

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF)
RULES AND REGULATIONS GOVERNING THE)
PROCEDURE FOR INSPECTION AND COPYING)
OF PUBLIC RECORDS UNDER THE FREEDOM) PSC Regulation Docket No.
OF INFORMATION ACT, 29 Del C. §§) 62
10001-10006 (OPENED AUGUST 17, 2010;)
REOPENED MAY 10, 2011; REOPENED)
NOVEMBER 8, 2011)

ORDER NO. 8072

AND NOW, this 8th day of November, 2011:

WHEREAS, by PSC Order No. 7868 dated November 18, 2010, the Delaware Public Service Commission (the "Commission") adopted Regulations Governing Requests Made Pursuant to the Freedom of Information Act, 29 Del. C. §§10001-10006 (the "FOIA Regulations"); and

WHEREAS, the FOIA Regulations became effective on December 1, 2010; and

WHEREAS, on October 20, 2011, the Governor signed Executive Order Number Thirty-One, which requires all Delaware executive branch agencies to implement, promulgate, and adopt a new uniform policy for addressing requests made under the Delaware Freedom of Information Act, 29 Del. C. §§10001-10006 ("FOIA"), and to rescind any existing FOIA policy no later than February 1, 2012; and

WHEREAS, because the Commission's existing FOIA Regulations are not substantially compatible with the new uniform policy required by Executive Order Number Thirty-One, the Commission therefore repeals

PSC Regulation Docket No. 62, Order No. 8072 Cont'd
and proposes to adopt new FOIA Regulations substantially in the form
attached as "Exhibit A."

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 *Del. C.* §209(a)(1) and 29 *Del. C.* §§10113 and 10013(b), and for the reasons set forth in the body of this Order, the Commission proposes to repeal its current *Regulations Governing Requests Made Pursuant to the Freedom of Information Act* and to promulgate revised *Regulations Governing Requests Made Pursuant to the Freedom of Information Act* ("Proposed FOIA Regulations"). A copy of those rules in their current form as approved by the Commission in Order No. 7494, dated December 16, 2008, is appended as Exhibit "B" to this Order. The proposed revised Rules, which include the revisions now being proposed for adoption, are attached to this Order as "Exhibit A."

2. That, pursuant to 29 *Del. C.* §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order; a copy of the current "Regulations Governing Requests Made Pursuant to the Freedom of Information Act" (adopted in PSC Order No. 7494 (December 16, 2008)) ("Exhibit B"); and a copy of the revised "Regulations Governing Requests Made Pursuant to the Freedom of Information Act" now being proposed for adoption ("Exhibit A").

3. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as "Exhibit C," to the Registrar of

PSC Regulation Docket No. 62, Order No. 8072 Cont'd

Regulations for publication in the *Delaware Register of Regulations*.

In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in The News Journal and the Delaware State News newspapers on **December 1, 2011**. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter.

4. That, pursuant to 29 *Del. C.* §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, **on or before December 31, 2011**. If no comments, suggestions, etc. are filed with the Commission objecting to the Proposed FOIA Regulations, the Commission will proceed to adopt them as final at its January 10, 2012, meeting without further notice.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

EXHIBIT A

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION
26 *Del. Admin. C.* §1008

Statutory Authority: 26 Delaware Code, Section 209(a)(1) and 29 Delaware Code, Sections 10113(a) and 10003(b)
(26 Del. C. §209(a)(1) and 29 Del. C. §§10113(a) and 1003(b))

Title 26 Public Utilities 1000 General Regulations

Public Service Commission

1008 Regulations Governing Requests Made Pursuant to the Freedom of Information Act

1.0 Definitions

~~Capitalized terms not otherwise defined in these regulations shall have the meanings given those terms in FOIA and the Commission's Rules of Practice and Procedure (see 26 **DE Admin. Code** §1001), as applicable.~~

~~"Affected Party" means any party who has submitted Third Party Confidential Records.~~

~~"FOIA" shall mean the Freedom of Information Act, 29 **Del.C.**, Ch. 100, as may be amended from time to time.~~

~~"Third Party Confidential Records" are records submitted to the Commission by a third party under a claim of confidentiality pursuant to the Commission's Rules of Practice and Procedure. Records will not be considered Third Party Confidential Records for purpose of these regulations if the records were not identified and submitted as confidential in accordance with the Commission's Rules of Practice and Procedure.~~

