

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide  
wastewater service in Charlotte County by  
Island Environmental Utility, Inc.

DOCKET NO. 020745-SU  
ORDER NO. PSC-03-0791-PCO-SU  
ISSUED: July 3, 2003

ORDER DENYING MOTIONS TO STRIKE OBJECTIONS AND  
GRANTING MOTIONS TO COMPEL DISCOVERY

On March 24, 2003, Island Environmental Utility, Inc. (IEU or utility) served its First Sets of Interrogatories and First Requests for Production of Documents on Messrs. Ronald A. Koenig (Koenig) and Daniel Nolan (Nolan). Koenig and Nolan are parties to this docket, having filed timely objections to, and requests for a hearing on, IEU's application for certificate. By letter dated March 28, 2003, received by the Office of General Counsel on April 16, 2003, and filed by the Office of General Counsel on April 17, 2003, Koenig objected to the discovery served upon him. Similarly, by letter dated April 11, 2003, received by the Office of General Counsel on April 18, 2003, and filed by the Office of General Counsel on May 1, 2003, Nolan also objected to the discovery served upon him. On April 21, 2003, IEU filed a Motion to Strike Objections and Compel Discovery directed to Nolan's objections. On April 22, 2003, IEU filed a Motion to Strike Objections and Compel Discovery directed to Koenig's objections. Finally, by letter dated April 23, 2003, and filed April 28, 2003, Koenig requested that IEU's Motion to Strike Objections and Compel Discovery directed to him be denied.

Arguments of Parties

In their respective objections, Koenig and Nolan argue that Rule 1.340, Florida Rules of Civil Procedure, requires that interrogatories shall not exceed 30, including all subparts. Koenig further argues that the majority of the interrogatories and document requests are irrelevant, intrusive, and serve no purpose other than to harass, embarrass, and annoy. Nolan similarly argues that the majority of the interrogatories should be categorized as a means of harassment, rather than as admissible evidence.

In its Motions to Strike Objections and Compel Discovery, IEU states that Koenig's and Nolan's objections were postmarked April 14, 2003, and April 16, 2003, respectively. The utility argues that because these objections to discovery were not filed within the time provided by Order No. PSC-02-1611-PCO-SU, the Order Establishing Procedure, issued November 20, 2002, in this docket, the objections should be stricken.

IEU points out that Order No. PSC-02-1611-PCO-SU specifically provides that "interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 100." Moreover, the utility argues that Rule

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1.340(b), Florida Rules of Civil Procedure, provides that interrogatories may relate to any matters that can be inquired into under Rule 1.280(b). Rule 1.350 makes similar provisions in reference to Rule 1.280(b). Rule 1.280(b) provides that a party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action. Rule 1.280(b) also provides that *it is not ground for objection that the information sought will be inadmissible at the trial if the information sought is reasonably calculated to lead to the discovery of admissible evidence.* According to IEU, the information sought by its discovery is relevant to the issues raised by Koenig and Nolan in their objections to the utility's application. In particular, with respect to the discovery propounded on Koenig, the utility seeks information relating to the degree of harm to Koenig's property and the financial burden on property owners which Koenig asserts will occur if IEU's application is granted. With respect to the discovery propounded on Nolan, the utility seeks information relating to over-development of the island, the lack of infrastructure to support further development, and the provision of necessary services in the public interest. IEU requests an order striking the objections of Koenig and Nolan and compelling answers to its discovery requests.

#### **Motions to Strike Denied**

Order No. PSC-02-1611-PCO-SU requires that objections to discovery requests shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes. The objections at issue were not timely filed in accordance with that Order. Nevertheless, because Koenig and Nolan are appearing *pro se*, and have not previously appeared before the Florida Public Service Commission, their objections shall be considered. Based on the foregoing, and being fully advised on the premises, IEU's Motions to Strike Objections are denied.

