



STATE OF GEORGIA

COUNTY OF FULTON

**AGREEMENT BETWEEN THE GEORGIA PUBLIC SERVICE**

**COMMISSION**

**AND**

( CONSULTING FIRM )

An **AGREEMENT**, made this \_\_\_ day of \_\_\_\_\_, 2020, (hereinafter, "**AGREEMENT DATE**") by and between the **GEORGIA PUBLIC SERVICE COMMISSION**, (hereinafter "**COMMISSION**"), whose address for the purpose of this **AGREEMENT** shall be 244 Washington Street, SW, Atlanta, GA 30334-5701, and (**CONSULTANT**) (hereinafter "**CONSULTANT**"), whose address for the purpose of this **AGREEMENT** shall be (**CONSULTANT ADDRESS**), to memorialize a certain **AGREEMENT** made and existing between the parties hereto beginning \_\_\_\_\_, 2020 (hereinafter referred to as "**BEGINNING DATE**").

**WITNESSETH**

**WHEREAS**, the **COMMISSION** desires to employ the services of a **CONSULTANT** who shall be selected by the **COMMISSION** to assist the **STAFF** (hereinafter referred to collectively as the "**STAFF**") of the **COMMISSION** and the Attorneys representing the **STAFF**; in providing general consulting assistance, but not limited to assisting the **STAFF** with Docket No. 43453: Generic Proceeding to Implement House Bill 244;

**WHEREAS**, the **COMMISSION** has the authority under Georgia Law to enter into such a contract; and

**WHEREAS**, the **CONSULTANT** is qualified to enter into such contract and has offered such services to the **COMMISSION** under the terms and conditions stated herein;

**WHEREAS**, the **COMMISSION** desires to enter into a contract for professional consulting services with the **CONSULTANT** for the performance of the duties described under the terms and conditions stated herein;

**NOW THEREFORE**, in consideration of the mutual promises and agreements hereinafter set forth, the satisfactory consideration each for the other hereby expressly recognized and agreed, the parties hereby contract for services in accordance with the following provisions.

### **ARTICLE I. SCOPE OF SERVICES**

The **CONSULTANT** shall perform the following services:

1. Review House Bill 244, PSC rule 515-12-1-.36: Pole Attachment Agreements, and all filings in this docket;
2. Assist the **STAFF** in the development of data requests to intervenors relating to the issues involved in the proceeding. In conjunction with the performance of this task, **CONSULTANT** will provide the data requests to the **STAFF** on a timely basis, to be forwarded by the **STAFF** to the appropriate party;
3. Review and analyze the intervenors' responses to data requests relating to the issues and prepare additional data requests as deemed necessary by the **STAFF** and **CONSULTANT**;
4. Meet with representatives of parties of record, as deemed necessary and appropriate by the **STAFF** and **CONSULTANT**, to supplement and complete discovery and investigation of the issues, including, but not limited to, the taking of interviews and depositions of intervenor personnel;
5. Review and provide analysis of the direct and rebuttal testimony and exhibits filed in Docket No. 43453. Assist the **STAFF** in crafting detailed cross-examination questions for witnesses.
6. Provide such other services relating to the issues as may be deemed necessary by the **STAFF**.

## ARTICLE II. CONSULTANT'S RESPONSIBILITIES

The **CONSULTANT** agrees that, for a period of one year following the completion of the project described in **ARTICLE I** herein, as well as during the time within which such duties are being performed, the **CONSULTANT** shall not enter into any employment with, or provide services to or on behalf of any company under the jurisdiction of the **COMMISSION**, or any subsidiary or affiliate of any such company. Additionally, the **CONSULTANT** must on their own action, disclose to the Attorneys for **STAFF** the fact and substance of any unauthorized contacts or representations made to the **CONSULTANT** outside the physical presence of Attorneys representing the **STAFF** or a **COMMISSION STAFF** member by persons known, or who reasonably should be known by the **CONSULTANT** to be associated, directly or indirectly, with any company referenced in this paragraph.

