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March 29, 1989

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Mr. David E. Smith
Director of Appeals
Florida Public Service Commission
101 East Gaines Street
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MAR 29 1989

Mr. William Bakstran
Associate General Counsel
Division of Appeals
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

FPSC-RECORDS/REPORTING

Re: Amendment of Rule 25-22.006, F.A.C., pertaining
to Confidential Information; FPSC Docket No. 890252-PU

Gentlemen:

Attached is a copy of the draft language on Rule 25-22.006. The strike-throughs and underlinings reflect the discussion we had at the March 22, 1989 Staff Workshop. This letter describes the changes reflected on the enclosed draft and expresses Tampa Electric's very serious concerns regarding the treatment of confidential information.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC _____
- WAS _____
- QTH _____

On page 1 the change on lines 6 through 8 are intended to make it clear that a formal proceeding does not have to take the form of a Section 120.57 proceeding.

On page 1, lines 9-10, the additional language is designed to put persons on notice that a proceeding is intended by the Commission to be a "inquiry."

On page 2 we have added language on lines 7 through 10 which we think is consistent with the Commission's goal of minimizing the handling of paperwork, particularly documents the confidentiality of which must be strenuously protected.

On page 2, line 23 through page 3, line 4, we have added language to the lead-in to subsection (3) of the draft rule to cover situations where the Commission's field staff comes in to look at utility records on some

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topic on an informal basis. We understand that such an informal review would not be considered an inquiry and we do not think it would constitute an "investigation", formal docket or any other type of official review. Tampa Electric wants the Staff to be able to review the company's records in-house. In the event the Staff does not take possession, Tampa Electric would still want the assurance that the substance of the material is protected from public disclosure. The additional language in the first part of subsection (3) is intended to provide this protection and at the same time facilitate the Staff's ability to review these documents on an informal basis.

On page 3 the changes on lines 5-10 reflect the consensus of the participants at the March 22, 1989 workshop.

On page 4, lines 2-3, Tampa Electric would urge that you strike the provision that a new docket be initiated each time a request is received outside a docketed proceeding. Striking this requirement would eliminate considerable paperwork processing both for the Division of Records and Reporting as well as the parties. You had expressed a concern that rulings be made by a commissioner as opposed to the Office of the General Counsel. This could be done on a rotating basis between commissioners without having a formal docket file opened on each request. We are simply attempting to reduce the amount of paperwork and procedures involved in handling these types of requests.

On page 4 we have modified subsection (4)(a) to require only one copy of the highlighted material and two copies of the blacked out material to be submitted. This has worked in the past and we would strongly urge that it continue in the future. It takes literally hours and hours of time to prepare even a single highlighted version of many of the documents which are furnished to the Commission. Restricting the highlighted version to one copy would significantly reduce the cost involved and would also reduce the effort required of the Division of Records and Reporting to protect these documents from public disclosure.

The remaining changes on page 4 through page 5, line 5, are consistent with the discussion at the workshop to require a detailed justification rather than a "line-by-line" or "field-by-field" justification.

On page 5 the change at lines 17-19 is also consistent with the discussion at the workshop to the effect that a utility cannot say for certain that any particular material is of the type normally treated as confidential by the industry. The focus should be on the effect which disclosure of the material would have on the party seeking confidentiality.

On page 6 at line 16, we have suggested that the reference to destroying unneeded material be deleted. As a practical matter, the Division of Records and Reporting has been returning these items rather than destroying them. This saves time for the Division of Records and

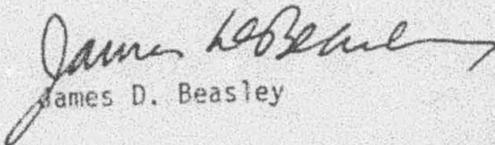
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Reporting and at the same time provides the utility with final assurance that the confidentiality of these documents has been protected all the way back to the utility's possession.