#### **Motions to Compel Granted**

Moreover, Koenig's letter dated April 23, 2003, in response to IEU's Motions, shall also be considered. Koenig objects to questions regarding, among other matters, his personal finances. Nolan argues that the discovery questions are a means of harassment and inadmissible. Rule 1.280(b)(1), Florida Rules of Civil Procedure, provides that "[i]t is not ground for objection that the information sought [through the process of discovery] will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Such discovery rules are very broad in scope and are to be liberally construed to accomplish their purpose. Amente v. Newman, 653 So. 2d 1030 (Fla. 1995). In Amente, the Florida Supreme Court articulated the established principle that "the concept of relevancy is broader in the discovery context than in the trial context" and that "a party may be permitted to discover relevant evidence that would be inadmissible at trial, so long as it may lead to the discovery of admissible evidence." See also Davich v. Norman Bros. Nissan, Inc., 739 So. 2d 138 (Fla. 5th DCA 1999); Balas v. Ruzzo, 703 So. 2d 1076 (Fla. 5th DCA 1997), clarified by Balas v. Ruzzo, 703 So. 2d 1076 (Fla. 5th DCA 1998); Jones v. Seaboard Coast Line Railroad Co., 297 So. 2d 861 (Fla. 2d DCA 1974); Murray Van

& Storage, Inc. v. Murray, 343 So. 2d 61, (Fla. 4th DCA 1977); 5 Florida Practice Series §10.2, Scope of Discovery (2002).

Although the responses to the discovery questions at issue may ultimately not be admissible at hearing, the questions are reasonably calculated to lead to the discovery of admissible evidence. The information sought relates to issues raised by Koenig and Nolan in their objections to IEU's application for a wastewater certificate. Therefore, IEU's Motions to Compel Discovery are granted. Koenig and Nolan are directed to (i) provide the utility with answers to the discovery at issue within 30 days from the issuance date of this Order and (ii) file a Certificate of Service with the Division of the Commission Clerk and Administrative Services, notifying this Commission of service of the discovery responses, within that same time frame. Pursuant to Rule 28-106.103, Florida Administrative Code, five extra days shall be added to the 30-day deadline if the responses are served by mail.

#### **Confidential Information**

The parties are advised that this Commission has a process designed to protect a party against the disclosure of confidential information. Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, discuss and set forth the procedures to be used to seek protection of proprietary confidential business information from public disclosure at the hearing. Copies of the procedures are attached to this Order. Parties may avail themselves of these procedures during the course of these proceedings, as they deem necessary.

#### **Filing Procedures**

Parties are further advised that all motions, responses, and other written materials concerning this docket must be addressed to the Division of the Commission Clerk and Administrative Services, with Docket No. 020745-SU clearly marked on the material, in order for the material to be properly filed. Copies of all such written materials shall be provided to all other official parties of record. Finally, the parties are encouraged to review Order No. PSC-02-1611-PCO-SU, the Order Establishing Procedure, to familiarize themselves with the Commission's procedural requirements and to contact staff for additional guidance as needed.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that IEU's Motions to Strike Objections directed to Koenig and Nolan are denied. It is further


ORDERED that IEU's Motions to Compel Discovery directed to Koenig and Nolan are granted. Koenig and Nolan are directed to (i) provide the utility with answers to the discovery at issue within 30 days from the issuance date of this Order and (ii) file a Certificate of Service with the Division of the Commission Clerk and Administrative Services, notifying this Commission of

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service of the discovery responses, within that same time frame. Pursuant to Rule 28-106.103, Florida Administrative Code, five extra days shall be added to the 30-day deadline if the responses are served by mail. It is further

ORDERED that all motions, responses, and other written materials concerning this docket must be addressed to the Division of the Commission Clerk and Administrative Services, with Docket No. 020745-SU clearly marked on the material, in order for the material to be properly filed. Copies of all such written materials shall be provided to all other official parties of record.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 3rd day of July, 2003.

  
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CHARLES M. DAVIDSON  
Commissioner and Prehearing Officer

(SEAL)  
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida

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Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

(b) In addition to the penalties and interest otherwise provided, the commission may impose a penalty upon a utility for failure to pay regulatory assessment fees in a timely manner in accordance with s. 367.161.

(2) Each utility shall pay an application fee, established by the commission, for an original certificate of authorization; an amendment to an existing certificate of authorization; a request for rate relief in accordance with s. 367.081 or s. 367.0814; a proceeding pursuant to s. 367.0822; service availability charges filed in accordance with s. 367.101; and when this chapter becomes applicable to a county in accordance with s. 367.171. The amount of the application fee determined by the commission may not exceed \$4,500 and must be based upon the existing or proposed capacity of the system, extension, or deletion. All such fee payments must be deposited in accordance with s. 350.113.

(3) Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the commission pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems.

