

Filing of Confidential or Exempt Document

1. Purpose and Scope

The purpose of this rule is to discourage the practice of filing non-confidential information confidentially, while providing a fair procedure for utilities and other filers to protect truly confidential information such as trade secrets or sensitive financial information. The Commission prefers that information be filed publicly, rather than confidentially. This Rule shall not be construed to protect information to any greater degree than that already afforded by applicable Mississippi law, including the Mississippi Public Records Act, Miss. Code Ann. § 25-61-3, -9. Before any information is filed confidentially pursuant to this Rule, the utility or other filer shall consider whether such information would be deemed confidential under any other applicable state or federal law. If the information would not be confidential under any other applicable law, then the information shall not be filed confidential pursuant to this Rule.

2. Definition

“Confidential information” means information, documents, or records that are of a confidential or proprietary nature pursuant to Mississippi or other applicable law.

3. Trade Secrets

Pursuant to Miss. Code Ann. § 75-26-3, “trade secrets” may be confidential and may include but are not limited to, information, including a formula, pattern, compilation, program, device, method, technique or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, others person who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

4. Specific Items

(a) Information included in a rate schedule pursuant to Miss. Code Ann. § 77-3-35 is not confidential and shall not be treated as such.

(b) Any confidential information or items that can be reasonably redacted from any document or material shall be so redacted, and the document or material shall be filed publicly without seeking a confidential designation. The utility or other filer must still comply with the applicable justification requirements of section 6(b) of this Rule.

(c) In accordance with Miss. Code Ann. § 79-23-1(1), (2), and § 25-61-9(1), information related to the establishment of, or changes in, rates regulated by the Commission shall be presumed to be accessible public records. If a utility considers such information confidential, the utility shall follow the procedures set out in section 4(b) or section 6 of this Rule.

(d) Information that has been publicly filed in any other forum (for example, but not limited to, the Federal Energy Regulatory Commission, with the clerk of a court, or other agency) shall not be filed as confidential under this Rule.

(e) If a utility seeks confidential designation for any information filed in response to a data request, the utility shall follow section 6(c) of this Rule.

5. Required Placement in Envelope

For paper copies, the page(s) containing the trade secret or confidential information shall be placed in an envelope other than white. Each page placed in the envelope shall be marked as “TRADE SECRETS” or “CONFIDENTIAL”.

6. Procedure

(a) Unless redacted and filed in accordance with section 4(b) of this Rule, whenever a party considers information contained in pleadings or other documents are trade secrets, confidential or otherwise exempt from public disclosure, the party shall designate that the information is protected by law from public inspection, examination or copying. Trade secrets or confidential information contained in documents will be removed and replaced by the filing party with a page marked: “This document contains trade secrets or confidential information and is separately filed.” All information for which no assertion of protection from public inspection, examination and copying is made will be placed in files available for public inspection. Trade secrets, confidential information and other records exempt from public inspection shall be separately stored in a secured location with limited access and safeguarded from unauthorized disclosure.

(b) A filing seeking confidential designation of information must be made, in writing no later than simultaneously with the submission of said information. The utility or any other filer shall provide the legal and factual basis for its assertion that the information qualifies as either confidential or a trade secret pursuant to Mississippi law and shall state why the information cannot be reasonably redacted and filed publicly. The justification by the utility or other filer for classification of the item as confidential or a trade secret must contain sufficient detail to permit a reasoned analysis by the Commission. If the Commission is unsatisfied with the justification, the Commission, at its sole discretion, may deny the confidential designation by written order, require the utility or other filer to provide further clarification or briefing or hold a hearing to resolve the confidential designation issue.

(c) Data Requests. If a utility or other party is required to submit confidential information pursuant to a data request, the information must be designated as confidential simultaneous with the filing of said information; however, a written justification of its confidentiality shall be submitted to the Commission within 14 calendar days after the information has been filed. If a utility or other party fails to provide written justification, the Commission, at its sole discretion, may deny the confidential designation by written order, require the utility or other party to provide justification or briefing or hold a hearing to resolve the confidential designation.

