

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

April 4, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *GP*
DIVISION OF WATER & WASTEWATER (MERCHANT) *MM*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (DAVIS) *DA*

RE: DOCKET NO. 960011-WU - INVESTIGATION OF RATES OF
INDIANTOWN COMPANY, INC., FOR POSSIBLE OVEREARNINGS
COUNTY: MARTIN

AGENDA: APRIL 16, 1996 - REGULAR AGENDA - MOTION FOR
RECONSIDERATION - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960011R2.RCM

CASE BACKGROUND

Indiantown Company, Inc. (Indiantown or utility) is a Class B utility providing water and wastewater service for approximately 1,677 water and 1,585 wastewater customers in Martin County. The utility's systems are located in the St. Johns River Water Management District Water Conservation Area, which is a designated critical water use area. For the test year ended December 31, 1994, the utility reported water operating revenues of \$449,029 and a net operating income of \$82,218. For the same year, the utility's wastewater operating revenues were \$502,022 with a net operating income of \$61,486.

The Commission last set Indiantown's rates and charges in Order No. 11891, issued on April 27, 1983, in Docket No. 810037-WS. In that order, the Commission determined the utility's rate base and authorized an overall rate of return of 9.87%. In Order No. PSC-95-1328-FOF-WS, issued on November 1, 1995, in Docket No. 950371-WS, the Commission re-established the utility's return on equity at 10.43%. The utility was granted index increases in 1984, 1987, 1988, 1989, 1993 and 1994, and a pass-through increase in 1991.

On February 6, 1996, the Commission issued Order No. PSC-96-0169-FOF-WS, in which it ordered that an investigation of the water rates and charges of Indiantown be initiated. On February 20, 1996, the utility filed a motion for reconsideration of Order No. PSC-96-0169-FOF-WS. This recommendation addresses the motion for reconsideration.

DOCUMENT NUMBER DATE

03789 APR-30

PSC-96-0169-REPORTING

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Indiantown Company, Inc.'s motion for reconsideration of Order No. PSC 96-0169-FOF-WS?

RECOMMENDATION: No. The Commission should deny Indiantown Company, Inc.'s motion for reconsideration of Order No. PSC 96-0169-FOF-WS. (PELLEGRINI)

STAFF ANALYSIS: As noted in the case background, the utility filed a motion for reconsideration of Order No. PSC-96-0169-FOF-WS. In that Order, the Commission ordered that an investigation of the water rates and charges of Indiantown be initiated. The Commission further ordered that the utility shall collect water service revenues of \$118,066 on an annual basis subject to refund and that it provide a corporate undertaking of \$92,428 to secure a potential refund of water revenues collected in the interim period. The Commission found the utility's water system to be earning an 89.39% overall rate of return and the wastewater system to be earning an overall rate of return of 6.40%. In Order No. PSC-95-1328-FOF-WS, issued November 1, 1995, in Docket No. 950371-WS, the Commission re-established the utility's return on equity to be 10.43%, and in Order No. PSC-96-0169-FOF-WS, the Commission established the utility's overall rate of return for interim purposes to be 9.61%.

In its motion for reconsideration, Indiantown contends that the Commission erred as a matter of law in ordering an investigation only of one aspect of the utility's operations. With reference to the Commission's statutory obligation to fix rates which are just, reasonable, compensatory, and not unfairly discriminatory, either upon request or its own motion, Section 367.081(2)(a), Florida Statutes, the utility notes that, while its water operations may appear to be overearning, its wastewater operations appear to be underearning. It argues that "the Commission has just as much legal obligation to adjust one inequity as the other." The utility requests the Commission to issue a revised order requiring it to collect instead water service revenues subject to refund offset by the amount by which wastewater service revenues are less than the minimum of its authorized range of rate of return or permitting it as well to collect increased interim wastewater rates subject to refund.

Rule 25-22.060(1), Florida Administrative Code, permits a party who is adversely affected by an order of the Commission to file a motion for reconsideration of that order. It is well-established in the law that the purpose of reconsideration is to bring to the Commission's attention some point that the Commission

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overlooked or failed to consider or a mistake of fact or law. The standard for reconsideration is set forth in Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962):

The purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. (citations omitted) It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or order.

Id. at 891.

It is staff's belief that the Commission fully considered both the potential for overearnings in Indiantown's water operations and the potential for underearnings in its wastewater operations in deciding to order a formal investigation only of the water operations' earnings. In Order No. PSC-96-0169-FOF-WS, the Commission stated:

[W]e find it appropriate that \$126,779, or 27.84%, of test year water revenues shall be held subject to refund pending our final determination of the utility's water revenue requirement, pursuant to Section 367.082(2)(b), Florida Statutes. The wastewater system is earning an overall rate of return of 6.40%, which is less than the minimum of the range of authorized overall rates of return.

Order at 3.

The utility appeared before the Commission at the January 16, 1996, Agenda Conference, at which the Commission ordered the overearnings investigation opened, and advanced its present argument, that its wastewater operations' underearnings warrant an offsetting consideration. Thus, staff believes that it can not be said, applying Diamond Cab, *supra*, that the Commission, in Order No. PSC-96-0169-FOF-WS, erred as a matter of law or overlooked a point of fact or law. Accordingly, Indiantown's motion for reconsideration of Order No. PSC-96-0169-FOF-WS should be denied.

For purposes of the Commission's information, it is important to note that netting the underearnings of one utility service against the overearnings of the other is inconsistent with

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Commission policy in overearnings investigations. Section 367.081, Florida Statutes, provides that a utility shall be permitted the opportunity to earn a fair rate of return on its investment used and useful in the public service. The Commission initiates an investigation of overearnings whenever an informal review of a utility's annual report suggests the potential for earnings in excess of the utility's authorized rate of return. On the other hand, it is staff's belief that it is the utility's responsibility in the usual case to come forward with a request for rate relief if the utility believes that it is underearning and that it requires relief. While the utility may not be permitted as a matter of law to earn in excess of its authorized rate of return, it is a matter within the utility's business judgment whether to suffer an underearnings posture. If it determines that it requires rate relief, the utility may file an application for an increase in its rates and charges pursuant to the provisions set forth in Section 367.081, Florida Statutes, and Chapter 25-30, Part V, Florida Administrative Code.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to complete the investigation of Indiantown's water service rates and charges, pursuant to Order No. PSC-96-0169-FOF-WS. (PELLEGRINI)

STAFF ANALYSIS: In Order No. PSC-96-0169-FOF-WS, the Commission ordered that an investigation of Indiantown's water service rates and charges be initiated. This docket should remain open for that purpose.