

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Indiantown Company, Inc., holder of Certificate Nos. 387-W and 331-S in Martin County, from Linda M. Post and David Ralicki, trustees of the Robert Post Marital Trust, Postco, Inc., to Jeffrey S. Leslie.

DOCKET NO. 100182-WS
ORDER NO. PSC-10-0471-FOF-WS
ISSUED: July 26, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP

ORDER APPROVING APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL

BY THE COMMISSION:

Background

Indiantown Company, Inc. (Indiantown or utility) is a Class A utility providing service to approximately 1,806 water and 1,712 wastewater customers in Martin County. Indiantown's service area is located in a portion of the South Florida Water Management District (SFWMD) where there are currently no water use restrictions. Indiantown's 2009 annual report shows annual operating revenues of \$750,247 and \$1,134,023 with net operating losses of (\$43,273) and (\$48,428) for water and wastewater, respectively.

In 1983, we granted to the utility grandfather Certificate Nos. 387-W and 331-S.¹ We subsequently approved two amendments to the utility's service territory.² In 1997, we approved the transfer of majority organizational control (TMOC) of the assets of Indiantown to Postco, Inc. (Postco), a company which was formed by Mr. Robert M. Post, Jr. to hold the assets of Indiantown.³ In 2007, control of Postco was transferred to the Robert M. Post Marital Trust

¹ Order No. 11891, issued April 27, 1983, in Docket No. 810037-WS, In re: Application of Indiantown Company, Inc., for certificates and increased water and sewer rates in Martin County, Florida.

² Order No. PSC-92-0116-FOF-WS, issued March 30, 1992, in Docket No. 910726-WS, In re: Application for amendment of Certificates Nos. 387-W and 331-S in Martin County by Indiantown Company, Inc. and Order No. PSC-04-0967-FOF-WS, issued October 5, 2004, in Docket No. 040497-WS, In re: Application for amendment of Certificates 387-W and 331-S to add territory in Martin County by Indiantown Company, Inc.

³ Order No. PSC-97-1171-FOF-WS, issued October 1, 1997, in Docket No. 970556-WS, In re: Application for transfer of majority organizational control of Indiantown Company, Inc. (holder of Certificates Nos. 331-S and 387-W) in Martin County to Postco, Inc.

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(Trust or Seller) following the death of Mr. Post. Linda M. Post and David Ralicki are the Trustees of the Trust.

On April 14, 2010, an application was filed by the Trustees of the Trust for the TMOC of Postco to Jeffrey S. Leslie (Mr. Leslie or Buyer) through a Stock Redemption Agreement (SRA) between the Trust, Postco, and Leslie. The closing of the SRA is conditioned on approval by this Commission of the TMOC.

An application for TMOC is governed by Section 367.071, Florida Statutes (F.S.), which states in part that no utility shall transfer its majority organizational control without determination and approval by this Commission that the proposed transfer is in the public interest. We have jurisdiction to consider this matter pursuant to Section 367.071, F.S.

Decision

On April 14, 2010, pursuant to Section 367.071, F.S. and Rule 25-30.037(3), Florida Administrative Code (F.A.C.), an application was filed on behalf of Indiantown for the transfer of majority organizational control of its holding company, Postco, from the Trust to Mr. Leslie through a SRA between the Trust, Postco, and Mr. Leslie. Since Postco owns 100 percent of the common stock of Indiantown, the transfer will result in a change of majority control of Indiantown from the Trust to Mr. Leslie. The closing of the SRA is anticipated to occur only after regulatory approval has been obtained.

The SRA provides that, at the time of closing, the outstanding shares of Postco will be redeemed by Mr. Leslie from the Trust. With the acquisition by Mr. Leslie of 100 percent of the issued and outstanding shares of stock in Postco, Mr. Leslie obtains majority control of Indiantown. While Mr. Leslie does not currently own any water or wastewater utilities, he has been President and CEO of Indiantown since 2007 and Chief Operating Officer since 1996. Except for the purchase of the parking lot, the stock transaction will not involve the payment of cash by Mr. Leslie. However, as part of the SRA transaction, the garbage operations and bank stock owned by Indiantown will be sold, and the proceeds will be used as specified in the SRA.

The application is in compliance with the governing statute, Section 367.071, F.S., and Rule 25-30.037(3), F.A.C., pertaining to an application for transfer of majority organizational control. A description of the territory granted to Certificate Nos. 387-W and 331-S is appended to this memorandum as Attachment A.