(d) A utility may petition the Commission for a waiver of the justification requirement for particular sections of certain routine filings. Waivers can only be granted for a period of time not to exceed three (3) years. Waivers can be rescinded by the Commission at its discretion and for any reason. The Commission may require conditions to be met by the utility prior to granting a waiver. Conditions may include, but are not limited to:

1. Filings which are made on a recurring or periodic basis; or
2. Information which has regularly been classified as confidential by the Commission in the past.

(e) Once information is filed pursuant to and in satisfaction of this Rule, it will be treated as confidential. If the Commission denies the designation of information as confidential or a trade secret, the information will be kept confidential until the time for filing an appeal from a Commission order has expired. If an appeal is filed, the Commission will keep the material confidential until judicial review is complete.

(f) No issue related to confidential designation shall constitute a basis to stay a docketed proceeding if the Commission and Staff have received access to the information in dispute and other parties have been given the opportunity to enter into protective agreements to obtain access to such information.

7. Protective Agreements

In proceedings before the Commission involving trade secrets or other confidential information, parties may enter into protective agreements to facilitate and safeguard the exchange of necessary information. Protective agreements may include procedures for copying, exchanging, serving, safeguarding, or challenging the characterization of trade secrets or confidential information. The Commission and the Staff shall not be a party to protective agreements and will not be bound by the terms of protective agreements.

8. Review of Confidentiality

(a) The Commission may, upon its own initiative, address the redaction or confidential designation of any information at any time. The Commission may determine the confidentiality of any information based solely on the justification submitted by the utility or other filer. The Commission may require any briefing from the utility or other filer it deems necessary to help the Commission resolve the confidentiality determination. The Commission may notice and hold any hearing it deems necessary to resolve the confidentiality determination.

(b) Except for the Public Utilities Staff, any party to a proceeding or any other person or entity that wishes to review or challenge the filing or designation of confidential information is referred to the Mississippi Public Records Act and Commission Rule 4.

(c) The Commission, at its sole discretion, may designate one of its members or attorneys, including any special assistant attorney general assigned to the Commission, to act as a

hearing examiner regarding any and all matters relating to confidentiality. Such officer may exercise all authority held by the Commission in matters related to this Rule.

Source: Mississippi Code Annotated § 77-3-54.

Filing of Confidential or Exempt Document

1. Purpose and Scope

The purpose of this rule is to discourage the practice of filing non-confidential information confidentially, while providing a fair procedure for utilities and other filers to protect truly confidential information such as trade secrets or sensitive financial information. The Commission prefers that information be filed publicly, rather than confidentially. This Rule shall not be construed to protect information to any greater degree than that already afforded by applicable Mississippi law, including the Mississippi Public Records Act, Miss. Code Ann. § 25-61-3, -9. Before any information is filed confidentially pursuant to this Rule, the utility or other filer shall consider whether such information would be deemed confidential under any other applicable state or federal law. If the information would not be confidential under any other applicable law, then the information shall not be filed confidential pursuant to this Rule.

2. Definition

“Confidential information” means information, documents, or records that are of a confidential or proprietary nature pursuant to Mississippi or other applicable law.

23. Trade Secrets

Pursuant to Miss. Code Ann. § 75-26-3, “trade secrets” may be confidential and may include but are not limited to, information, including a formula, pattern, compilation, program, device, method, technique or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, others person who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

4. Specific Items

(a) Information included in a rate schedule pursuant to Miss. Code Ann. § 77-3-35 is not confidential and shall not be treated as such.

(b) Any confidential information or items that can be reasonably redacted from any document or material shall be so redacted, and the document or material shall be filed publicly without seeking a confidential designation. The utility or other filer must still comply with the applicable justification requirements of section 6(b) of this Rule.

(c) In accordance with Miss. Code Ann. § 79-23-1(1), (2), and § 25-61-9(1), information related to the establishment of, or changes in, rates regulated by the Commission shall be presumed to be accessible public records. If a utility considers such information confidential, the utility shall follow the procedures set out in section 4(b) or section 6 of this Rule.

(d) Information that has been publicly filed in any other forum (for example, but not limited to, the Federal Energy Regulatory Commission, with the clerk of a court, or other agency) shall not be filed as confidential under this Rule.

(e) If a utility seeks confidential designation for any information filed in response to a data request, the utility shall follow section 6(c) of this Rule.

