

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

AUGUST 28, 1997

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FPSC - Records/Reporting

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

FROM: DIVISION OF WATER & WASTEWATER (GOLDEN, REDEMANN) *mad bsm per gon*
DIVISION OF LEGAL SERVICES (REYES) *hjt*

RE: DOCKET NO. 970556-WS - INDIANTOWN COMPANY, INC. -
APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL
CONTROL OF INDIANTOWN COMPANY, INC. (HOLDER OF
CERTIFICATES NOS. 331-S AND 387-W) IN MARTIN COUNTY TO
POSTCO, INC.
COUNTY: MARTIN

AGENDA: SEPTEMBER 9, 1997 - REGULAR AGENDA - PROPOSED AGENCY
ACTION FOR ISSUES 2 AND 3 - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\970556WS.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

Indiantown Company, Inc. (Indiantown, utility, or Seller) is a Class B utility which provides water and wastewater service in Martin County. According to the utility's 1996 Annual Report, it serves 1,685 water customers and 1,549 wastewater customers. In 1996, the utility had annual operating revenues of \$466,000 and \$511,000 for water and wastewater, respectively. Also, the utility had a net operating income of \$47,000 for water and a net operating loss of \$45,000 for wastewater. The utility's facilities consist of one water treatment plant, one water transmission and distribution system, one wastewater treatment plant, and one wastewater collection system.

On May 9, 1997, Indiantown filed an application for transfer of majority organizational control of Indiantown to Postco, Inc. (Postco or Buyer.) The utility's application was found to be deficient. The deficiencies were corrected on July 11, 1997.

Section 367.071, Florida Statutes, states in part that no utility shall transfer its majority organizational control without approval of the Commission. Staff has reviewed the Stock Purchase Agreement and has found that although the parties have come to an agreement on the sale of the stock, the official closing is contingent upon the approval of the Commission. The following is staff's recommendation regarding the utility's request to transfer majority organizational control.

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DISCUSSION OF ISSUES

ISSUE 1: Should the name changes and transfer of assets and majority organizational control requested by Indiantown Company, Inc. be approved?

RECOMMENDATION: Yes. The name change of Indiantown Company, Inc. to CFC Parent, Inc. should be approved. Also, the transfer of water and wastewater assets from CFC Parent, Inc. to its subsidiary ICO Enterprises, Inc. should be approved. Additionally, the transfer of majority organizational control of ICO Enterprises, Inc. to Postco, Inc. should be approved. Finally, the name change of ICO Enterprises, Inc. to Indiantown Company, Inc. should be approved. The utility should file a copy of the certificates or other documents issued by the Department of State showing its acceptance of the utility's name changes, and an executed and recorded copy of the warranty deeds, within thirty days of the issuance date of the Order granting the certificate. (GOLDEN, REDEMANN)

STAFF ANALYSIS: The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of majority organizational control. The application contains checks totaling \$4,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. However, the utility has proposed two name changes and an asset transfer in addition to the stock transfer. Therefore, at staff's request, the utility also provided additional information regarding the name changes and asset transfer.

Indiantown currently operates the utility's water and wastewater facilities, along with an unregulated garbage/refuse business and development land which is not associated with any utility service. Additionally, Indiantown has two telephone subsidiaries; Indiantown Telephone System, Inc. (Telco) and Arrow Communications, Inc. (Arrow).

Indiantown's common stock is currently owned by two U.S. corporations and two individuals who are foreign nationals. The outstanding portion of Indiantown's preferred stock is owned by one of the individuals mentioned above. The stockholders plan to sell all of the stock of the water and wastewater utility, garbage/refuse business, and telephone subsidiaries to Postco. Indiantown will retain ownership of the development land and continue operation of its non-utility related business functions following the stock transfer. The Commission has already

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acknowledged the transfer of controlling stock interest of Telco and Arrow to Postco in Dockets Nos. 970553-TP and 970554-TP.