The **COMMISSION** shall inform the **CONSULTANT** of the **COMMISSION'S** policies and regulations with respect to such unauthorized contacts or representatives. At the conclusion of the work performed pursuant to this contract, the **CONSULTANT** shall affirm in writing that no unauthorized contacts were made or that such contacts were reported as required.

Non-compliance with this requirement may result in immediate cancellation of this contract and the institution of any additional proceeding deemed necessary or appropriate by the Attorneys representing the **COMMISSION**. The Attorneys representing the **COMMISSION** are authorized to use any reasonable method to ensure strict compliance with this requirement.

Upon completion of all tasks as described in the **AGREEMENT** and the **CONSULTANT'S** proposal, the **CONSULTANT** agrees that any software, databases, or other analytical tools purchased or developed in support of activities covered under this **AGREEMENT** and any work product resulting from activities covered under this **AGREEMENT** become property of the **COMMISSION**. The **CONSULTANT** further agrees that such software, databases, analytical tools, or work products purchased, developed, or produced for the **COMMISSION** shall not be offered to any other entity in any manner whatsoever, in whole or in part, without the permission of the **COMMISSION**.

## ARTICLE III. TIME OF PERFORMANCE

The period of performance of this contract shall be from the **AGREEMENT DATE** through the completion of tasks as described in **ARTICLE I** or until the **COMMISSION** shall determine that further performance is not needed and shall instruct the **CONSULTANT** to suspend performance; provided, however, that nothing herein shall prohibit the **CONSULTANT** from making appropriate fee and

expense applications for work performed between the **BEGINNING DATE** and **AGREEMENT DATE**. In the event that performance shall be suspended upon instruction of the **COMMISSION**, the **CONSULTANT** shall be compensated for all work completed prior to said suspension according to allowed expenses and labor at the rates as stated in **ARTICLE IV. COMPENSATION AND PAYMENT**, below.

#### **ARTICLE IV. COMPENSATION AND PAYMENT**

The **CONSULTANT** shall be paid a sum not to exceed **\$ DOLLAR AMOUNT** for professional services and related expenses rendered under this contract (hereinafter, "**CONTRACT AMOUNT**").

The **CONSULTANT's** expenses are to include support for professional services, including but not limited to reasonable and necessary actual expenses (as approved by the **COMMISSION**) incurred by the **CONSULTANT** for travel, lodging, meals, telephone, express mail delivery, computer charges, and copying costs. All such expenses shall be subject to the provisions of the Consultant Billing Requirements for Reimbursement/Non-Reimbursement of Consultant Contract Charges set forth in Exhibit A, attached hereto and incorporated herein by reference.

Maximum reimbursement amounts for daily meals for the **CONSULTANT** shall be a per diem of **\$50.00** per full work day. For partial work days, each consultant must use the per meal reimbursement rates as follows:

Breakfast	\$ 7.50
Lunch	\$12.50
Dinner	\$30.00

To receive payment for services rendered hereunder, on a monthly basis the **CONSULTANT** shall submit to the **COMMISSION** monthly invoices for **STAFF'S** review and examination; provided however that prior to each monthly payment, the **CONSULTANT** must be in compliance with so much of this **AGREEMENT** as is applicable at the time. Prior to final payment the **CONSULTANT** shall have completed all obligations under this **AGREEMENT**. Invoices shall be submitted based on actual time and reasonable, necessary, and maximum allowable expenses expended on the contract work, with labor rates for the **CONSULTANT'S** personnel as shown below and in accordance with billing instructions contained in the **COMMISSION'S** Guidelines for Consultant Billing of Direct Reimbursable Charges to Contracts to be issued to the **CONSULTANT** by the Utilities Division's Business Analyst once this contract is executed as shown below.

NAME AND TITLE

HOURLY RATE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\$\_\_\_\_\_/hour  
\$\_\_\_\_\_/hour  
\$\_\_\_\_\_/hour  
\$\_\_\_\_\_/hour

Additionally, the **COMMISSION** and the **CONSULTANT** further agree that the contract amount shall be subject to modification by agreement between the parties hereto to accommodate changes in workload required of the **CONSULTANT** due to subsequent changes in the scope and level of the **CONSULTANT'S** responsibilities not otherwise properly compensated by the amount originally stated in this **AGREEMENT**. Any such modification shall be agreed to in writing by the **COMMISSION** and the **CONSULTANT**. In the event modification of this **AGREEMENT** shall not be mutually agreed to by the **CONSULTANT** and the **COMMISSION**, the **COMMISSION** shall be the final arbiter of such modification.