2.0 General

~~2.1 The Commission promulgates these regulations, pursuant to 29 **Del.C.** §10003(b), to establish procedures regarding requests made to the Commission pursuant to FOIA for public records in the possession of the Commission. The Commission is under no obligation under FOIA to answer written questions, analyze data, create documents not already in its possession or compile information in a record. FOIA requests shall be made for the purposes of obtaining existing documents in the Commission's possession.~~

~~2.2 Consistent with FOIA, it is the Commission's desire that the public have access to the Commission's public records under reasonable terms and conditions. These regulations establish~~

~~reasonable fees for compiling and photo-copying public records and provide instructions regarding how to make FOIA requests with the Commission and how such requests will be processed.~~

~~2.3 Commission staff may perform the duties of the Commission under these regulations.~~

3.0 Requests

~~3.1 Persons requesting requests for records pursuant to FOIA shall submit an original and one copy of a written letter request indicating that the request is being made pursuant to FOIA. The written request shall be addressed to:~~

~~Delaware Public Service Commission~~

~~Attn.: Commission Secretary~~

~~861 Silver Lake Boulevard~~

~~Cannon Building, Suite 100~~

~~Dover, Delaware 19904~~

~~Requests by electronic mail will not be entertained.~~

~~3.2 Requests shall indicate clearly where records are to be sent.~~

~~3.3 Requests for records shall describe the records sought in sufficient detail to enable their location with reasonable effort.~~

~~3.4 Records may not be produced to any person who has an outstanding balance with the Commission relating to a prior FOIA request.~~

~~3.5 Requests that do not comply with these regulations may be denied in whole or in part.~~

4.0 Responses

~~4.1 The Commission shall respond to a request made under these regulations within fifteen (15) business days of receipt of the request. Such response may include the requested records, deny the request in whole or in part, or indicate when the requested records will be produced and under what, if any, conditions. A response to a request for Third Party Confidential Records shall be made pursuant to the procedures and the timeframe set forth in Rule 6 below.~~

~~4.2 Additional time shall be allowed beyond the fifteen business days provided for in Section 4.1 when a request is for voluminous records, requires legal advice or a record is in storage or archived. In any of these cases, the requestor shall be advised by the custodian of a record, within fifteen business days after the custodian of a record receives the request, stating the need for additional time. Such additional time provided for in this section 4.2 shall be reasonable.~~

~~4.3 To the extent a FOIA request seeks documents that the Commission, in its sole discretion, may consider voluminous, the Commission may require that the party requesting the records inspect and~~

~~copy the records at the Commission's office during its regular business hours. Alternatively, the Commission may, in its sole discretion, employ the assistance of an outside vendor to copy the requested records, in which case the requester will be required to pay the copy charges assessed by such vendor.~~

~~14 DE Reg. 1397 (06/01/11)~~

~~5.0 Fees for Photocopying Performed by Commission and Administrative Fees.~~

~~5.1 Administrative Fees. The Commission may assess administrative fees incurred in responding to a FOIA request as set forth herein. Such fees include:~~

~~5.1.1 Staff time associated with processing FOIA requests, including, but not limited to, time spent locating and reviewing files, monitoring file reviews, and generating computer records.~~

~~5.1.2 Administrative fees will be billed per quarter hour and will be billed at the current, hourly pay grade rate of the personnel performing the service. Administrative charges will be in addition to any copying charges.~~

~~5.2 Photocopy Charges~~

~~5.2.1 Standard Size Copies. The charge for copying standard size black and white public records shall be \$0.50 per printed page (i.e., single-sided copies are \$0.50 and double-sided copies are \$1.00). The charge for color copies or printouts shall be \$2.00 per page. This charge applies to copies on the following standard paper sizes: 8.5 x 11; 8.5 x 14; and 11 x 17.~~

~~5.2.2 Oversized Copies/Printouts. The charge for copying oversized public records (including but not limited to blueprints, engineering drawings, GIS printouts and maps) shall be as follows: 24 x 26: \$2.00 each; 24 x 36: \$3.00 each; 30 x 42: \$5.00 each; and all larger documents: \$1.00 per square foot. An additional charge of \$1.50 per page will be assessed to color copies.~~