**History.**—ss. 19, 27, ch. 89-353; s. 5, ch. 90-166; s. 4, ch. 91-429.

### **367.156 Public utility records; confidentiality.—**

(1) The commission shall continue to have reasonable access to all utility records and records of affiliated companies, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities. Upon request of the utility or any other person, any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

(2) Discovery in any docket or proceeding before the commission shall be in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Information which affects a utility's rates or cost of service shall be considered relevant for purposes of discovery in any docket or proceeding where the utility's rates or cost of service are at issue. The commission shall determine whether information requested in discovery affects a utility's rates or cost of service. Upon showing by a utility or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue appropriate protective orders designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. Such proprietary confidential business information shall be exempt from s. 119.07(1). Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the office of the Public Counsel and any other party subject to the public records act as confidential and shall be exempt from s. 119.07(1), pending a formal ruling on such request by the commission or the return of the records to the person providing the records. Any record which has been determined to be proprietary confidential business information and is not entered into the official record of the proceeding must be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record must be returned within 30 days after the decision on appeal. The commission shall adopt the necessary rules to implement this provision.

(3) Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public.

Proprietary business information includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

(4) Any finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not exceeding 18 months, unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period. The commission shall order the return of records containing proprietary confidential business information when such records are no longer necessary for the commission to conduct its business. At that time, the commission shall order any other person holding such records to return them to the person providing the records. Records containing proprietary confidential business information which have not been returned at the conclusion of the period set pursuant to this subsection shall no longer be exempt from s. 119.07(1), unless the public utility or affected person shows, and the commission finds, that the records continue to contain proprietary confidential business information. Upon such finding, the commission may extend the period for confidential treatment for a period not to exceed 18 months, unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period. During commission consideration of an extension, the records in question will remain exempt from s. 119.07(1). The commission shall adopt rules to implement this provision which shall include notice to the public utility or affected person regarding the expiration of confidential treatment.

**History.**—ss. 10, 15, ch. 82-25; ss. 20, 26, 27, ch. 89-353; s. 4, ch. 91-429; s. 169, ch. 96-406.

#### **367.161 Penalties.—**

(1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission. However, any penalty assessed by the commission for a violation of s. 367.111(2) shall be reduced by any penalty assessed by any other state agency for the same violation. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the utility, enforceable by the commission as statutory liens under chapter 85. The proceeds from the enforcement of any such lien shall be deposited into the General Revenue Fund.

(2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. The collected penalties shall be deposited into the General Revenue Fund unallocated.

**History.**—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 21, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; ss. 6, 8,

(3) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.

Specific Authority: 350.01(7), 350.127(2), F.S.

Law Implemented: 120.525, F.S.

History: New 3/23/93

25-22.003 Emergency Meeting.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History--New 12/21/81, Formerly 25-22.03, Repealed 05/03/99.

25-22.004 Commission Forms.

Specific Authority: 120.53(1)(b), F.S.

Law Implemented: 120.53(1)(b), F.S.

History--New 6/7/84, Formerly 25-22.04, Amended 04/16/90, 08/21/90, 08/23/90, Repealed 05/03/99.

25-22.005 Noticing Address Files.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History--New 08/21/84, Formerly 25-22.05, Amended 07/11/96, Repealed 05/03/99.

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 the Commission Clerk and Administrative Services.

(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 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 the Commission Clerk and Administrative Services. 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 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 the Commission Clerk and Administrative Services 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. 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 the Commission Clerk and Administrative Services 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 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, file a request for confidential classification with the Division of the Commission Clerk and Administrative Services. 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 the Commission Clerk and Administrative Services. 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), 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 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, for which a ruling on confidentiality is pending, 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 the Commission Clerk and Administrative Services. 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 and line at which the confidential material is found and shall correlate the page and line 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 the Commission Clerk and Administrative Services 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 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 sub-paragraph.

(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 the Commission Clerk and Administrative Services 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) 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) (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 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) 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) 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) 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 the Commission Clerk and Administrative Services. The material will thereafter receive confidential treatment through completion of judicial review.

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, 4/21/96.

25-22.007 Reserved.

25-22.008 Practitioners.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History--New 09/24/81, Formerly 25-22.08, Amended 03/21/94, Repealed 05/03/99.

Rule 25-22.009 Size of Paper Filed With Commission.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 2/12/90, Repealed 7/11/96.