

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation of rates) DOCKET NO. 960011-WS
of Indiantown, Inc., in Martin) ORDER NO. PSC-97-0101-FOF-WS
County for possible) ISSUED: January 27, 1997
overearnings.)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING RULE WAIVER

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and 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.

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. Based on a desk audit of the 1994 annual report for Indiantown, we began an informal investigation into potential overearnings. The auditor's suggested adjustments to the utility's books indicated that the utility was earning an overall rate of return of 75.08% for the water system.

In Indiantown's last rate case, Docket No. 810037-WS, in Order No. 11891, issued April 27, 1983, we set rate base and authorized a return on equity (ROE) of 16.35%. The utility applied for index and pass-through increases for the years 1986 through 1994, pursuant to Section 367.081(4), Florida Statutes. By Order No. PSC-95-1328-FOF-WS, issued November 1, 1995, in Docket No. 950371-WS, we initiated this limited proceeding in order to establish a more appropriate ROE going forward, while authorizing 10.43% as the midpoint of the utility's ROE for all regulatory purposes, effective November 1, 1995.

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FPSC-RECORDS/REPORTING

By Order No. PSC-96-0169-FOF-WS, issued on February 6, 1996, in this docket, we initiated an investigation of the utility's water rates and charges and ordered that 1996 water service revenues of \$118,066 on an annual basis be placed subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code. We further ordered that Indiantown provide a corporate undertaking as a guarantee of any potential refund of water revenues collected under interim conditions, and that by no later than the twentieth day of each month, the utility file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount subject to refund.

By Order PSC-96-0657-FOF-WS, issued on May 10, 1996, we established rate base for 1994, required a refund of the 1994 water price index adjustment as applied to 1994, 1995, and 1996 revenues pursuant to Section 367.081(4)(d), Florida Statutes, and reduced rates to remove the 1994 water price index adjustment. In July 1994, Indiantown implemented water and wastewater price indexes. The price index adjustments increased water revenues by \$8,713, about 2.05% annually, and wastewater revenues by \$8,651, about 1.86% annually. We determined that Indiantown earned a 77.59% return on water rate base, and, thus, found it appropriate that the utility refund with interest the water price index adjustment collected in 1994. We further found it appropriate to require the utility to refund with interest the portion of revenues collected in 1995 and 1996 attributable to the 1994 water price index adjustment.

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 assistance in calculating the refunds, wrote to the Director, Division of Water and Wastewater, proposing a simplified calculation. Our staff agreed to assist the utility with the required calculations pursuant to Rule 25-30.360(4)(2), Florida Administrative Code. However, because the staff could not provide this assistance without the utility's violation of Rule 25-30.360(2), Florida Administrative Code, on August 19, 1996, the utility filed a motion for waiver of the time requirement of 90 days until November 1, 1996, and proposed to include interest to the date of the refund. By Order No. PSC-96-1204-FOF-WS, issued September 23, 1996, we permitted the utility until November 1, 1996, to make the refunds.

In Order No. PSC-96-1205-FOF-WS, issued on September 23, 1996, we found that, when its water and wastewater earnings were combined, the utility was earning below its authorized range as a

whole. We released the utility's corporate undertaking and also released the revenues held subject to refund pursuant to Order No. PSC-96-0169-FOF-WS to the utility's benefit.

On October 22, 1996, Indiantown filed a Petition for Waiver of Rule and for Extension of Time to Make Refunds. On October 30, 1996, the utility filed a Supplemental Petition. We grant the company's petition and authorize refunds on a pro rata basis.

PETITION FOR RULE WAIVER

Indiantown filed its petition for waiver of rule under Section 120.542, Florida Statutes, on October 22, 1996. On October 30, 1996, the company filed a supplemental petition that addressed why the waiver requested would serve the purposes of the underlying statute, a requirement of Section 120.542, Florida Statutes, it neglected to address in its initial petition. Thus, the petition was in compliance with statute. Pursuant to Section 120.542(6), Florida Statutes, we provided notice to the Department of State, which published notice of the waiver request in the Florida Administrative Weekly on November 15, 1996. We received no comments in the period for comment, which ended on December 15, 1996. We must rule on the petition by January 20, 1997, pursuant to Section 120.542(7), Florida Statutes.

