

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to) DOCKET NO. 951563-PU
Rule 25-22.006, F.A.C.,) ORDER NO. PSC-96-0463-FOF-PU
Confidential Information) ISSUED: April 3, 1996
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

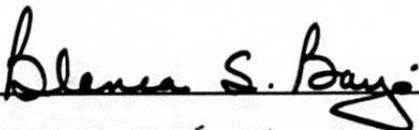
NOTICE OF ADOPTION OF RULE

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has adopted the amendments to Rule 25-22.006, Florida Administrative Code, relating to confidential information without changes.

The rule amendments were filed with the Department of State on April 1, 1996 and will be effective on April 21, 1996. A copy of the rule as filed with the Secretary of State is attached to this Notice.

This docket is closed upon issuance of this notice.

By ORDER of the Florida Public Service Commission, this 3rd day of April, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DOCUMENT NUMBER DATE

03790 APR-3 96

FPSC-RECORDS/REPORTING

25-22.006 Confidential Information.

(1) Definitions.

(a) "Confidential Information" means material that has been determined, pursuant to this rule, to be proprietary confidential business information under Section 350.121, 364.183, 366.093, or 367.156, F.S.

(b) "Formal proceeding" means a proceeding docketed in the Commission's Division of Records and Reporting.

(c) "Inquiry" means an investigation pursuant to section 350.121, F.S. An inquiry is set in motion by the Commission Chairman, the Executive Director, or the General Counsel to evaluate a complaint, allegation, or ~~to~~ develop information as a basis to initiate action on or dispose of any matter within the Commission's jurisdiction.

(d) "Material" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other recorded information regardless of physical form or characteristics.

(e) "Obtaining material" means receiving material pursuant to filing or taking physical control of material by removing the original material or a copy of it from the utility's or other person's premises. Obtaining material also means the extraction of data from material for inclusion in working papers or memoranda.

(2) Material obtained during an inquiry.

(a) All material obtained incident to an inquiry by the Commission, its staff, or any consultant employed by the Commission is exempt from the public access requirements of Section 119.07(1), F.S., and will be accorded stringent procedural safeguards against public disclosure during the pendency of the inquiry. When the Commission or its staff is requesting information incident to an inquiry, the source shall be informed in writing that the request is made incident to an inquiry.

(b) An inquiry will terminate 40 days after the transmittal of a notice of termination by the Division of Records and Reporting. This notice will be sent to all sources from whom material was obtained during the inquiry and will include a list of all materials obtained from the source~~(s)~~ during the inquiry and any portions of staff work papers, analyses, and reports containing materials obtained from the source during the inquiry. The notice will indicate whether the Commission intends to retain, destroy, or return the materials listed. A source may, within 30 days after issuance of the notice, file with the Division of Records and Reporting a written request that the material the Commission intends to retain be classified as confidential and exempt from Section 119.07 (1), F.S. Requests filed in response to the notice of termination shall meet the same criteria and be processed in the same manner as other requests for confidential classification under subsection (4) of this rule~~(see subsection 4)~~. If no timely

request for confidential classification is filed, confidentiality is waived and the material becomes subject to inspection and examination pursuant to Section 119.01 (7), F.S.

(3) Material obtained outside of an inquiry. Material obtained by the Commission or its staff outside of an inquiry shall be subject to inspection and examination pursuant to Section 119.07(1), F.S., unless the utility or other person requests that it be classified as confidential information.

(a) 1. If the utility or other person believes information requested by staff is confidential, the utility or other person may require that the staff request be in writing. Prior to the staff obtaining any material, a utility or other person may receive temporary exemption from Section 119.07(1), F.S., by filing a notice of intent to request confidential classification. The notice of intent to request confidential classification shall be filed with the Division of Records and Reporting and shall have appended thereto a copy of any written request for the material to which it relates. A copy of the notice shall be provided to the division~~(s)~~ requesting the material. To maintain continued confidential handling of the material the utility or other person must, within 21 days after the staff has obtained the material ~~(or in the case of material obtained during the course of an audit, within 21 days after the field audit exit conference)~~, file a request for confidential classification with the Division of

Records and Reporting. Absent good cause shown, failure to file such a request within 21 days shall constitute a waiver of confidentiality.

2. In the case of material obtained by the Commission's auditors, the utility shall indicate on the document request Form PSC/AFA 6 (2/95) whether the information is believed by the utility to be confidential. To maintain continued confidential handling of the material, the utility must, within 21 days after the audit exit conference or, if waived, the date the audit exit conference would have taken place, file a request for confidential classification with the Division of Records and Reporting. Absent good cause shown, failure to file such a request within 21 days shall constitute a waiver of confidentiality.

