

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 930003-GU
(PGA) Clause.) ORDER NO. PSC-93-1098-CFO-GU
_____) ISSUED: July 27, 1993

ORDER REGARDING FPU'S REQUEST FOR CONFIDENTIAL TREATMENT
OF ITS NOVEMBER, 1992 SCHEDULES AND INVOICES

Florida Public Utilities Company (FPU) has requested confidential treatment of certain specified information in its Schedule A-7P, Firm Transportation System Supply Schedule, and purchased gas invoices for the month of November, 1992. The confidential information and request are found in Documents No. 148-93 and 3333-93.

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." A request for specified confidential classification of documents must meet a 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. 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 1-5 in the columns "Purchased From", "System Supply", "Total Purchased", "Commodity Cost/Third Party", "Other Charge ACA/GRI/Fuel", and "Total Cents Per Therm". FPU states that the specified information represents gas supply packages which FPU negotiated with suppliers other than FGT, and is thus contractual information which, if made public, would impair the efforts of FPU to contract for goods or services on favorable terms. Disclosure would provide a competitor with a list of those suppliers. The information also includes the volumes purchased and costs by gas supply source. Competing gas suppliers could then gain an advantage over FPU, since the suppliers would be less likely to make price concessions. FPU argues that release of the information could lead to inflated price fixing by gas suppliers and possibly higher gas costs to FPU's customers. Further, FPU states that the data in the column "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 asserts 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 1-9 of the columns entitled "Producer Name", "Receipt Point", "Gross Amount", "Net Amount", "Monthly Gross", "Monthly Net", "Wellhead Price", and "Citygate Price" on the Firm Transportation System Supply Schedule. FPU states that specified information represents gas supply packages which FPU negotiated with suppliers other than FGT, and is thus contractual information which, if made public, would impair the efforts of FPU to contract for goods or services on favorable terms. Disclosure would provide a competitor with a

list of those suppliers. The information also includes the volumes purchased and costs by gas supply source. Competing gas suppliers could then gain an advantage over FPU, since the suppliers would be less likely to make price concessions. FPU argues that release of the information could lead to inflated price fixing by gas suppliers and possibly higher gas costs to FPU's customers. Further, FPU states that the data in the column "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 requests confidential classification of all gas purchase 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. FPU also argues that it is contractually obligated to keep confidential all material terms of its gas supply agreements and transactions with suppliers. The invoice data represents negotiated gas supply packages purchased from suppliers other than Florida Gas Transmission Company. The invoice data also lists FPU's gas suppliers. FPU argues that disclosing supplier names would be detrimental to the interests of FPU by providing competitors with a list of FPU suppliers. Additionally, the invoice data also contains information about volumes purchased and costs by gas supply source. FPU argues that disclosing this information would allow competitors an advantage over FPU, since suppliers may be less likely to make price concessions. Releasing volume and cost information could lead to inflated price fixing by gas suppliers. Consequently, FPU asserts, release of the aforementioned information may result in higher gas costs which would be passed to FPU ratepayers. I agree.

Further, FPU requests confidential classification of format elements, fonts, and type sizes of the submitted gas purchase invoices, with the exception of invoices from FGT. FPU asserts that such elements allow any persona familiar with supplier invoices to identify the supplier from the invoice format alone. FPU argues that this is contractual information which, if made public, would impair the efforts of FPU to contract for goods or 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 November, 1992, only.

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


FPU requests that this information not be declassified for eighteen months, pursuant to Section 366.093(4), Florida Statutes. I find that this information shall be held as proprietary confidential business information for that length of time and that this will enable FPU to negotiate future gas purchase contracts without other vendors having access to information which could impair FPU's ability to make natural gas purchases on favorable terms. I note that this declassification period will ultimately protect FPU and its customers.

It is, therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that the proprietary confidential business information discussed above, as found in Documents No. 148-93 and 3333-93, 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 27th day of July, 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.

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.