~~5.2.3 Microfilm/Microfiche Printouts. Microfilm and/or microfiche printouts made by Commission personnel and printed on standard sized paper will be \$1.00 per page.~~

~~5.2.4 Electronically-Generated Records. Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies, including but not limited to magnetic tape, diskette or compact disc costs and third party costs.~~

~~5.3 Payment for copies and/or administrative charges are due at the time the records are released.~~

~~6.0 Requests Seeking Non-Public and Third Party Confidential Records.~~

~~6.1 Records identified as non-public pursuant to 29 Del.C. §10002(g) shall not be produced in response to a FOIA request. In addition, the following procedures shall apply to requests seeking records that the Commission believes are non-public because they are Third Party Confidential Records:~~

~~6.1.1 Upon receipt of a request seeking Third Party Confidential Records, the Commission will notify the Affected Party in writing of the request, identifying the party making the request and the Third Party Confidential Records sought.~~

~~6.1.2 Within ten (10) days of receipt of the notice required by Rule 6.1, the Affected Party shall advise the Commission in writing whether it opposes the disclosure of the Third Party Confidential Records. If the Commission is not so notified, it will produce the Third Party Confidential Records.~~

~~6.1.3 If the Affected Party timely objects to the production of the Third Party Confidential Records, the Affected Party shall, at the time of notifying the Commission of its objection, provide in writing information sufficient to justify a claim of confidentiality under FOIA. Such information shall include, but not be limited to, the following:~~

~~6.1.3.1 Any measures taken by the Affected Party to guard against disclosure of the Third Party Confidential Records;~~

~~6.1.3.2 Whether the Third Party Confidential Records have been intentionally or inadvertently disclosed since their submission to the Commission and any actions or precautions taken in connection with such disclosure; and~~

~~6.1.3.3 Whether the disclosure of the Third Party Confidential Records would result in substantial or harmful effects on the Affected Party's commercial or financial interests, and if so: (a) what those harmful effects would be; (b) why the effects should be viewed as substantial; and (c) how the disclosure would cause such harmful effects.~~

~~6.1.4 The Affected Party bears the burden of establishing confidentiality under FOIA. A unilateral assertion that records are confidential or otherwise not subject to a FOIA request is insufficient to support a finding that requested information is in fact non-public.~~

~~6.1.5 Within a reasonable time after receiving the Affected Party's response filed pursuant to Rule 5.1.2, the Commission shall determine whether the Third Party Confidential Documents should be produced pursuant to FOIA despite the Affected Party's claim of confidentiality. Written notice of the Commission's decision shall be provided to the party making the FOIA request and the Affected Party.~~

~~7.0 Appeals of Commission's Decision.~~

~~As authorized by 29 Del.C. §10005, any person denied access to requested records may (i) bring suit in a court of competent jurisdiction within sixty (60) days of such denial or (ii) petition the Attorney General to determine whether a violation of FOIA has occurred. The procedures applicable to such petition are provided in 29 Del.C. §10005.~~

~~14 DE Reg. 584 (12/01/10)~~

1.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Affected Party" means any party who has submitted Third Party Confidential Records.

"Commission" means the Public Service Commission of Delaware.

“FOIA” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the Delaware Code.

“FOIA Coordinator” shall mean the person designated by the Secretary to receive and process FOIA Requests.

“FOIA Request” or “Request” means a request to inspect or copy Public Records pursuant to Chapter 29, Section 10003 of the Delaware Code, and in accordance with this regulation.

“FOIA Request Form” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“Non-Custodial Records” shall have the meaning set forth in Section 3.6.

“Public Record” shall have the meaning set forth in 29 Del. C. §10002.

“Requesting Party” shall mean the party filing a FOIA Request.

“Secretary” means the Secretary of the Commission, or any employee of the Commission designated by the Secretary and authorized by the Executive Director.

“Third Party Confidential Records” are records submitted to the Commission by a third party under a claim of confidentiality pursuant to the Commission’s Rules of Practice and Procedure, 26 Del. Admin. C. §1001. Records will not be considered Third Party Confidential Records for purpose of this regulation if the records were not identified and submitted as confidential in accordance with the Commission’s Rules of Practice and Procedure, 26 Del. Admin. C. §1001.