On lines 29-31 of page 6 through page 7, line 1, we have included a change to make this subsection consistent with subsection 2(b). That subsection allows 30 days for a source to request confidentiality after receiving the written notice of termination of an inquiry.

We appreciate the opportunity to provide input to the Staff in connection with the proposed revision to the confidentiality rule. Again, we would urge that you keep in mind the goal of minimizing administrative burdens both to the Commission and to the affected parties. Unless this goal is actively pursued by everyone involved, the handling of confidential information could grind the whole process to a halt under an avalanche of paperwork.

Sincerely,


James D. Beasley

JDB/pp
enc.

cc: All Parties of Record (w/enc.)
Mr. Steve C. Tribble (w/enc.)

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Mr. William Bakstran
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail this 29th day of March, 1989 to the following individuals:

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703 First Florida Bank Building
Tallahassee, Florida 32301

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Peggs & Lane
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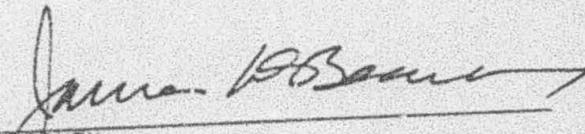
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ATTORNEY

1 25-22.006 Confidential Information.

2 (1) Definitions.

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

6 (b) "Formal proceeding" means a proceeding formally docketed in the
7 Commission's Division of Records and Reporting, in which the
8 substantial interests of a party may be determined by the Commission.

9 (c) "Inquiry" means an investigation formally designated as such
10 and set in motion by the Commission Chairman, the Executive Director, or
11 the General Counsel to evaluate a complaint, allegation, or to develop
12 information as a basis to initiate action on or dispose of any matter
13 within the Commission's jurisdiction.

14 (d) "Material" means all documents, papers, letter, maps, books,
15 tapes, photographs, films, sound recordings or other material regardless of
16 physical form or characteristics, made or received by the Commission, its
17 staff or consultants pursuant to law or in connection with the transaction
18 of official business of the agency.

19 (e) "Taking possession of material" means obtaining physical control
20 of material by taking the original material or a copy from the company's
21 premises, or by the extraction of data by inclusion into working papers or
22 memoranda.

23 (2) Material received during an inquiry.

24 (a) All material obtained incident to an inquiry by the Commission,
25 its staff or any consultant employed by the Commission is exempt from the
26 public access requirements of Section 119.07(1), F.S. during the pendency
27 of the inquiry. When the Commission or its staff is requesting information
28 incident to an inquiry, the source shall be informed in writing that the
29 request is made to an inquiry.

30 (b) An inquiry will terminate 40 days after the transmittal of a
31 notice of termination by the Division of Records and Reporting. This

1 notice will be sent to all sources from whom confidential material was
2 received during the inquiry and will include a list of all materials
3 obtained from the source(s) during the inquiry and any portions of staff
4 work papers, analyses and reports containing materials obtained from the
5 source during the inquiry. The notice will indicate whether the Commission
6 intends to retain, destroy (with the consent of the source(s)) or return
7 the materials listed. The Commission will make every effort to minimize
8 the extent to which it retains any of the materials with any doubtful need
9 for retention being resolved in favor of returning the materials to the
10 source(s). A source may, within 30 days after issuance of the notice,
11 file with the Division of Records and Reporting a written request that the
12 material the Commission intends to retain be classified as confidential and
13 exempt from Section 119.07 (1) F.S. Requests filed in response to this
14 notice shall meet the same criteria and be processed in the same manner as
15 other requests for confidential classification under this rule (see
16 subsection 4). If no timely request for confidential classification is
17 filed, confidentiality is waived and the material becomes subject to
18 inspection and examination pursuant to Section 119.01 (7), F.S.

