

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 940003-GU
(PGA) Clause.) ORDER NO. PSC-94-0106-CFO-GU
_____) ISSUED: January 28, 1994

ORDER REGARDING FPU'S REQUEST FOR CONFIDENTIAL TREATMENT
OF ITS SEPTEMBER, 1993 SCHEDULES AND INVOICES

On October 27, 1993, Florida Public Utilities Company (FPU) filed a request for specified confidential treatment of certain line items in its Schedule A-7P, a Firm Transportation System Supply Sheet, and gas purchase invoices (and related transactions) for the month of September. The confidential information is found in Document No. 11603-93.

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 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. 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 1-18 in the columns "Purchased From", "System Supply", "Total Purchased", "Commodity Cost/Third Party", "Other Charge ACA/GRI/Fuel", and "Total Cents Per Therm". This information represents gas supply packages which FPU negotiated with suppliers, and releasing the information may result in higher gas costs to FPU's customers. The information includes the persons from whom FPU purchases gas supplies, which would provide competitors with a list of FPU suppliers. The information also includes the volumes purchased and costs by gas supply source, which would allow others to compete with FPU for the same suppliers. Those suppliers would then be less likely to make price concessions. Further, the data in "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 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 also requests confidential classification of lines 1-10 of columns "Producer Name", "Receipt Point", "Gross Amount", "Net Amount", "Monthly Gross", "Monthly Net", "Wellhead Price", and "Citygate Price" on the Firm Transportation System Supply Sheet. This information represents gas supply packages which FPU negotiated with suppliers, and releasing the information may result in higher gas costs to FPU's customers. The information includes the persons from whom FPU purchases gas supplies, which would provide competitors with a list of FPU suppliers. The information also includes the volumes purchased and costs by gas supply source, which would allow others to compete with FPU for the same suppliers. Those suppliers would then be less likely to make price

concessions. Further, the data in "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 treatment of the substantive information contained in its natural gas supply invoices and related transactions, with the exception of FGT invoices. The information FPU seeks to protect regarding invoices is found on the Gas Invoices, pages 16-23, on lines 1-80 and on its Gas Invoice Allocation form, page 24, on lines 8-9 and 30-31. The requested information consists of the suppliers' identities, contract period for each invoice, account numbers, invoice numbers and dates, payment due dates, descriptions of service, delivery pipeline and related information, amounts of gas, volumes and unit prices, charge subtotals, price computation methodologies, total invoice amounts, payment instructions, and the names and phone numbers of supplier representatives. FPU also requests confidential treatment of the format and style elements of the invoices. FPU maintains that the identity of an individual gas supplier can be determined by any person familiar with the format, fonts, and/or type sizes particular to that supplier's invoice. FPU asserts that disclosure of the requested information would be detrimental to the interests of FPU and its customers. FPU argues that disclosure of this information could provide competing gas suppliers with a list of FPU suppliers, giving them a competitive advantage. FPU also argues that FPU suppliers would be less likely to make price concessions, potentially leading to inflated price fixing. FPU asserts that disclosing the requested information could result in higher gas costs, which would have to be passed on to customers. FPU states 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.

Additionally, FPU submits a schedule describing the details of the allocations of all gas invoices it receives to its firm, interruptible and end use customers. The information is found on page 24, lines 8-9 and 30-31. The schedule echoes information that is requested to remain confidential and has been described above as well as the appropriated costs allocations of each invoice. FPU asserts that the aforementioned information requested to be kept confidential 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 September, 1993, only.

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

FPU requests that the information for which it seeks confidential classification not be declassified for a period of eighteen months, as provided in Section 366.093(4), Florida Statutes. FPU contends that the time period requested is necessary to allow FPU to negotiate future gas purchase contracts with its suppliers/competitors (and other customers having access to information which would adversely affect the ability of FPU to negotiate such future contracts) on favorable terms. I agree.

It is, therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that the proprietary confidential business information discussed above, for Florida Public Utilities Company's schedules and invoices for September, 1993, as found in Document No. 11603-93, 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 28th day of January, 1994.



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.