(b) When the material is obtained incident to a formal proceeding, the utility or other person requesting confidential classification shall also serve a copy or summary of its request on all parties of record and on Public Counsel. The summary shall describe the material in sufficient detail so as to reasonably inform the reader of the nature of the material. Any party to a formal proceeding may file an objection to the request for confidential classification within 14 days after service of the copy or summary.

(c) Requests for confidential classification, including motions for protective orders under Paragraph 6(a) ~~5(a)~~, and any

objections filed in response thereto shall be ruled on expeditiously by the prehearing officer assigned to the docket. The Commission panel assigned to the case will hear any motion for reconsideration filed regarding ~~protest to~~ the prehearing officer's ruling. If a request is received outside a docketed proceeding, the request itself will be docketed.

(d) All material that has been classified as confidential, ~~or~~ for which a ruling on confidentiality is pending, ~~or~~ is subject to a notice of intent to request confidential classification, or is subject to a claim of confidentiality as provided for in Section 364.183(1), F.S., shall be exempt from Section 119.07(1), F.S., and will be accorded stringent internal procedural safeguards against public disclosure. Any staff or consultant reports or work products containing confidential information extracted from material having been classified as confidential, or which has been claimed to be confidential or for which a ruling on confidentiality is pending, shall be handled in the same manner as the material so classified. The Commission shall have discretion to retain any confidential material in its possession. Upon the consent of the Department of State, the Commission may return or, after consulting with the source, destroy any material that is no longer needed.

(4) Requests for confidential classification.

(a) A request for confidential classification of material shall be filed in writing with the Division of Records and

Reporting. All such requests, including motions for protective orders based on confidentiality, shall be styled to clearly indicate on their face that confidentiality is being requested. The utility or other person shall file with the request one copy of the material for which confidential treatment is requested. On this copy, the specific information asserted to be confidential shall be highlighted. Along with the highlighted copy, the utility or other person shall file two or more edited copies as required by the type of proceeding, which will be made available for public inspection. In the edited copies, the specific information asserted to be confidential shall be blocked out by the use of an opaque marker or other masking device. The utility or other person shall identify the page~~(s)~~ and line~~(s)~~ at which the confidential material is found and shall correlate the page~~(s)~~ and line~~(s)~~ identified with the specific justification proffered in support of the classification of such material.

(b) In the case of electronically stored material, one unedited version shall be submitted along with a written identification of the specific data fields for which confidential classification is requested along with a field-by-field justification for the confidential classification.

(c) In the line-by-line or field-by-field justification for confidential classification, the utility or other person must demonstrate how the information asserted to be confidential

qualifies as one of the statutory examples listed in section 364.183(3), 366.093(3), or 367.156(3), F.S. If no statutory example is applicable, then the utility or other person shall include a statement explaining how the ratepayers or the person's or utility's business operations will be harmed by disclosure.

(d) The request shall include an affirmative statement that the material for which confidential classification is sought is intended to be and is treated by the utility or other person as private and has not been disclosed.

(e) The burden of proof shall be on the utility or other person to show that the material in question contains bona fide proprietary confidential business information. A request for confidential classification that fails to identify the material for which confidential classification is sought in sufficient detail to permit a reasoned analysis or which fails to provide the required justification for classification may be denied as insufficient on its face.

(f) The Division of Records and Reporting shall make available for public inspection a listing of daily filings with the Commission requesting confidentiality.

(g) The Commission shall have the discretion to modify the requirements of this subsection in order to alleviate the financial burden of entities qualifying as small businesses under section 288.702, F.S.

(h) A utility may petition the Commission for a waiver of the justification for particular sections of certain routinized for filings. The Commission may require conditions to be met by the utility that may include, but not be limited to:

1. Filings which are routine, filed periodically, and which have been filed for a minimum of six months;

2. Information which has regularly been classified as confidential in the past; and

3. While the utility must identify material to be classified by line-by-line reference, the utility may cite to a previous order for justification.

If the waiver is approved, the Commission will issue an order referencing the appropriate previous order stating the relevant justification. No party will be denied the opportunity to object to a request for confidentiality made pursuant to this subparagraph.

(5) Claim of confidential treatment pursuant to section 364.183(1), F.S.

(a) Telecommunications companies or other persons claiming confidential treatment for materials pursuant to section 364.183(1), F.S., shall file with the Division of Records and Reporting one copy of all such materials and include a cover letter stating that confidentiality is being claimed. The telecommunications company or other person also shall file one copy

of the material on which the specific information claimed as confidential shall be highlighted. Along with the highlighted copy, the telecommunications company or other person shall file two edited copies which will be made available for public inspection. In the edited copies, the specific information claimed to be confidential shall be blocked out by the use of an opaque marker or other masking device.

(b) In the case of electronically stored material, one unedited version shall be submitted along with a written identification of the specific data fields for which confidentiality is claimed, along with a field-by-field justification for the confidential classification.