Additionally, the **COMMISSION** and the **CONSULTANT** further agree that, if a work plan submitted by the **CONSULTANT** is utilized under this contract in order to provide general consulting assistance on a project or matter, the amount stated in a work plan approved by the **STAFF** shall be a "not to exceed" amount unless it is subject to modification by agreement between the parties hereto to accommodate changes in the workload required of the **CONSULTANT** due to subsequent changes in the scope and level of the **CONSULTANT'S** responsibilities not otherwise properly compensated by the amount originally stated in the work plan. Any such modification shall be agreed to in writing by the **COMMISSION** and the **CONSULTANT**. In the event the **CONSULTANT** and the **COMMISSION** shall not mutually agree to modification of a work plan compensation amount, the **COMMISSION** shall be the final arbiter of such modification.

Notwithstanding any other provision in this **AGREEMENT**, in the event that the appropriations from the Georgia General Assembly no longer exist or in the event that obligations of the **COMMISSION** incurred at any time exceed the balance of remaining unobligated funds, then this **AGREEMENT** shall terminate without further obligation of the **COMMISSION**.

**ARTICLE V. RETENTION OF RECORDS**

The **CONSULTANT** shall keep and maintain all records and other documents pertaining to the performance of this **AGREEMENT** until the final payment of funds paid to the **CONSULTANT** by the **COMMISSION** pursuant to this contract. At such time, physical custody of the records and documents shall be returned to the **COMMISSION**.

The **CONSULTANT** shall be bound by and shall comply with Georgia Law and the provision of **COMMISSION** Rule 515-3-1-.11 relating to Trade Secrets should the provisions of that rule become applicable during the course of this contract.

#### **ARTICLE VI. NO TOLERATION OF UNACCEPTABLE BEHAVIORS**

**CONSULTANT** shall at all times conduct their business activities pursuant to this Agreement in a highly ethical manner and in compliance with all applicable laws and regulations. **CONSULTANT** shall not, at any time, exhibit the following:

1. Harassment or unlawful discrimination of any kind or character, including but not limited to conduct or language derogatory to any individual, race, color, religion, age, disability, veteran status, genetic information, gender, sex, sexual orientation, gender identity, national origin, or any classification protected by federal, state or local law, that creates an intimidating, hostile, or offensive working environment. Specific examples include, but are not limited to jokes, pranks, epithets, written or graphic material, or hostility or aversion toward an individual or group on the basis of a legally protected status.
2. Any conduct or acts such as threats or violence that creates a hostile, abusive, or intimidating work environment. Examples of such inappropriate behaviors include, but are not limited to abusive posturing, abusive language and/or written material, including but not limited to, emails, correspondence documents, notes, texts, etc...

#### **ARTICLE VII. MISCELLANEOUS**

The **CONSULTANT** and the **COMMISSION** further mutually agree as follows:

1. The **CONSULTANT** and its subcontractors agrees to comply with all provisions of the "Georgia Security and Immigration Compliance Act" of 2006, as amended in the code sections of O.C.G.A. §13-10-90 and §13-10-91.
2. This **AGREEMENT** constitutes the entire agreement between the parties, and amendments thereto must be in writing and signed by the parties hereto.
3. The provisions of **O.C.G.A. §45-10-20 PUBLIC OFFICERS AND EMPLOYEES, CODE OF ETHICS AND CONFLICTS OF INTEREST** are not and will not be violated by the parties to this **AGREEMENT**.

The parties agree that in the execution of this **AGREEMENT**, they will not discriminate against any person on the basis of race, color, creed, religion, natural origin, sex or handicap.

