

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Tampa Electric Company)
For Determination of Need for Willow Oak-)
Davis 230 kV Transmission Line)
_____)

Docket No. 070193-EI

Dated: April 27, 2007

TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION

Tampa Electric Company ("Tampa Electric" or the "company"), pursuant to Rule 25-22.006(4), Florida Administrative Code, hereby files this Request for Confidential Classification and states the following:

1. On April 27, 2007, Tampa Electric filed its Petition to Determine Need for Electrical Transmission Line incorporated by reference therein the supporting Prefiled Direct Testimony and Exhibit of Paul Davis.

2. The Prefiled Exhibit of Mr. Paul Davis incorporated by reference into Tampa Electric's Petition contains proprietary confidential business information. The proprietary confidential business information was redacted from the Prefiled Exhibit of Mr. Paul Davis. The unredacted pages of the Prefiled Exhibit of Mr. Paul Davis containing the proprietary

confidential business information (highlighted in yellow) were provided under separate cover in envelopes marked "CONFIDENTIAL."

3. Tampa Electric maintains that the redacted portions of the Prefiled Exhibit of Mr. Paul Davis incorporated by reference into Tampa Electric's 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:

JMP _____
JOM _____
JTR _____
JCR 1
JCL 1
JPC _____
JCA _____
JCR _____
JGA _____
JEC _____
JTH 1 copy records

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(c) Security measures, systems, or procedures.

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

4. In support of its position that the redacted portions of the Prefiled Exhibit of Mr. Paul Davis constitutes proprietary confidential business information under Section 366.093(3), Tampa Electric 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:

¹ 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.)

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

[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.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:

³ See 66 FR 52917, 97 FERC ¶61,030.

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

⁵ See 18 CFR 388.113.

⁶ 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 CEII.

(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;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. Tampa Electric 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, Tampa Electric maintains that confidential classification is appropriate for the following redacted portions of the Prefiled Exhibit of Mr. Paul Davis.

The prefiled Exhibit to the prefiled Testimony of Paul Davis incorporated by reference into Tampa Electric's Petition to Determine Need for the Willow Oak-Davis 230kV Project:

⁷ 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).

⁸ See In re: Petition for determination of need for Collier-Orange River 230kV 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.

1) Attachment 1 – Tampa Electric Company Electric Facilities Map (General Map)

2) Attachment 9 – Load Flow Summary Table

8. Much of the information for which confidential classification is sought provides details regarding the specific configuration of Tampa Electric’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, Tampa Electric maintains that Attachments 1 and 9 to the prefiled Exhibit of Paul Davis 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.

9. Attachment 1 is a map reflecting Tampa Electric’s substations and transmission system configuration. The map shows the interconnection and interrelationship between and among Tampa Electric’s major transmission lines (69 kV, 138 kV and 230 kV), 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 Tampa Electric 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 9 summarizes the results of the load flow diagrams (Load Flow Summary Table) included in Exhibit to the Petition. Tampa Electric maintains that certain information reflected in this attachment 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 designated by FERC as critical energy infrastructure information.¹⁰

11. 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 and Light granting Florida Power and Light’s request for confidential information of substantially similar information

⁹ FERC 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.

¹⁰ 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 information infrastructure. Order No. 630, at ¶34.

requested by Tampa Electric to be protected herein. Similar information requested by Tampa Electric 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 and Light Company.

WHEREFORE, based on the foregoing, and pursuant to Section 366.093(3) and (4), Florida Statutes, Tampa Electric 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 this 27th day of April, 2007.

LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 425-5487

By: 

Lee L. Willis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by Hand Delivery to
the following this 27th day of April, 2007:

Martha Carter-Brown, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

By: _____


Lee L. Willis

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: 4-27-07
TO: Lee Willis
FROM: T. Henry, 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. 070193 or (if filed in an undocketed matter) concerning Paul Davis attachments 1 & 9, and filed on behalf of Tampa Electric/ Lee L. Willis. The document will be maintained in locked storage.

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

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PSC/CCA019-C(Rev 12/06)

Attachment-1
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Attachment - 9
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