2.0 Purpose

The purpose of this regulation is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the Delaware Code, the Freedom of Information Act.

Commission employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Commission and comply with the policy that the public shall have reasonable access to Public Records.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

3.1.1. All FOIA Requests shall be made in writing to the Commission in person, by email, by fax, or online in accordance with the provisions of this regulation. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms

with this regulation shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Commission's website or from the office or website of any state agency.

3.1.2 . All requests shall adequately describe the records sought in sufficient detail to enable the Commission to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Commission in locating the requested records, the Commission may request the Requesting Party to provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

3.2. Method of Filing Request

3.2.1.1. FOIA Requests may be made by mail or in person to the FOIA Coordinator: Mr. Christopher Portante, Community Relations Coordinator, Delaware Department of State, Office of the Secretary, 401 Federal Street, Suite 3, Dover, Delaware 19901; telephone number (302) 857-3038, by email to christopher.portante@state.de.us, by fax at (302) 739-3811; or via online request form, which may be found on the Commission's home page at <http://depsec.delaware.gov/default.shtml>.

3.3. FOIA Coordinator

3.3.1. The Secretary shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Commission's responses. The FOIA Coordinator shall be identified on the Commission's website. The FOIA Coordinator may designate other Commission employees to perform specific duties and functions hereunder.

3.3.2. The FOIA Coordinator or his or her designee, working in cooperation with other Commission employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought and to assist the Commission in locating and providing the requested records. The FOIA Coordinator or his or her designee will also work to foster cooperation between the Commission and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Commission may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Commission shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3. In addition to the foregoing responsibilities, beginning on January 1, 2012, the FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Commission received the Request; the Commission's response deadline pursuant to §3.4; the date of the Commission's response pursuant to §3.4 (including the reasons for any extension pursuant to §3.4.1); the names, contact information, and dates of correspondence with individuals contacted in connection with requests pursuant to §§3.3.2, 3.5 and 3.6; the dates of review by the Commission pursuant to §3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and administrative fees assessed; and the date of final disposition.

3.4. Agency Response to Requests

3.4.1 The Commission shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after receiving such request, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Commission shall cite one of the reasons why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Commission denies a request in whole or in part, the Commission's response shall indicate the reasons for the denial. The Commission shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Commission from its own records, if doing so can be accomplished by the Commission with reasonable effort. If the Commission determines that it cannot fulfill all or any portion of such request, the Commission shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Commission. Upon receipt from DTI, the Commission may review the email records in accordance with §3.7.

3.5.2 Before requesting DTI to provide email records, the Commission shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel, or modify the request.

3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Commission but that are either not within its possession or cannot otherwise be fulfilled by the Commission with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Commission shall promptly request that the relevant public body provide the Non-Custodial Records to the Commission. Prior to disclosure, records may be reviewed in accordance with §3.7 by the Commission, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Commission.

3.6.2 Before requesting any Non-Custodial Records, the Commission shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel, or modify the request.

3.7 Review by Commission

3.7.1 Prior to disclosure, records may be reviewed by the Commission to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del. C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del. C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Commission

from disclosing or permitting access to Public Records if the Commission determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review

3.8.1 The Commission shall provide reasonable access for reviewing Public Records during its regular business hours.

4.0 Fees

4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1. Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2. Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Documents larger than 24" x 36": \$1.00 per square foot

4.1.1.3. Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

4.2. Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation:

4.2.1.1 identifying records;

4.2.1.2 monitoring file reviews; and

4.2.1.3 generating computer records (electronic or print-outs).

Administrative fees shall not include any cost associated with the Commission's legal review of whether any portion of the requested records is exempt from FOIA. The Commission shall make every effort to ensure that administrative fees are minimized and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Commission shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2. Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Commission shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel, or modify the request.

4.2.3. Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4. When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Commission in its discretion may aggregate staff time for all such requests when computing fees hereunder.

4.3. Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm or microfiche shall be provided free of charge. The charge for microfilm or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4. Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to, DVD, CD, or other electronic storage costs) and administrative costs.

4.5. Payment

4.5.1. The Commission may require all fees to be paid prior to performing any service under this regulation.

4.5.2. The Commission may require pre-payment of all fees prior to fulfilling any request for records under this regulation.

