

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of) DOCKET NO. 940826-TL
capital recovery requirements by) ORDER NO. PSC-95-1053-FOF-TL
Indiantown Telephone Systems,) ISSUED: August 24, 1995
Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER ACKNOWLEDGING WITHDRAWAL OF PETITION, APPROVING REFUND
AND CLOSING DOCKET

BY THE COMMISSION:

By letter dated February 3, 1993, Indiantown Telephone System, Inc. (Indiantown or the company) agreed to cap its earnings for calendar year 1993 at the top of the range of its authorized return on equity. The company's year end surveillance report indicated overearnings of approximately \$20,000. A subsequent audit by the Commission staff indicated that, after appropriate adjustments were made, the company over-earned by \$71,115 in calendar year 1993.

By letter dated July 7, 1994, the company advised that it anticipated substantially modifying or replacing its central office switch "in order to provide anticipated future services." Indiantown also suggested that its 1993 overearnings be placed in a depreciation reserve.

On August 8, 1994, Indiantown advised it would upgrade its processor and petitioned for a capital recovery schedule to write-off the unamortized balance of its existing processor. It proposed to apply the 1993 overearnings amount, as calculated in the staff audit report, to the recovery schedule.

On March 29, 1995, the Commission issued Order No. PSC-95-0427-FOF-TL as proposed agency action, granting the petition for a capital recovery schedule and approving the request to apply the 1993 overearnings to the unamortized balance.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On April 19, 1995, the Office of Public Counsel (OPC) timely filed a protest of the Commission Order. The matter was scheduled for hearing on October 6, 1995.

On June 1, 1995, by letter to staff counsel, OPC advised that it intended "to raise an additional issue in this case concerning the amount of the overearnings by Indiantown Telephone Company in 1993." OPC indicated that while it accepted the adjustments proposed by the staff audit, "an additional adjustment should be made for the excessive level of salaries and benefits paid to Indiantown's executives during 1993, as well as the expenses incurred by those executives."

On July 7, 1995, Indiantown filed a Notice of Withdrawal of Request for Approval of Capital Recovery Requirements. The company stated it no longer sought approval to apply the 1993 overearnings to unrecovered switching and circuit investment, but would instead refund the overearnings amount as determined by the staff audit, plus interest, to its subscribers in accord with Rule 25-4.114, F.A.C.

On July 12, 1995, Indiantown wrote a letter to the Chairman advising of its planned actions. The company stated that "acting voluntarily and expeditiously is the best course of action for the company and will significantly benefit subscribers by returning overearnings to them without further delay." The company did not request Commission approval of its planned refund.

It is well settled that a petitioner may, as a matter of right, withdraw a petition up to the point the matter is submitted to the trier of fact. See Rule 1.420(a)(1), Florida Rules of Civil Procedure, and Order No. PSC-94-0310-FOF-EQ issued March 17, 1994, in Docket No. 920977, Petition for approval of contract for the purchase of firm capacity and energy between General Peat Resources, L.P. and Florida Power and Light Company. Thus the company's withdrawal of its Request for Capital Recovery Requirements is an action which does not require Commission approval, and is, therefore, acknowledged.

Indiantown cannot, by its withdrawal of its request, unilaterally foreclose OPC's right to litigate the issues of the appropriateness of the level of salaries and benefits paid to Indiantown's executives during 1993, as well as the expenses incurred by those executives. Indiantown's decision to refund what it believes is the 1993 overearnings amount, does not divest the Commission of jurisdiction to determine the appropriate amount and distribution of Indiantown's overearnings. Based on the understanding that 1) Indiantown had withdrawn its request, 2)

Indiantown would make the proposed refund, and, 3) OPC retains the right to dispute the level and disposition of any excess 1993 overearnings; OPC voluntarily withdrew its protest without prejudice.

Therefore, we find that a refund of \$78,809, which includes \$7,694 of interest through mid September, 1995, is appropriate for Indiantown's 1993 overearnings. The company's proposed amount of \$71,115, plus interest, shall be refunded to customers of record as of July 1, 1995. The refund shall be distributed during the September, 1995 billing cycle. Refunds should be made as a credit to residential and business customers, pro rata according to rate levels. The company shall comply with Rule 25-4.114, F.A.C. in processing the refund.

In the final report submitted after the refunds are made pursuant to Rule 25-4.114, F.A.C., Indiantown should include documentation (in the form of a priceout) showing the calculations for the actual refund amounts per access line.

The Commission on its own motion, or OPC, retains the right to initiate a proceeding to determine the appropriate level or disposition of Indiantown's 1993 overearnings.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Indiantown's withdrawal of its Request for Capital Recovery Requirements is acknowledged. It is further

ORDERED that a refund of \$78,809, which includes \$7,694 of interest through mid September, 1995, is appropriate for Indiantown's 1993 overearnings. It is further

ORDERED that the refund amount of \$78,809 shall be refunded to customers of record as of July 1, 1995. It is further

ORDERED that the refund shall be distributed during the September, 1995 billing cycle. Refunds shall be made as a credit to residential and business customers, pro rata according to rate levels. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 24th
day of August, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 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 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 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.