Pursuant to Rule 25-30.037(3)(f), F.A.C., the application contained a statement of how the transfer is in the public interest. According to the application, the transaction will not result in any change in management or operation of Indiantown, and Indiantown's existing management and operation personnel will remain in place. Mr. Leslie believes his knowledge and experience will allow him to maintain quality utility service for Indiantown's customers. In addition, Mr. Leslie has provided a statement of intent to fulfill the commitments, obligations, and representations of the seller with regard to utility matters. As noted, the former owner died and the Trust is disposing of the assets of the estate. We find that Mr. Leslie has demonstrated

technical and financial ability to continue to operate the utility based upon his years of experience managing the utility and the value of utility stock.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. No objections to this application were received and the time for the filing of such objections has expired. Pursuant to Rule 25-30.037(3)(i), F.A.C., the application is to contain evidence that the utility has control of the land upon which the utility facilities are located. A copy of the warranty deed in the name of Indiantown Company, Inc. was provided for the land on which the water and wastewater treatment facilities are located.

We have verified that Indiantown is current on filing its annual reports through 2008. An extension was granted to file the 2009 annual report by June 30, 2010. The annual report was timely filed on June 24, 2010. All regulatory assessment fees (RAFs) are current through December 31, 2009. The utility will continue to be responsible for filing annual reports and RAFs for 2009 and future years.

Pursuant to Rule 25-30.037(3)(h), F.A.C., the application contains a statement that Mr. Leslie has determined that the utility's systems appear to be in satisfactory condition and in substantial compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). We have confirmed Mr. Leslie's statement with the DEP. DEP noted that it has approved modifications to Indiantown's wastewater treatment plant to provide reuse service. A new class of service for reuse was approved in 2009.⁴ We have also confirmed that Indiantown is in good standing with the South Florida Water Management District.

Indiantown's current rates were established pursuant to a rate case, effective July 20, 2005.⁵ Every year since the rate case, Indiantown has filed a price index, some with pass-through adjustments, as well. Rule 25-9.044(1), F.A.C., provides that in the case of a change in ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission. The Buyer has not requested a change; therefore, the existing rates and charges, in effect, shall continue.

Based on the above, we determine that the transfer of majority organizational control of Indiantown Company, Inc.'s parent, Postco, Inc., from the Robert M. Post Martial Trust to Jeffrey S. Leslie is in the public interest and shall be approved effective July 13, 2010, the date of our vote. This order shall serve as the utility's Certificate Nos. 387-W and 331-S and shall be retained by the utility. The tariff pages reflecting the transfer shall be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

⁴ Order No. PSC-09-0393-TRF-SU, issued June 2, 2009, in Docket No. 080712-SU, In re: Application for approval of a new class of service for reuse water service in Martin County by Indiantown Company, Inc.

⁵ Order No. PSC-05-0624-PAA-WS, issued June 7, 2005, in Docket No. 040450-WS, In re: Application for rate increase in Martin County by Indiantown Company, Inc. Indiantown's rates and charges were originally established in 1983 pursuant to Order No. 11891.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Indiantown's parent, Postco, Inc., from the Robert M. Post Marital Trust to Jeffrey S. Leslie is in the public interest and shall be approved effective July 13, 2010. It is further

ORDERED that this order shall serve as the utility's Certificate Nos. 387-W and 331-S and shall be retained by the utility. It is further

ORDERED that the tariff pages reflecting the transfer shall be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of July, 2010.



ANN COLE
Commission Clerk

(S E A L)

ELS

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.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**INDIANTOWN COMPANY, INC.
Martin County, Florida
Water and Wastewater Service Territory**

Township 39 South, Range 38 East, Martin County

All of Section 22, South of State Road 710 R/W

Section 25, the South 1/2

Section 26, the West 1/2 of the South 1/2

Parcel 1

In Section 26, Township 39 South, Range 38 East, commence at the Northwest corner of said Section 26, thence south along the west line of said Section 26 to the intersection with the westerly projection of the north line of Tract 56, Block B according to the Plat of Indiantown Farms as recorded in Plat Book 1, page 80 Public Records, Martin County, Florida, and the Point of Beginning; thence east along the north line of Tracts 56 and 11 and the easterly projection thereof to the east line of the west one-half of said Section 26; thence south along said east line to the intersection with the easterly projection of the south line of said Tract 11; thence west along the south lines of said Tracts 11 and 56 and the westerly projections thence to the west line of the aforesaid Section 26; thence north along said west line to the Point of Beginning.

