

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 930003-GU
(PGA) Clause.) ORDER NO. PSC-93-1429-CFO-GU
ISSUED: September 30, 1993

ORDER ON CONFIDENTIALITY FOR SJNG'S
PURCHASED GAS PROJECTION FOR THE
SIX MONTH PERIOD ENDING MARCH, 1994

BY THE COMMISSION:

On July 8, 1993, St. Joe Natural Gas Company, Inc. (SJNG) filed a request for specified confidential treatment of certain line items in its Schedules E-1/PFS-O and E-3P of the purchased gas projection filing for the six month period ending March 31, 1994. The confidential information is found in Document No. 7357-93.

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.

DOCUMENT FILED-DATE

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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 SJNG and third party vendors (vendors). Since "open access" became effective in the FGT system on August 1, 1990, gas supplies became available to SJNG from vendors other than FGT. Purchases are made by SJNG 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 SJNG can vary from vendor-to-vendor.

SJNG argues that the information in columns A-G of lines 7-12, 26-33, and 46 on Schedule E-1/PFS-O is contractual information, the disclosure of which would impair SJNG's efforts to contract for goods and services on favorable terms. The data shows the price or weighted average price which SJNG has projected to pay its vendors for specific months and period dates. SJNG argues that knowledge of these projected prices would give other competing vendor(s) 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 SJNG's current vendor(s). Despite the fact that this information is the projected price or weighted average price projected to be paid by SJNG during the involved month, SJNG argues that a vendor which sells gas at a price less than such weighted average cost could refuse in the future to make price concessions previously made, and could refuse to sell at a price less than such weighted average projected price. SJNG asserts that the end result is reasonably likely to be increased gas prices, and therefore an increased cost of gas which SJNG must recover from its ratepayers. I agree. I find the above-mentioned lines on Schedule E-1/PFS-O to be proprietary confidential business information.

SJNG argues that the information in columns A-G of lines 1-5, 7-12, 20-24, 26-33, and 46 on Schedule E-1/PFS-R is contractual information, the disclosure of which would impair SJNG's efforts to contract for goods and services on favorable terms. The data shows the price or weighted average price which SJNG has projected to pay its vendors for specific months and period dates. SJNG argues that knowledge of these projected prices would give other competing vendor(s) 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 SJNG's current vendor(s). Despite the fact that this information is the projected price or weighted average price projected to be paid by SJNG during the involved month, SJNG argues that a vendor which sells gas at a price less than such weighted average cost could refuse in the future to make price concessions previously made, and could refuse to sell at a price less than such weighted average projected price. SJNG asserts that the end result is reasonably likely to be increased gas prices, and therefore an increased cost of gas which SJNG must recover from its ratepayers. I agree. I find the above-mentioned lines on Schedule E-1/PFS-R to be proprietary confidential business information.

In addition, SJNG argues that the information in columns A-K of lines 1-18 and 23-25 on Schedule E-3P is contractual data which should be afforded confidential treatment. The information delineates the number of therms projected to be purchased for the system supply, the number of therms purchased for end use, commodity costs/pipeline, the demand costs, and FGT's GRI, ACA, TRC, and TOP costs for purchases by SJNG from its vendor(s). These figures are algebraic functions of the price per therm paid to vendors in the column entitled "Total Cents Per Therm." SJNG argues that the publication of these columns together or independently could allow other vendors to derive the purchase price of gas paid by SJNG to its vendor(s). Therefore, SJNG asserts, disclosure of this information would permit other vendors to determine contractual information which would impair SJNG's efforts to contract for goods and services on favorable terms. I agree. I find the above-mentioned lines on Schedule E-3P to be proprietary confidential business information.

I find that by granting the company's confidentiality request, 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 vendor(s). The confidential information of the purchased gas projection filing is approved only for the six month period ending March, 1994.

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

SJNG requests that this information not be declassified until September 30, 1995, providing confidential treatment for the information for over 23 months from the issuance of this order.

Under Section 366.093(4), Florida Statutes, and Rule 25-22.006(8), Florida Administrative Code, proprietary confidential business information may be protected for 18 months. The Commission may approve a longer period if it finds, for good cause, that such longer period is necessary to protect SJNG's ratepayers or business operations.

SJNG does not request an extension per se, nor does it specify why 18 months is an inadequate time period or why 23 months is necessary. Consequently, this information shall only be held as proprietary confidential business information for 18 months from the date of this order. This will sufficiently enable SJNG to negotiate future gas purchase contracts without other vendors having access to information which could impair SJNG's ability to make natural gas purchases on favorable terms. I note that this 18 month declassification period will ultimately protect SJNG and its customers.

It is, therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that the requested information in Document No. 7357-93 shall be treated as proprietary confidential business information to the extent discussed above. It is further

ORDERED that this information be classified as proprietary confidential business information for 18 months from the date of this order.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 30th day of September, 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.