

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Purchased Gas) DOCKET NO. 920003-GU
Adjustment (PGA) Clause.) ORDER NO. PSC-92-1249-CFO-GU
) ISSUED: 11/03/92

ORDER REGARDING SJNG'S REQUEST FOR CONFIDENTIAL TREATMENT
OF ITS AUGUST, 1992 SCHEDULES AND INVOICES

BY THE COMMISSION:

On September 21, 1992, St. Joe Natural Gas Company, Inc. (SJNG) filed a request for specified confidential treatment of certain line items in its schedules A-1, A-7P, and A-9 and in its invoices from third party vendors for the purchase of natural gas for system supply use during the month of August, 1992. The confidential information is found in Document Nos. 10912-92 and 10914-92.

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.

DOCUMENT NUMBER-DATE

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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. Rates 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 lines 1-5, 7-12, 20-24, 26-33, and 46 of columns A-H on Schedule A-1 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 period dates. Knowledge of the prices that SJNG pays to its vendor(s) during a month 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. We agree and find that the requested information is proprietary confidential business information.

In addition, SJNG argues that the information in lines 1-13 of columns A-L on Schedule A-7P is contractual data which should be afforded confidential treatment. We agree. The information delineates the number of therms purchased for system supply, the number of therms purchased for end use, the commodity costs/pipeline and third party, the 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 entitled "Total Cents Per Therm." Thus, 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). We find that this information would permit other vendors to determine contractual information which, if made public, would impair SJNG's efforts to contract for goods and services on favorable terms.

Likewise, SJNG asserts that the information shown in lines 1-10 on Schedule A-9 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 16 and 17 of the same columns. Therefore, 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. We agree.

Finally, SJNG requests confidential classification of the name, address, phone number, fax number, remittance person's name, 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. If this information were made public, SJNG asserts that it would be at a disadvantage, because suppliers may expect SJNG to pay a higher price because of the suppliers' knowledge of SJNG's circumstances. We agree.

SJNG also argues that the 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). 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. We agree.

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We find that by granting SJNG'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). We note that we are approving the confidential classification of this information for the month of August, 1992, only.

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

SJNG requests that this information not be declassified until March 1, 1994. We find that this information shall be held as proprietary confidential business information until this date, and that this 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. We note that this declassification period will ultimately protect SJNG and its customers.

It is, therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the proprietary confidential business information discussed above in Document Nos. 10912-92 and 10914-92. It is further

ORDERED that this information shall be classified as proprietary confidential business information until March 1, 1994.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 3rd day of November, 1992.



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 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.