

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: February 21, 2002
TO: All Electric and Natural Gas Utilities
All Interested Persons
FROM: Robert V. Elias, Senior Attorney
RE: Confidential Information - Staff Workshop Scheduled for March 15, 2002

Consistent with discussions at the September 4, 2001, Internal Affairs meeting, the staff of the Florida Public Service Commission is evaluating the revision of the Commission's procedures for processing confidential information in the electric and gas industries pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. The Commission's objective is to streamline the process, while balancing the clearly articulated public policy that requires information maintained by government agencies be freely available to the public.

Attached is staff's draft revision to Section 366.093, Florida Statutes. It provides that material claimed to be confidential may be filed with the agency, and a Commission ruling on that claim is only required in limited instances. To a large extent, the draft language mirrors the provisions of Section 364.183, Florida Statutes, pertaining to access to telecommunications company records. The principal differences between this proposed language and Section 364.183, Florida Statutes, are that: 1) the Commission may, on its own motion, require the person seeking to limit access to the information demonstrate that the information meets the statutory definition of "proprietary confidential business information" and; 2) it provides a time limit for a claim of confidentiality.

Staff will conduct a workshop on this subject, beginning at 10:00 a.m. on March 15, 2002, in Room 152 of the Betty Easley Conference Center. We would appreciate your participation. Specifically, we request input on any changes to the existing statutes, rules or Commission procedures which would streamline the process while maintaining reasonable public access to documents. Your comments at the workshop may be general in nature or may specifically address the attached draft language.

If you need additional information, you may contact me at (850) 413-6189 or by e-mail at relias@psc.state.fl.us.

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(1) The commission shall continue to have reasonable access to all public utility records and records of the utility's 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 public utility or 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).~~ Upon request of the public utility or other person, any records received by the commission which are claimed by the company or other person to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request of any person or upon on its own motion, the commission shall require any person asserting a claim that information is proprietary confidential business information to demonstrate that the information meets the requirements of subsection (3), below. Except as provided in subsection (4), below, records received by the commission which are claimed by the public utility or other person to be proprietary confidential business information shall be kept confidential for a period of two years from the date of filing.

(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 a 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 law 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 private agreement that provides that the information will not be released to the public. Proprietary confidential 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 public 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 business 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 to exceed 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.