

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 950003-GU
(PGA True-Up)) ORDER NO. PSC-95-1077-CFO-GU
_____) ISSUED: August 29, 1995

ORDER REGARDING FPUC'S REQUEST FOR CONFIDENTIAL TREATMENT

On July 27, 1995, Florida Public Utilities Company (FPUC) filed a request for specified confidential treatment of certain line items in its Schedules A-3, A-4, Gas Invoices, Traded Imbalances, and Off-Systems Sales Invoices submitted as part of its Purchased Gas Adjustment (PGA) filing for the month of June 1995. The confidential information is found in Document No. 07163-95.

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." A request for specified confidential classification of documents must comply with Section 366.093, Florida Statutes. The Company may fulfill its burden of compliance by demonstrating that the documents fall into one of the statutory examples 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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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 which is a matter of public record. Rates for purchases of gas supplies from persons other than FGT, however, are based on negotiations between FPUC and third party vendors (vendors). Since "open access" became effective in the FGT system on August 1, 1990, gas supplies became available to FPUC from vendors other than FGT. Purchases are made by FPUC 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 FPUC can vary from vendor-to-vendor.

FPUC requests confidential classification of the information on Schedule A-3, Transportation Purchases System Supply and End Use, in lines 1 - 11 of the columns "Purchased From", "System Supply", "End Use", "Total Purchased", "Commodity Cost/Third Party", "Other Charge ACA/GRI/Fuel", and "Total Cents Per Therm". The information in these columns represents gas supply packages purchased from suppliers other than Florida Gas Transmission Company. This data contains the names of other FPUC gas suppliers, information on the volume purchased, and the price paid for gas from each supplier. FPUC argues that the release of this information would be detrimental to FPUC because it would provide competing suppliers with information which would give them an advantage over FPUC and would make suppliers less likely to make price concessions. In addition, FPUC alleges that release of the information found in the "Other Charge ACA/GRI/Fuel" column would allow a competitor to compute FPUC's cost of gas by supplier. Clearly, the release of the cited information in Schedule A-3 "would impair the efforts of [Florida Public Utilities Company] to contract for goods or services on favorable terms." Section 366.093 (3)(d), Florida Statutes. This information shall, therefore, be granted confidential treatment.

FPUC also requests confidential classification of the information on Schedule A-4, Florida Gas Transmission Firm Transportation System Supply, in lines 1 - 13 in the columns "Producer/Supplier", "Receipt Point", "Gross Amount", "Net Amount", "Monthly Gross", "Monthly Net", "Wellhead Price", and "Citygate Price". This information also represents gas supply packages which FPUC purchased from suppliers other than Florida Gas Transmission Company, and releasing the information may result in higher gas costs to FPUC's customers. The information includes the persons from whom FPUC purchases gas supplies, which would provide competitors with a list of FPUC suppliers. The information also includes the volumes purchased and costs by gas supply source,

which would allow others to compete with FPUC for the same suppliers. Those suppliers would then be less likely to make price concessions. Further, the data in "Citygate Price" is a function of the cost of gas purchased by FPUC from its suppliers. Release of such information would enable a third party to compute FPUC's cost of gas by supplier. FPUC argues that this is contractual data, the disclosure of which could impair FPUC's ability to contract for goods and services on favorable terms. This argument is persuasive, and, therefore, this information shall be given confidential treatment.

In addition, FPUC requests confidential treatment of the information in Lines 1 - 80, of Pages 16 - 21 of its June 1995 Gas Purchase Invoices and Related Transactions. FPUC notes that it is necessary to keep the entire invoice confidential because any person familiar with the format, fonts and/or type sizes used by each gas supplier could determine the identity of FPUC's suppliers. FPUC argues that release of the gas suppliers' identities, account numbers, invoice numbers, dates, payment due dates, payment instructions, description of services, pipeline name, receipt point, meter numbers, volumes, amounts, price computation methodologies, and all subtotals and totals would provide competing gas suppliers with an advantage over FPUC, which would likely lead to the reduced likelihood that suppliers would make price concessions. As such, the release of this information could lead to inflated prices from gas suppliers and increased costs for customers. In addition, FPUC argues that it is contractually obligated to keep the material terms confidential of its gas supply agreements and transactions. This argument is also persuasive, and, therefore, this information shall be given confidential treatment.

In addition, FPUC requests confidential treatment of the information in the June 1995 Traded Imbalances and/or Off-Systems Sales Invoices, on Page 22, Lines 10 - 13 of Columns A and B, Line 15 of Column C, Lines 19 - 20, 22 and 26 of Columns E - G, Line 24 of Columns E and G, Line 28 of Column G, and Lines 30 and 32 of Columns B - E. This information represents revenue received by FPUC and credited to its PGA for imbalances traded and as an alternative to Florida Gas Transmission Company's relinquishment program. FPUC argues that release of this information would put future transactions of this type at risk because other firm capacity holders could ascertain the customers involved in this transaction. FPUC argues that this, "would impair the efforts of [Florida Public Utilities Company] to contract for goods or services on favorable terms." Section 366.093 (3) (d), Florida Statutes. Again, this is a persuasive argument, and this information shall, therefore, be granted confidential treatment.

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FPUC asserts that this information is treated by FPUC as proprietary information and that it has not been publicly disclosed.

FPUC requests that the information for which it seeks confidential classification not be declassified for a period of eighteen months, as allowed by Section 366.093(4), Florida Statutes. FPUC contends that the time period requested is necessary to allow FPUC to negotiate future gas purchase contracts with its suppliers/competitors (and other customers having access to information which would adversely affect the ability of FPUC to negotiate such future contracts) on favorable terms. The time period requested is appropriate.

It is, therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the proprietary confidential business information discussed above, as found in Document No. 07163-95, shall be afforded confidential treatment. It is further

ORDERED that this information shall be classified as proprietary confidential business information for eighteen months from the date of this order. It is further

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

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 29th day of August, 1995.



J. TERRY DEASON, Commissioner and
Prehearing Officer

(S E A L)

VDJ

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.