19 (3) Material received outside of an inquiry. Material received by
20 the Commission or its staff outside of an inquiry shall be subject to
21 inspection and examination pursuant to Section 119.07(1), Florida Statutes,
22 unless the utility requests that it be classified as confidential
23 information. Occasionally the Commission's Staff will informally review
24 material on a utility's premises. If the Staff desires to take possession
25 of any of such material, it shall so advise the utility in writing
26 (typically, on an audit request form) and afford the utility an opportunity
27 to request that the material be classified as confidential information. If
28 the Staff does not desire to take possession of material which it
29 informally reviews on site at the utility, the Staff nevertheless shall
30 refrain from disclosing any of the contents of the material thus reviewed
31 to any other person. The Staff shall also refrain from later incorporating

1 any information contained in such material into any Staff prepared report,
2 workpaper or other document without first notifying the utility and giving
3 the utility an opportunity to request that such document be classified as
4 confidential information.

5 (a) Prior to the staff taking possession of any material, a utility
6 has the option to require that information requests be submitted in
7 writing. from a utility the staff will inform the utility in writing of
8 the right to have confidential information exempted from the public access
9 requirements of the Public Records Law by following the procedures in
10 Section (4) of this Rule: A utility may obtain temporary exemption from
11 Section 119.07(1), Florida Statutes by filing a notice of intent to request
12 confidential classification. This notice shall be filed with the Division
13 of Records and Reporting and shall have appended thereto a copy of any
14 the staff's written request for the material to which it relates. A
15 copy of the notice shall be provided to the division(s) requesting the
16 material. To obtain continued confidential handling of the material the
17 utility must within 21 days after the staff takes possession of the
18 material, or in the case of material obtained during the course of an
19 audit, within twenty one three days after the field audit exit
20 conference, file a request for confidential classification with the
21 Division of Records and Reporting.

22 (b) When the material is received by the Commission or its staff
23 incident to a formal proceeding, the utility requesting confidential
24 classification shall also serve a copy or a summary of its request on all
25 parties of record. The summary shall describe the material in sufficient
26 detail so as to reasonably inform the reader of the nature of the
27 material. Any party to a formal proceeding may file an objection to the
28 request for confidential classification within 14 days after service of the
29 summary.

30 (c) Requests for confidential classification and any objections filed
31 in response thereto shall be ruled on by the prehearing officer assigned to

1 the docket and the Commission panel assigned to the case will hear any
2 protest to the ruling. if a request is received outside a docketed
3 proceeding; the request itself will be docketed.

4 (d) All material that has been classified as confidential or for
5 which a ruling on confidentiality is pending shall be exempt from Section
6 119.07(1), F.S., and will be accorded stringent internal procedural
7 safeguards against public disclosure. Any staff or consultant reports or
8 work products containing confidential information extracted from material
9 having been classified as confidential, or for which a request for
10 confidential specification is pending shall be handled in the same manner
11 as the material so classified. The Commission may in its discretion retain
12 or, after obtaining the consent of the Department of State, destroy
13 or return to its source or, with the agreement of the source, destroy
14 any confidential material in its possession. Material received during a
15 formal proceeding and classified as confidential shall remain so classified
16 after the formal proceeding is terminated.

17 (4) Requests for confidential classification.

18 (a) A request for confidential classification of material shall be
19 filed in writing with the Division of Records and Reporting. The utility
20 shall file with its request one copy ~~two copies~~ of the material for
21 which confidential treatment is requested. On this each copy, the
22 utility shall highlight the specific information it is asserting to be
23 confidential. Along with the highlighted copy ~~copies~~, the utility
24 shall file two or more edited copies as required by the type of
25 proceeding, which will be made available for public inspection. In the
26 edited copies, the specific information the utility is asserting to be
27 confidential shall be blocked out by the use of an opaque marker or other
28 masking device. The utility shall file with its request a ~~fine~~ by
29 ~~fine~~ detailed justification for confidential classification of the
30 specific information it is asserting to be confidential.

31 (b) In the case of computerized material, such as magnetic tape, the

1 utility may submit one unedited version with a written identification of
2 the specific data fields for which confidential classification is requested
3 along with a field-by-field detailed justification for the
4 confidential classification.

