

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment ) DOCKET NO. 940003-GU  
(PGA) Clause. ) ORDER NO. PSC-94-0630-CFO-GU  
\_\_\_\_\_ ) ISSUED: May 24, 1994

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

Chesapeake Utilities Corporation, Florida Division (Chesapeake), filed a request for specified confidential treatment of certain line items in its Schedules A-1, A-7P, Weighted Average Costs of Gas, City Gate Cost of Gas - Firm Transportation, Transportation for Others, and its invoices from third party suppliers for natural gas purchases. Chesapeake asserts that this information for which confidential treatment is sought is treated by the utility and its affiliates as proprietary confidential business information and that it has not been disclosed to others. The confidential information is found in Document No. 11270-93.

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 which is a matter of public record. FGT's purchased gas adjustment, which varies monthly, can have a significant effect on the cost of gas which Chesapeake purchases from FGT. For purposes of this filing the Florida Division is required to show the quantities of gas purchased from FGT during the months of April through July 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, rates for purchases of gas supplies from persons other than FGT are currently based primarily on negotiations between Chesapeake and third-party suppliers. Since "open access" became effective in the FGT system on August 1, 1990, gas supplies became available to Chesapeake from suppliers other than FGT. Purchases are made by Chesapeake 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 Chesapeake can vary from supplier to supplier.

Chesapeake argues that on Schedules A-1/MT-AO, A-1/MF-AO and A-1/MI-AO, the information in lines 8, 13, 27, 34, 46, and 52 for columns labeled "Current Month" (Actual, Revised Estimate, and Difference) and "Period to Date" (Actual, Revised Estimate, and Difference) is contractual information which, if made public, would impair Chesapeake's efforts to contract for goods or services on favorable terms. The total cost figures for Chesapeake's purchases from its suppliers shown in line 8 can be divided by the therms purchased from such suppliers in line 27 to determine the weighted average cost of gas paid by Chesapeake to its suppliers in line 46. Thus, Chesapeake argues that the publication of information in lines 8 and 27, together or independently, would allow another supplier to derive the purchase price of gas Chesapeake paid to its current suppliers for the period. Chesapeake states that the same rationale applies to lines 13, 34, and 52. Total transportation cost shown on line 13 can be divided by the therms purchased on line 34 to determine the City-Gate delivered price of transportation purchases, shown on line 52. The transportation rates charged by FGT are a matter of public record and shown on lines 45 and 47. Thus, the publication of the information on lines 13, 34, and 52 together, or independently, would allow another supplier to derive the purchase price of gas Chesapeake paid to its current suppliers for the period. Chesapeake argues that this knowledge 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, thus impairing the competitive interests of

Chesapeake and its current suppliers. Chesapeake asserts that 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 agree.

Further, Chesapeake argues that on Schedules A-1/MT-AO, A-1/MF-AO and A-1/MI-AO, the information in lines 1, 2, 5-7, 9-12, 20, 21, 25, 26, 28, 31, and 32 for columns "Current Month" (Actual, Revised Estimate and Difference) and "Period to Date" (Actual, Revised Estimate and Difference) is also confidential information which, if made public, would impair the efforts of Chesapeake to contract for goods or services on favorable terms. This information shows the price or average prices which Chesapeake paid to its suppliers for gas during the period. Knowledge of those prices 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. Even though this information is the price or weighted average price, a supplier to Chesapeake which might have been willing to sell gas at a price less than such weighted average cost would likely refuse to do so. Such a supplier would be less likely to make any price concessions which it might have previously made or have been willing to make, and could simply refuse to sell at a price less than such weighted average price. Chesapeake asserts that 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 agree.

Chesapeake argues that on Schedule A-7P(1), lines 1-9, 13, and 20 of columns "System Supply" and "Total Therms Purchased" through "Total Cents Per Therm" contain information regarding the number of therms purchased for system supply and total therms purchased, as well as the commodity costs/pipeline, demand costs, and commodity costs/supplier for purchases by Chesapeake from its suppliers. This information is an algebraic function of the price per therm paid to such suppliers in the column "Total Cents Per Therm." Therefore, the publication of these columns together or independently could allow other suppliers to derive the purchase price of gas paid by Chesapeake to its suppliers. Thus, Chesapeake argues, this information would permit other suppliers to determine contractual information which, if made public, would impair the efforts of Chesapeake to contract for the goods or services on favorable terms. I agree.

