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January 26, 1990

Mr. Steven C. Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Amendment of Rule 25-22.006, FAC,
Pertaining to Confidential Information
Docket No. 890252-PU

Dear Mr. Tribble:

Enclosed herewith for filing on behalf of Tampa Electric Company are the original and 15 copies of Tampa Electric's Post-Hearing Comments on Proposed Final Version of the Confidential Rule.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Yours truly,

John P. Fons
John P. Fons

- ACK _____
- AFA /
- APP /
- CAF _____
- CMY _____
- CTR JPF/csu
- EAG Enclosures
- LEG _____
- LIN cc: All Parties of Record
- OPC _____
- RCH /
- SEC /
- WAS _____

STH *Miss De Don*

RECEIVED & FILED

J.P.F.
FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
00828 JAN 26 1990
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-22.006,) Docket No. 890252-PU
FAC, Pertaining to Confidential) Submitted for Filing:
Information) January 26, 1990

TAMPA ELECTRIC'S POST-HEARING COMMENTS ON
PROPOSED FINAL VERSION OF THE CONFIDENTIAL RULE

Pursuant to Rule 22.016(5), Florida Administrative Code, and the post-hearing schedule prescribed by the hearing officer, Tampa Electric Company ("Tampa Electric") submits its Post-Hearing Comments on the Proposed Final Version of Rule 25-22.006, Florida Administrative Code (the "Confidential Rule"), issued on January 12, 1990, by the Florida Public Service Commission Director of Appeals.

1. Tampa Electric believes that the Hearing Officer has in general incorporated the suggestions of the substantially affected parties into the Proposed Final Version of the Confidential Rule, issued on January 12, 1990. While Tampa Electric believes the revisions will assist the parties and the Commission in resolving matters regarding confidential documents, Tampa Electric suggests that the Commission amend a portion of the Proposed Final Version of the Confidential Rule.

2. In the section of the Confidential Rule regarding documents obtained by the Commission outside of an inquiry, the Proposed Revised Rule 25-22.006(3)(a), Florida Administrative Code, states:

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To maintain obtain continued confidential handling of the material the utility or other person must, within 21 days after staff has obtained takes possession of the material . . . , file a request for confidential classification with the Division of Records and Reporting. Failure to file such a request within 21 days shall constitute a waiver of confidentiality.

Tampa Electric is concerned that such an absolute penalty for failing to file a request within the required time may result in detrimental harm to confidential information of, not only a regulated company, but possible of unsuspecting third parties whose documents have been provided to the Commission. For instance, if the documents include confidential information regarding a customer, the proposed final version of the rule would not provide flexibility to allow the Commission to declare the information confidential. In order to provide the Commission with this flexibility, Tampa Electric recommends that the rule be amended to read as follows:

Absent good cause shown, Failure to file such a request within 21 days shall constitute a waiver of confidentiality.

This was the language that was proposed by the Commission Staff at the rulemaking hearing and was agreed by the parties to be the most effective approach to avoid such a draconian result. See Rule Hearing, November 17, 1989, Tr. 48-57. Tampa Electric believes that while such a change would not remove a company's incentive, provided by the penalty, to timely file its request, the rule would allow the Commission to make exceptions to its rule without being procedurally required to waive the rule.

3. In addition, the Proposed Final Version of the Confidential Rule 25-22.006(6)(a), Florida Administrative Code, incorporates conditions permitting any person to petition to inspect documents which the Commission has ruled exempt from the "Public Records Act," Section 119.07, Florida Statutes. During the November 17, 1989, Rule Hearing, the issue was raised regarding Rule 25-22.006(6)(a), Florida Administrative Code, as to whether the utility company continued to carry the burden of proving confidentiality even after the material had been ruled confidential by the Commission. Obviously, once the information has been ruled confidential by the Commission, the rationale explaining why the information is confidential will be contained in the Commission's order. Thus, the person wishing to inspect the confidential information should carry the burden of proof and show why the Commission's order is no longer applicable. Therefore, Tampa Electric suggests that the Proposed Final Version of Rule 25-22.006(6)(a), Florida Administrative Code, be amended to read:

Any person may file a petition to inspect and examine any material the Commission The petitioner carries the burden of proving that the Commission's order is no longer applicable.

This amended rule would assist the petitioner in making a proper argument and prevent the utility from simply responding to a petition by citing the Commission's order granting confidentiality.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 26th day of January, 1990, by U.S. mail or hand delivery to the following:

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