

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Purchased Gas Adjustment)	DOCKET NO. 910003-GU
(PGA) Clause.)	ORDER NO. 24929
_____)	ISSUED: 8/19/91

ORDER ON CONFIDENTIALITY

BY THE COMMISSION:

On July 5, 1991, and on July 16, 1991, People's Gas System, Inc. (PGS) filed requests (Document Nos. 6775-91 and 7175-91) for specified confidential treatment of certain line items in schedules A-1, A-2, A-7P, E-1, E-2, E-3P, E-4P, and E-5 of its monthly and projected purchased gas adjustment (PGA) filing. After discussions with Commission Staff, PGS filed a revised request on August 8, 1991, for confidentiality (Document No. 8035-91). This revised request relates to its revised composite exhibit PGS-1, which consists of schedules E-1/PFS-0, E-2, E-3P(a)-(g), E-4P, and E-5P. We will rule on the initial request of July 5, 1991 for schedules A-1, A-2 and A-7P for the month of May, 1991, and we will rule on the revised request of August 8, 1991, for the composite exhibit PGS-1, also.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." In the instant matter, the value that all parties would receive by examining and utilizing the information contained in this document must be weighed against the legitimate concerns of PGS regarding disclosure of business information which it considers proprietary. It is our view that parties must meet a very high burden when requesting confidential classification of documents.

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, PGS has the burden to show that the material submitted is qualified for confidential classification. Rule 25-22.006, Florida Statutes, provides that the Company may fulfill its burden by demonstrating that the information falls under 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.

DOCUMENT NUMBER-DATE

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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. 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.

We note that Florida Gas Transmission Company's (FGT) current demand and commodity rates for FTS-1 transportation service and G purchases 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. The cost of gas which PGS purchases from FGT can be significantly impacted by FGT's purchased gas adjustment. For the purposes of this filing, we have required PGS to estimate the amount and cost of gas that PGS plans to purchase from FGT during the next six-month period. FGT's purchased gas adjustment is subject to FERC review, and PGS's projections concerning FGT will not affect the actual level of FGT's purchased gas adjustment during the next period. Since August 1, 1990, when "open access" became effective on the FGT system, gas supplies have become available to PGS from suppliers other than FGT. The rates paid for the purchases of gas supplies from entities other than FGT result primarily from negotiations between PGS's affiliate, Gator Gas Marketing, Inc. (Gator), numerous producers, and gas marketing companies. The factors which Gator must consider when determining the price include the length of the period, the season, the quantities involved, and whether the purchase is made on a firm or interruptible basis. In addition, prices paid by Gator can vary from producer-to-producer or marketer-to-marketer, even when the conditions of the purchase are not significantly different. Gator also sells directly to several of PGS's large industrial customers who do not buy from PGS's system supply.

On Schedule A-1, PGS argues that the data found on lines 5, 6, 15, 17, 24, 25, 35, 43, 44 and 54, of column(s) current month and period to date, and actual and difference amount, is contractual

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information, the disclosure of which would impair PGS's efforts to contract for goods or services on favorable terms. We agree. PGS states that line 43 shows the weighted average price which PGS paid to Gator and Seminole Gas Marketing, Inc. (Seminole), affiliates of PGS, for gas for the current month (May 1991) and the period to date (April - May 1991). Knowledge of the prices paid for the current month and the period to date by PGS to its affiliates would give other competing suppliers 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 a PGS affiliate. Despite the fact that this information is the weighted average price paid to PGS's affiliates for the current month and for the period to date, a supplier of the affiliate which had sold gas for such month or period at a price less than such weighted average cost could refuse in the future to make price concessions previously made, and refuse to sell at a price less than such weighted average price. The end result is reasonably likely to be increased gas prices, and therefore an increased cost of gas which PGS must recover from its ratepayers. PGS also states that the total cost figures for PGS's purchases from its affiliates shown on line 5 can be divided by the therms purchased from such affiliates on line 24 to determine the weighted average cost or price on line 43. Thus, the publication of the information on lines 5 and 24 together, or independently, could allow a supplier to derive the purchase price of gas paid by PGS to its affiliates. In addition, the information regarding the total cost of gas purchased (line 6) and the total therms purchased (line 25), as well as total pipeline and transportation costs (line 15), total cost (line 17), total pipeline and transportation therms (line 35), total cents-per-therm cost of gas purchased (line 44), and total pipeline and transportation cents-per-therm (line 54) are algebraic functions of the price per therm paid by PGS to its affiliates for gas for the current month and the period date, and could be used (since the purchases from FGT and the costs thereof are public and have not been deleted from the reporting schedule) to derive the purchase price (or information from which to determine the purchase price) of gas paid by PGS to its affiliates during the involved periods. Accordingly, we find this to be proprietary confidential business information.

