

## Rule 515-3-1-.11. Trade Secrets

- (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 by written affidavit 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:

## Exhibit B

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.
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- (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 or 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.

## Exhibit B

**Cite as Ga. Comp. R. & Regs. R. 515-3-1-.11**

**Authority:** O.C.G.A. §§ [10-1-761\(4\)](#); [46-2-30](#), 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.

**Amended:** F. Oct. 18, 2012; eff. Nov. 7, 2012.