4. By entering into this contract with the **COMMISSION**, the **CONSULTANT** hereby certifies that the **CONSULTANT** will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract as set forth in O.C.G.A. §50-24-4.
5. The **CONSULTANT** acknowledges that the **COMMISSION** is a public entity with public powers and responsibilities in service of the state of Georgia. This **AGREEMENT** shall not be construed to impair **COMMISSION** public functions and powers.

**CONSULTANT** agrees to comply with the **COMMISSION'S Trade Secret Requirements: Rule Section 515-3-1.11** attached hereto and incorporated into this **Agreement** as Exhibit B.

6. This **AGREEMENT** shall be deemed to have been executed in Fulton County, Georgia, and shall be governed by, construed under, performed and enforced in accordance with the laws of the state of Georgia. The **COMMISSION** may lay venue for any action hereunder in Fulton County, Georgia, and may insist that any action brought respecting the subject matter hereof shall be brought in Fulton County, Georgia.

**IN WITNESS WHEREOF**, the parties hereto have executed this **AGREEMENT** effective as of the date stated above, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**GEORGIA PUBLIC SERVICE COMMISSION**

**BY:** \_\_\_\_\_  
**CHUCK EATON**  
**CHAIRMAN**

**(CONSULTANT FIRM NAME)**

**BY:** \_\_\_\_\_  
**(CONSULTANT)**  
**FEDERAL TAX IDENTIFICATION**  
**NUMBER** \_\_\_\_\_

SAMPLE



## EXHIBIT A

# Consultant Billing Requirements for Reimbursement / Non-Reimbursement of Consultant Contract Charges

Original – February 22, 1993  
Revision #1 February 22, 1994  
Revision #2 April 4, 2001  
Revision #3 November 3, 2018

Georgia Public Service Commission (“GPSC”) requires that Consultants follow the contract requirements regarding costs to be invoiced for direct reimbursement. Only necessary and reasonable actual expenditures, unless specifically exempted by this document, of an appropriate and non-extravagant nature for contract related work incurred only by Consultant personnel, Consultant subcontractors, and related vendor charges will be considered for reimbursement. These costs are usually embodied in the categories of labor, travel, miscellaneous, and other support charges (as described in the contract, though not all inclusive and not otherwise already built into the direct billing rates/fees in the contract).

Accordingly, GPSC will treat billed costs for reimbursement/non-reimbursement as shown below:

### LABOR

- Refer to **RFP General Paragraph 1.9** for guidelines on requesting to add personnel to the contract, and **Paragraph 1.11E** for removal of personnel from the contract. Any such requests should be by letter to **Mr. Tom Bond, Director of Utilities**, and should include justification for the personnel changes, explaining the work assignments and providing a resume for the new personnel. As stated in **Paragraph 1.9**, if no clerical/administrative personnel are listed in the Consultant’s proposal the costs for this type work will be assumed (by the Commission) to have been otherwise covered in the bid price.

All labor charges to contracts must be adequately supported by approved time records before reimbursement will be made.

## TRAVEL

- By travel costs, the GPSC means necessary and reasonable transportation, lodging and meals charges incurred by Consultant personnel for the tenure of trips necessary to the contract work and away from the consultants' personnel home-office<sup>1</sup>. A consultant is traveling away from their home-office if the duties require traveling beyond the general area the home-office for a period substantially longer than an ordinary day's work. A consultant's home-office is the entire city or general area where their main place of business or work is located.

Travel costs allocated, or that should be allocated, between GPSC contract(s) and other jobs charged during the trip tenure must be fairly distributed by time charged to each job or contract in order for GPSC costs to be reimbursed without reduction by the GPSC Auditor for excess charges.

In these regards, the GPSC **will not** reimburse for the following types of travel charges billed directly to the contracts:

- (1) **First Class Airfares** - When first class is used, the Consultants should invoice for the net of the total fare less the first class premium. Also, the GPSC expects the Consultants where possible to make travel arrangements far enough in advances to obtain economy fares.
- (2) **Flight or other travel insurance**
- (3) **Mileage** that does not seem reasonable, is charged above the current **IRS Allowable Rate** and is not explained as to departure and arrival points and purpose for each trip.
- (4) **For Lodging**, the GPSC expects Consultant personnel, where possible, to obtain Government rates to effect economy in lodging expense. To this end, the Utilities Division Director will provide a letter establishing that the Consultant is employed on Government work, and which the Consultant should present to lodging registration personnel to obtain a lesser rate.
  - i. In cases where it appears to the GPSC that lodging expense per invoice is excessive and the Consultant

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<sup>1</sup> Home-office can be a commercial office or a personal residence.

cannot justify the excess satisfactorily, the GPSC will disallow the excess.

