BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas Adjustment (PGA) Clause.	)	DOCKET NO. 920003-GU
	)	ORDER NO. PSC-92-0755-CFO-GU
	)	ISSUED: 8-6-92

ORDER ON CHESAPEAKE'S REQUEST FOR CONFIDENTIAL TREATMENT OF PORTIONS OF ITS JANUARY, 1992 SCHEDULES AND INVOICES

BY THE COMMISSION:

Chesapeake Utilities Corporation, Florida Division (Chesapeake) filed a request (Document No. 1991-92) for specified confidential treatment of certain line items in its schedules A-1, A-7P, Weighted Average Costs of Gas, City Gate Cost of Gas - Firm Transportation, Transportation for Others and its invoices from third party suppliers for the purchase of natural gas during the month of January, 1992. Chesapeake also submitted a revision to its request (Document No. 4977-92). We will rule on the original request (Document No. 1991-92) and as it is revised (Document No. 4977-92).

There is a presumption in the law of the State of Florida 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. 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.

Chesapeake argues that on Schedules A-1/MT-AO, A-1/MF-AO and A-1/MI-AO, the information in lines 8, 27 and 46, for columns labeled "Current Month" (Actual, Original Estimate and Difference) and "Period to Date" (Actual, Original Estimate and Difference) is contractual information which, if made public, would impair Chesapeake's efforts to contract for goods or services on favorable terms. We agree. The total cost figures for Chesapeake's purchases from its suppliers shown in line 8 can be divided by the therms purchased from such suppliers in line 27 to determine the weighted average cost of gas paid by Chesapeake to its suppliers in line 46. Thus, the publication of information in lines 8 and 27, together or independently, would allow another supplier to derive the purchase price of gas Chesapeake paid to its current suppliers for the period. This knowledge 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, thus impairing the competitive interests of Chesapeake and its current suppliers. 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. Accordingly, we find the above-mentioned lines on Schedule A-1 to be proprietary confidential business information.

We note that 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 the purposes of this filing, Chesapeake is required to show the quantities purchased from FGT during the month of January, 1992, 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.

Further, Chesapeake argues that on Schedule A-1/MT-AO, A-1/MF-AO and A-1/MI-AO, the information in lines 1-5, 7, 9-12, 20-24, 26, 28-33, 39-43, 45, and 47-51 for columns labeled "Current Month" (Actual, Original Estimate and Difference) and "Period to Date" (Actual, Original Estimate and Difference) is also confidential information which, if made public, would impair the efforts of Chesapeake to contract for goods or services on favorable terms. This information shows the price or average prices which Chesapeake paid to its suppliers for gas during the period. Knowledge of those prices 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. Even though this information is the price or weighted average price, a supplier to Chesapeake during the involved period which might have been willing to sell gas at a price less than such weighted average cost would likely refuse to do so. Such a supplier would be less likely to make any price concessions which it might have previously made or willing to make, and could simply refuse to sell at a price less than such weighted average price. The end result, Chesapeake asserts, is reasonably likely to be increased gas prices, and, therefore, an increased cost of gas which Chesapeake must recover from its ratepayers. We find the above-mentioned lines on Schedule A-1 to be proprietary confidential business information with the exception of lines 39-42, 45, and 47-51 of the column entitled "Current Month - Actual." The information in the lines noted as an exception under "Current Month - Actual" shows the commodity, demand, overrun and total cost of gas for the FGT pipeline, transportation system supply and less end-use contract and is public information. As noted in the preceding paragraph, FGT's demand and commodity rates for transportation and sales are set forth in FGT's tariff, which is on file with FERC and which is a matter of public record, and accordingly, we cannot treat such information as confidential.

Chesapeake argues that on Schedule A-7P(1), lines 1-8 of columns labeled "System Supply" through "Total Cents Per Therm" contain information regarding the number of therms purchased for system supply, 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 entitled, "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, 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-7P(1), the information in lines 1-8 for the column entitled "Purchased From," shows the identity of Chesapeake's supplier 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. 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 argues that for certain information contained in Schedule A-7P(2), the disclosure of the identity of Chesapeake's transportation customers would be detrimental to the interests of Chesapeake and its ratepayers, since it would provide brokers, marketers, FGT, and other pipelines with a list of potential bypass candidates. This is information, Chesapeake contends, that relates to its competitive interests, the disclosure of which would impair the competitive business of Chesapeake. The information contained in lines 1-7 for the columns entitled "End Use" and "Total Therms Transported" are the monthly volumes transported for its customers. The amounts in the columns entitled, "Commodity Cost/Pipeline" and "Demand Cost" are the amounts paid to Chesapeake by its customers for the transportation service. Thus, the information contained in the columns labeled, "End Use" through "Demand Cost" are algebraic functions of the price per therm transported for customers in the column entitled, "Total Cents Per Therm." Thus, the publication of these columns, together or independently, could allow brokers and marketers to determine contractual information which, if made public, would impair the competitive interests of Chesapeake.

