

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment ) DOCKET NO. 930003-GU  
(PGA) Clause. ) ORDER NO. PSC-93-1050-CFO-GU  
\_\_\_\_\_ ) ISSUED: July 19, 1993

ORDER ON CONFIDENTIALITY FOR CHESAPEAKE'S PURCHASED GAS  
PROJECTION FILING FOR PERIOD ENDING SEPTEMBER 30, 1993

On January 6, 1993, Chesapeake Utilities Corporation, Florida Division, ("Chesapeake") filed a request for specified confidential treatment of certain line items in its purchased gas projection filing for the six month period ending September 30, 1993. The purchased gas projection filing, Exhibit AMV-2, consists of Schedules E-1/PTS-O, E-1/PFS-O, E-1/PIS-O, E-1/PTS-R, E-1/PFS-R, E-1/PIS-R, E-2P, E-3P, E-4P, and E-5P. The confidential information is found in Document No. 149-93. The information for which confidential classification is sought is intended to be and is treated by Chesapeake as proprietary and has not been publicly disclosed. Chesapeake has requested specified confidential treatment of the following schedules:

<u>SCHEDULES</u>	<u>DOCUMENT NO.</u>
E-1/PTS-O, E-1/PFS-O E-1/PIS-O, E-1/PTS-R E-1/PFS-R, E-1/PIS-R E-3P	149-93

There is a presumption in the law of the State of Florida 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

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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. We have 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.

Chesapeake argues that lines 8, 27, and 46 for each column of Schedules E-1/PTS-O, E-1/PFS-O, E-1/PIS-O, E-1/PTS-R, E-1/PFS-R, and E-1/PIS-R are contractual information which, if made public, "would impair the efforts of [Chesapeake] to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. The total estimated cost figures for Chesapeake's purchases from its suppliers shown on line 8 can be divided by the estimated therms to be purchased from these suppliers on line 27 to determine the weighted average cost of gas Chesapeake estimates it will pay its suppliers on line 46. Thus, the publication of information on lines 8 and 27 together, or independently, would allow another supplier to derive the purchase price of gas Chesapeake projects it will pay for the period. This knowledge would give other competing suppliers information with which to control the pricing of gas either by all quoting a particular price, or by adhering to a price offered by a current supplier, thus impairing the competitive interests of Chesapeake and its current suppliers. The end result is reasonably likely to be increased gas prices and an increased cost of gas which Chesapeake must recover from its ratepayers. I agree and find the information on lines 8, 27, and 46 for each column of Schedules E-1/PTS-O, E-1/PFS-O, E-1/PIS-O, E-1/PTS-R, E-1/PFS-R, and E-1/PIS-R to be proprietary confidential business information.

Florida Gas Transmissions Company's ("FGT's") current demand and commodity rates for FTS-1 transportation service and G purchases are set forth in FGT's tariff on file with the Federal Energy Regulatory Commission ("FERC") and are a matter of public record. FGT's purchased gas adjustment (which increases or decreases monthly) can have a significant effect on the cost of gas

purchased by Chesapeake from FGT. For purposes of this filing, Chesapeake is required to show the quantities of gas which it estimates it will purchase from FGT during the periods of October 1992 through March 1993 and April 1993 through September 1993, together with the cost of such purchases. FGT's purchased gas adjustment is subject to FERC review and is a matter of public record. However, the rates of gas supplies purchased from persons other than FGT are currently based primarily on negotiations between Chesapeake and third-party suppliers. Since "open access" became effective on the FGT system on August 1, 1990, gas supplies have been (and will continue to be) available to Chesapeake from these other suppliers. Purchases are made by Chesapeake at varying prices depending upon the quantities involved and whether the purchase is made on a firm or interruptible basis. Gas prices can vary from supplier to supplier.