On Schedule A-2, PGS argues that the data found on lines 4, 5, 6, 9, 11, 12, 13, and 19, of column(s) current month and period to date, actual, and difference amount, would permit a supplier to determine contractual information which, if made public, would impair the efforts of PGS to contract for goods and services on favorable terms. We agree. The information on line 4 shows PGS' total cost of gas for the current month and the period to date. This information is the same as the information on line 17 of

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Schedule A-1, and is entitled to protection based on the rationale set forth in the justification for confidentiality of line 17 on Schedule A-1. Line 5, if subtracted from line 3, would equal line 4, and thus is entitled to the same protection as line 4. Lines 6, 9, 11, 12, and 13 are algebraic functions of line 5. Thus, the publication of these lines together, or independently, would allow a supplier to derive line 5, which is necessary to derive the total cost of gas for the current month and the period to date, which could then be used to determine line 17 on Schedule A-1, which could then be used to determine the cost of gas purchased by PGS from its affiliates. For example, line 19 (the interest provision for the current month) must be kept confidential or a supplier could calculate line 13, from which to calculate line 12, from which to calculate line 11, from which to calculate line 5. Line 19 is identical to line 6, and thus is confidential for the same reasons as line 6. Disclosure of this information on Schedule A-2 is reasonably likely to result in increased prices, and, thus, an increased cost of gas which PGS must recover from its ratepayers. We find this information to be proprietary confidential business information.

PGS asserts that lines 8 through 10 and Total on Schedule A-7P, column(s) total cents per therm, system supply, end use, total purchased, commodity cost/pipeline and demand cost is contractual information, the disclosure of which would impair PGS's efforts to contract for goods or services on favorable terms. We agree. The information reveals the monthly weighted average prices that PGS actually paid to Gator and Seminole during the month May, 1991. PGS argues that disclosure of these costs would give competitors the potential ability to control gas pricing by either quoting a particular price (which would in all likelihood equal or exceed the price PGS has projected it will have to pay), or by adhering to a price offered by a PGA affiliate. Even though these costs are weighted averages, disclosure of this information could still be detrimental to PGS because a supplier may refuse to sell gas at a price lower than the weighted average cost. Also, disclosure of this information may decrease the likelihood of suppliers making price concessions. Thus, disclosure of this information could result in increased gas prices, which PGS would have to recover from its ratepayers. The information regarding the numbers of therms purchased for system supply, for end use, and in total, as well as the total commodity costs/pipeline and demand costs paid for purchases by PGS from its affiliates, are algebraic functions of the price per therm paid to such affiliates in the column

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entitled Total Cents Per Therm. Thus, the publication of these columns together, or independently, could allow a supplier to derive the purchase price of gas paid by PGS to its affiliates. We find this information to be proprietary confidential business information.

On Schedule E-3P(a)-(g), PGS argues that the data found on lines 10-12 of column K, Total Cents Per Therm, is contractual information, the disclosure of which would impair PGS's efforts to contract for goods or services on favorable terms. We agree. The information reveals the monthly weighted average prices that PGS projects it will pay Gator and Seminole during the period October 1991 through March 1992. PGS argues that disclosure of these projections would give competitors the potential ability to control gas pricing by either quoting a particular price (which would in all likelihood equal or exceed the price PGS has projected it will have to pay), or by adhering to a price offered by a PGA affiliate. Even though these projections are weighted averages, disclosure of this information could still be detrimental to PGS because a supplier may refuse to sell gas at a price lower than the weighted average cost. Also, disclosure of this information may decrease the likelihood of suppliers making price concessions. Thus, disclosure of this information could result in increased gas prices, which PGS would have to recover from its ratepayers.