In addition, Chesapeake contends that for Schedule A-7P(1), the information in lines 1-9 for the column "Purchased From," shows the identity of Chesapeake's suppliers and is contractual and

proprietary business information which, if made public, would impair Chesapeake's efforts to contract for goods or services on favorable terms. Chesapeake argues that knowledge of the name of Chesapeake's suppliers would give competing suppliers information with which, together with price and quantity information discussed in the preceding paragraph, to potentially or actually control the pricing of gas, thus impairing the competitive interests and/or ability of Chesapeake and its current suppliers. I agree.

Chesapeake requests confidential treatment for information on Schedule A-7P(2) for lines 1-6 of columns "Transported For", "End Use" through "Demand Cost" (End Use, Total Therms Transported, Commodity Cost/Pipeline, and Demand Cost), and "Total Cents Per Therm." Chesapeake argues the disclosure of the identity of Chesapeake's transportation customers would be detrimental to the interests of Chesapeake and its ratepayers, since it would provide brokers, marketers, FGT, and other pipelines with a list of potential bypass candidates. This is information, Chesapeake contends, that relates to its competitive interests, the disclosure of which would impair the competitive business of Chesapeake. The information in the columns "End Use" and "Total Therms Transported" are the monthly volumes transported for its customers. The amounts in the columns "Commodity Cost/Pipeline" and "Demand Cost" are the amounts paid to Chesapeake by its customers for the transportation service. The information contained in the columns "End Use" through "Demand Cost" are algebraic functions of the price per therm transported for customers in the column "Total Cents Per Therm." Chesapeake asserts that the publication of these columns, together or independently, could allow brokers and marketers to determine contractual information which, if made public, would impair the competitive interests of Chesapeake. I agree.

Chesapeake also seeks confidential treatment of the highlighted information on its current and previous months' Invoices, and for the information in lines 1-9 and 13 for all the columns (Producer, Receipt Point, Gross Nominated, Net Delivered, Invoice \$ Amount, Trans. Costs, Total Costs, and WACOG) on the City Gate Cost of Gas - Firm Transportation Schedule. The Company contends that disclosing the identity of its suppliers is contractual and proprietary business information, which, if made public, would impair its efforts to contract for goods or services on favorable terms. Chesapeake argues that competing suppliers could use the name of the suppliers, together with the price and quantity information discussed above, to potentially or actually control the pricing of gas which would impair its competitive interests of Chesapeake and its current suppliers. Chesapeake asserts that the end result is reasonably likely to be an increased

cost of gas which Chesapeake would have to recover from its ratepayers. I agree.

Chesapeake also asserts that the highlighted information on the current and previous months' Invoices, which is summarized on the Weighted Average Cost of Gas Schedule and the City Gate Cost of Gas - Firm Transportation Schedule, shows the FGT assigned points of delivery, actual quantity of gas purchased, and the price per unit of gas purchased. Knowledge of this information, Chesapeake maintains, would also give other competing suppliers the 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 Chesapeake's current suppliers, thus impairing the competitive interests or ability of Chesapeake and its suppliers. Chesapeake asserts that the end result is reasonably likely to be increased gas prices and therefore an increased cost of gas which Chesapeake would have to recover from its ratepayers. I agree.

The Weighted Average Cost of Gas Schedule is Chesapeake's internal accounting source document for recording the monthly cost of gas for financial statement purposes. The information included on this schedule under columns "Billing Determinants" and "Total Dollars" is also included on Schedule A-1/MT-AO, with the exception of lines 29 and 34 on that schedule. Chesapeake requests confidential treatment for the information in lines 1-5 for the columns labeled "Billing Determinants" and "Total Dollars," which summarizes current G demand billing determinants, G purchases, rates, and total dollars paid for this service. Chesapeake argues that this information is contractual information which, if made public, would impair the efforts of Chesapeake to contract for goods and services on favorable terms. I agree.

