

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment ) DOCKET NO. 940003-GU  
(PGA) Clause. ) ORDER NO. PSC-94-0105-CFO-GU  
\_\_\_\_\_ ) ISSUED: January 28, 1994

ORDER ON INDIANTOWN'S REQUEST FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF ITS SEPTEMBER, 1993 SCHEDULES AND INVOICES

Indiantown Gas Company (Indiantown) requests specified confidential treatment of certain line items in its Schedules A-1, A-7P, Firm Transportation System Supply Schedule, E-1/PFS-R, and its vendor invoices for the month of September, 1993. The confidential information is found in Document No. 11335-93.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." It is this Commission's view that a request for specified confidential classification of documents must meet a very high burden. The Company may fulfill its burden by demonstrating that the documents fall into one of the statutory examples set out in Section 366.093, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

The Florida Legislature has determined that "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" is proprietary confidential business information. Section 366.093(3)(d), Florida Statutes.

To establish that material is proprietary confidential business information under Section 366.093(3)(d), Florida Statutes, a utility must demonstrate (1) that the information is contractual data, and (2) that the disclosure of the data would impair the efforts of the utility to contract for goods or services on favorable terms. The Commission has previously recognized that this latter requirement does not necessitate the showing of actual impairment, or the more demanding standard of actual adverse results; instead, it must simply be shown that disclosure is "reasonably likely" to impair the company's contracting for goods or services on favorable terms.

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FPSC-RECORDS/REPORTING

Florida Gas Transmission Company's (FGT) demand and commodity rates for transportation and sales service are set forth in FGT's tariff, which is on file with the Federal Energy Regulatory Commission (FERC) and is a matter of public record. Rates for purchases of gas supplies from persons other than FGT, however, are based on negotiations between Indiantown and third party vendors (vendors). Since "open access" became effective in the FGT system on August 1, 1990, gas supplies became available to Indiantown from vendors other than FGT. Purchases are made by Indiantown at varying prices, depending on the term during which purchases will be made, the quantities involved, and whether the purchase will be made on a firm or interruptible basis. The price at which gas is available to Indiantown can vary from vendor-to-vendor.

Indiantown requests confidential treatment of the information in Schedule A-1 at the following locations: columns A through H of lines 1, 7-9, 12, 28, 30 and 33; columns B through H of lines 2, 13, 23, and 34; columns E, F, G, and H of lines 3 and 24; columns A, C, E, F, G, and H of lines 5, 14, 29, 35, and 48; and columns A, C, E and G of line 26. Indiantown asserts that this is contractual information, the disclosure of which would impair Indiantown's efforts to contract for goods and services on favorable terms. The information shows the price or weighted average price which Indiantown has projected to be paid to its vendors for specific months and period dates. Indiantown states that knowledge of the projected prices to be paid to its vendor(s) during a month would give other competing vendor(s) information with which to potentially or actually control the pricing of gas, by either all quoting a particular price, or by adhering to a price offered by Indiantown's current vendor(s). Even though this information is the weighted average price paid or projected, a vendor which sells gas at a price less than such weighted average cost could refuse in the future to make price concessions previously made, and could refuse to sell at a price less than such weighted average projected price. Indiantown asserts that the end result is reasonably likely to be increased gas prices, and therefore, an increased cost of gas which Indiantown must recover from its ratepayers. I agree. I find the above-mentioned lines on Schedule A-1 to be proprietary confidential business information.

In addition, Indiantown requests confidential treatment of the information in line 1 of columns B, E, G, H, I, J, and L on Schedule A-7P. Indiantown argues that this is contractual data which should be afforded confidential treatment. The information delineates the number of therms projected to be purchased for the

system supply, the number of therms purchased for end use, the commodity costs, the demand costs, and FGT's GRI, ACA, TRC, and TOP costs for purchases by Indiantown from its vendor(s). These figures are algebraic functions of the price per therm paid to vendors in the column entitled "Total Cents Per Therm." Publication of these columns together, or independently, could allow other vendors to derive the purchase price of gas paid by Indiantown to its vendor(s). Indiantown asserts that disclosure of this information would permit other vendors to determine contractual information which, if made public, would impair Indiantown's efforts to contract for goods and services on favorable terms. I agree. I find the above-mentioned lines on Schedule A-7P to be proprietary confidential business information.

Indiantown seeks confidential treatment for the information in the Firm Transportation System Supply Schedule at line 1 of columns A through H, line 11 of columns C through F, and line 12 of columns G and H. Indiantown argues that this is contractual information, the disclosure of which would impair Indiantown's efforts to contract for goods and services on favorable terms. This information includes the gross and net deliveries, both daily and monthly, the weighted average cost, wellhead price, and citygate price. Indiantown asserts that publication of these columns together, or independently, could allow other vendors to derive the purchase price of gas paid by Indiantown to its vendor(s). Indiantown further asserts that the data including producer name and receipt point was made under contract and Indiantown thus considers it to be proprietary information. I agree. I find the above-mentioned lines on the Firm Transportation System Supply Schedule to be proprietary confidential business information.

Further, Indiantown seeks confidential treatment for volume, price, totals, and vendor-specific information on its invoices, except for its invoices from FGT. Indiantown states that the information on the invoices is negotiated individually and is considered proprietary, containing data which includes price and volume specific to Indiantown. Disclosing this information could provide competing suppliers an opportunity to fix their prices to Indiantown based on such information. Indiantown therefore argues that disclosure would impair the efforts of Indiantown to contract goods and services on favorable terms.

I find that by granting the company's confidentiality request, others will be able to calculate the purchased gas adjustment factor without suppliers being able to back-in to the price paid by

ORDER NO. PSC-94-0105-CFO-GU  
DOCKET NO. 940003-GU  
PAGE 4

the company to its vendor(s). I am approving the confidential classification of this information requested for the month of September, 1993.

Indiantown asserts that this material for which it seeks classification is intended to be and is treated by Indiantown and its affiliates as confidential information, and that it has not disclosed this information to others.

Indiantown requests that the proprietary information discussed above be treated as confidential until February 28, 1995. I find that the period requested is necessary to allow Indiantown time to negotiate future gas contracts. If this information were declassified at an earlier date, competitors would have access to information which could adversely affect the ability of Indiantown to negotiate future contracts on favorable terms. I find that this time period of confidential classification will ultimately protect Indiantown and its ratepayers.

It is, therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that the proprietary confidential business information discussed above, as found in Document No. 11335-93 shall be afforded confidential treatment. It is further

ORDERED that the information discussed above shall be afforded confidential treatment until February 28, 1995.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 28th day of January, 1994.

  
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J. TERRY DEASON, Chairman and  
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.