

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of) DOCKET NO. 940826-TL
capital recovery requirements by) ORDER NO. PSC-95-0799-PCO-TL
INDIANTOWN TELEPHONE SYSTEM,) ISSUED: July 3, 1995
INC.)
_____)

ORDER GRANTING MOTION TO COMPEL

On June 1, 1995, the Office of Public Counsel (OPC) served its Second Set of Interrogatories and Second Request for Production of Documents on Indiantown Telephone System, Inc. (Indiantown). At that same time, by letter, OPC advised all parties that it intended to question the level of earnings achieved by Indiantown in 1993.

On June 9, 1995, Indiantown filed its Initial Objections to Citizens' Second Set of Interrogatories and Second Request for Production of Documents. In essence, Indiantown alleges that OPC's requests concerning expenses incurred by Indiantown in 1993 are "... an attempt to broaden the scope of this docket (that) is totally inappropriate and impermissible."

Among the issues identified for resolution in this docket in the Order Establishing Procedure, Order No. PSC-95-0570-TL (Order No. 95-0570) is Issue 4: "What is the appropriate disposition of the 1993 overearnings in the amount of \$72,252?" Indiantown suggests that OPC's failure to request reconsideration of Order No. 95-0570 makes it "too late for Public Counsel to question the level of overearnings set forth uncontested issue in the Commission's Procedural Order." Indiantown also notes OPC's previous statement in the Petition on Proposed Agency Action that it would not contest the Commission's determination "that Indiantown Telephone Company earned \$71,115 above its maximum authorized return on equity during 1993."

On June 13, 1995, OPC filed a Motion to Compel Indiantown to Answer Citizens' Second Set of Interrogatories and to Produce Documents Requested by the Citizens' Second Request for Production of Documents. OPC states that "Since the proposed agency action order in this case was not severable, the protest of that Order affects the entire order." OPC also alleges that Order No. 95-0570 states that "the scope of this proceeding shall be based upon the issues raised by the parties and the Commission staff up to and including the prehearing conference." Since the prehearing conference has not yet been held, OPC suggests "the parties are free to raise issues." OPC asks that the Commission require

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-95-0799-PCO-TL
DOCKET NO. 940826-TL
PAGE 2

"Indiantown to respond to the Citizens' second set of interrogatories and to produce the documents requested by the Citizens' second request for production of documents by no later than Thursday, July 6, 1995." No response to the Motion to Compel was filed.

Having reviewed the discovery requests, the objections filed by Indiantown, the Motion to Compel, and, being otherwise advised in the premises, I find that OPC's Motion to Compel Indiantown to Answer Citizens' Second Set of Interrogatories and to Produce Documents Requested by the Citizens' Second Request for Production of Documents should be granted for the reasons set out below.

First of all, the issue list attached to the Order on Prehearing Procedure is tentative and does not limit the scope of otherwise relevant issues. Secondly, despite the representations made in the Public Counsel's Protest, he is correct, as a matter of law, that the Protest dissolves the entire PAA Order. From that point on all relevant issues can be raised. I know of no legal impediment to the Public Counsel changing his mind in deciding the best way to represent his clients.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that OPC's Motion to Compel Indiantown to Answer Citizens' Second Set of Interrogatories and to Produce Documents Requested by the Citizens' Second Request for Production of Documents is granted. It is further

ORDERED that Indiantown shall serve its responses no later than July 6, 1995.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 3rd day of July, 1995.



J. TERRY DEASON, Commissioner and
Prehearing Officer

(S E A L)
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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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.