In its petition, Indiantown, asked for a waiver of Rule 25-30.360(3), Florida Administrative Code, which provides that the basis for refund where the refund is the result of a specific rate change shall be per customer where the refund can be computed on that basis. In addition, Indiantown asked for an extension of time to make the refund, beyond that which we granted in Order No. PSC-96-1204-FOF-WS.

Indiantown stated that it does not take issue with our determination to require a refund removing the effect of the 1994 water price index in the years 1994 through 1996. Indiantown further stated that it understands adherence to the rule will provide a refund of the precise amount due each customer, but it claimed that to do so would be unjustifiably burdensome. The company stated that, even with the assistance provided by our staff, there remains a great deal of work for it to do, work it could not complete within the extended time. The company stated that it is not realistic to require a refund as precise as that contemplated by Rule 25-30.360(3), Florida Administrative Code. It proposed that the refund can be reasonably accomplished by distributing the total amount of the refund, with interest, to the

customers receiving service on September 23, 1996, on a pro rata basis, or by crediting the company's contributions-in-aid-of-construction account for the full amount.

Section 120.542(7), Florida Statutes, requires us to issue an order in writing granting or denying the petition and stating the relevant facts and reasons for our decision. Our decision must be supported by competent substantial evidence.

Our policy is that refunds should be made on a per customer basis as set forth in Rule 25-30.360(3), Florida Administrative Code, meaning a specific refund to those customers actually overcharged. We have not departed from this policy in respect to water and wastewater proceedings. However, we have departed from this policy in telecommunications proceedings in the past by authorizing prospective rate reductions as proxies for direct refunds that could not be reasonably made. See, e.g., Order No. PSC-95-1484-FOF-TI, issued November 3, 1995, in Docket No. 951102-TI; Order No. PSC-95-1238-FOF-TI, issued October 5, 1995, in Docket No. 950787-TI; Order No. PSC-95-1167-FOF-TI, issued September 20, 1995, in Docket No. 950788-TI; and Order No. PSC-95-0682-FOF-TI, issued June 6, 1995, in Docket 950064-TI. In these orders, we have stated our preference for direct refunds to the customers overcharged, but have acknowledged that direct refunds in the circumstances of those dockets would have been expensive and unduly burdensome.

The underlying statute in this instance is Section 367.081(4)(d), Florida Statutes. It provides that we may order the utility to refund with interest to the ratepayers the amount of any overearnings attributable to price index adjustments. In this docket, we find that to require Indiantown to make refunds with strict adherence to Rule 25-30.360(3), Florida Administrative Code, would create a substantial hardship. Indiantown stated that it will still have to perform a very large number of calculations to complete the refunds in conformance with the rule, this despite the great amount of work already done by the staff. For the very most part, the customers who received service in the period in which the 1994 water price index adjustment was effective are the same as those receiving service at the present time. Thus, we find that the purposes of Section 367.081(4)(d), Florida Statutes, will be achieved by either of the proposals advanced by the company, without undue discrimination.

The Legislature has found that strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. Section 120.542(1), Florida Statutes. With that in mind, we find that Indiantown has

carried its statutory burden under Section 120.542, Florida Statutes. Accordingly, we find it appropriate to grant the company's petition for waiver of Rule 25-30.360(3), Florida Administrative Code. Furthermore, we find it appropriate to authorize the company to complete the refunds within 60 days after our order becomes final.

THE REFUND

As noted above, our staff agreed to assist the utility in the calculation of the refund. The utility agreed to supply usage data in electronic spreadsheet format. On September 26, 1996, the staff received from the utility a diskette containing water usage data by account number for the period of June 1994 through July 1996. The data was compiled in one file as a workbook. The workbook contained 22 worksheets, each of the worksheets representing a month of usage data. It contained approximately 1,700 account numbers. Once the staff applied the necessary calculation to determine the amount of each customer's refund without interest per month, the size of the file surpassed the storage capability of the diskette. Therefore, the file had to be separated into seven diskettes, each containing three or four months of usage data.

In order to determine the amount of interest for each customer, Rule 25-30.360(4)(d), Florida Administrative Code, states that an interest multiplier may be applied against the amount of each customer's refund in lieu of a monthly calculation of the interest for each customer. The interest multiplier is calculated by dividing the total amount refundable to all customers, including interest, by the total amount of refund, excluding interest. The staff contacted the utility on or about October 1, 1996, to request the information necessary to calculate the interest multiplier. The information was furnished by facsimile on October 8, 1996.

