

VOTE SHEET

DATE: September 3, 1996

RE: DOCKET NO. 960011-WS - Investigation of rates of Indiantown Company, Inc. in Martin County for possible overearnings.

Issue 1: Recommendation that the Commission waive the time requirement of Rule 25-30.360(2), F.A.C., as requested by the utility.

APPROVED

Issue 2: Recommendation that this docket not be closed in this item. Whether to close this docket is to be determined in the contemporaneous agenda conference item considering staff's final recommendation in its overearnings investigation.

APPROVED

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

[Handwritten signature]

Stephen Clark

J. Tom Dean

[Handwritten signature]

REMARKS/DISSENTING COMMENTS:

PSC/RAR33 (5/90)

DOCUMENT NUMBER-DATE

09392 SEP-4 96

FPSC-RECORDS/REPORTING

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center, 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

AUGUST 22, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *G. P. (M)*
DIVISION OF WATER AND WASTEWATER (AUSTIN, B. DAVIS *B. Davis*
FUCHS) *EF*

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

COUNTY: MARTIN

AGENDA: SEPTEMBER 3, 1996 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960011TW.RCM
THIS ITEM SHOULD PRECEDE THE OVEREARNINGS
RECOMMENDATION IN THIS DOCKET

CASE BACKGROUND

Indiantown Company, Inc. (Indiantown or utility) is a Class B utility providing water and wastewater service to approximately 1,677 water and 1,585 wastewater customers in Martin County. Staff has conducted an overearnings investigation in the instant docket and brings its final recommendation on that matter to the Commission at this Agenda Conference as well.

Earlier in this docket, by Order No. PSC-96-0657-FOF-WS, issued May 10, 1996, the Commission established the utility's 1994 rate base. It required the utility to refund with interest the 1994 water price index adjustment and to reduce rates to remove the effect of the 1994 water price index. On July 26, 1996, the utility filed revised tariff sheets to be effective July 19, 1996. On July 31, 1996, the utility, having earlier asked for staff's assistance in calculating the refunds, wrote to the Director, Division of Water and Wastewater, proposing a simplified calculation. Staff has agreed to assist the utility with the required calculations. However, staff cannot provide this assistance without the utility's violation of Rule 25-30.360(2), Florida Administrative Code. Hence, on August 19, 1996, the utility filed a Motion for Waiver (motion), which this recommendation addresses.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission waive the time requirement of Rule 25-30.360(2), Florida Administrative Code, as requested by the utility?

RECOMMENDATION: Yes. (PELLEGRINI)

STAFF ANALYSIS: In Order No. PSC-96-0657-WS, the Commission found Indiantown's 1994 return on equity (ROE) to have been 50.77% for the water system, above its then-maximum authorized ROE of 17.35%. Accordingly, the Commission determined excessive revenue for 1994 to have been \$110,834. The Commission found Indiantown's 1994 ROE for the wastewater system to have been 17.29%, within its authorized range.

In July 1994, Indiantown implemented water and wastewater price indexes pursuant to Section 367.082(4), Florida Statutes. Those rate adjustments increased water revenues by \$8,713, about 2.05% annually, and wastewater revenues by \$8,651, about 1.86% annually. Pursuant to Section 367.081(4)(d), Florida Statutes, the Commission may order a utility to refund, with interest, a price index if, within 15 months after the filing of a utility's annual report, the Commission finds that the utility exceeded the range of its last authorized rate of return on equity. In Order No. PSC-96-0657-FOF-WS, the Commission determined that Indiantown earned a 77.59% return on water rate base, and, thus, found it appropriate that the index adjustment collected in 1994 for the water system, having contributed to overearnings, be refunded with interest. The Commission further found that the portion of revenues collected in 1995 and 1996 attributable to the 1994 price index adjustment be refunded with interest.

Rule 25-30.360(2), Florida Administrative Code, requires that refunds be made within 90 days of the Commission's order. Order No. PSC-96-0657-FOF-WS became final on May 31, 1996. Hence, the utility is under a requirement to make the refunds by August 30, 1996. On July 31, 1996, after several discussions with staff, the utility formally asked for staff's assistance in making the refunds calculations. The utility stated that it does not have the resources to comply with the refunds order without the assistance of staff or some simplification of the calculations. As noted earlier, staff has agreed to assist the utility in carrying out the refunds calculations. Pursuant to Rule 25-30.360(4)(2), Florida Administrative Code, upon request of the utility, staff shall provide applicable interest figures and assistance in calculations. Because staff cannot complete the necessary calculations in time to

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permit the refunds to be made by the required date, the utility filed a motion for a waiver of the time requirement. The utility requested the waiver be effective until November 1, 1996. The utility proposed to include interest to the date of the refund.

Rule 25-30.011, Florida Administrative Code, permits the Commission, upon application, to temporarily exempt utilities from the requirements of its rules that represent unreasonable difficulty in immediate compliance. The rule is a procedural rule. It is within the Commission's discretion to relax or modify its procedural rules adopted for the orderly transaction of business when the ends of justice require. See, e.g., American Farm Lines v. Black Ball Freight, 397 U.S. 532 (1970). Accordingly, staff recommends the Commission grant the waiver as requested by the utility. The purpose of Section 367.081(4)(d), Florida Statutes, the law implemented, will not be compromised if the refunds are made with full interest by November 1, 1996. Staff accepts the utility's assertion that it lacks the resources or facilities to correctly carry out the refunds within the required period as one made in good faith.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, not in this item. Whether to close this docket is to be determined in the contemporaneous Agenda Conference item considering staff's final recommendation in its overearnings investigation. (PELLEGRINI)

STAFF ANALYSIS: The Commission should not close this docket in this item. Whether to close this docket should be determined in the Agenda Conference item to follow this one, in which staff brings its final recommendation to the Commission following the completion of its overearnings investigation.