

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for authority to convert all remaining sales customers to transportation service and to terminate merchant function by Indiantown Gas Company.

DOCKET NO. 020471-GU  
ORDER NO. PSC-02-1655-TRF-GU  
ISSUED: November 26, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING PHASE ONE OF PETITION FOR AUTHORITY TO  
CONVERT ALL REMAINING SALES CUSTOMERS TO  
TRANSPORTATION SERVICE AND TO  
TERMINATE MERCHANT FUNCTION BY INDIANTOWN GAS COMPANY

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

In April 2000, we adopted Rule 25-7.0335, Florida Administrative Code, which requires each local distribution company (LDC) to offer the transportation of natural gas to all non-residential customers. The rule further provides that each LDC may offer the transportation of natural gas to residential customers when it is cost effective to do so. At the time of our adoption of Rule 25-7.0335, Indiantown Gas Company (Indiantown or the Company) did not offer transportation service.

At present, only one industrial customer (a citrus plant) is taking transportation service, and accounts for 30% of the total

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system throughput. At the end of December 2001, the remaining sales customers on the Company's system included one industrial (cogeneration facility) customer who accounts for 65% of total system throughput, and approximately 25 non-residential customers, who account for 2.5% of total system throughput. The 600 residential customers account for the remaining 1.8% of system throughput. The one industrial (cogeneration facility) is planning to transfer to transportation service in September 2002.

Given the reduced level of its system throughput associated with sales service, and the continuing migration of its non-residential customers to transportation service, the Company believes that if it were to remain in the merchant function, it would find it increasingly difficult to deliver gas to its customers at competitive prices. Based on the Company's experience, the number of producers and/or marketers interested in providing gas supply for such a diminished level of usage on a stand-alone basis is limited.

Indiantown has concluded that the only cost effective approach available to it is to completely exit the merchant function, and require all remaining sales customers convert to transportation service. A customer meeting was held on July 11, 2002, in Indiantown. No customers chose to speak at the customer meeting.

We have jurisdiction over this matter pursuant to several provisions of Chapter 366, Florida Statutes, including Sections 366.03, 366.04, 366.05, 366.06, and 366.075, Florida Statutes.

#### APPROVAL OF PHASE I

On May 24, 2002, Indiantown filed its petition for authority to convert all remaining sales customers to transportation service and to exit the merchant function, to become effective November 5, 2002. Our analysis consists of two sections. The first section addresses the provisions of the proposed tariff and the second addresses our authority to approve the tariff.

#### Provisions of the Proposed Tariff

Under Indiantown's proposal, an Aggregated Transportation Service (ATS) tariff would be established to facilitate the

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conversion of the remaining sales service customers to aggregated customer pools. Qualified gas marketers would be retained to administer the pools. These Pool Managers would have the capability of combining the gas supply requirements of customers in the ATS pool(s) with other customers served by the Pool Manager, both on and off the Company's distribution system.

Indiantown believes its customers' gas supply needs are best served by a gas marketer with the ability to "rebundle" the Company's small volume gas users into a diversified, state-wide customer group consisting of industrial and commercial customers with different levels of weather sensitivity and peak usage. The increased market power of a larger overall customer group with greater gas volume requirements, would result in a higher probability of obtaining lower gas costs than would be achievable by the decreasing sales service volumes on the Company's system alone. Indiantown's approach will allow all stakeholders adequate time to develop the knowledge and experience needed for a successful transition to a fully competitive open market.

Indiantown would maintain a contractual relationship with the Pool Manager(s) throughout the transition period, which is designed to provide reliable service at reasonable prices, while gradually introducing more options and choices to a better informed customer group. The ATS tariff includes a phased-in transition period to be completed over several years.

The implementation of Phase One would be for a two-year period where all remaining residential and non-residential sales customers would receive gas supply service through one qualified Pool Manager, selected by the Company through a Request for Proposals (RFP) process. The ATS agreement between the Company and the selected Pool Manager would be structured to provide customers the opportunity to select between two pricing options: a monthly indexed price, similar to the current Purchased Gas Adjustment (PGA) pricing mechanism, or a fixed price option that enables customers to mitigate the potential price volatility of the monthly indexed price.