All of Section 27, South of State Road 710 R/W

All of Section 34

All of Section 35, South of State Road 710 R/W

All of Section 36

Township 40 South, Range 38 East, Martin County

Section 1

The North 3/4 of the East 1/2 of the East 1/2 of the North 1/2 of the West 1/2, and the West 1/2 of the North 1/2 of the West 1/2 lying North of West Farm Road. (West Farm Road can be described approximately as follows: From the Northeast corner of said section Run 3,309 feet South along the East line to the intersection of West Farm Road; thence North 86 degrees West along said road a distance of 1,095 feet; thence North 59 degrees West a distance of 3,017 feet; thence North 77 degrees West a distance of 1,338 feet to the intersection of said road with the West line of said section. This point is also being 1,314 feet south of the Northwest corner of said section.)

Section 2

The area lying North of West Farm Road. (West Farm Road can be described approximately as follows: From the Northeast corner of said section run South along the East Section line a distance of 1,314 feet to the intersection of West Farm Road; thence North 77 degrees West a distance of 1,241 feet; thence North 61 degrees West a distance of 2,093 feet to the intersection of the North line of said section. This point also being 3,090 feet West of the Northeast corner of said section.)

Township 39 South, Range 39 East, Martin County

All of Section 33

Parcel 2

Section 31, the South 1/4

Begin at the Northwest corner of Section 31, Township 39 South, Range 39 East, in the centerline of County Road 609 (SW Allapattah Road); thence east along the north line of said Section 31 to the northeast corner of said Section 31; thence south along the east line of said Section 31 to the intersection with the south line of the North half of the South half of said Section 31; thence west along said south line to the intersection with the west line of said Section 31 and the centerline of said County road 609; thence north along said west line and centerline to the Northwest corner of said Section 31 and the Point of Beginning.

Parcel 3

Begin at the Northeast corner of Section 32, Township 39 South, Range 39 East; thence south along the east line of said Section 32 a distance of 1,656 feet; thence northwest to the intersection with the north line of said Section 32, at a point 1,880 feet west of the Northeast corner of said Section 32, thence east along said north line to the Northeast corner of said Section 32 and the Point of Beginning.

Parcel 4

Begin at the Southwest corner of Section 32, Township 39 South, Range 39 East; thence north along the west line of said Section 32 to the intersection with the north line of the Southwest one quarter (SW 1/4) of said Section 32; thence east along said north line to the intersection with the east line of said Southwest one quarter (SW 1/4) of Section 32; thence south along said east line to the intersection with the south line of said Section 32; thence west along said south line to the Southwest corner of said Section 32 and the Point of Beginning.

Township 40 South, Range 39 East, Martin County

All of Section 5

All of Section 6

All of Sections 4, 7, 8, 9, North of the St. Lucie Canal R/W

Parcel 5

Being a parcel of land lying in Sections 8 and 9, Township 40 South, Range 39 East, Martin County, Florida, being more particularly described as follows: being bounded on the northwest by the southerly right-of-way line of State Road 76 and being bounded on the northeast and southeast by the westerly and northwesterly right-of-way line of SW Indiantown Avenue and being bounded on the southwest by the easterly right of way line of State Road 710.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Indiantown Company, Inc.
pursuant to
Certificate Number 387-W

to provide water service in Martin County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
11891	04/27/83	810037-WS (CR)	Grandfather
PSC-92-0116-FOF-WS	03/30/92	910726-WS	Amendment
PSC-97-1171-FOF-WS	10/01/97	970556-WS	Transfer of Majority Control
PSC-04-0967-FOF-WS	10/05/04	040497-WS	Amendment
PSC-10-0471-FOF-WS	07/26/10	100182-WS	Transfer of Majority Control

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Indiantown Company, Inc.
pursuant to
Certificate Number 331-S

to provide wastewater service in Martin County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
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PSC-97-1171-FOF-WS	10/01/97	970556-WS	Transfer of Majority Control
PSC-04-0967-FOF-WS	10/05/04	040497-WS	Amendment
PSC-10-0471-FOF-WS	07/26/10	100182-WS	Transfer of Majority Control