

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of INDIANTOWN )	DOCKET NO. 900835-WS
COMPANY, INC. for permission to )	
gross up contributions-in-aid-of- )	ORDER NO. 24303
construction (CIAC) in Martin )	
County )	ISSUED: 3/29/91
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 GERALD L. GUNTER  
 J. TERRY DEASON  
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTIONORDER ON CIAC GROSS-UP

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature, and as such, will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Indiantown Company, Inc. (the utility) is a Class B water and wastewater utility providing service to the public in Martin County. A review of the utility's 1989 Annual Report reflected 1,445 water and 1,305 wastewater customers as of December 31, 1989. Gross annual operating revenues of \$391,515 and \$392,933 were reflected for the water and wastewater systems, respectively, and the utility had net operating income of \$29,237 for the water system and \$62,064 for the wastewater system.

On October 16, 1990, pursuant to Rule 25-22.036, Florida Administrative Code and Commission Order No. 23541, Indiantown Company, Inc. filed its petition for authority to gross-up contributions-in-aid-of-construction (CIAC). The Commission has received a waiver of the sixty day time period. The utility asserts that this request is necessary in order to provide the cash flow necessary to fund the corporate income tax liability associated with the receipt of CIAC under the provisions of Section

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118(b), Internal Revenue Code. The utility indicated that it is scheduled to accept the transfer of approximately \$935,000 of water and sewer lines installed by Indianwood Development, which when included in the utility's gross income, will create a current tax liability of approximately \$352,000.

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact on CIAC resulting from the amendment of Section 118(b) of the Internal Revenue Code. Order No. 23541, issued October 1, 1990, ordered that no utility may gross-up CIAC without first obtaining Commission approval.

Section 367.091(5), Florida Statutes, provides that within sixty (60) days of the filing of an application to change a rate or charge the Commission may approve, withhold consent, or allow upon inaction, the rates requested to become effective. The file-and-suspend statutes have been interpreted by the Florida Supreme Court in Citizens of the State of Florida vs Wilson, 568 So.2d 904 (Fla. 1990), to provide that rates which become effective upon inaction by the Commission are merely interim rates pending final order by the Commission. The case law also provides that substantially interested persons have the right to a hearing on the interim rates.

We have considered the data which has been submitted and find that the utility has filed the minimum information required by Order No. 23541. Although the information filed makes it appear that the utility will have a tax liability as a result of the conveyance of the CIAC, we find that it is reasonable and necessary to require amplification and explanation of the data filed, as well as additional and corroborative data, before we can make a final determination that a tax liability exists and that other sources of funds are not available at a reasonable cost.

In consideration of the above, we are not suspending rates or withholding consent. By our inaction on the file-and-suspend provision of Section 367.091(5), Florida Statutes, it is our intent to allow the new tariffs to become effective on an interim basis.

Pursuant to Orders Nos. 16971 and 23541, CIAC tax impact amounts are to be deposited as received in a fully funded interest bearing escrow account. However, because this gross-up is being

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allowed on an interim basis and may not be permitted after further examination, no monies shall be withdrawn from the escrow account until a final determination is made in this matter. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund.

In the event that CIAC gross-up is permitted after a final determination, all CIAC tax impact monies received during the tax year that are in excess of the utility's actual tax liability resulting from its collection of CIAC, together with interest on such excess monies, must be refunded on a pro rata basis to the contributions of those amounts. Further, all provisions of Orders Nos. 16971 and 23541 not addressed in this Order are incorporated herein by reference.

The tariffs proposed by the utility in its application will become effective, but not final, on the date this order is issued. However, substantially affected persons shall have 21 days from the date of this order to request a hearing.

It is, therefore,

ORDERED by the Florida Public Service Commission that the tariffs filed by Indiantown Company, Inc. for CIAC gross-up are neither approved, suspended nor denied. It is further

ORDERED that the tariffs filed by Indiantown Company, Inc. shall become effective, but not final, on the date this order is issued. It is further

ORDERED that Indiantown Company, Inc. shall be allowed to collect gross-up contributions-in-aid-of-construction on an interim basis subject to refund and in accordance with the provisions of Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that Indiantown Company, Inc. shall deposit all gross-up contributions-in-aid-of-construction collected into a fully funded interest bearing escrow account. It is further

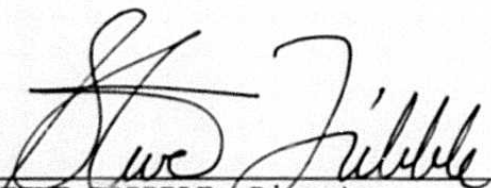
ORDERED that Indiantown Company, Inc. shall make no withdrawals from the escrow account until a final determination to approve or deny the new tariffs is made in this matter. It is further

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ORDERED that the provisions of this Order issued as proposed agency action shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that this docket shall remain open for further proceedings.

By ORDER of the Florida Public Service Commission this 29th  
day of MARCH, 1991.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

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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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 19, 1991.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.