

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 940003-GU
(PGA) Clause.) ORDER NO. PSC-94-1500-CFO-GU
) ISSUED: December 7, 1994

ORDER REGARDING SJNG'S REQUEST FOR CONFIDENTIAL TREATMENT
OF ITS OCTOBER 1994 SCHEDULES AND INVOICES

On November 21, 1994, St. Joe Natural Gas Company, Inc. (SJNG) filed a request for specified confidential treatment of certain line items in its Schedules A-1 and supporting detail, A-3, A-4, and its invoices from third party vendors for the purchase of natural gas for system supply use during the month of October 1994. The confidential information is found in Document No. 11863-94.

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 "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. Rates

DOCUMENT NUMBER-DATE

12224 DEC-7th

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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 lines 1-6, 7-9, 15-23, 31 of columns A through H, in lines 1, 8, 25 and 32 of columns A and B and in lines 17 and 24 of columns A through C on Schedule A-1 Supporting is contractual information, the disclosure of which would impair SJNG's efforts to contract for goods and services on favorable terms. The information shows the price or weighted average price which SJNG has paid to its vendors for specific months and periods to date. SJNG argues that knowledge of these prices would give other competing vendors 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 price or weighted average price paid by SJNG during the involved month, a vendor which had sold 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 price. The end result, SJNG asserts, is reasonably likely to be increased gas prices and therefore an increased cost of gas which SJNG must recover from its ratepayers.

In addition, SJNG requests confidential treatment for the information in lines 1-14 of columns A through L on Schedule A-3. SJNG argues that this is contractual information which, if made public would impair the efforts of SJNG to contract goods and services on favorable terms. The information delineates the number of therms purchased for system supply, the number of therms purchased for end use, commodity costs/pipeline, commodity costs/third party, 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 "Total Cents Per Therm". Thus, SJNG asserts, 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).

SJNG also requests confidential classification for the information shown on Schedule A-4, in lines 1-19 of columns A through H, in line 26 of columns C through F, and in line 27 of columns G and H. This information regarding the vendors, the receipt point, gross and net amounts of daily and monthly MMBtus, and the Wellhead and Citygate prices per MMBtu are algebraic functions of the information shown in lines 19 and 20. Thus, SJNG argues, this information would permit other vendors to determine contractual information which, if made public "would impair the efforts of [SJNG] to contract goods and services on favorable terms." Section 366.093(3)(d), Florida Statutes.

Further, SJNG requests confidential classification of the name, address, phone number, fax number, remittance person's name and bank account number, company logo, customer number, contract number, and contract date found on its vendor(s) invoices, except for the invoices from FGT. SJNG argues that this is contractual data, the disclosure of which could impair SJNG's ability to contract for goods and services on favorable terms. Knowledge of the name of SJNG's vendor(s), contract number(s), and contract date(s), would give other competing vendors knowledge of the expiration dates of SJNG's contracts, which would enable other suppliers to know when a particular contract needs to be replaced or continued. SJNG asserts that with this information, other vendors may reasonably expect to receive a higher price for gas from SJNG, who would be without a contracted supply and somewhat more willing to pay a higher price as a result.

SJNG also argues that the type service, POI, Mcf, MMBtu, Rate, and amount on its vendor invoice(s) is contractual information, the disclosure of which could impair SJNG's ability to contract for goods and services on favorable terms. For the FGT invoices only, SJNG discloses the rate since it is public information, but requests confidential treatment for the Mcf, MMBtu, and amount. The information on the invoice shows the actual quantity and price per therm of gas purchased. Knowledge of the FGT-assigned points of delivery (POI), price, and quantity received by SJNG would give other competing vendors information with which to potentially or actually control the pricing of gas by either all quoting a particular price, or adhering to a price offered by SJNG's current vendor(s), thus impairing the competitive interests of SJNG and its current vendor(s). 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. SJNG

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

SJNG has requested that this information not be declassified until May 1, 1996. According to SJNG holding this information as proprietary confidential business information until this date will 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. It is noted that this declassification period will ultimately protect SJNG and its customers.

In consideration of the foregoing, it is therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that St. Joe Natural Gas Company's request for confidential treatment of the specified information in Document No. 11863-94, as discussed above, is granted. It is further

ORDERED that this information shall be classified as proprietary confidential business information until May 1, 1996. 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 Chairman J. Terry Deason, as Prehearing Officer, this 7th day of December, 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.