

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 920807-GP  
Determination of Need for ) ORDER NO. PSC-93-1289-CFO-GP  
intrastate Natural Gas Pipeline ) ISSUED: September 7, 1993  
by SunShine Pipeline Partners )  
\_\_\_\_\_ )

ORDER ON REQUESTS FOR CONFIDENTIAL TREATMENT

BY THE COMMISSION:

On March 5, 1993, SunShine Pipeline Partners (SunShine) filed an application for a determination of need for a natural gas transmission pipeline into the State of Florida. The Commission held a hearing on SunShine's Petition on May 10 and 11, 1993, and on July 1, 1993, the Commission issued its final order in the case. In the course of the discovery process prior to the hearing, intervenor Florida Gas Transmission Company (FGT) presented SunShine with a request for production of documents that included two groups of documents that SunShine considered to be confidential business information. SunShine filed a Motion for Protective Order to prevent disclosure of the two groups of documents, and identified them as exhibit A and exhibit B to the motion. SunShine also requested confidential treatment of the documents during the hearing process. The confidential information is contained in Document No. 4152-93.

Shortly thereafter, on April 16, 1993, SunShine and FGT filed a Joint Stipulation on SunShine's Motion for Protective Order and Request for Confidential Treatment. The Stipulation provided that FGT would execute a non-disclosure agreement for discovery purposes, and FGT also agreed not to object to SunShine's request for confidential treatment in the event that the documents were introduced as evidence at the hearing. The prehearing officer approved the parties' Stipulation. The documents in question were not introduced as evidence at the hearing. Therefore, in accordance with Rule 25-22.006, Florida Administrative Code, the documents may be returned to SunShine.

On May 4, 1993, SunShine filed another request for confidential treatment of certain information contained in Late-Filed Exhibit No. 2 to the deposition of SunShine's witness, Mr. Judah L. Rose. The document, identified with Document Number 4993-93, contained information explaining the methodology used to determine whether existing electrical power plants in Florida were technically and economically accessible to the proposed pipeline. SunShine asserted that material included in late-filed exhibit 2 is entitled to confidential treatment because it is information

DOCUMENT NO. 4152-93

09584 012-78

SEP 10 1993

relating to SunShine's specific costs to serve and rates for service to potential customers in the state. The document was introduced into the record of the hearing as part of Mr. Rose's deposition. It was appropriately treated as confidential information during the hearing.

Florida law presumes that documents submitted to governmental agencies shall be public records. This presumption is based on the concept that government should operate in the "sunshine." 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. A party must demonstrate that the documents fall into one of the statutory examples set out in Section 368.108, Florida Statutes, or that the information is proprietary business information, the disclosure of which will cause harm to the utility's business operations.

The Florida Legislature has determined that "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" is proprietary confidential business information. Section 368.108(3)(e), Florida Statutes. To establish that material is proprietary confidential business information, a party must demonstrate (1) that the information relates to competitive interests, and (2) that the disclosure of the data would impair the competitive business of the party. 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.

It appears that the exhibit contains proprietary business information relating to SunShine's costs and derived rates to provide service in its competitive natural gas transmission business. If the information is disclosed to SunShine's competitors and potential customers, SunShine's competitors would gain an unfair advantage in competing for potential customers, and SunShine would be hindered in its ability to bargain for better terms and conditions of service with prospective customers.

In consideration of the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Document No. 4152-93 shall be returned to SunShine Pipeline Partners. It is further

ORDERED that SunShine Pipeline Partners' Request for Confidential Treatment of Document No. 4993-93 is granted. It is further

ORDERED that pursuant to Section 368.108, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire eighteen (18) months form the date of issuance of this Order, in the absence of a renewed request for confidentiality. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality period.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 7th day of September, 1993.

  
SUSAN F. CLARK, Commissioner and  
Prehearing Officer

( S E A L )  
MCB:bmi

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by

ORDER NO. PSC-93-1289-CFO-GP  
DOCKET NO. 920807-GP  
PAGE 4

filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.