- ii. The GPSC also means by lodging, such lodging used by Consultant personnel on trips away from their usually assigned home office. Accordingly, billings for lodging in the area of the Consultant personnel's normal home office will not be allowed by the GPSC.

(5) **Meals** - The GPSC **will not** reimburse for:

- a. Individual person's or multi-party meals that are above contract or the "Commission Consultant Billing Guidelines for Reimbursement" maximums.
- b. "Working dinners" or other "working meals" of any combination of Consultant, Subcontractor, GPSC, and Auditee personnel.
- c. Courtesy or other types of meals billed by the Consultant for other than Consultant personnel.
- d. Consultant personnel meals in their home-office area.
- e. Drinks of an identifiable alcoholic nature.
- f. Private Butler, refreshments and snacks costs will be added to the costs of meals in determining if meals costs exceed the contract or billing guideline maximums (**See (a) above**).

(6) Movie rentals or other entertainment charged during tenure of trips or at other times.

(7) Charges for books, manuals, reports, docket filings and comments, or other literary items, which the GPSC thinks, should be included in the Consultant's library at no cost to the GPSC.

For such items, before the Consultants order outside copying that they expect to charge to the GPSC, they should contact the GPSC project's person-in-charge to determine whether the GPSC already has the documents and could provide them to the Consultants under reasonable circumstances, such as absolute need to the job, available time, less than vendor costs, etc. The Consultant shall provide a statement as to which project leader was contacted and the date the contact was made.

(8) Personal telephone calls, valet service, or other charges deemed personal by GPSC.

- (9) Miscellaneous charges not individually identified as to nature and amount, and not deemed by GPSC Auditor to be related or necessary for the job.
- (10) Mark-up costs will not be reimbursed.

### **OTHER SUPPORT CHARGES**

- Only those other support charges of such nature as described in the contract, though not all-inclusive, will be reimbursed when properly supported.

### **DOCUMENT SUPPORT**

- GPSC provides separate guidelines for consultants to furnish documentation support to the GPSC for costs invoiced (such as labor timecards/sheets, airplane tickets, car rental vouchers, itemized lodging bills, large meals tickets, etc.) Any cost not deemed by GPSC to be properly supported by required documentation will not be reimbursed. **(See Attachment No. 2 for further document support requirements).**

### **CONSULTANT INVOICE SUPPORT**

### **PERCENT BILLED SCHEDULE**

- We desire a schedule of “percent billed-to-date vs. contract amount” to be included with each invoice with the following data: total amount previously billed, amount of current invoice, total billed-to-date, contract amount, and percent billed-to-date.

### **LABOR**

- We desire a labor summary sheet showing the total labor hours billed by Consultant employee, times each employee’s contract billing rate/fee to equal the total amount of labor cost billed on each invoice. The labor summary sheet should be supported by employee and their supervisor for the time periods billed. Employee’s time

should be recorded on the timecards/timesheets and in the labor summary in quarter-hour increments.

**Subcontractor Charges** - A subcontractor's letterhead invoice to the Consultant firm should be provided, supported by the same kind of documents required for Consultant charges for labor, travel, etc.

## **TRAVEL**

- We desire a travel summary schedule showing total travel costs by employee for the period billed, backed up by employee expense reports with major cost items supported by such as letterhead itemized lodging bills, airline tickets, and car rental invoices. We also desire meal receipts, parking tickets, taxi, ride share receipts, toll receipts, etc. (See below for further discussion of these items).

**Lodging** - To be reported at actual, reasonable and necessary cost, and supported by letterhead itemized hotel/motel bills. If the bill includes lodging for some person not on the Commission job (like a family member or a friend), the allocated cost for the non-job people should be deducted from the total bill.