In addition, Chesapeake argues that lines 1-5, 7, 9-13, 20-24, 26, 28-34, 39-43, 45, and 47-52 for each column of Schedules E-1/PTS-O, E-1/PFS-O, E-1/PIS-O, E-1/PTS-R, E-1/PFS-R, and E-1/PIS-R are contractual information which, if made public, "would impair the efforts of [Chesapeake] to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. The information shows the price or average prices Chesapeake projects it will pay gas suppliers during this period. Knowledge of the prices Chesapeake estimates it will pay during this period would give other competing suppliers information with which to potentially or actually control the pricing of gas either by all quoting a particular price or by adhering to a price offered by a current supplier. Chesapeake contends that, even though information is the price or weighted average price Chesapeake estimates it will pay during the period, a supplier that may have been willing to sell gas at a price less than the weighted average cost would likely refuse to do so. Such a supplier would be less likely to make any price concessions which it may have previously made or may be willing to make in the future, and could simply refuse to sell at a price less than the weighted average price. The end result is reasonably likely to be increased gas prices, and, therefore, an increased cost of gas which Chesapeake must recover from its ratepayers. I find, therefore, the information on lines 1-5, 7, 9-13, 20-24, 26, 28-34, 39-43, 45, and 47-52 for each column of Schedules E-1/PTS-O, E-1/PFS-O, E-1/PIS-O, E-1/PTS-R, E-1/PFS-R, and E-1/PIS-R to be proprietary confidential business information.

Also, Chesapeake states that on Schedule E-3P, the information on lines 1-10 of columns entitled "System Supply" through "Total Cents per Therm" regarding the number of therms estimated to be purchased for system supply, as well as the commodity costs/pipeline, demand costs, and commodity costs/supplier for purchases made by Chesapeake from its suppliers are algebraic functions of the price per therm paid to these suppliers in the column entitled "Total Cents Per Therm." Chesapeake contends that the publication of these columns together or independently could allow other suppliers to derive the purchase price of gas Chesapeake estimates it will pay its suppliers. This information, Chesapeake asserts, would permit other suppliers to determine contractual information which, if made public, "would impair the efforts of [Chesapeake] to contract for goods of services on favorable terms." Section 366.093(3)(d), Florida Statutes. I agree.

Chesapeake also maintains that the information on lines 1-10 of the column entitled "Purchased From" on Schedule E-3P shows the identity of Chesapeake's suppliers and, therefore, is contractual and proprietary business information which, if made public, would impair its efforts to contract for goods and services on favorable terms. Chesapeake asserts that the knowledge of the name of its suppliers would give other competing suppliers information which, together with price and quantity information previously discussed, would enable them to control the pricing of gas, thus, impairing the competitive interests of Chesapeake and its current suppliers. I agree.

I find that by granting Chesapeake's confidentiality request as discussed above, others will be able to calculate the purchased gas adjustment factor without suppliers being able to back-in to the price paid by the company to its seller(s). I am approving the confidential information of the purchased gas projection filing only for the six month period ending September 30, 1993.

Chesapeake requests that this information not be declassified until July 5, 1994, pursuant to Section 366.093(4), Florida Statutes. I find that this information shall be held as proprietary confidential business information until this date, and that this will enable Chesapeake to negotiate future gas purchase contracts without other suppliers and competitors having access to information which could impair Chesapeake's ability to negotiate future contracts on favorable terms. I note that this

declassification period will ultimately protect Chesapeake and its customers.

It is, therefore,

ORDERED by the Florida Public Service Commission that the contractual information discussed in the body of this Order concerning the confidential filing of portions of the purchased gas projection filing of Chesapeake Utilities Corporation, Florida Division, for the six month period ending September 30, 1993 is proprietary confidential business information, pursuant to Section 366.093, Florida Statutes. (Document No. 149-93). It is further

ORDERED that this information be classified as proprietary confidential business information until July 5, 1994.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 19th day of July, 1993.

  
J. TERRY DEASON, Commissioner  
and Prehearing Officer

( S E A L )

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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)

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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.