

BEFORE THE COMMONWEALTH PUBLIC UTILITIES COMMISSION

ADMINISTRATIVE DOCKET

Proposed

**RULES RELATING TO THE PROTECTION
OF CONFIDENTIAL INFORMATION IN
REGULATORY PROCEEDINGS**

Rule 1. Purpose and Statutory Authority.

These rules are issued under the authority of 4 CMC § 8409(n). They establish procedures to be used by a party, in a formal docket, filing information with the Commonwealth Public Utilities Commission [CPUC] that the party claims is confidential and therefore should not be subject to public inspection.

Rule 2. Applicability.

These rules apply to all persons filing information with or seeking information from CPUC, which has been filed under proceedings governed by the Public Utilities Commission Act [4 CMC § 8401 et. sec.]. They also apply to CPUC, or a presiding officer to the extent they govern CPUC's response to a claim of confidentiality in a formal docket.

Rule 3. Procedures Relating to Confidential Information Submitted to CPUC.

- a. All documents, data, information, studies, computer programs and other matters filed with CPUC in any form or produced in response to any interrogatories or requests for discovery, and all notes taken or copies made thereof, that are claimed to be a trade secret or confidential in nature (herein referred to as "confidential information") shall be furnished under the terms of this Rule 3. There is a rebuttable presumption that cost studies, customer usage data, marketing studies, non-public financial information and contracts between providers are confidential information which is protected under this rule. A party seeking confidential treatment of information not afforded a rebuttable presumption of confidentiality must make the following showing at the time the information is submitted in order for the information to receive confidential treatment: 1] the information is not commonly known by or available to the public, competitors of the applicant or other persons engaged in the party's business; 2] the information derives economic value, actual or potential,

from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; 3] the information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and 4] the information has not been disclosed to others with no restriction on disclosure. Any party making this showing will have its information treated confidentially unless the CPUC affirmatively finds that the information is not entitled to confidential treatment pursuant to Rule 3(e)(i). Any party filing confidential information with the CPUC shall submit redacted documents to be included in the CPUC's public files. All persons accorded access to such confidential information, shall treat such information as constituting confidential information and shall neither use nor disclose such information except for the purpose of the proceeding in which such information is obtained and in accordance with this Rule 3.

- b. A claim of confidentiality constitutes a representation to CPUC that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, confidential under the definition established in subsection (a) above. If a claim of confidentiality is made in violation of this Rule 3(b), CPUC may impose an appropriate sanction upon the claiming party, including an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including reasonable attorney's fees.
- c. CPUC's acceptance of information pursuant to a claim of confidentiality shall not be construed to be an agreement or ruling by CPUC that the subject information is, in fact, confidential.
- d. To the extent there may be information, which a party believes requires extraordinary protection beyond that provided for in these rules, the party shall submit a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief, the specific relief requested, and advise all other parties of the request and the subject matter of the material at issue.
- e. This Rule 3(e) establishes a procedure for the expeditious handling of information that a party claims is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.
 - i. A party seeking to challenge a claim of confidentiality shall first contact counsel for the providing party and attempt to resolve any differences by stipulation. With respect to formal, docketed

proceedings, only a party of record in the proceeding shall have standing to challenge a claim of confidentiality. In other matters, a party must demonstrate its direct interest in the proceeding to have standing to challenge a claim of confidentiality. The CPUC may challenge claims of confidentiality on its own motion.

