

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 970003-GU
(PGA) True-up.) ORDER NO. PSC-97-0484-CFO-GU
_____) ISSUED: April 28, 1997

ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
REQUEST FOR CONFIDENTIAL TREATMENT FOR CERTAIN
PORTIONS OF ITS EXHIBIT GMB-3 AND REVISED EXHIBIT GMB-3
(DOCUMENT NOS. 00188-97 AND 01211-97)

On January 8, 1997, Florida Public Utilities Company ("FPU" or "Company") filed a request for confidential classification of certain portions of Exhibit GMB-3 to the direct testimony of George Bachman, filed concurrently with FPU's Petition for a Mid-Course Correction to the Approved Purchased Gas Adjustment Factor. On February 3, 1997, FPU filed Revised Exhibit GMB-3 along with a request for confidential classification of certain portions of Revised Exhibit GMB-3. FPU asserts that the information and material at issue is intended to be and is treated by the Company as proprietary and confidential. The information for which confidential treatment was requested is found in Document Nos. 00188-97 and 01211-97.

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 the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 366.093, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

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 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.

In its requests, FPU states that Schedule E-3, page 3 of Exhibit GMB-3, and Schedule E-3, page 3 of Revised Exhibit GMB-3, identify the actual price, quantity, and supplier for each of FPU's

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purchases of gas during the period of April 1996 through November 1996. FPU requests confidential treatment for the following information found in Schedule E-3 of both documents: (1) the identity of the vendor that the gas was purchased from (lines 1 - 50 of "PURCHASED FROM" column); (2) whether the gas was system supply or end use (lines 1 - 50 of "SYSTEM SUPPLY" and "END USE" columns); (3) the total amount purchased (lines 1 - 50 of "TOTAL PURCHASED" column); (4) third party commodity cost (lines 1 - 50 of "THIRD PARTY" column); (5) other charges (lines 1 - 50 of "OTHER CHARGES, ACA/GRI/FUEL" column); and (6) total cents per therm (lines 1 - 50 of "TOTAL CENTS PER THERM" column). This information can be found at the same lines and columns in Exhibit GMB-3 and Revised Exhibit GMB-3.

FPU argues that this information is contractual information which, if made public, would impair the efforts of FPU to contract for similar goods and services on favorable terms and would be detrimental to the interests of FPU and its customers. FPU states that release of the cost, which information is a function of the price of gas paid by FPU to each of its suppliers pursuant to an individually negotiated gas supply package, and quantity of gas purchased by FPU would reveal the negotiated purchasing arrangement between the Company and each of its suppliers. FPU further states that revealing the identification of its existing suppliers would provide competitors with a list of those suppliers. FPU argues that the release of any of this information would provide the Company's suppliers and potential suppliers with an advantage when negotiating contracts with FPU, potentially resulting in higher gas costs for FPU and its customers. Further, FPU claims, the release of such information to competing suppliers has the potential to lead to the fixing of gas prices by suppliers, which would result in higher gas costs for FPU and its customers.

I find that the information discussed above is proprietary confidential business information and should be given confidential treatment to avoid harm to FPU and its ratepayers. FPU requests that this information be held confidential for a period of 18 months, as allowed by Section 366.093(4), Florida Statutes. FPU argues that this period is necessary to allow it to negotiate future gas purchase contracts on favorable terms. It is noted that this time period will ultimately protect FPU and its customers.

In consideration of the foregoing, it is therefore

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the information in Document Nos. 00188-97 and 01211-97 for which confidential treatment was requested shall be treated as proprietary confidential business information as discussed in the body of this Order. It is further

ORDERED that the information discussed in the body of this Order shall be afforded confidential treatment for a period of 18 months from the issuance 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 28th day of April, 1997.



J. TERRY DEASON, Commissioner and
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 25-22.0376, 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.