PGS also argues that on Schedules E-3P(a)-(g), lines 10-12 of columns E, System Supply; F, End Use; G, Total Purchased; H, Commodity Cost/Pipeline; I, Demand Cost; and J Other Charge ACA/GRI/Fuel, and lines 1-9 of columns E, System Supply; F, End Use; G, Total Purchased; H, Commodity Cost/Pipeline; I, Demand Cost; J, Other Charge; and K, Total Cents Per Therm are algebraic functions of the price per therm PGS projects it will pay in the future to its affiliates in column K, lines 10-12, on the Schedules E3-P(a)-(g) noted above. The publication of these columns together, or independently, would allow a supplier to derive the purchase price of gas PGS projects it will have to pay to its affiliates during the next six-month period. Thus, we find that this information would permit a supplier to determine contractual information which, if made public, would impair the efforts of PGS to contract for goods or services on favorable terms.

PGS asserts that line 49 of columns B (October) through H (Total), on Schedule E-1/PFS-O, is also contractual information, which if made public, would impair PGS's efforts to contract for goods or services on favorable terms. We agree. This information shows the weighted average price which PGS projects it will have to pay to Gator and Seminole during the period October 1991 through March 1992. Disclosure of these weighted average prices would give

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other competing suppliers information which would enable them to potentially control gas pricing by either quoting a price equal to or exceeding the price PGS has projected it will pay, or by adhering to a price offered by a PGS affiliate. Even though this information is the weighted average price, its disclosure could still be harmful to PGS because a supplier may refuse to sell gas at a price lower than the weighted average cost. Also disclosure of this information may keep suppliers from making price concessions. Thus, disclosure of this information could reasonably result in increased gas prices, and, therefore, an increased cost of gas which PGS would recover from its ratepayers. We find this information to be proprietary confidential business information.

In addition, PGS argues that lines 5 and 28 of columns B (October) through H (Total) on Schedule E-1/PFS-0 should also be afforded confidential treatment. We agree. The total projected cost figures for PGS's purchases from its affiliates on line 5 can be divided by the therms projected to be purchased from such affiliates on line 28 to determine the projected weighted average cost or price on line 49. Thus, the publication of the information on lines 5 and 28 together, or independently, would allow a supplier to derive the purchase price of gas that PGS projects it will pay to its affiliates in the future. We find that disclosure of this contractual information could impair PGS's efforts to contract for goods and services on favorable terms.

PGS also requests confidential classification for lines 1-5, 7-13, 16, 25-27, 30-40, 46-48, and 56-81 for columns B (October) through H (Total), on Schedule E-1/PFS-0. This data makes up the algebraic functions of the price per therm that PGS projects it will pay to its affiliates, and could be used to derive the purchase price of gas (or information which would enable one to determine the purchase price) because the total cost of gas purchased (line 6), total therms purchased (line 50), and the PGA factor and true-up have not been deleted. We find that disclosure of this contractual information could impair the efforts of PGS to contract for goods or services on favorable terms.

We find that by affording the above information confidential treatment, 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 affiliates. We note that we are approving the confidential classification of revised composite exhibit PGS-1, projected information for the projected period October 1991 - March 1992 and the initial request of July 5, 1991 for schedules A-1, A-2 and A-7P for the month of May 1991 only.

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We also find that this information is treated by PGS and its affiliates as confidential information, and that it has not been disclosed to others.

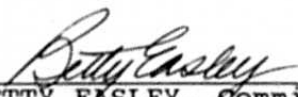
PGS requests that this information not be declassified until February 8, 1993. We find that this information shall be held as proprietary confidential business information until that date, and that this will enable PGS and/or its affiliates to negotiate future gas purchase contracts without their suppliers, competitors, and other customers having access to information which would adversely affect the ability of PGS and its affiliates to negotiate such future contracts on favorable terms. We note that this declassification period will ultimately protect PGS and its customers.

It is, therefore,

ORDERED by the Florida Public Service Commission that the proprietary confidential business information filed by Peoples Gas System (Document Nos. 6775-91 and 8036-91) and discussed in the body of this Order shall be afforded confidential treatment pursuant to Section 366.093, Florida Statutes. It is further

ORDERED that this information shall be classified as proprietary confidential business information until February 8, 1993.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 19th day of AUGUST, 1991.



BETTY EASLEY, Commissioner
and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(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 sewer 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.