- ii. In the event the parties cannot agree as to the character of the information challenged, any party challenging a claim of confidentiality shall do so by advising all parties and CPUC, in writing, that it deems material non-confidential. This notice shall designate the material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential. A certificate of delivery, including date and time and place of delivery shall be filed with CPUC and the other parties.
- iii. The party claiming confidentiality shall, within seven business days of the certified date of delivery of the notice referenced in subsection (ii) above, file an appropriate pleading stating grounds upon which the challenged data is deemed to be confidential. The challenging party shall have seven business days to respond to the pleading. In the event the claiming party fails to file an appropriate pleading within seven business days, CPUC may enter an order that the challenged material may be used in the public record.
- iv. When CPUC receives a pleading asserting confidentiality by the claiming party regarding any items claimed as proprietary, CPUC will enter an order resolving the issue. In the interim, any information that is presumptively confidential or is certified as confidential under rule 3(a) shall be protected from disclosure until such time as CPUC issues an order resolving any dispute.
- v. In the event CPUC rules in response to a pleading that any information is not confidential and should be removed from the protective requirements of this rule or from the protection of the sealed record, the parties, to enable the claiming party to seek a stay or other relief, shall not disclose the information or use it in the public record for five business days.
- vi. In the event CPUC rules that information previously filed in a proceeding is not confidential, the filing party may, by motion

submitted within five business days of the ruling regarding confidentiality, request that it be permitted to remove the subject information from the record. Pending the ruling on the motion, all persons accorded access to such information shall continue to treat the information as confidential pursuant to this Rule 3. To the extent the confidential information is required to be filed with CPUC by CPUC rule or order, the filing party shall not be permitted to remove such information from the record without CPUC consent.

- f. A party submitting information claimed to be confidential to CPUC shall file, as part of the public record [i.e. not under seal], the testimony and/or exhibits without including the information claimed to be confidential. The first page of these documents shall be stamped: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENTS HAS BEEN FILED UNDER SEAL". A cover page shall include a list of the documents filed under seal and indicate the nature of the documents, so that if the documents are separated from the envelope it will still be clear that they are claimed to be confidential. In addition, to the document/s available for public inspection, the filing party shall file under seal the information claimed to be confidential. All pages of the information claimed to be confidential shall be clearly marked as "confidential" and submitted in a sealed envelope. The following information shall be written on the outside of the seal envelope: 1. the caption "CONFIDENTIAL - SUBMITTED IN DOCKET NO. _____"; 2. the name of the filing party; 3. date of filing; 4. description of the information; 5. the filing party's statement as to whether it prefers: (i) to retrieve the information following conclusion of CPUC proceedings and any related court actions from the CPUC and any third parties allowed disclosure, (ii) to have the information returned to the filing party by the CPUC and any third parties allowed disclosure, or (iii) to have the information destroyed by the CPUC any third parties allowed disclosure, by shredding or electronic file deletion; and 6. if the party chooses to retrieve the information, the name and phone number of the person who will be authorized to retrieve the information.
- g. Confidential information, if filed with CPUC, will be sealed by the CPUC administrator, segregated in files of CPUC, and withheld from inspection by any person not bound by the terms of this Rule 3. This treatment shall prevail unless the confidential information is released from the restrictions of this rule either through agreement of the parties and publication by the filing party, or pursuant to CPUC order or final order of a court having jurisdiction.

- h. Confidential information will be marked as such, where feasible, and disclosed only on a “need to know” basis as determined by the CPUC. Only parties who have entered an appearance in formal, docketed proceedings shall be able to request access to confidential information submitted in those proceedings. Any party desiring access to confidential information for itself, its counsel, or other experts or advisors, must file a motion with the CPUC and served upon the party claiming confidentiality describing why disclosure of the confidential information is necessary to the parties to whom it would be disclosed. The party claiming confidentiality shall have five business days to file any objections to the requested disclosure. Unless otherwise agreed by the parties, within ten business days of either the filing of the motion or the objections, whichever is later, the CPUC shall rule upon the motion. Where the CPUC authorizes disclosure of confidential material and it is too voluminous to copy and deliver to those authorized access to it, the confidential information shall be made available for inspection and review by those authorized to access it pursuant to the procedures described herein, at a place and time mutually agreed on by the parties, or at the premises of the providing party, or as directed by CPUC. During the inspection, the parties may take notes on the material or request and receive copies of the documents. All notes taken and copies received of such documents shall be treated as constituting confidential information in accordance with this Rule 3.
- i. All confidential information made available by a party shall be given solely to CPUC, its staff, including CPUC’s hearing examiner, consultants and counsel [Staff] and shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the regulatory proceedings in which the information is produced. With the exception of Staff, any disclosure of such information to a third party must be authorized pursuant to the procedure specified in Rule 3(h), including disclosure to a party’s counsel, experts or advisors, and is permitted solely for the purpose of the proceeding in which the information is produced. Any staff member may have access to any confidential information made available under the terms of this rule. Staff is limited to using confidential information only in the specific proceeding in which it was obtained. However, except as provided in this Rule 3 or other CPUC rule or order, Staff members shall be subject to all other requirements of this rule.
- j. No access to information under seal shall be allowed until a person seeking such access signs a nondisclosure agreement in the form that is