(c) 1. The materials claimed to be confidential shall be kept confidential until returned to the provider pursuant to subsection (6)(d) of this rule, unless the materials will be used in a Commission proceeding or are the subject of a request pursuant to Section 119.07(1), F. S.

2. Any person may file a petition to inspect and examine any material which has been claimed confidential pursuant to 364.183(1), F.S. A copy of the petition must be served on the affected telecommunications company or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the

filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings.

~~(6)(5)~~ Discovery.

(a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

(b) The Commission's protective orders shall exempt proprietary confidential business information from section 119.07(1), F.S. While a request for a protective order is pending, the information asserted to be confidential shall also be exempt from section 119.07(1), F.S. Such exemption shall apply whether the information is in the possession of an entity, individual, or state agency, including the Office of Public Counsel.

(c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a

proceeding before the Commission, the utility may request a temporary protective order exempting the information from section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

(d) Confidential information which has not been entered into the official record of the proceeding shall be returned to the utility or person who provided the information no later than 60 days after the final order, unless the final order is appealed. If the final order is appealed, the confidential information which has not been made a part of the record shall be returned no later than 30 days after the decision on appeal.

(7)~~(6)~~(a) Any person may file a petition to inspect and examine any material which the Commission has ruled exempt from s. 119.07(1), F.S., or which is exempted under paragraph 3(d) pending the Commission's ruling or as the result of the filing of a notice of intent to request confidentiality. A copy of the petition must be served on the affected utility or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the

filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings. Material obtained by the Commission in connection with an inquiry shall not be subject to requests for inspection and examination until after the inquiry is terminated.

(b) A finding of confidentiality notwithstanding, a source may consent to inspection or examination by any person. Such consent shall not constitute a waiver of confidentiality and only the person~~(s)~~ specified in the consent may inspect or examine the material. The Commission may be requested to issue a protective order to recognize the terms and conditions of the consent. All persons are urged to seek mutual agreement regarding access prior to bringing a controversy to the Commission.

(8)(7) Use of confidential information during formal proceedings.

(a) The Commission may rely upon confidential information during a formal proceeding and such information, if otherwise admissible, will be received in evidence. In such event, reasonable precautions will be taken to segregate confidential information in the record and otherwise protect its integrity.

(b) When information subject to a claim of confidentiality pursuant to Section 364.183(1) or a request is admitted into the evidentiary record of a hearing, if such information is not otherwise subject to a request for confidentiality filed with the

Commission, the parties to the case and the Commission shall treat the information as confidential pending a ruling on the confidentiality of the information. To maintain continued confidentiality, the party to whom the information belongs shall file a request for confidential classification within 21 days of the conclusion of the hearing.

(c) When information subject to a claim of confidentiality pursuant to Section 364.183(1) or a request is contained in a party's brief or other post hearing filing filed with the Commission, the party filing such information shall notify the owner of the information at least three working days prior to the date that the filing will be made. To maintain continued confidential treatment, the party to whom the information belongs shall file, on the same date the brief or other post-hearing filing is filed, either a notice of intent to request confidentiality treatment pursuant to (b) of this subsection, a request for confidential treatment, or a statement that the information is already subject to a request for confidentiality that has been filed with the Commission and the date that the request was filed.

(9)-(8) Duration of Confidential Classification.

(a) Orders of the Commission granting confidential classification shall limit the duration of such classification to a period not exceeding 18 months. The Commission may approve a longer period if it finds, for good cause, that such longer period

is necessary to protect the ratepayers or the business operations of the utility or affected person.

(b) When confidential information is no longer needed for the Commission to conduct its business, the Commission shall order all persons holding such information to return it to the utility or person providing the information.

(c) Confidential information not returned at the conclusion of the period established under paragraph (a) of this subsection, shall no longer be exempt from s. 119.07(1), F.S., unless the utility or affected person shows, and the Commission finds, that the information continues to be confidential. Upon such finding, the duration of confidential classification may be extended for a period of up to 18 months, or for a longer period if the Commission finds, for good cause, that such longer period is necessary to protect the business operations of the utility or affected person. While the Commission is considering an extension under this paragraph, the information in question shall remain exempt from s. 119.07(1), F.S.

~~(10)~~(9) Judicial Review. When the Commission denies a request for confidential classification, the material will be kept confidential until the time for filing an appeal has expired. The utility or other person may request continued confidential treatment until judicial review is complete. The request shall be in writing and filed with the Division of Records and Reporting.

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The material will thereafter receive confidential treatment through completion of judicial review.

Specific Authority: 350.127, FS.

Law Implemented: 350.121, 364.183, 366.093, 367.156, FS.

History: New 7-1-85, Amended 4-26-90, 4-21-96.