4.6. Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Commission in preparing the requested records. The Commission shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0. Applicability

5.1. To the extent any provision in this regulation conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

6.0. Requests Seeking Non-Public and Third Party Confidential Records.

6.1 Records identified as non-public pursuant to 29 Del. C. §10002(g) shall not be produced in response to a FOIA Request. In addition, the following procedures shall apply to requests seeking records that the Commission believes are non-public because they are Third Party Confidential Records:

6.1.1 Upon receipt of a request seeking Third Party Confidential Records, the Commission will notify the Affected Party in writing of the request and identify the party making the request and the Third Party Confidential Records sought.

6.1.2 Within ten (10) days of receipt of the notice required by Rule 6.1.1, the Affected Party shall advise the Commission in writing whether it opposes the disclosure of the Third Party Confidential Records. If the Commission is not so notified, it will produce the Third Party Confidential Records.

6.1.3 If the Affected Party timely objects to the production of the Third Party Confidential Records, the Affected Party shall provide in writing, at the time of notifying the Commission of its objection, information sufficient to justify a claim of confidentiality under FOIA. Such information shall include, but not be limited to, the following:

6.1.3.1 Any measures taken by the Affected Party to guard against disclosure of the Third Party Confidential Records;

6.1.3.2 Whether the Third Party Confidential Records have been intentionally or inadvertently disclosed since their submission to the Commission and any actions or precautions taken in connection with such disclosure; and

6.1.3.3 Whether the disclosure of the Third Party Confidential Records would result in substantial or harmful effects on the Affected Party's commercial or financial interests, and if so:

6.1.3.3.1 what those harmful effects would be;

6.1.3.3.2 why the effects should be viewed as substantial; and

6.1.3.3.3 how the disclosure would cause such harmful effects.

6.1.4 The Affected Party bears the burden of establishing confidentiality under FOIA. A unilateral assertion that records are confidential or otherwise not subject to a FOIA request is insufficient to support a finding that requested information is in fact non-public.

6.1.5 Within a reasonable time after receiving the Affected Party's response filed pursuant to 6.1.3, the Commission shall determine whether the Third Party Confidential Documents should be produced pursuant to FOIA despite the Affected Party's claim of confidentiality. Written notice of the Commission's decision shall be provided to the party making the FOIA request and the Affected Party.

7.0. Effective Date

This policy shall become effective immediately.

EXHIBIT B

Public Service Commission

1008 Regulations Governing Requests Made Pursuant to the Freedom of Information Act

1.0 Definitions

Capitalized terms not otherwise defined in these regulations shall have the meanings given those terms in FOIA and the Commission's Rules of Practice and Procedure (see 26 **DE Admin. Code** §1001), as applicable.

"Affected Party" means any party who has submitted Third Party Confidential Records.

"FOIA" shall mean the Freedom of Information Act, 29 **Del. C.**, Ch. 100, as may be amended from time to time.

"Third Party Confidential Records" are records submitted to the Commission by a third party under a claim of confidentiality pursuant to the Commission's Rules of Practice and Procedure. Records will not be considered Third Party Confidential Records for purpose of these regulations if the records were not identified and submitted as confidential in accordance with the Commission's Rules of Practice and Procedure.

2.0 General

2.1 The Commission promulgates these regulations, pursuant to 29 **Del.C.** §10003(b), to establish procedures regarding requests made to the Commission pursuant to FOIA for public records in the possession of the Commission. The Commission is under no obligation under FOIA to answer written questions, analyze data, create documents not already in its possession or compile information in a record. FOIA requests shall be made for the purposes of obtaining existing documents in the Commission's possession.

2.2 Consistent with FOIA, it is the Commission's desire that the public have access to the Commission's public records under reasonable terms and conditions. These regulations establish reasonable fees for compiling and photo-copying public records and provide instructions regarding how to make FOIA requests with the Commission and how such requests will be processed.

2.3 Commission staff may perform the duties of the Commission under these regulations.

3.0 Requests

3.1 Persons requesting requests for records pursuant to FOIA shall submit an original and one copy of a written letter request indicating that the request is being made pursuant to FOIA. The written request shall be addressed to:

Delaware Public Service Commission

Attn.: Commission Secretary

861 Silver Lake Boulevard

Cannon Building, Suite 100

Dover, Delaware 19904

Requests by electronic mail will not be entertained.