attached and incorporated as Attachment 1. The Nondisclosure Agreement shall require the persons to whom the disclosure is to be made to certify in writing that they have read this Rule 3 and agree to be bound by the terms of the rule. The agreement shall be delivered to counsel for the filing party and to CPUC at or before the time of review of the documents. All persons, including Staff, who are afforded access to any information under seal shall take all reasonable precautions to keep the confidential information secure in accordance with the purpose and intent of this Rule 3.

- k. Where reference to information subject to this Rule 3 is made in pleadings, briefs, arguments or motions, it shall be by citation of title or exhibit number, or by some other description that will not disclose the information. Any further use of or substantive references to such information shall be placed in a separate section of the pleading or brief and submitted to CPUC under seal.
- l. Sealed portions of the record in any proceeding may be forwarded under seal to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations.
- m. At the conclusion of the proceedings, all paper and electronic documents and information submitted to CPUC subject to this Rule 3, except the original and copies required by Staff to carry out its regulatory responsibilities, shall at the option of the filing party as specified in Rule 3(f), either be retrieved by the filing party, be returned to the filing party, or be destroyed by all parties in possession of such documents and information. If the filing party elects to retrieve information provided pursuant to this Rule 3 and does not retrieve the documents from CPUC within seven business days of notification by PUC, the documents will be shredded or destroyed. The original shall be maintained by CPUC as part of its archival files and shall be kept confidential. Where the filing party specifies under Rule 3(f) that confidential information shall be returned to it, parties shall, within seven business days of the conclusion of the proceeding in which documents and information subject to this Rule 3 were produced, return such documents and information to the filing party and certify to the filing party and CPUC that the information has been returned in a timely manner. Where the filing party specifies under Rule 3(f) that the CPUC and third parties shall destroy the confidential information, within seven business days of the conclusion of the proceeding in which the information was submitted, third parties shall submit certifications to the filing party and to the CPUC that the information has been destroyed in a timely manner.

- n. Parties retain the right to question, challenge and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Rule 3 on the grounds of relevancy or materiality.
- o. Any person or party to the proceeding retains all remedies existing at civil or criminal law for breach of this Rule 3, and compliance with these rules shall not be construed to be a waiver of those rights.
- p. CPUC's hearing examiner is hereby authorized to make the rulings, determinations and orders as required of CPUC under these rules and further to interpret the meaning of these rules consistent with their reasonable application and purpose.

ATTACHMENT 1

BEFORE THE COMMONWEALTH PUBLIC UTILITIES COMMISSION

DOCKET _____

NONDISCLOSURE AGREEMENT

I hereby state that I have read the protective provisions relating to confidential information contained in the Rules of the Commonwealth Public Utilities Commission regarding the protection of confidential information in regulatory proceedings under the Public Utilities Commission Act [4 CMC § 8401 et. sec.] and agree to be bound by the terms of those protective provisions with respect to all evidence and information produced or arising the course of this Docket No.

_____.

Date

Name

Title

Employer or Firm

Business Address

Party in Docket

Signature

Signature of Counsel