Limits on lodging costs have not been set; however, costs are expected to be reasonable based on known going rates in cities where work is performed. As previously stated, Government rates for lodging should be obtained where possible. A letter should be obtained from the Utilities Division Director for each Consultant to present to lodging offices to request Government rates to facilitate this cost reduction effort.

## **MEALS**

- Meals per consultant are reimbursed at a per diem of **\$50.00** per full work day. Receipts are not necessary for reimbursement of this per diem. For partial work days, each consultant must use the per meal reimbursement rates as follows:

<b>Breakfast</b>	<b>\$7.50</b>
<b>Lunch</b>	<b>\$12.50</b>
<b>Dinner</b>	<b>\$30.00</b>

Meals required during travel days are reimbursable at the above partial per diems.

## TRANSPORTATION

- When mileage is charged for any amount, we desire a listing of each trip by origin and destination, number of miles traveled, mileage rate charged, and purpose for the trip.

To reduce transportation costs, Consultant personnel are encouraged to share rental cars, taxi and limos. Where possible, Consultant organizations are encouraged to use their company cars for the transport of their personnel on intracity trips and to and from the airport, or as an alternative, use the city transit systems (like Marta trains) where possible for such trips.

## MISCELLANEOUS

- A category of cost stated only as “**miscellaneous**” **will not be reimbursed**. Each element making up such a group charge should be listed by name and amount. The elements should also be contract related and are envisioned by the GPSC to include minor office supplies, incidental postage, baggage handling tips, etc.

## OTHER SUPPORT CHARGES

- Support documents should be submitted for each line item billed at \$25 or more. (See below for examples).

**Vendor Charges** – A vendor’s letterhead bill or invoice should be provided, with adequate description of items furnished, with unit prices shown to support the amounts billed to the Consultant.

**Computer-Use, Data Base, Time Sharing, Etc., Charges** – The Consultant, on a one time basis, and before or with the first bill to GPSC, is expected to provide the GPSC with a description of the agreement with the provider(s) of these services as to how the costs are determined and assigned to the Consultant and then assigned to the GPSC. If no such agreement exists, the Consultants should provide the GPSC a description of how the Consultant similarly determines and assigns the costs to the GPSC.

For such items billed by hours of use, the support should include a schedule of hours expended times the hourly rate charged to arrive at the line item amount billed. For service/product costs allocated to GPSC, the allocation bases and computations should be set forth

in each invoice. For items billed by number of copies, the number of copies times the cost per copy should be submitted.

**Telephone Calls** - Only business (**non-personal**) telephone calls and fax charges will be reimbursed. They should be supported by a letterhead telephone bill from the providing telephone company/carrier. The bill should list all the individual calls charged, by from-and-to locations, numbers, amounts, etc.

To reduce long distance (LD) costs, when Consultants are in the GPSC Atlanta offices and need to make job related LD calls, they should use the GPSC outgoing WATS line by dialing "8" plus area code and seven digit number of callees. Also, when Consultants are out in the field (in Georgia) and need to make LD calls to the GPSC Atlanta offices, they should use the GPSC incoming Watts line by dialing 1-800-282-5813 and asking for the callee by name and/ or telephone number. The GPSC Staff will assist the Consultants, when needed, in these telephone cost reduction efforts.