Near the end of the initial two-year period, the Company would evaluate customer acceptance of the program, assess its own capabilities to expand program options, and make a determination of

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the feasibility and timing for initiating Phase Two. Indiantown would also report to this Commission on the results of Phase One, and the customer education and implementation plan for Phase Two. After submitting the report, Indiantown will petition this Commission for approval to start implementing Phase Two.

Phase Two would expand the choices available. The Company would retain, through an RFP process similar to that used in Phase One, a minimum of two Pool Managers. The Company would require each Pool Manager to offer a range of gas pricing terms and conditions. Customers would have the ability to choose between the two Pool Managers, and select the pricing option that best matched their individual circumstances. At the end Phase Two, the Company would report to the Commission on the results of Phase Two, and the Phase Three customer education and implementation plan. The duration of Phase Two is left open, but is expected to be at least one year.

Phase Three would completely transition customers to a fully competitive marketplace. With its customers being better informed and having several years of experience with gas marketers and various pricing options, customers would be free to choose any Pool Manager authorized to deliver gas on the Company's distribution system, and negotiate price and other terms with no constraints imposed by the Company. Pool Managers would be authorized to directly solicit any and all customers for gas supply services.

The Company's proposal is carefully designed to avoid exposure of its customers to the risk of service disruption. The ATS Agreement provides for severe financial penalties and potential termination of the agreement in the event that the ATS Pool Manager fails to deliver gas. Indiantown is prepared to act as the supplier of last resort in the case of longer term problems.

The ATS Agreement would specifically define the Pool Managers' actions or omissions constituting a default, including: failure to observe the terms and conditions of the ATS Agreement; failure in performance of essential duties and obligations such as failing to deliver gas for an extended period without prior approval, force majeure, or re-relinquishing capacity outside the contract limits; engaging in price gouging, slamming or other improper or unlawful activities; and, the failure to maintain financial viability.

Indiantown would implement procedures and provide the oversight necessary to ensure continuity of service to the pool customers in a default situation. If the Pool Manager defaults during Phase One, the Company would act to terminate the ATS Pool Manager and, as the supplier of last resort, would recall the interstate pipeline capacity, arrange for gas supply, and perform all other necessary functions to ensure delivery to affected customers. If during Phase Two, either of the two ATS Pool Managers defaults, the non-defaulting Pool Manager would assume gas delivery responsibilities for all customers until arrangements to qualify a replacement Pool Manager could be made. If both Pool Managers default, the Company as the supplier of last resort, would recall the interstate pipeline capacity, arrange for gas supply, and perform all other necessary functions to ensure delivery to affected customers, until arrangements to qualify replacement Pool Managers could be made.

For the residential and small commercial customers transitioning from sales to transportation service, the Company would maintain the customer service function, maintain customer account transaction records, and provide gas supply billing and collections indefinitely. Customers would continue to receive one monthly bill, and the Pool Managers' charges would appear in lieu of the Company's purchased gas adjustment. The Company would follow a prescribed hierarchy in applying customer payments. All payments would first be applied to any taxes and fees imposed by government; second, to Pool Managers' charges for gas supply; and third, to the Company's regulated transportation charges.

This payment hierarchy would enable the Company to retain the capability to disconnect customers for non-payment in the event of a partial payment. Applying the payment to the Pool Manager's gas supply cost prior to the Company's regulated charges would prevent customers from taking advantage of the absence of the Pool Manager's service disconnect authority by paying only the regulated charges. However, this arrangement would not provide protection to the Pool Manager in the event that the customer failed to pay at all. The Pool Manager would have the authority to appropriately secure customer accounts through cash deposits or similar means.

