

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

DECEMBER 26, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *PEL*
DIVISION OF WATER & WASTEWATER (AUSTIN) *AUS*

RE: DOCKET NO. 960011-WS - INVESTIGATION OF RATES OF
INDIANTOWN COMPANY, INC., IN MARTIN COUNTY FOR POSSIBLE
OVEREARNINGS
COUNTY: MARTIN

AGENDA: JANUARY 7, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION
- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: GRANT/DENY RULE WAIVER JANUARY 20, 1997

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960011WS.RCM

CASE 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, the Commission 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, the Commission 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, the Commission 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.

By Order No. PSC-96-0169-FOF-WS, issued on February 6, 1996, in this docket, the Commission 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

DOCUMENT NUMBER-DATE

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REC'D - RECORDS & REPORTING

DOCKET NO. 960011-WS
DATE: December 26, 1996

to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code. The Commission 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, the Commission 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. The Commission 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. The Commission 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. Staff agreed to assist the utility with the required calculations pursuant to Rule 25-30.360(4)(2), Florida Administrative Code. However, because 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, the Commission permitted the utility until November 1, 1996, to make the refunds.

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

DOCKET NO. 960011-WS
DATE: December 26, 1996

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. This recommendation addresses these petitions.

DOCKET NO. 960011-WS
DATE: December 26, 1996

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Indiantown Company, Inc.'s Petition for Waiver of Rule and for Extension of Time to Make Refunds?

RECOMMENDATION: Yes. The Commission should grant Indiantown Company, Inc.'s Petition for Waiver of Rule. In addition, the Commission should authorize the company to complete the refunds within 60 days after the Commission's order becomes final.
(PELLEGRINI)

STAFF ANALYSIS: 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 is in compliance with statute. Pursuant to Section 120.542(6), Florida Statutes, the Commission provided notice to the Department of State, which published notice of the waiver request in the Florida Administrative Weekly on November 15, 1996. The Commission received no comments in the period for comment, which ended on December 15, 1996. The Commission must rule on the petition by January 20, 1997, pursuant to Section 120.542(7), Florida Statutes.

In its petition, Indiantown, asks 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 asks for an extension of time to make the refund beyond that granted by the Commission in Order No. PSC-96-1204-FOF-WS.

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

DOCKET NO. 960011-WS
DATE: December 26, 1996

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 the Commission to issue an order in writing granting or denying the petition and stating the relevant facts and reasons for the Commission's decision. The Commission's decision must be supported by competent substantial evidence.

The Commission's 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. Staff is not aware of the Commission's departure from its refund policy in respect to water and wastewater proceedings. However, the Commission has departed from its refunds 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, the Commission has stated its preference for direct refunds to the customers overcharged, but has 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 the Commission may order the utility to refund with interest to the ratepayers the amount of any overearnings attributable to price index adjustments. In this docket, staff believes 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 states 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 staff. Staff believes that 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, staff believes 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.

DOCKET NO. 960011-WS
DATE: December 26, 1996

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, staff believes that Indiantown has carried its statutory burden under Section 120.542, Florida Statutes, and accordingly, recommends that the Commission grant the company's petition for waiver of Rule 25-30.360(3), Florida Administrative Code. Furthermore, staff recommends that the Commission authorize the company to complete the refunds within 60 days after the Commission's order becomes final.

DOCKET NO. 960011-WS
DATE: December 26, 1996

ISSUE 2: If the utility is granted a waiver of that portion of Rule 25-30.360, Florida Administrative Code, which requires the computation of refunds on a "per customer" basis, what is the appropriate methodology to be used in completing the refunds?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, the utility should be allowed 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 interest should be calculated as of the date of the actual refund. Pursuant to Rule 25-30.360(7), Florida Administrative Code, the utility should provide staff with a final report after all administrative aspects of the refund are completed.

STAFF ANALYSIS: As noted in the case background, 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, 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 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. Staff contacted the utility on or about October 1, 1996, and requested the necessary information to allow staff to calculate the interest multiplier. Staff received this information by fax on October 8, 1996.

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 this point, would only allow the utility to determine the refund amount with interest for just the usage. The base facility charge refund amount with interest had still to be determined.

DOCKET NO. 960011-WS
DATE: December 26, 1996

The usage data was customer specific by account numbers. However, it did not specify the meter sizes for the account numbers. Therefore, staff could not determine the base facility charge refund amount due for each account number. Staff requested the meter sizes for the account number. However, the utility said that it would be very time consuming to compile the information. Therefore, staff constructed a matrix for all of the approved meter sizes. The matrix would allow the utility to calculate each customer's base facility charge with interest in relation to what point during the refund period the customer started and ended service.

On October 17, 1996, staff provided the utility with 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. Staff attempted to compile the usage refund amount. However, the task was tedious and time consuming. Also, 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 time frame, the refund was to be done by November 1, 1996.

On October 22, 1996, the utility filed a petition for a waiver (discussed in Issue 1) of that portion of Rule 25-30.360, Florida Administrative Code, that requires computation of the refund on a "per customer" basis and also requested an extension of time to make the refund that is longer than that granted by Order No. PSC-96-1204-FOF-WS. The utility indicated that strict compliance to Rule 25-30.360, Florida Administrative Code, would create an unreasonable administrative burden on the company. In the petition, the utility proposed the following alternatives to accomplish an appropriate refund.

- 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.

DOCKET NO. 960011-WS
DATE: December 26, 1996

- ◆ 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.

If the Commission approves staff's recommendation in Issue 1, staff recommends that the utility be allowed 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. 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 staff believes would not be substantial.

Further, staff recommends that interest should be calculated as of the date of the actual refund, and that, pursuant to Rule 25-30.360(7), Florida Administrative Code, the utility should provide staff with a final report after all administrative aspects of the refund are completed.

DOCKET NO. 960011-WS
DATE: December 26, 1996

ISSUE 3: Should this docket be closed?

RECOMMENDATION: This docket should be closed administratively upon completion of the administration of the refund pursuant to Rule 25-30.360(7), Florida Administrative Code, if no person whose substantial interests are affected by the proposed action files a protest within the 21 day protest period.

STAFF ANALYSIS: If the Commission approves staff's recommendations in Issues 1 and 2, this docket should be closed administratively upon completion of the administration of the refund pursuant to Rule 25-30.360(7), Florida Administrative Code, if no person whose substantial interests are affected by the proposed action files a protest within the 21 day protest period.