

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-96-0218-NOR-PU
Confidential Information) ISSUED: February 15, 1996
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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 RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-22.006, Florida Administrative Code, relating to confidential information.

The attached Notice of Rulemaking will appear in the February 23, 1996 edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., April 3, 1996
Betty Easley Conference Center
Room 152, 4075 Esplanade Way
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than March 15, 1996.

DOCUMENT NUMBER-DATE

01809 FEB 15 96

FPSC-RECORDS/REPORTING

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By ORDER of the Florida Public Service Commission, this 15th
day of February, 1996.



BLANCA S. BAYÓ, Director
Division of Records & Reporting

(S E A L)

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justification requirements of certain routinized form filings. Rulings by hearing officers are to be reviewed by the Commission using the reconsideration standard. A separate process is established for the treatment of confidential information received by telecommunications companies pursuant to Section 364.183(1), F.S.

RULEMAKING AUTHORITY: 350.127, F.S.

LAW IMPLEMENTED: 350.121, 364.183, 366.093, 367.156, F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

HEARING: IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., April 3, 1996

PLACE: Room 152, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THIS RULE AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399.

THE FULL TEXT OF THE RULE IS:

25-22.006 Confidential Information.

- (1) Definitions.
- (a) No Change.

(b) No Change.

(c) No Change.

(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) No Change.

(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) No Change.

(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) No Change.

(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) No Change.

(c) No Change.

(d) No Change.

(e) No Change.

(f) No Change.

(g) No Change.

(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) No Change.

(b) No Change.

(c) No Change.

(d) No Change.

~~(7)-(6)~~ (a) No Change.

(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) No Change.

(b) No Change.

(c) No Change.

(10)(9) Judicial Review. 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 4/26/90, _____.

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NAME OF PERSON ORIGINATING PROPOSED RULE: Noreen Davis.

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULE:
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: February 6, 1996

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (904) 413-6770 at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).