

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 940003-GU
(PGA) Clause.) ORDER NO. PSC-94-0901-CFO-GU
ISSUED: July 25, 1994

ORDER ON CHESAPEAKE'S REQUEST FOR CONFIDENTIAL TREATMENT
OF PORTIONS OF ITS APRIL, 1994 SCHEDULES AND INVOICES

On June 2, 1994, Chesapeake Utilities Corporation, Florida Division (Chesapeake), filed a request for specified confidential treatment of certain line items in its Schedule A-3, in columns "System Supply", "Total Therms Purchased", "Commodity Cost/Pipeline", "Demand Cost", "Commodity Cost/Supply", and "Total Cents Per Therm", and A-4 Transportation System Supply in columns "Producer/Supplier", "Gross Amount", "Net Amount", "Monthly Gross", "Monthly Net", "Wellhead Price", "City Gate Price" 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. 05394-94.

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 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.

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

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"reasonably likely" to impair the company's contracting for goods or services on favorable terms.

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 month of April 1994, 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-3, lines 1-2 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.

In addition, Chesapeake contends that for Schedule A-3, the information in lines 1-2 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.

Chesapeake requests confidential treatment for information on Schedule A-4 for lines 1-14 of column "Producer/Supplier." Chesapeake argues that the identity of Chesapeake's suppliers 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.

Chesapeake also requests confidential treatment for information on Schedule A-4 for lines 1-14 of columns "Gross Amount", "Net Amount", "Monthly Gross", "Monthly Net", "Wellhead Price" and "City Gate Price." Chesapeake argues the information regarding the number of MMBtu's per day and per month purchased by Chesapeake as well as the wellhead and city gate price per MMBtu paid by Chesapeake to its suppliers is contractual information which, if made public, "would impair the efforts of [Chesapeake] to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes. Knowledge of the prices Chesapeake paid to its suppliers during this period would give other competing suppliers information with which to potentially or actually control the pricing of gas either by all quoting a particular price or by adhering to a price offered by a current supplier. The end result is reasonably likely to be increased gas prices, and, therefore, an increased cost of gas which Chesapeake must recover from its ratepayers.

Chesapeake also asserts that the highlighted information on the current month's Invoices, 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.

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Chesapeake requests that this information not be declassified until December 1, 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. It is noted that this time period of confidential classification will ultimately protect Chesapeake and its ratepayers.

In consideration of the foregoing, it is therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the request for confidential treatment of the proprietary confidential business information discussed above, as found in Document No. 05394-94, 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 December 1, 1995 is granted. 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 Susan F. Clark, as Prehearing Officer, this 25th day of July, 1994.


SUSAN F. CLARK, 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 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.