5 (c) In its line-by-line or field-by-field detailed
6 justification for confidential classification, the utility must demonstrate
7 how the information it is asserting to be confidential qualifies as one of
8 the statutory examples listed in section 364.183(3), 366.093(3), or
9 367.156(3), Florida Statutes. If no statutory example is applicable, then
10 the utility shall include a statement explaining how the utility or its
11 customers will be harmed by disclosure. The utility shall also specify a
12 date by which the material will no longer be confidential or shall explain
13 why such a date cannot be determined.

14 (d) The request shall include an affirmative statement that the
15 material for which confidential classification is sought is not available
16 in any other public forum such as Federal Communications Commission,
17 Federal Energy Regulatory Commission, or other state commission, and
18 that the material is of the type normally treated as confidential by the
19 industry.

20 (e) The burden of proof shall be on the utility moving party
21 to show that the material in question contains bona fide proprietary
22 confidential business information. A request for confidential
23 classification that fails to identify the proprietary information in
24 sufficient detail to permit a reasoned analysis or which fails to provide a
25 detailed justification for classification may be denied as insufficient on
26 its face.

27 (5) Discovery.

28 (a) In any proceeding before the Commission any utility may request a
29 protective order protecting proprietary confidential business information
30 from discovery. Upon a showing by the utility that such protection is
31 necessary, the Commission shall issue the protective order. If the

1 Commission determines that discovery of proprietary confidential business
2 information is necessary to protect the public interest, the Commission
3 shall enter a protective order limiting discovery in a manner provided for
4 in Rule 1.280, Florida Rules of Civil Procedure.

5 (b) The Commission's protective orders shall exempt proprietary
6 confidential business information from section 119.07(1), Florida
7 Statutes. Such exemption shall apply whether the information is in the
8 possession of an entity, individual, or state agency, including the Office
9 of Public Counsel.

10 (c) When a utility agrees to allow Public Counsel to inspect or take
11 possession of utility information with the understanding that Public
12 Counsel agrees to keep the information confidential, either the utility or
13 Public Counsel may request a protective order exempting the information
14 from section 119.07(1), Florida Statutes. If the information is not to be
15 used in a docket or proceeding before the Commission, it may be
16 destroyed or returned to the utility in accordance with the record
17 retention requirements of the Department of State. If the information is
18 to be used in a docket or proceeding before the Commission, then the
19 utility must file a specific request for a protective order under paragraph
20 (a) above.

21 (6)(a) Any person may file a petition to inspect and examine any
22 material the Commission has exempted from s. 119.07(1), Florida Statutes.
23 A copy of the petition must be served on the affected utility which shall
24 have 14 days to file a response as to why the material should remain
25 exempt. The petitioner shall have ten days to file a reply to the
26 utility's response. The Commission may set the matter for hearing or may
27 issue a ruling on the pleadings. Material obtained by the Commission in
28 connection with an inquiry shall not be subject to requests for inspection
29 and examination until after the inquiry is terminated, notice is issued
30 pursuant to subsection 2(b) of this rule and any timely request for
31 confidential protection has been submitted by the source(s) of the

1 material, as provided in Section 2(b) of this rule.

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

9 (7) Use of confidential material during formal proceedings. The
10 Commission may rely upon confidential material during a formal proceeding
11 and such material, if otherwise admissible, will be received in evidence.
12 In such event, reasonable precautions will be taken to segregate
13 confidential material in the record and otherwise protect its integrity.

14 (8) Judicial Review. When the Commission denies a request for
15 specified confidential classification or disapproves a proposal to edit,
16 the utility or other source may request continued confidential treatment
17 until judicial review is complete. The request shall be in writing and
18 filed with the Division of Records and Reporting. The material will
19 thereafter receive confidential treatment through completion of judicial
20 review.

21 Specific Authority: 350.127, F.S.

22 Law Implemented: 350.121, 364.183, 366.093, 367.156, F.S.

23 History: New 7/1/85, Amended
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