

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Purchased Gas Adjustment)	DOCKET NO. 910003-GU
(PGA) Clause.)	ORDER NO. 25071
_____)	ISSUED: 9/16/91

ORDER ON CONFIDENTIALITY

BY THE COMMISSION:

On August 20, 1991, People's Gas System, Inc. (PGS) filed a request (Document No. 8395-91) for specified confidential treatment of certain line items in invoices covering PGS' gas purchases for May and June 1991. These invoices were requested by Commission Staff. On August 28, 1991, PGS filed the "public copies" relating to its request for confidentiality (Document No. 8650-91).

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 Administrative Code, 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.

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.

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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.

PGS requests confidential treatment for the rates at which the purchases covered by the invoice were made, the volumes purchased (stated in therms, MMBTU, and/or MCF), and the total cost of the gas purchased. PGS argues that this is contractual data, the disclosure of which could impair the ability of PGS to contract for goods and services on favorable terms. We agree. The information shows either the actual prices PGS paid to each individual supplier of gas for the months of May and June 1991, or information from which such prices could be calculated. Knowledge of these prices could give other competing suppliers information with which to potentially or actually control the pricing of gas, either by all quoting a particular price (which would in all likelihood equal or exceed the price PGS paid), or by adhering to a price offered by a particular supplier. A supplier which might have been willing to sell gas at a price less than the price reflected in any individual invoice would most likely refuse to do so. Such a supplier would be less likely to make any price concessions which it might have previously made (or might otherwise have been willing to make), and could simply refuse to sell at a price less than an individual price paid by PGS. 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. We find this data to be proprietary confidential business information.

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 certain portions of PGS' invoices for the months of May and June 1991 only.

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

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publicly disclosed to others.

PGS requests that this information not be declassified until February 20, 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. 8396-91 and 8397-91) and discussed in the body of this Order shall be afforded confidential treatment pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. It is further

ORDERED that this information shall be classified as proprietary confidential business information until February 20, 1993.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 16th day of SEPTEMBER, 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.