Also, Chesapeake asserts that the information on lines 12-14.1 of the columns "Billing Determinants", "Total Dollars", and "Firm", lines 14 and 14.1 of the column "Rate", of the Weighted Average Cost of Gas Schedule summarizes its current FTS-1 transportation service including the demand cost, commodity pipeline cost, demand billing determinants and actual therm purchases from suppliers transported under FTS-1 service. This information is also included on Schedule A-1/MT-AO for which confidential treatment has been sought. Chesapeake asserts that the publication of the specified columns on line 14 of the Weighted Average Cost of Gas Schedule, together or independently, would allow another supplier to derive the purchase price of gas that Chesapeake paid its current suppliers for the period. The total dollar figures for Chesapeake's purchases from its suppliers can be divided by the therms purchased from such suppliers to determine the weighted

average cost of gas paid by Chesapeake to its suppliers, all of which is contained in the corresponding columns on line 14. This information, Chesapeake contends, is contractual information which, if made public, would impair Chesapeake's efforts to contract for goods and services on favorable terms. I agree.

Chesapeake further asserts that the current FGT demand and commodity charges for Chesapeake's FTS-1 service, as well as the contract entitlement, are shown on lines 12 and 13. The contract entitlement represents the sum of gas transported by Chesapeake for both system supply and end-use customers under FT agreements. Publication of the information on lines 12, 13 and 14 together or independently, Chesapeake contends, could allow suppliers, brokers, and/or marketers to determine both the level of FTS-1 used to serve current system demand as well as the amount of FTS-1 service that Chesapeake's customers have contracted for under FT agreements. Chesapeake further states that this is contractual information which, if made public, would impair the competitive business of Chesapeake. I agree.

Chesapeake requests confidential treatment of the information on line 14.1 of the columns "Billing Determinants", "Rate", "Total Dollars", and "Firm" on the Weighted Average Cost of Gas Schedule. Chesapeake states that this line is an adjustment which relates to invoices from a previous period. Chesapeake asserts that this information should be confidential for the same reasons as stated in the preceding paragraphs relating to current and previous months' Invoices. For the same reasons as above, I agree.

Further, the information included on lines 23-26, 28, 29 and 31-34 of the column "Billing Determinants" on the Weighted Average Cost of Gas Schedule is a reconciliation of the volume of gas purchased during the month with the volume of gas actually delivered by the pipeline. Publication of these volumes by type of service could allow suppliers, marketers, and producers to determine the amount of gas purchased for system supply as well as the amount of gas transported for others on Chesapeake's system. This is contractual information, Chesapeake contends, which, if made public, would impair its efforts to contract for goods and services on favorable terms as well as impair its competitive business. I agree. Likewise, this information, with the exception of line 29, is also included on Schedule A-1/MT-AO for which confidential treatment has been granted.

By granting Chesapeake's request for confidentiality 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 supplier(s). I am approving the confidential

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classification of this information for the month of September, 1993 only, except as noted above with regard to invoices.

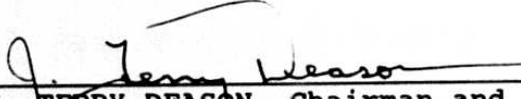
Chesapeake requests that this information not be declassified until April 18, 1995, as provided by Section 366.093(4), Florida Statutes. Section 366.093(4), Florida Statutes, states that any finding by the Commission that records contain proprietary confidential business information is effective for a period set by the Commission not to exceed 18 months, unless the Commission finds, for good cause, that protection from disclosure shall be made for a specified longer period. The time period requested is necessary, Chesapeake contends, to allow it to negotiate future gas purchase contracts without its suppliers, competitors, or other customers having access to information which could adversely affect the ability of the Florida Division of Chesapeake to negotiate such future contracts on favorable terms.

In consideration of the foregoing, it is therefore

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that the request for confidential treatment of the proprietary confidential business information discussed above, as found in Document No. 11270-93, shall be granted as discussed in the body of this Order. It is further

ORDERED that the request of Chesapeake Utilities Corporation, Florida Division, for the declassification date of April 18, 1995 is granted.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 24th day of May, 1994.

  
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J. TERRY DEASON, Chairman 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

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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.