

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 940003-GU
(PGA) Clause.) ORDER NO. PSC-94-0634-CFO-GU
_____) ISSUED: May 24, 1994

ORDER ON CHESAPEAKE'S REQUEST FOR CONFIDENTIAL TREATMENT
OF PORTIONS OF ITS DECEMBER, 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. 00823-94.

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 NUMBER-DATE

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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 Schedule A-7P(1), lines 1-9 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 1-8 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 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.

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

ORDER NO. PSC-94-0634-CFO-GU
DOCKET NO. 940003-GU
PAGE 4

Chesapeake requests that this information not be declassified until July 25, 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. 00823-94, 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 July 25, 1995 is granted.

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



J. TERRY DEASON, Chairman and
Prehearing Officer

(S E A L)
MRC:bmi

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.

ORDER NO. PSC-94-0634-CFO-GU
DOCKET NO. 940003-GU
PAGE 5

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.