

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 930003-GU
(PGA) Clause.) ORDER NO. PSC-93-0927-CFO-GU
_____) ISSUED: June 21, 1993

ORDER REGARDING FPU'S REQUEST FOR CONFIDENTIAL TREATMENT
OF ITS MARCH, 1993 SCHEDULES AND INVOICES

On April 26, 1993, Florida Public Utilities Company (FPU) filed a request for specified confidential treatment of certain line items in its Schedule A-7P, a Firm Transportation System Supply Worksheet, and gas purchase invoices for the month of March. The confidential information is found in Document No. 4543-93.

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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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 FPU and third party vendors (vendors). Since "open access" became effective in the FGT system on August 1, 1990, gas supplies became available to FPU from vendors other than FGT. Purchases are made by FPU 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 FPU can vary from vendor-to-vendor.

FPU requests confidential classification of the information on Schedule A7-P in lines 1-15 in the columns "Purchased From", "System Supply", "Total Purchased", "Commodity Cost/Third Party", "Other Charge ACA/GRI/Fuel", and "Total Cents Per Therm". This information represents gas supply packages which FPU negotiated with suppliers, and releasing the information may result in higher gas costs to FPU's customers. The information includes the persons from whom FPU purchases gas supplies, which would provide competitors with a list of FPU suppliers. The information also includes the volumes purchased and costs by gas supply source, which would allow others to compete with FPU for the same suppliers. Those suppliers would then be less likely to make price concessions. Further, the data in "Other Charge ACA/GRI/Fuel" is a function of the cost of gas purchased by FPU from its suppliers. Release of such information would enable a third party to compute FPU's cost of gas by supplier. FPU argues that this is contractual data, the disclosure of which could impair FPU's ability to contract for goods and services on favorable terms. I agree.

FPU also requests confidential classification of lines 1-14 of columns "Producer Name", "Receipt Point", "Gross Amount", "Net Amount", "Monthly Gross", "Monthly Net", "Wellhead Price", and "Citygate Price" on the Firm Transportation System Supply Sheet. This information represents gas supply packages which FPU negotiated with suppliers, and releasing the information may result in higher gas costs to FPU's customers. The information includes the persons from whom FPU purchases gas supplies, which would provide competitors with a list of FPU suppliers. The information also includes the volumes purchased and costs by gas supply source, which would allow others to compete with FPU 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 FPU from its suppliers. Release of such information would enable a third party to compute FPU's cost of gas by supplier. FPU argues that this is contractual data, the disclosure of which could impair FPU's ability to contract for goods and services on favorable terms. I agree.

FPU also requests confidential classification of the material data on all gas supply invoices, with the exception of invoices from FGT. FPU argues that this is contractual data, the disclosure of which could impair FPU's ability to contract for goods and services on favorable terms. This information represents gas supply packages which FPU negotiated with suppliers, and releasing the information may result in higher gas costs to FPU's customers. The information includes the persons from whom FPU purchases gas supplies, which would provide competitors with a list of FPU suppliers. The information also includes the volumes purchased and costs by gas supply source, which would allow others to compete with FPU for the same suppliers. Those suppliers would then be less likely to make price concessions. If this information were made public, FPU asserts that it would be at a disadvantage, because suppliers may expect FPU to pay a higher price because of the suppliers' knowledge of FPU's circumstances. I agree.

Further, FPU petitions to keep every format and style element of all gas supply invoices confidential, except for the FGT invoices. FPU maintains that the identity of an individual gas supplier can be determined by any person familiar with the format, fonts, and/or type sizes particular to that supplier's invoice, so that disclosing the format and style elements could provide competitors with a list of FPU suppliers. FPU argues that this is contractual data, the disclosure of which could impair FPU's ability to contract for goods and services on favorable terms. I agree.

I find that by granting FPU's confidentiality request as discussed above, others will be able to calculate the PGA factor without suppliers being able to back-in to the price paid by the company to its vendor(s). Confidential classification of this information is approved for the month of March, 1993, only.

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

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

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. 4543-93, 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.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 21st day of June, 1993.



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.

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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.