages 12, 13 and 14;
2. Attachment 1;

⁷In 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).

⁸See In re: Petition for determination of need for Collier-Orange River 230 kV transmission line in Collier, Hendry, and Lee Counties, by Florida Power & Light Company, Order Nos. PSC-03-0551-FOF-EI issued April 28, 2003 and PSC-03-0685-CFO-EI issued June 6, 2003.

3. Attachment 4;
4. Attachment 9;
5. Appendix A (pages A.1 through A.25); and
6. Appendix B (pages B.1 through B.12).

(b) Prefiled Direct Testimony of Vicente Ordax, Jr.:

1. Page 10, line 7.

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 the above-cited FERC Orders:

Exhibit "A" to the Petition:

- Redacted words on pages 12, 13 and 14.
- Attachments 1, 4 and 9.

Prefiled Direct Testimony of Vicente Ordax, Jr.: Page 10, line 7.

9. Attachment 1 is a map reflecting FPL's substation and transmission system configuration. The map shows the interconnection and interrelationship between and among FPL's major transmission lines (230 kV and 500 kV lines), major transmission stations and power plants. 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.⁹ 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 1 from public inspection under federal law, the Commission likewise should conclude that Attachment 1 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 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

⁹FERC 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.

useful to a person in planning an attack on this “critical infrastructure.”¹⁰ 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 paragraph 34 of FERC Order No. 630.

11. Attachment 9 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 Alternative I to the Project as described in FPL’s Petition. FPL maintains that the information 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.¹¹ With particular regard to Section 388.113, Code of Federal Regulations, FPL notes that the load flow maps contained in Appendices A and B do not merely give the location of critical infrastructure elements, but show the interrelationship between same. Accordingly, 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.

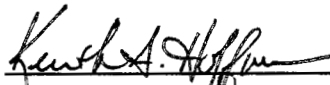
¹⁰See 18 C.F.R. §388.113(c)(2).

¹¹Load 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.

12. The text of the statements in the narrative portion of the Petition and in the Prefiled Direct Testimony of Mr. Ordax similarly identify, relate to or concern specific FPL transmission and distribution facilities, including substations, the interrelationship of these facilities, and the number of customers who could sustain interruptions of service depending on the occurrence of various single contingency events, and therefore constitute CEII as defined by FERC, and such information should be afforded confidential protection under Section 366.093(3), Florida Statutes.

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 determining the information and documents described above to be proprietary confidential business information that is not subject to public disclosure.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by Hand Delivery to the following this 26th day of June , 2006:

Martha Carter-Brown, Esq.
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Florida Public Service Commission
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