The same information from Schedule A-7P(2) is contained in lines 2-7 and 10-14 of the Transportation for Others Schedule for all the columns (Transportation for Others, Therms, Demand Charge Billed, Commodity Charge Billed and Total). Chesapeake also seeks confidential treatment of this information on the same basis as stated above for Schedule A-7P(2). We have already found this information to be confidential as it appears on Schedule A-7P(2), and for the same reasons, we find this information to be confidential on the Transportation for Others Schedule.

Therefore, for the reasons noted above, we find that the requested information for Schedules A-7P(1), A-7P(2) and Transportation for Others to be proprietary confidential business information.

In addition, Chesapeake also seeks confidential treatment of the highlighted information on its Invoices, submitted to it for gas purchased from third party suppliers, and for the information in lines 1-12 for all columns (Producer, Receipt Point, Gross Nominated, Net Delivered, Invoice $ Amount, Trans. Costs, Total Costs, and WACOG) for the City Gate Cost of Gas - Firm Transportation Schedule. The Company contends that disclosing the identity of its suppliers is contractual and proprietary business information, which, if made public, would impair its efforts to contract for goods or services on favorable terms. Competing suppliers, Chesapeake argues, could use the name of the suppliers, together with the price and quantity information discussed above, to potentially or actually control the pricing of gas which would impair its competitive interests of Chesapeake and its current suppliers. The end result is reasonably likely to be an increased cost of gas which Chesapeake would have to recover from its ratepayers. We agree.

Chesapeake asserts that the highlighted information on the invoices, which is also summarized on the Weighted Average Cost of Gas Schedule and the City Gate Cost of Gas - Firm and Interruptible Transportation Schedules, 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. 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. We agree with this analysis except as it is applied to the rate column on the invoices from FGT. Since the FGT rate is public information on file with FERC, the FGT rate will not be treated as confidential on the invoices. We would like to clarify that this only applies to the FGT rate and not to the rate from third party suppliers.

The Weighted Average Cost of Gas Schedule is Chesapeake's internal accounting source document for recording the monthly cost of gas for financial statement purposes. The information included on this schedule under columns entitled "Billing Determinants" through "Total Dollars" (Billing Determinants, Rate, and Total

Dollars) is also included on Schedule A-1/MT-AO, with the exception of lines 29 and 34. Chesapeake requests confidential treatment for the information in lines 1-10 for the columns labeled "Billing Determinants" through "Total Dollars," which Chesapeake asserts summarizes current G demand billing determinants, G purchases, rates, and total dollars paid for this service. This information, Chesapeake argues, is contractual information which, if made public, would impair the efforts of Chesapeake to contract for goods and services on favorable terms. Since the information in lines 1-10 under the column entitled "Rate" is public information on file with FERC, this particular portion of Chesapeake's request can not be granted. We agree with Chesapeake's analysis as it relates to the information in lines 1-10 for the columns entitled "Billing Determinants" and "Total Dollars."

Also, Chesapeake asserts that the information found in lines 12-16 of the columns entitled "Billing Determinants" through "Total Dollars" (Billing Determinants, Rate, and Total Dollars) of the Weighted Average Cost of Gas Schedule summarizes its current FTS-1 transportation service including the demand cost, commodity pipeline cost, demand billing determinants and actual therm purchases from suppliers transported under FTS-1 and service. This information is also included on Schedule A-1/MT-AO for which confidential treatment has been sought. The total dollar figures for Chesapeake's purchases from its suppliers shown on line 14 can be divided by the therms purchased from such suppliers on line 14 to determine the weighted average cost of gas paid by Chesapeake to its suppliers on line 14. Thus, Chesapeake asserts, the publication of the information on line 14, together or independently, would allow another supplier to derive the purchase price of gas that Chesapeake paid to its current suppliers for the period. This information, Chesapeake contends, is contractual information which, if made public, would impair Chesapeake's efforts to contract for goods and services on favorable terms. Since the information in lines 12-13 and 15-16 under the column entitled "Rate" is public information on file with FERC, this particular portion of Chesapeake's request can not be granted. We agree with the remainder of Chesapeake's analysis.