The staff calculated the interest multiplier and applied it to the usage refund amount for each month of the refund period to determine the refund with interest amount for each month's usage. The calculation, at that point, only allowed the utility to determine the refund amount with interest for usage. The base facility charge refund amount with interest had still to be determined.

The usage data was customer specific by account numbers. However, it did not specify the meter sizes for the account numbers. As a result, the base facility charge refund amount due each account number could not be determined. The staff requested the meter sizes for each account number, but the utility said that it would be very time consuming to compile that information.

Therefore, the staff constructed a matrix for all of the approved meter sizes. Knowing the customer's meter size, the matrix would allow the utility to calculate each customer's base facility charge with interest in relation to the points during the refund period the customer started and ended service.

On October 17, 1996, the staff sent the utility a letter explaining how to calculate the refund with the information provided, the seven diskettes containing the 14 matrices, the 22 worksheets of usage data and the schedule for the calculation of the interest multiplier. In order to determine a customer's usage refund amount with interest, the utility would have to go through each of the 22 worksheets and add up each customer's usage refund amount. The staff attempted to compile the usage refund amount. However, the task was tedious and time consuming. Also, the staff believed that the attempt was going beyond the scope of assistance in this matter. As for the base facility refund amount with interest, the utility would have to determine when a customer began receiving service and when the service ended during the refund period. By adding these two amounts, the utility would be able to determine each customer's total refund with interest. Pursuant to Order No. PSC-96-1204-FOF-WS which extended the time frame, the refund was to be done by November 1, 1996.

In its petition for rule waiver, the utility proposed the following alternatives to accomplish an appropriate refund.

- (1) Compute the total refund with interest, as already done by Staff; divide that amount by the number of customers being served on the date of the Commission's refund order; credit the bill of each customer on the system on the date of Order No. PSC-96-1204-FOF-WS; or
- (2) Require a credit to the utility's CIAC account of the full amount of the refund plus interest. The utility indicated that this would equally benefit all existing customers and would inure to the benefit of future customers by reducing rate base.

We find it appropriate to allow the utility to refund to each customer on the system as of the date of Order No. PSC-96-1204-FOF-WS, a pro rata share of the total refund with interest. The utility shall first identify the portions of the revenues to be refunded that are attributable to residential and to commercial customers and then to determine pro rata shares for the members of each class. Since the customers being served as of that date, September 23, 1996, are nearly the same ones served throughout the

refund period, the only remarkable discrepancy between this method and the method prescribed by rule would be that the customers receive a pro rata share of the refund rather than an exact amount, a discrepancy we believe will not be substantial.

Further, we find that interest shall be calculated as of the date of the actual refund, and that, pursuant to Rule 25-30.360(7), Florida Administrative Code, the utility shall provide a final report after all administrative aspects of the refund are completed. Indiantown shall complete the refund within 60 days of the date this order becomes final. This docket shall be closed administratively upon our staff's verification that the refund has been appropriately completed.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that Indiantown Company, Inc.'s petition for waiver of Rule 25-30.360(3), Florida Administrative Code, is granted. It is further

ORDERED Indiantown Company, Inc., shall make refunds on a pro rata basis as herein described. It is further

ORDERED that Indiantown Company, Inc., shall complete the refunds within 60 days after this Order becomes final. It is further

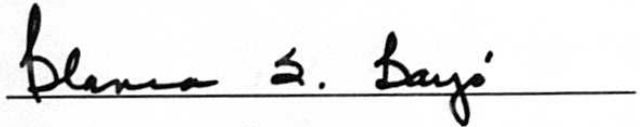
ORDERED that Indiantown Company, Inc., shall calculate interest as of the date of the actual refund. It is further

ORDERED that Indiantown Company, Inc., shall provide a final report pursuant to Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed administratively upon staff's verification that the refund has been completed.

By ORDER of the Florida Public Service Commission, this 27th
day of January, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 17, 1997.

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.

ORDER NO. PSC-97-0101-FOF-WS
DOCKET NO. 960011-WS
PAGE 9

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 substantially 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 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 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.