3.2 Requests shall indicate clearly where records are to be sent.

3.3 Requests for records shall describe the records sought in sufficient detail to enable their location with reasonable effort.

3.4 Records may not be produced to any person who has an outstanding balance with the Commission relating to a prior FOIA request.

3.5 Requests that do not comply with these regulations may be denied in whole or in part.

4.0 Responses

4.1 The Commission shall respond to a request made under these regulations within fifteen (15) business days of receipt of the request. Such response may include the requested records, deny the request in whole or in part, or indicate when the requested records will be produced and under what, if any, conditions. A response to a request for Third Party Confidential Records shall be made pursuant to the procedures and the timeframe set forth in Rule 6 below.

4.2 Additional time shall be allowed beyond the fifteen business days provided for in Section 4.1 when a request is for voluminous records, requires legal advice or a record is in storage or archived. In any of these cases, the requestor shall be advised by the custodian of a record, within fifteen business days after the custodian of a record receives the request, stating the need for additional time. Such additional time provided for in this section 4.2 shall be reasonable.

4.3 To the extent a FOIA request seeks documents that the Commission, in its sole discretion, may consider voluminous, the Commission may require that the party requesting the records inspect and copy the records at the Commission's office during its regular business hours. Alternatively, the Commission may, in its sole discretion, employ the assistance of an outside vendor to copy the requested records, in which case the requester will be required to pay the copy charges assessed by such vendor.

14 DE Reg. 1397 (06/01/11)

5.0 Fees for Photocopying Performed by Commission and Administrative Fees.

5.1 Administrative Fees. The Commission may assess administrative fees incurred in responding to a FOIA request as set forth herein. Such fees include:

5.1.1 Staff time associated with processing FOIA requests, including, but not limited to, time spent locating and reviewing files, monitoring file reviews, and generating computer records.

5.1.2 Administrative fees will be billed per quarter hour and will be billed at the current, hourly pay grade rate of the personnel performing the service. Administrative charges will be in addition to any copying charges.

5.2 Photocopy Charges

5.2.1 Standard Size Copies. The charge for copying standard size black and white public records shall be \$0.50 per printed page (i.e., single-sided copies are \$0.50 and double-sided copies are \$1.00). The charge for color copies or printouts shall be \$2.00 per page. This charge applies to copies on the following standard paper sizes: 8.5 x 11; 8.5 x 14; and 11 x 17.

5.2.2 Oversized Copies/Printouts. The charge for copying oversized public records (including but not limited to blueprints, engineering drawings, GIS printouts and maps) shall be as follows: 24 x 26: \$2.00 each; 24 x 36: \$3.00 each; 30 x 42: \$5.00 each; and all larger documents: \$1.00 per square foot. An additional charge of \$1.50 per page will be assessed to color copies.

5.2.3 Microfilm/Microfiche Printouts. Microfilm and/or microfiche printouts made by Commission personnel and printed on standard sized paper will be \$1.00 per page.

5.2.4 Electronically-Generated Records. Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies, including but not limited to magnetic tape, diskette or compact disc costs and third-party costs.

5.3 Payment for copies and/or administrative charges are due at the time the records are released.

6.0 Requests Seeking Non-Public and Third Party Confidential Records.

6.1 Records identified as non-public pursuant to 29 **Del.C.** §10002(g) shall not be produced in response to a FOIA request. In addition, the following procedures shall apply to requests seeking records that the Commission believes are non-public because they are Third Party Confidential Records:

6.1.1 Upon receipt of a request seeking Third Party Confidential Records, the Commission will notify the Affected Party in writing of the request, identifying the party making the request and the Third Party Confidential Records sought.

6.1.2 Within ten (10) days of receipt of the notice required by Rule 6.1, the Affected Party shall advise the Commission in writing whether it opposes the disclosure of the Third Party Confidential Records. If the Commission is not so notified, it will produce the Third Party Confidential Records.