35. Required Placement in Envelope

For paper copies, the page(s) containing the trade secret or confidential information shall be placed in an envelope other than white. Each page placed in the envelope shall be marked as “TRADE SECRETS” or “CONFIDENTIAL”.

46. Procedure

(a) Unless redacted and filed in accordance with section 4(b) of this Rule, whenever a party ~~believes that~~ considers information contained in pleadings or other documents are trade secrets, confidential or otherwise exempt from public disclosure, the party shall designate that the information is protected by law from public inspection, examination or copying. Trade secrets or confidential information contained in documents will be removed and replaced by the filing party with a page marked: “This document contains trade secrets or confidential ~~material~~ information and is separately filed.” All ~~materials~~ information for which no assertion of protection from public inspection, examination and copying is made will be placed in files available for public inspection. Trade secrets, confidential information and other records exempt from public inspection shall be separately stored in a secured location with limited access and safeguarded from unauthorized disclosure.

(b) A filing seeking confidential designation of information must be made, in writing no later than simultaneously with the submission of said information. The utility or any other filer shall provide the legal and factual basis for its assertion that the information qualifies as either confidential or a trade secret pursuant to Mississippi law and shall state why the information cannot be reasonably redacted and filed publicly. The justification by the utility or other filer for classification of the item as confidential or a trade secret must contain sufficient detail to permit a reasoned analysis by the Commission. If the Commission is unsatisfied with the justification, the Commission, at its sole discretion, may deny the confidential designation by written order, require the utility or other filer to provide further clarification or briefing or hold a hearing to resolve the confidential designation issue.

(c) Data Requests. If a utility or other party is required to submit confidential information pursuant to a data request, the information must be designated as confidential simultaneous with the filing of said information; however, a written justification of its confidentiality shall be submitted to the Commission within 14 calendar days after the information has been filed. If a utility or other party fails to provide written justification, the Commission, at its sole discretion, may deny the confidential designation by written order, require the utility or other party to provide justification or briefing or hold a hearing to resolve the confidential designation.

(d) A utility may petition the Commission for a waiver of the justification requirement for particular sections of certain routine filings. Waivers can only be granted for a period of time not to exceed three (3) years. Waivers can be rescinded by the Commission at its discretion and for any reason. The Commission may require conditions to be met by the utility prior to granting a waiver. Conditions may include, but are not limited to:

1. Filings which are made on a recurring or periodic basis; or
2. Information which has regularly been classified as confidential by the Commission in the past.

(e) Once information is filed pursuant to and in satisfaction of this Rule, it will be treated as confidential. If the Commission denies the designation of information as confidential or a trade secret, the information will be kept confidential until the time for filing an appeal from a Commission order has expired. If an appeal is filed, the Commission will keep the material confidential until judicial review is complete.

(f) No issue related to confidential designation shall constitute a basis to stay a docketed proceeding if the Commission and Staff have received access to the information in dispute and other parties have been given the opportunity to enter into protective agreements to obtain access to such information.

57. Protective Agreements

In proceedings before the Commission involving trade secrets or other confidential information, parties may enter into protective agreements to facilitate and safeguard the exchange of necessary information. Protective agreements may include procedures for copying, exchanging, serving, safeguarding, or challenging the characterization of trade secrets or confidential information. The Commission and the Staff shall not be a party to protective agreements and will not be bound by the terms of protective agreements.

8. Review of Confidentiality

(a) The Commission may, upon its own initiative, address the redaction or confidential designation of any information at any time. The Commission may determine the confidentiality of any information based solely on the justification submitted by the utility or other filer. The Commission may require any briefing from the utility or other filer it deems necessary to help the Commission resolve the confidentiality determination. The Commission may notice and hold any hearing it deems necessary to resolve the confidentiality determination.

(b) Except for the Public Utilities Staff, any party to a proceeding or any other person or entity that wishes to review or challenge the filing or designation of confidential information is referred to the Mississippi Public Records Act and Commission Rule 4.

(c) The Commission, at its sole discretion, may designate one of its members or attorneys, including any special assistant attorney general assigned to the Commission, to act as a

hearing examiner regarding any and all matters relating to confidentiality. Such officer may exercise all authority held by the Commission in matters related to this Rule.

Source: Mississippi Code Annotated § 77-3-54.