

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of Need for	)	
Lake Agnes-Gifford 230 kV transmission line	)	Docket No. 070393-EI
in Polk and Orange Counties, by Progress	)	
Energy Florida and Tampa Electric Company.	)	Filed: August 1, 2007
_____	)	

TAMPA ELECTRIC COMPANY AND PROGRESS ENERGY FLORIDA'S REQUEST FOR CONFIDENTIAL CLASSIFICATION

Tampa Electric Company and Progress Energy Florida (hereinafter referred to as the "Companies"), pursuant to Rule 25-22.006(4), Florida Administrative Code, hereby file this Request for Confidential Classification and state the following:

1. On August 1, 2007, the Companies filed their Petition to Determine Need for Electrical Transmission Line incorporating by reference therein the supporting Joint Prefiled Direct Testimony and Exhibits of Brantley Tillis of Progress Energy Florida and Thomas J. Szelistowski of Tampa Electric Company.

2. Prefiled Exhibit BT/TJS-10 to the Joint Prefiled Direct Testimony of Messrs. Tillis and Szelistowski incorporated by reference into the Companies' Petition contains proprietary

CMP \_\_\_\_\_  
 COM \_\_\_\_\_ confidential business information. The proprietary confidential business information was redacted  
 CTR \_\_\_\_\_ from Prefiled Exhibit BT/TJS-10 to said testimony. The unredacted pages of Prefiled Exhibit  
 (ECR) \_\_\_\_\_  
 GCL 2 BT/TJS-10 of Messrs. Tillis and Szelistowski containing the proprietary confidential business  
 OPC \_\_\_\_\_ information (highlighted in yellow) have been provided under separate cover in envelopes marked  
 RCA \_\_\_\_\_ "CONFIDENTIAL."  
 SCR \_\_\_\_\_  
 SGA \_\_\_\_\_  
 SEC \_\_\_\_\_  
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FPSC-COMMISSION CLERK

3. The Companies maintain that the redacted portions of Prefiled Exhibit BT/TJS-10 incorporated by reference into the Companies' Petition constitutes "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.

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

4. In support of its position that the redacted portions of Prefiled Exhibit BT/TJS-10 constitutes proprietary confidential business information under Section 366.093(3), the Companies rely on the Policy Statement and Rule issued by the Federal Energy Regulatory Commission

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<sup>1</sup>For this and all subsequent references to Section 366.093(3)(c), Florida Statutes (2006), see also Section 281.301, Florida Statutes (2006) ("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.)

<sup>2</sup>See Fla.Admin.Code Rule 25-22.006(4)(d).

(“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 Commission’s Internet site, the Records and Information Management System (“RIMS”), and the Public Reference Room.<sup>3</sup>

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.<sup>4</sup>

On February 21, 2003, following its consideration of comments submitted in response to the NOPR,

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<sup>3</sup>See 66 FR 52917, 97 FERC ¶61,030.

<sup>4</sup>See 67 FR 57994, IV FERC Stats. & Regs. ¶32,564.

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,<sup>5</sup> regarding access to critical energy infrastructure information.<sup>6</sup> 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;
    - (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552;<sup>7</sup> 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

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<sup>5</sup>See 18 CFR 388.113.

<sup>6</sup>FERC'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 to CEII.

<sup>7</sup>In 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).

destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

7. The Companies submit 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. Based on these authorities, and for the reasons set forth below, the Companies maintain that confidential classification is appropriate for the redacted portions of Prefiled Exhibit BT/TJS-10 which contains Load Flow Summary Tables.

8. Exhibit BT/TJS-10 contains Load Flow Summary Tables which summarize the results of the load flow analysis and diagrams that support the Petition and have been made available for review and inspection. The Companies maintain that the redacted information in this Exhibit should be exempt from public inspection and disclosure under the rationale of FERC Order No. 630. Specifically, the redacted information contains information that has been designed by FERC as critical energy infrastructure information.<sup>8</sup> As such, the Companies maintain that Exhibit BT/TJS-10 to the Joint Prefiled Direct Testimony constitutes proprietary confidential business information under Section 366.093(3), Florida Statutes, as “security measures, systems, or procedures,” information that relates to such security 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.

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<sup>8</sup>Load 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 infrastructure information. Order No. 630, at ¶34.

9. This Commission on July 26, 2006 issued Order No. PSC-06-0631-CFO-EI in Docket No. 060424-EI In re: Petition for determination of need for Bobwhite-Manatee 230kV transmission line in Manatee and Sarasota Counties, by Florida Power & Light granting Florida Power & Light's request for confidential classification of substantially similar information requested by the Companies to be protected herein. See also Order No. PSC-03-0685-CFO-EI issued June 6, 2003 in Docket No. 030084-EI In re: Petition for determination of need for Collier-Orange River 230kV line in Collier, Hendry and Lee Counties by Florida Power & Light Company.

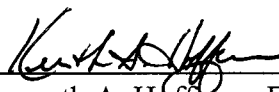
WHEREFORE, based on the foregoing, and pursuant to Section 366.093(3), and (4), Florida Statutes, Tampa Electric Company and Progress Energy Florida respectfully request that the Prehearing Officer enter an Order determining the information and documents described above to be proprietary confidential business information that is not subject to public disclosure.

Respectfully submitted this 1<sup>st</sup> day of August, 2007.

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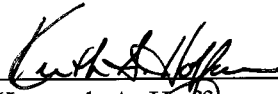
By:   
Kenneth A. Hoffman, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail this 1<sup>st</sup> day of August, 2007 to the following:

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State of Florida



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

**CONFIDENTIAL**

**DATE:** 8/1/07  
**TO:** Rutledge / Hoffman  
**FROM:** \_\_\_\_\_, Division of the Commission Clerk &  
Administrative Services  
**RE:** **Acknowledgment of Receipt of Confidential Filing**

This will acknowledge receipt of a **CONFIDENTIAL DOCUMENT** filed in Docket No. 070393 or (if filed in an undocketed matter) concerning Exhibit B-T / ISS 10, and filed on behalf of TECO. The document will be maintained in locked storage.

Any questions regarding this matter should be directed to Marguerite Lockard at (850) 413-6770.

**CONFIDENTIAL**

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