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FERC Standards of Conduct Protocols for the Florida Reliability Coordinating Council

The Florida Reliability Coordinating Council's ("FRCC") purpose is to ensure and enhance the reliability and adequacy of bulk electricity supply in Florida, now and into the future. The FRCC members are comprised of a variety of entities including investor-owned utilities, cooperative utilities, municipal utilities, federal power agencies, power marketers and independent power producers. To help fulfill its mission, the FRCC requests that its members provide the FRCC and other FRCC members with a variety of transmission information, including but not limited to, transmission plans, operating procedures, maps, and power flows. The FRCC members who are investor-owned utilities that have Open Access Transmission Tariffs ("OATTs") on file with the Federal Energy Regulatory Commission ("FERC") and the FRCC members who have non-jurisdictional "safe harbor" OATTs on file with FERC are subject to specific FERC requirements that regulate the disclosure of their transmission information. Additionally, some non-jurisdictional FRCC members with conforming OATTs are voluntarily complying with these specific FERC requirements that regulate disclosure of their transmission information. In accordance with the OATT and the FERC Standards of Conduct, these utilities must provide non-preferential access to their transmission information to all transmission customers under their OATT. The FERC Standards of Conduct also prohibits these utilities from providing preferential access to their transmission function information to their marketing (merchant) function employees and certain affiliates. Due to the fact that the FRCC has access to and consolidates transmission information from these utilities, and other FRCC transmission owners in Florida, the FRCC also must take all necessary steps to ensure that transmission information is shared in accordance with the OATT and FERC Standards of Conduct so that these utilities may comply with those regulatory requirements.

The OATT and the FERC Standards of Conduct are intended to level the playing field in the wholesale market. In FERC's view, preferential knowledge by marketing employees of the condition of the transmission system would convey a competitive advantage. The OATT and FERC Standards of Conduct are rules that seek to prevent such advantages. In fact, the question is not whether the transfer of information did or would confer an advantage, but rather whether it is *conceivable* that the transfer of information could confer an advantage. The primary rule is that a transmission provider must treat **all** transmission customers, affiliated and non-affiliated, on a non-discriminatory basis and it cannot operate its transmission system to give a preference to any transmission customer or to share non-public transmission or customer information with any transmission customer. At the core, the rules also prevent transmission function employees from sharing with their marketing function employees and certain affiliates non-public transmission information about the transmission provider's transmission system or any other

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transmission system, which is information that the affiliated marketing employee receiving the information could use to commercial advantage.

FERC has issued a number of Standards of Conduct orders. FERC's most recent Standards of Conduct order was Order 717 issued on October 16, 2008. FERC also implemented OATT reform via their Order Nos. 890, 890-A and 890-B during 2007 and 2008. As a result of Order Nos. 890, 890-A and 890-B, new transmission planning principles were implemented. These FERC orders taken collectively provide the framework to ensure that non-preferential access to transmission information is being provided to all transmission customers.

PROTOCOLS

1. The FRCC shall be prohibited from sharing any non-public transmission information with any marketing employee, including marketing employees that are affiliated with FRCC member companies, unless the FRCC has: (1) obtained consent from the Transmission Provider whose non-public transmission information will be disclosed; and (2) such transmission information is posted on a secure website that is accessible by all marketing employees, with appropriate consideration of any redaction of critical energy infrastructure information.
2. The FRCC's Manager of System Planning and Operations shall implement rules and procedures to ensure that Marketers/Brokers do not receive any preferential treatment or achieve any competitive advantage through access to non-public transmission information via the FRCC.
3. If the FRCC discovers that non-public transmission information has been improperly disclosed to a marketing employee, the FRCC shall immediately contact the member company whose information was disclosed.
4. If marketing employees are present during FRCC meetings where non-public transmission information that has not been previously shared per Protocol 1 and appropriately noticed may be discussed, the FRCC's chair of that meeting shall ensure that the marketing employees are excused from the room before such non-public transmission information is discussed and any minutes of the FRCC meetings reflect that marketing employees were excused from the portion of the meeting in which non-public transmission information was discussed. **All marketing employees, affiliated and non-affiliated, should be excused from the meeting.**

DEFINITIONS

Note: These definitions were extracted from the Code of Federal Register text from 18 C.F.R. § 358.3 that was modified as a result of FERC's Standard of Conduct Order 717. Only those portions of the definitions applicable to this document are provided below.

- (c) **Marketing functions** means:
 - (1) in the case of public utilities and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) acting in their POLR capacity.

- (d) **Marketing function employee** means an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions.

- (h) **Transmission functions** means the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.

- (i) **Transmission function employee** means an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions.

- (j) **Transmission function information** means information relating to transmission functions.

- (k) **Transmission provider** means:
 - (1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce.