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Railbelt Reliability Council		

CONFIDENTIAL DOCUMENTS AND ACCESS RULE

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1.0 PURPOSE AND SCOPE

Public access to RRC documents, as defined in the Documents Retention and Access Rule (ER3), is essential to the collaboration, transparency, and openness that underpin RRC processes. Pursuant to 3 Alaska Administrative Code (AAC) 46.460(a)(4)(B), there is a presumption that all documents received by the RRC are public unless the document is classified in whole or in part as confidential under 3 AAC 48.040(b) or for good cause pursuant to Section 4.1 – Classification of Documents as Confidential of this rule.

2.0 DEFINITIONS

Term	Definition
Approved Participant	A member of the public approved to participate under the Public Participation in a Development Rule (ER5)
CEO	RRC chief executive officer
CMEP	Compliance Monitoring and Enforcement Program (ER2)

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Term	Definition
Directors	Members of the RRC Board of Directors
NDA	Nondisclosure agreement
RCO	RRC regulatory and compliance officer, as designated by the CEO
RRC	Railbelt Reliability Council

3.0 RESPONSIBILITIES OF KEY PERSONNEL

Title	Responsibilities
CEO	The RRC chief executive officer oversees compliance with this rule.
RCO	The RCO is responsible for carrying out this rule.

4.0 CLASSIFICATION AND DESIGNATION OF DOCUMENTS

All documents retained by the RRC shall be public unless the RRC classifies the document or certain information contained therein as confidential. Any documents or portions thereof classified confidential will be designated pursuant to Section 4.2 – Document Designation and Access. Each document in the RRC’s possession that is not public shall bear the applicable designation from Section 4.2 – Document Designation and Access. Portions of public documents that have been redacted will include a designation adjacent to each redaction.

The RRC may classify RRC-generated documents or portions thereof as confidential and apply the appropriate designation(s) to such documents pursuant to this rule and applicable law.

The RRC on its own may, but is not required to, classify documents or portions of documents received by the RRC from third parties as confidential. The RRC is not liable for the failure of a third party to request confidential treatment of documents submitted to the RRC.

4.1 Classification of Documents as Confidential

The RRC RCO, as designated by the CEO, may classify a document as confidential pursuant to 3 AAC 48.040(b) or upon a finding that good cause exists. Good cause to classify a document as confidential requires a showing that (1) disclosure of the document to the public might competitively or financially disadvantage or harm the person with the confidentiality interest or might reveal a trade secret; and (2) the need for confidentiality outweighs the public interest in disclosure. The RRC will give the presumption that documents are public all due consideration and will limit classification to specific portions of a document to the greatest extent possible to allow a redacted version of the document to remain public.

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When determining whether to classify a document as confidential, public interest in disclosure may be determined based on:

1. Whether disclosure would enable more effective public participation in or oversight of RRC activities, including whether disclosure would promote transparency and open discussion of public affairs or would enhance RRC accountability, such as providing the reasoning for certain decisions and augmenting understanding of the development or interpretation of proposed and approved plans, rules, tariff, reliability standards, and standards;
2. Whether the information sheds light on the RRC's performance of its duties or wrongdoing;
3. Whether the information will facilitate lowest reasonable costs or greatest value to ratepayers;
4. Whether the information could inform policy work of other organizations or contribute to innovation and the facilitation of research, such as statistical information;
5. Whether the information relates to a program or initiative that was the subject of a media release or highlighted in a corporate plan or plans that underpin achievement of the RRC's strategic and operational goals;
6. Whether the information promotes community well-being, such as revealing environmental or health risks or other measures relating to public health and safety (e.g., Occupational Safety and Health Administration) standards; and
7. Other public interest considerations as applicable.

The following considerations are not relevant in determining good cause:

1. Potential embarrassment to the RRC or a Registered Entity;
2. The fact that the information is technical or could be difficult to understand;
3. The likelihood that the information will be seen out of context, misunderstood, or misinterpreted; or
4. The likelihood that disclosure will result in confusion or unnecessary debate.

4.2 Document Designation and Access

All nonpublic documents retained by the RRC and classified confidential shall be designated as provided in this section. The designation shall be marked clearly on every page of the document – for example, "CONFIDENTIAL – RESTRICTED DISTRIBUTION" .. Labeling, storage, and distribution of nonpublic documents will be managed by the RCO to ensure distribution is appropriately restricted.

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1. "Confidential" shall be the designation for any documents that are classified as confidential. Such documents may be viewed by RRC employees and Directors; Approved Participants who require access to the document(s) and have signed a confidentiality agreement; and contractors who require access to the document(s) and have signed a confidentiality agreement.
2. "Confidential – Restricted Distribution" shall be the designation for any documents classified as confidential that the RCO determines should only be accessible to certain employees, Directors, contractors, and/or Approved Participants due to the nature of the confidential information contained therein, including but not limited to:
 - a. Proprietary information or information that could cause competitive harm;
 - b. Critical Energy Infrastructure Information as defined in 18 Code of Federal Regulations 388.113(c);
 - c. Cybersecurity Incident Information as defined in 3 AAC 48.040(b)(14);
 - d. Personal information, including personnel matters and medical or other personal information that, under governing personnel practices and the laws of Alaska, is not public;
 - e. Information protected by the attorney-client privilege or attorney work product prepared for the RRC; and
 - f. Information collected or generated pursuant to an internal investigation into an allegation of misconduct under the Conduct Compliance Rule (ER12) or the Discrimination & Harassment Policy (P-01).
3. "Confidential – CMEP" shall be the designation for any documents submitted to or copied by the RRC during an audit, review, or investigation in connection with any formal or informal proceeding for a compliance monitoring and enforcement action under the RRC CMEP Rule (ER2). This designation shall apply automatically to all applicable documents requested during an action under the CMEP Rule (ER2). Documents designed Confidential – CMEP may only be viewed by the CEO, Directors, and RRC employees or contractors directly involved in the proceeding.

5.0 PROCESS TO SEEK CONFIDENTIAL TREATMENT OF INFORMATION

Anyone seeking confidential treatment of document(s) submitted to the RRC may submit a petition for confidential treatment. All petitions for confidential treatment will be posted to the RRC website as public notice of the request. Pending the RRC decision on a petition, the document(s) identified in the request will be treated as confidential. The person seeking confidential treatment may provide

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notification and withdraw document(s) at any point during the petition process; in this instance, public notice will be posted to the RRC website. The process to petition for confidential treatment of a document is detailed below.

5.1 Filing a Petition for Confidential Treatment

A person seeking confidential treatment of documents filed with, served upon, or otherwise made available to the RRC may file the following with the RRC:

1. A petition for confidential treatment identifying the document(s) for which confidential treatment is requested (including any specific information within a document if redaction is possible) and the proposed designation(s) from Section 4.2 – Document Designation and Access, including any restricted distribution proposed, and setting out good cause or the basis in applicable law for the requested confidential treatment; and
2. A printed or electronic copy of the document(s) for which confidential treatment is sought must be delivered to the RRC when the petition is filed. Electronic copies should be provided via flash drive or CD and accompanied by a cover sheet describing the contents of the flash drive or CD. The first page of printed document(s) or the cover sheet accompanying documents submitted electronically should be marked with the proposed confidentiality designation. Printed or electronic copies should be provided in a sealed envelope marked "confidential" and accompanied by a copy of the petition for confidential treatment.

5.2 Public Comments and Response

Any person may submit public comments regarding a petition filed under Section 5.1 –Filing a Petition for Confidential Treatment with the RRC within ten (10) business days of the date public notice of the petition is posted to the RRC website. Instructions for providing public comments will be included in the public notice.

The person seeking confidential treatment may submit a response to any public comments received by the RRC within ten (10) business days after the deadline closes for filing public comments with the RRC. All public comments and any response will be posted to the RRC website.

5.3 RRC Decision

The RCO will review the petition and any public comments and responses. Within sixty (60) calendar days of the date a petition is filed, the RCO must issue a decision granting, partially granting, or denying a petition to classify a document as confidential. The decision must also grant, partially grant, or deny a

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request for restricted distribution, if any. The decision must address how the RCO considered the public interest in disclosure. The decision will be posted to the RRC website.

If the RCO determines that only specific information contained in a document is confidential and may be redacted, the RCO shall include in the notice a request that the petitioner provide the RRC with a redacted version of the document consistent with the RRC decision. The redacted document will be public.

Within ten (10) business days following receipt of notice of a denial, the petitioner may notify the RRC in writing that it is withdrawing the document, the notification of which will be posted on the RRC website. If notice of withdrawal of the document is not received by the RRC within the ten (10) business-day deadline, the document will be retained by the RRC and treated as public.

6.0 DOCUMENTS ELIGIBLE FOR RRC NONDISCLOSURE AGREEMENT

To ensure that the RRC is able to carry out its responsibilities, the RRC may enter into NDAs with parties from whom the RRC has requested documents that contain information which may be confidential under 3 AAC 48.040(b) or other applicable law. Prior to executing an NDA, the RRC will issue notice of its intent to execute the NDA on its website and provide an opportunity for public comment. The NDA will not exceed the scope of the RRC's authority under state law. An NDA shall not be executed without the CEO's approval. If the RRC determines that any documents received under an NDA do not constitute confidential information under this rule or applicable law, the RRC will return the document(s) to the providing party. A list of executed NDAs will be maintained on the RRC website. The RRC will have an NDA template.

7.0 ACCESS TO CONFIDENTIAL DOCUMENTS

Any person, including RRC employees, directors, contractors, and Approved Participants, may request access to confidential documents maintained by the RRC or to reclassify a confidential document as public. Such requests may be accepted, partially accepted, or denied as explained in this section.

7.1 Request for Access to or Reclassification of Confidential Documents

A request for access to documents that have been classified as confidential or to reclassify confidential documents as public may be submitted via the form available on the RRC's website, by electronic mail, or on paper. The request must include the following:

1. The requestor's name and contact information;

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2. A list or description of the confidential document(s) the requestor seeks access to or seeks to reclassify as public;
3. A description of the requestor's membership (if any) on an RRC committee;
4. Confirmation that the requestor is not involved in active litigation against the RRC;
5. Indication of whether the requestor would like access to or reclassification of the document requested, or both;
6. Whether the requestor is willing to enter into a confidentiality agreement; and
7. If applicable, an explanation of how the requested reclassification would not result in competitive disadvantage or harm, and why the request is in the public interest.

The request may include any other information the requestor believes to be relevant, such as a statement regarding the purpose for which the requestor seeks access to a confidential document(s).

7.2 RRC Determination of Access or Reclassification

After a request for access to or reclassification of confidential documents is received:

1. The RCO will review the request for completeness, identify the confidential document(s) requested, and, as applicable, provide notice to the person(s) who submitted the confidential document(s) to the RRC that a request for access to the document(s) or to make the documents public has been received. The request will be published on the RRC website;
2. Within ten (10) business days of receiving that notice, the person(s) who submitted the requested confidential document(s) may provide a written statement to the RRC regarding the request for access or reclassification. The statement will be published on the RRC website;
3. The RCO will determine whether full, partial, or no release of the requested confidential document(s) should occur and whether full or partial release should be conditioned upon the requestor executing a confidentiality agreement. The RCO's written determination will address the public interest in disclosure and whether good cause exists to continue to treat the document(s) as confidential or whether the documents are otherwise eligible under applicable law for classification as confidential. The written determination will be published on the RRC website;
4. If the RCO determines that any portion of a confidential document provided to the RRC by a third party should be made public, the RCO will notify such person(s) and provide seven (7)

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business days for such person(s) to request withdrawal of the document. The RRC will publish a request for withdrawal on the RRC website; and

5. If a request for withdrawal is not submitted within the seven (7) business day period, the document or portion thereof will be provided to the requestor and reclassified as public.

7.3 Access to Confidential Documents by Approved Participants

The RRC may provide access to confidential documents or information contained therein to certain members of the public approved as participants in a development (Approved Participants) in accordance with the Public Participation in a Development Rule (ER5) if deemed necessary and appropriate. The process for providing access to confidential documents or information to Approved Participants is as follows:

1. An Approved Participant requiring access to confidential information necessary for their participation may request access using the process in Section 7.1 – Request for Access to or Reclassification of Confidential Documents;
2. The RCO will review the request using the process in Section 7.2 – RRC Determination of Access or Reclassification and determine in writing whether such access is necessary to the requestor’s participation in the development and appropriate. The RCO will provide a written determination of any denials or full or partial access. The request and written determination will be posted on the RRC website; and
3. If the RCO grants the request for access in whole or in part, the Approved Participant must execute a confidentiality agreement prior to accessing the confidential documents or information.

7.4 Confidentiality Agreements

All RRC Directors, employees, contractors, and Approved Participants will be required to execute a confidentiality agreement prior to accessing RRC confidential documents. The confidentiality agreement will require agreement not to disclose RRC confidential documents and will provide for liability for any release of RRC confidential documents or information contained therein.

8.0 RECLASSIFICATION OF CONFIDENTIAL DOCUMENTS

The RRC will review documents classified as confidential on a regular basis to confirm that such documents still qualify for confidential treatment. If the RRC determines that a document should be reclassified as public, the RCO will issue notice of its intent to reclassify the document and seek to

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reclassify the document through the process identified in Section 7.1 – Request for Access to or Reclassification of Confidential Documents.

If a providing party concludes that information for which it had sought confidential treatment no longer qualifies for that treatment, the providing party will promptly notify the RRC. The RRC will then reclassify those documents pursuant to this section.

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