## EXHIBIT B

### Trade Secret Requirements: Rule Section 515-3-1-.11

- 1) In the event that any party or utility subject to the jurisdiction of the Commission is required to file with the Commission, or otherwise requested to provide to the Commission staff information which that party or utility considers to be a trade secret (as defined in O.C.G.A. Section 10-1-761(4)) (hereinafter referred to as "protected information"), then the following procedures shall apply:
  - a) The affected party or utility shall submit, within the time specified or agreed to, the required or requested protected information under protective seal with the designation "TRADE SECRET" prominently attached to each page thereof; and
  - b) The affected party or utility shall, at the same time, provide a version of the document containing protected information which can be used for public disclosure with the designation "PUBLIC DISCLOSURE DOCUMENT" prominently attached to each page thereof; and
  - c) The affected party or utility shall, at the same time, provide in writing the legal and factual basis for its assertion that the protected information is a trade secret and should not be disclosed, including, for each item claimed to be a trade secret:
    1. Why the information derives economic value from not being generally known to others;
    2. How others can obtain economic value from its disclosure; and
    3. Procedures utilized by the affected party or utility to maintain its secrecy; and
  - d) The affected party or utility shall maintain a master list of all documents submitted to the Commission pursuant to this rule, which list shall identify the document submitted, the number of copies submitted, and, if applicable, the docket in connection with which submission was made.
- 2) Upon request by any person pursuant to the Georgia Open Records Act, O.C.G.A. Section 50-18-70, et seq., for access to information which includes protected information, the Commission shall respond by providing that person with any non-protected information requested, the "public disclosure" version of the protected information, and written



notice that certain information has been withheld as alleged protected information not subject to public disclosure.

- 3) Any person who is a party or intervenor in a docket or non-docket matter, other than the Consumers' Utility Counsel, and desires access to protected information submitted to the Commission pursuant to this rule, may petition the Commission for such access. A hearing shall be held to consider the request, at which time the affected party or utility shall have the burden of proving that the potential for economic harm to them outweighs the public benefit derived from allowing the party or intervenor access to such information.
  - a) Any person who is granted access to protected information pursuant to paragraph (3) above, and the Consumer's Utility Counsel, shall be required to enter into a protective agreement with the affected party or utility which shall include, but not be limited to, the following terms:
    1. Access to and use of the protected information shall be limited to matters relating to the docket or non-docket;
    2. The protected information shall not be disclosed to any other person at any time unless such disclosure is required by an order of the Commission or a court of competent jurisdiction or authorized by the affected party or utility;
    3. The protected information shall not be copied or otherwise reproduced by the party or intervenor;
    4. The agreement shall apply to all employees, attorneys, agents, and consultants of the party or intervenor;
    5. Any other terms or conditions as are reasonable to insure the confidentiality of the protected information.
- 4) The Commission, upon request by the party or intervenor and after being provided with an executed copy of the protective agreement, shall provide the party of intervenor with the number of copies of the protected information agreed upon in the protective agreement, which copies shall be returned to the Commission not later than forty-five (45) days after the conclusion of the docket or non-docket, or the conclusion of judicial appeals relating to the matter.
- 5) Within thirty (30) days of compliance by parties or intervenors with the provision of paragraph 4 above requiring the return of the protected information to the Commission, the Commission shall return all copies

of the protected information in its possession to the affected party or utility, and the affected party or utility must preserve and maintain a master copy of said protected information for a period of seven (7) years.

- 6) The public disclosure version of the protected information shall be utilized in the course of an open docket or public hearing, if necessary; provided, however, that, if the Commission staff or any party determines that protected information must be utilized in the course of an open docket or public hearing, then they shall meet or confer with the affected party or utility in a good faith effort to accommodate such use, or make an appropriate motion before the Commission for such use.
- 7) Any party or intervenor, the Commission staff, the Consumers' Utility Counsel, or the Commission on its own motion, may challenge the designation of information as a "trade secret" by filing a motion to that effect with the Commission. In such a case, the affected party or utility shall have the burden of proving that the information constitutes a trade secret. If, after a hearing and an in-camera inspection, the Commission determines that the information provided does not constitute a trade secret or only a portion of the information is a trade secret, or that the protected information must be disclosed in part or in whole in connection with any hearing, or otherwise, then the Commission shall issue an order to that effect, which order shall be automatically stayed for thirty (30) days from the date of the order.
- 8) The Commission, its staffs, attorneys, agents, and consultants, shall not disclose any protected information except as authorized by the affected party or utility, by Commission order, by court order, or by these rules, and shall take all reasonable and necessary measures to maintain the confidentiality of the protected information. Authority Ga. L. 1878-79, p. 125; 1907, pp. 72-81, 1922, pp. 142-147; 1975, pp. 404-412. **History.** Original Rule entitled "Trade Secrets" adopted. F. Oct. 14, 1994; eff. Nov 3, 1994.