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FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF CHANGES

RULE: 25-22.006

TITLE: Confidential Information.

DOCKET NO.: B90252-PU

ORIGINAL NOTICE PUBLISHED: September 15, 1989

Pursuant to Section 120.54(12)(b), Florida Statutes, notice is given that the above rule amendment, filed with the Secretary of State on April 6, 1990, contained the following changes from the rule as proposed:

Substantial rewording of Rule 25-22.006. See Florida Administrative Code for present text.

25-22.006 Confidential Information.

- (1) No change.
- (a) No change.
- (b) No change.
- (c) No change.
- (d) No change.
- (e) No change.
- (2) No change.

(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) No change.
- (3) No change.

(a) 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

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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.

(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 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 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, 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 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) No change.

(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) No change.

(c) No change.

(d) No change.

(e) No change.

(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.

(5) No change.

(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) No change.

(c) No change.

(d) No change.

(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) No change.

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

- (8) No change.
- (a) No change.
- (b) No change.
- (c) No change.
- (9) No change.

Specific Authority: 350.127, F.S.

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

History: New 7/1/85, Amended