As the Company prepares to exit the merchant function, participation in the purchased gas cost recovery proceedings will

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no longer be necessary. The Company filed its final PGA true-up for the calendar year 2001 in May 2002. The filing shows an over-recovery of \$32,869. Projected filings are due in September 2002 for the determination of the PGA cap for the year 2003. However, upon activation of service by the Phase One ATS Pool Manager, there would cease to be any need for the Company to have an active PGA mechanism. Whatever over or under-recovery may have accrued at that time will be reviewed by the Commission for appropriate disposition by the Company. Indiantown proposes to address that matter in a subsequent filing within ninety days of the termination of its gas sales merchant function. Based on the most recent data, it appears that the Company will be in an over-recovery state for the period ended August 31, 2002.

The Company has submitted revised tariff sheets that incorporate the changes necessary to implement transportation service to all remaining sales customers.

#### Commission's Jurisdiction

Indiantown cites Rule 25-7.0335, Florida Administrative Code, as our authority for approving the Petition. The rule requires that each local distribution company (LDC) "offer" the transportation of natural gas to all non-residential customers. The rule further provides that each LDC "may offer" the transportation of natural gas to residential customers when it is cost-effective to do so.

Indiantown's request in the Petition falls outside the scope of the rule. The rule requires that LDC's "offer" transportation service to non-residential customers and that LDC's "may offer" such service to residential customers. The rule does not allow LDC's to require that any customer switch to transportation service. Indiantown's proposed ATS tariff requires customers to switch from sales to transportation service and so the rule is inapplicable.

Section 366.075, Florida Statutes, provides that we are authorized to approve rates on an experimental or transitional basis for any public utility, to encourage energy conservation or efficiency. This section provides sufficient authority for the action we take herein.

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Conclusion

Based on the Company's petition, we find that Phase One of Indiantown's proposal to convert all remaining sales customers to transportation service and to exit the merchant function is appropriate and reasonable, and is hereby approved as an experimental and transitional pilot program pursuant to Section 366.075, Florida Statutes. In addition to the two-year report contemplated in the Company's Petition, Indiantown shall provide a similar interim report to this Commission regarding Phase One. The report shall be submitted no later than 90 days from the conclusion of the first twelve months of the implementation of Phase One. The tariff shall become effective on November 5, 2002, and the interim report is due no later than 90 days after November 5, 2003. Further, all of the revenues and costs associated with the implementation of Phase One shall be accounted for above the line.

We believe it is reasonable and prudent to monitor the results of the implementation of Phase One before ruling on the Company's request regarding Phases Two and Three. Therefore, we will not address nor make a determination as to Phases Two and Three at this time. Any change to Phase One, either to terminate its implementation or to proceed to Phases Two or Three, shall require an affirmative act of this Commission.

If a protest is filed within 21 days of this Order approving Indiantown's tariff by a person whose substantial interests are affected, the tariff shall remain in effect pending resolution of the protest, with any charges held subject to refund pending resolution of the protest. If no protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Phase One of Indiantown Gas Company's Petition for authority to convert all remaining sales customers to transportation service and to terminate merchant function is approved as an experimental and transitional pilot program pursuant to Section 366.075, Florida Statutes. It is further

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ORDERED that in addition to the two-year report contemplated in the Company's Petition, Indiantown shall provide a similar interim report to this Commission regarding Phase One. The report shall be submitted no later than 90 days from the conclusion of the first twelve months of the implementation of Phase One. It is further

ORDERED that the tariff shall become effective on November 5, 2002. It is further

ORDERED that all of the revenues and costs associated with implementation of Phase One shall be accounted for above the line. It is further

ORDERED that any change to Phase One, either to terminate its implementation or to proceed to Phases Two or Three, shall require an affirmative act of this Commission. It is further

ORDERED that if a protest is filed within 21 days of this Order approving the tariff by a person whose substantial interests are affected, the tariff shall remain in effect pending resolution of the protest, with any charges held subject to refund pending resolution of the protest. It is further

ORDERED that if no protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 26th day of November, 2002.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )  
JSB



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NOTICE OF FURTHER PROCEEDINGS

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 17, 2002.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

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.