The current FGT demand and commodity charges for Chesapeake's FTS-1 service, as well as the contract entitlement, are shown on lines 12 and 13 for the columns entitled "Billing Determinants" through "Total Dollars" (Billing Determinants, Rate, and Total Dollars). The contract entitlement represents the sum of gas transported by Chesapeake for both system supply and end-use customers under FT agreements. Publication of the information on lines 12, 13 and 14 together or independently, Chesapeake contends, could allow suppliers, brokers, and/or marketers to determine both

the level of FTS-1 used to serve current system demand as well as the amount of FTS-1 service that Chesapeake's customers have contracted for under FT agreements. Chesapeake further states that this is contractual information which, if made public, would impair the competitive business of Chesapeake. We agree with Chesapeake's assertions except as they relate to the information in lines 12 and 13 under the "Rate" column, which is information set forth in FGT's tariff on file with FERC and is a matter of public record.

In addition, Chesapeake maintains that the publication of the information in lines 18-20 of the columns entitled "Billing Determinants" through "Total Dollars" of the Weighted Average Cost of Gas Schedule "would impair the efforts of [Chesapeake] to contract for goods and services on favorable terms." Section 366.093(3)(d), Florida Statutes. However, under the column entitled "Rate," the information in lines 18 and 20 is public information on file with FERC. The current FGT commodity cost for ITS-1 service is shown on line 18. The rate charged by FGT for this service is set forth in FGT's tariff on file with the FERC and is a matter of public record. The total dollars charged by FGT for this service is a function of the rate times volumes transported each month. Thus, the publication of the information on line 18, together or independently, Chesapeake asserts, could allow another supplier to derive the volumes transported under ITS-1 service. Generally, Chesapeake maintains, the billing determinants shown on lines 18 and 19 will be the same volumes and any difference will be an imbalance on FGT's system. Publication of the data on lines 18 and 19, together or independently, could allow another supplier to derive the purchase price of gas Chesapeake paid to its current suppliers for the period. We agree that the information in lines 18-20 of the columns entitled "Billing Determinants" and "Total Dollars" is proprietary confidential business information as is the information in line 19 of the column entitled "Rate"; however, we find that the information in lines 18 and 20 of the column entitled "Rate" is public information for the reasons stated above.

Also, Chesapeake maintains that the information in lines 1-10 12-16, and 18-20 of the columns labeled "Firm" through "Florida Division" on the Weighted Average Cost of Gas Schedule (Firm, Preferred Interruptible, Account, Florida Division) are used for general ledger classification only by Chesapeake. This information shows total current gas costs incurred by the utility for each type of service. Publication of this information, Chesapeake contends, would impair the efforts of Chesapeake to contract for goods or services on favorable terms. We agree. This information is also included on Schedule A-1/MT-AO for which confidential treatment has also been sought.

Further, the information included on lines 23-26, 28-29 and 31-34 of the column entitled "Billing Determinants" on the Weighted Average Cost of Gas Schedule is a reconciliation of the volume of gas purchased during the month with the volume of gas actually delivered by the pipeline. Publication of these volumes by type of service could allow suppliers, marketers, and producers to determine the amount of gas purchased for system supply as well as the amount of gas transported for others on Chesapeake's system. This is contractual information, Chesapeake contends, which, if made public, would impair its efforts to contract for goods and services on favorable terms as well as impair its competitive business. We agree with Chesapeake's analysis. Likewise, this information, with the exception of line 29, is also included on Schedule A-1/MT-AO for which confidential treatment has been sought.

We find that by granting Chesapeake'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 supplier(s). We note that we are approving the confidential classification of this information for the month of January, 1992, only.

We also find that this information is treated by Chesapeake and its affiliates as confidential information and that it has not been disclosed to others.

DECLASSIFICATION

The Florida Division of Chesapeake requests that the information for which it seeks confidential classification not be declassified until August 20, 1993 as provided by Section 366.093(4), Florida Statutes. Section 366.093(4), Florida Statutes, provides 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 18-month time 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.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the request by Chesapeake Utilities Corporation, Florida Division, to protect from public disclosure the information on its Schedules and Invoices relating to the month of January, 1992, identified in DN-1991-92 and as revised in Document No. 4977-92, and discussed within the body of this Order, is granted. This information is confidential and shall continue to be exempt from the requirements of Section 119.07(1), Florida Statutes. We note, however, that since the information found in lines 39-42, 45, and 47-51 of the column entitled "Current Month - Actual" on Schedule A-1, and in lines 1-10, 12-13, 15-16, 18 and 20 of the column entitled "Rate" on the Weighted Average Cost of Gas Schedule, and the FGT rate on the Invoices is public information, the request is not granted as it relates to these lines, as discussed within the body of this Order. It is further

ORDERED that the request of Chesapeake Utilities Corporation, Florida Division, for the declassification date included in the text of this Order is granted.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 6th day of August, 1992.

Betty Easley

BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

DLC:bmi

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, is 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.