

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment) DOCKET NO. 970003-GU
(PGA) True-Up.) ORDER NO. PSC-97-1192-CFO-GU
_____) ISSUED: October 2, 1997

ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF SPECIFIED
PORTIONS OF ITS PGA FILING FOR MAY 1997 (DN 06222-97)

On June 20, 1997, Florida Public Utilities Company ("FPUC" or "Company") filed a request for confidential classification of certain line items in its Schedule A-1 Supporting Detail Supplement, Schedule A-3, Schedule A-4, May 1997 Gas Purchase Invoices, and May 1997 Imbalance Resolutions. FPUC asserts that the information and material at issue is intended to be and is treated by the Company as proprietary and confidential. The confidential information is found in Document No. 06222-97.

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." A request for specified confidential classification of documents must comply with Section 366.093, Florida Statutes. The Company may fulfill its burden of compliance by demonstrating that the documents fall into one of the statutory examples or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

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 utility's efforts to contract 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 for purchases of gas supplies from persons other than FGT, however,

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are based on negotiations between FPUC and third party vendors (vendors). Since "open access" became effective in the FGT system on August 1, 1990, gas supplies became available to FPUC from vendors other than FGT. Purchases are made by FPUC 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 FPUC can vary from vendor-to-vendor.

FPUC requests confidential classification for information on its Schedule A-1 Supporting Detail Supplement, at lines 7-12 in the columns titled "Vendor", "Invoice, Credit, Check, or Identifying Number", "Invoice Amount", and "Classification Breakdown". FPUC asserts that the information in these columns represents negotiated gas supply packages purchased from suppliers other than Florida Gas Transmission Company. FPUC contends that this information is contractual information which, if disclosed, would impair the Company's efforts to contract for goods and services on favorable terms. This data contains the names of gas suppliers from whom FPUC is purchasing gas. FPUC argues that the release of this information would be detrimental to FPUC and its customers because it would provide competitors with a list of the Company's suppliers. This data also contains information concerning the volumes purchased and the price paid for gas from each supplier. FPUC argues that the release of this information could provide competing gas suppliers with an advantage over FPUC. The Company contends that release of this information could potentially lead to inflated price fixing by gas suppliers and could make suppliers less likely to offer price concessions. Potentially, FPUC claims, this may result in higher gas costs which would have to be passed along to FPUC's customers.

FPUC also requests confidential classification for information on its Schedule A-3, at lines 1-14 in the columns titled "Purchased From", "System Supply", "End Use", "Total Purchased", "Commodity Cost/Third Party", "Other Charge ACA/GRI/Fuel", and "Total Cents Per Therm". According to the Company, the information in these columns represents negotiated gas supply packages purchased from suppliers other than Florida Gas Transmission Company. FPUC states that this data contains the names of other FPUC gas suppliers and information on the volume purchased and the price paid for gas from each supplier. FPUC argues that the release of this information would be detrimental to the Company because it would provide competing suppliers with information which would give them an advantage over FPUC and would make suppliers less likely to make price concessions. In addition, FPUC alleges that release of the information found in the "Other Charge ACA/GRI/Fuel" column would allow a competitor to compute FPUC's cost of gas by supplier. FPUC

contends that this information is contractual information which, if disclosed, would impair the Company's efforts to contract for goods and services on favorable terms.

In addition, FPUC requests confidential classification for information on its Schedule A-4, at lines 1-25 in the columns "Producer Name", "Receipt Point", "Gross Amount", "Net Amount", "Monthly Gross", "Monthly Net", "Wellhead Price", and "Citygate Price". FPUC asserts that this information represents negotiated gas supply packages purchased from suppliers other than Florida Gas Transmission Company, and that releasing the information may result in higher gas costs to FPUC's customers. This data contains the names of gas suppliers from whom FPUC is purchasing gas. FPUC argues that the release of this information would be detrimental to FPUC and its customers because it would provide competitors with a list of the Company's suppliers. This data also contains information concerning the volumes purchased and the price paid for gas from each supplier. FPUC argues that the release of this information could provide competing gas suppliers with an advantage over FPUC. The Company contends that release of this information could potentially lead to inflated price fixing by gas suppliers and could make suppliers less likely to offer price concessions. Further, the data in the "Citygate Price" column is a function of the cost of gas purchased by FPUC from its suppliers. FPUC claims that release of such information would enable a third party to compute FPUC's cost of gas by supplier. FPUC argues that this information is contractual data which, if made public, could impair FPUC's ability to contract for goods and services on favorable terms.

FPUC requests confidential treatment for the entirety of its May 1997 Gas Purchase Invoices on pages 16-20. FPUC claims that these invoices contain the following information which must be kept confidential: suppliers' identities; the period the invoices are for; account numbers; invoice numbers; invoice dates; payment due dates; description of services provided; pipeline to which gas was delivered; amount of gas delivered; receipt points; meter numbers; volumes; unit prices; subtotals of the charges; price computation methodologies; total invoice amounts; payment instructions; and suppliers' accounting and gas control representatives' names and telephone numbers. FPUC argues that the release of this information would be detrimental to FPUC and its customers because it would provide competitors with a list of the Company's suppliers. In addition, FPUC asserts that anyone familiar with the format, fonts, and/or type sizes used by gas suppliers in their invoices could use that knowledge to determine the identity of those suppliers. FPUC also argues that the release of this information could provide competing gas suppliers with an advantage

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over FPUC. The Company contends that release of this information could potentially lead to inflated price fixing by gas suppliers and could make suppliers less likely to offer price concessions. Potentially, FPUC claims, this may result in higher gas costs which would have to be passed along to FPUC's customers. FPUC, therefore, requests that every element of these gas supply invoices, except the invoices from FGT, be given confidential status.

FPUC also requests confidential treatment for the information contained in lines 1 through 80 of its May 1997 Imbalance Resolutions at page 21. FPUC maintains that for competitive purposes it must be assured that no other pipeline customer will be able to ascertain the parties involved in this transaction, nor the prices of the components of such transactions nor the quantities involved in this transaction. FPUC argues that if this information is not kept confidential, future transactions of this type may be put at risk. FPUC contends that this information is contractual information which, if made public, "would impair the efforts of [Florida Public Utilities Company] to contract for goods or services on favorable terms." Section 366.093(3)(d), Florida Statutes.

Upon review, it appears that the information discussed above is proprietary confidential business information and should be given confidential treatment to avoid harm to FPUC and its ratepayers. FPUC requests that this information remain confidential for a period of at least 18 months, as provided in Section 366.093(4), Florida Statutes. According to FPUC, the time period requested is necessary to allow the Company to negotiate future gas purchase contracts on favorable terms. The time period requested is appropriate.

It is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the proprietary confidential business information discussed above, as found in Document No. 06222-97, shall be granted 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. 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.

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 2nd day of October, 1997.


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 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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.