6.1.3 If the Affected Party timely objects to the production of the Third Party Confidential Records, the Affected Party shall, at the time of notifying the Commission of its objection, provide in writing information sufficient to justify a claim of confidentiality under FOIA. Such information shall include, but not be limited to, the following:

6.1.3.1 Any measures taken by the Affected Party to guard against disclosure of the Third Party Confidential Records;

6.1.3.2 Whether the Third Party Confidential Records have been intentionally or inadvertently disclosed since their submission to the Commission and any actions or precautions taken in connection with such disclosure; and

6.1.3.3 Whether the disclosure of the Third Party Confidential Records would result in substantial or harmful effects on the Affected Party's commercial or financial interests, and if so: (a) what those harmful effects would be; (b) why the effects should be viewed as substantial; and (c) how the disclosure would cause such harmful effects.

6.1.4 The Affected Party bears the burden of establishing confidentiality under FOIA. A unilateral assertion that records are confidential or otherwise not subject to a FOIA request is insufficient to support a finding that requested information is in fact non-public.

6.1.5 Within a reasonable time after receiving the Affected Party's response filed pursuant to Rule 5.1.2, the Commission shall determine whether the Third Party Confidential Documents should be produced pursuant to FOIA despite the Affected Party's claim of confidentiality. Written notice of the Commission's decision shall be provided to the party making the FOIA request and the Affected Party.

7.0 Appeals of Commission's Decision.

As authorized by 29 **Del.C.** §10005, any person denied access to requested records may (i) bring suit in a court of competent jurisdiction within sixty (60) days of such denial or (ii) petition the Attorney General to determine whether a violation of FOIA has occurred. The procedures applicable to such petition are provided in 29 **Del.C.** §10005.

14 DE Reg. 584 (12/01/10)

"E X H I B I T" C

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE ADOPTION OF)
RULES AND REGULATIONS GOVERNING THE)
PROCEDURE FOR INSPECTION AND COPYING)
OF PUBLIC RECORDS UNDER THE FREEDOM) PSC Regulation Docket No.
OF INFORMATION ACT, 29 Del C. §§) 62
10001-10006 (OPENED AUGUST 17, 2010;)
REOPENED MAY 10, 2011; REOPENED)
NOVEMBER 8, 2011)

**NOTICE OF RULE-MAKING: REVISED PROPOSED REGULATIONS
GOVERNING REQUESTS MADE PURSUANT TO THE FREEDOM OF INFORMATION ACT**

By PSC Order No. 7868 dated November 18, 2010, the Delaware Public Service Commission (the "Commission") adopted *Regulations Governing Requests Made Pursuant to the Freedom of Information Act, 29 Del. C. §§10001-10006* (the "FOIA Regulations"). These FOIA Regulations became effective on December 1, 2010. On October 20, 2011, the Governor signed Executive Order Number Thirty-One, which requires all Delaware executive branch agencies to implement, promulgate, and adopt a new uniform policy for addressing requests made under the Delaware Freedom of Information Act, 29 Del. C. §§10001-10006 ("FOIA"), and to rescind any existing FOIA policy no later than February 1, 2012. Because the Commission's existing FOIA Regulations are not substantially compatible with the new uniform policy required by Executive Order Number Thirty-One, the Commission now proposes to repeal the existing FOIA Regulations and replace them

with the new FOIA Regulations substantially in the form attached as "Exhibit A."

You can review PSC Order No. 8072 (dated November 8, 2011) and the proposed new Regulations in the December 1, 2011, issue of the Delaware Register of Regulations. You can also review the Order and the proposed FOIA Regulations at the Commission's Internet website located at <http://depsec.delaware.gov>. Written copies of the Order and proposed FOIA Regulations can be obtained at the Commission's office at the address located below.

The Commission now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed repeal of the existing FOIA Regulations and the adoption of the proposed new FOIA Regulations. **If you want to file any such materials, you should submit an original and ten copies of such written documents on or before December 31, 2011.** You should file such materials with the Commission at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904
Attn: Reg. Docket. No. 62

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to alisa.bentley@state.de.us.

If you are disabled and need assistance or help to participate in making comments to the proposed FOIA Regulations, please contact the Commission to discuss such assistance. If you want more information or have questions, you can contact the Commission about the matter at (800) 282-8574 (toll-free in Delaware) or (302) 736-7500. Inquiries can also be sent by Internet e-mail addressed to alisa.bentley@state.de.us.