Under Indiantown's current corporate structure, the assets of the water and wastewater utility, garbage/refuse business, and development land are combined under one company. Because Indiantown will retain ownership of the development land, the Seller believes it will be beneficial to segregate the assets of the water and wastewater utility into a separate company prior to the stock transfer. The utility has proposed taking the following steps to complete the stock transfer. In order that the name of the water and wastewater utility may remain the same, Indiantown will sell the right to use the Indiantown Company name to Postco. Indiantown will then change its name to CFC Parent, Inc. (CFC Parent) and will create two new subsidiaries named ICO Enterprises, Inc. (ICO Enterprises) and ICO Sanitation, Inc. (ICO Sanitation.) The water, wastewater, and garbage collection assets held by CFC Parent (formerly Indiantown) will be transferred to the two new subsidiaries. The water and wastewater assets will be transferred to ICO Enterprises, and the garbage/refuse assets will be transferred to ICO Sanitation, through a tax-free transfer which will allow the assets to retain their same value after the transfer. CFC Parent will retain the development land and any other non-utility assets that it holds and begin operating under the name CFC Parent.

Upon completion of the name change and corporate reorganization, the majority organizational control of ICO Enterprises and ICO Sanitation will be transferred to Postco. Postco will then change the name of ICO Enterprises back to Indiantown and continue to operate the water and wastewater utility under the name Indiantown. All of these steps will be performed at closing and should be completed in a matter of hours or a few days at the most, resulting in a seamless transfer from the perspective of the utility's customers.

Regarding the name changes, the utility has stated that the reason for the two name changes is to prevent the customers from experiencing a change in the utility's name or any other aspect of their service as a result of the stock transfer. Additionally, this will eliminate the need for the utility to file a new tariff, and change its letterhead, business cards, and directory listings. Rule 25-30.039(2)(e), Florida Administrative Code, requires in part that an application for name change include a statement that the ownership and control of the utility and its assets will not change under the proposed name. The utility has provided a statement that the ownership and control of the utility will not change as a result of the change in name from Indiantown to CFC Parent and

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addition of the two subsidiaries; ICO Enterprises and ICO Sanitation. Similarly, after the transfer of majority organizational control is completed, the ownership and control of the utility at that point will not change when the utility's new name of ICO Enterprises is changed back to Indiantown.

Rule 25-30.039(2)(e), Florida Administrative Code, requires that an application for name change include a copy of the certificate or other document issued by the Department of State showing its acceptance of the utility's new name. Because the utility will not proceed with the proposed name changes unless the Commission approves the request to transfer majority organizational control, the utility has not yet obtained the required documentation from the Department of State. However, the utility has committed to providing this documentation, along with any documents required by the Commission, upon completion of the stock transfer.

Regarding the transfer of the water and wastewater assets from CFC Parent to ICO Enterprises, the utility has stated that it believes the segregation of the regulated assets into a discreet corporate entity will allow the utility's stock to be purchased without affecting the valuation of the assets, or creating adverse tax implications for the Sellers, Buyer, or customers. The utility has stated that the assets will not be sold during this transaction. The utility proposes to transfer the assets from the parent company to the newly formed subsidiary through a tax-free exchange, thereby allowing the assets to retain their same value. All of the stock of CFC Parent, ICO Enterprises, and ICO Sanitation will be owned by the same stockholders who currently own Indiantown's stock. Therefore, ownership and control of the assets will be the same before and after the name change and transfer of assets from CFC Parent to ICO Enterprises.

The utility has stated that the asset transfer is in the public interest because it is one of the steps necessary to permit a seamless transfer of majority organizational control, and to insure no change in rate base, rates, or the utility's name. After the transfer, the water and wastewater assets will be in a corporation which is solely in the business of providing water and wastewater service. The utility has stated that upon completion of the stock transfer, ICO Enterprises, under the name Indiantown, will have its own set of books with assets recorded at the same valuation as presently shown on the utility's books.

The utility has not yet provided evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(3)(i), Florida Administrative Code.

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However, the utility has provided copies of unexecuted warranty deeds. The land upon which the utility facilities are located is currently included within a much larger description of the land owned by Indiantown. As discussed above, CFC Parent (formerly Indiantown) will retain ownership of the development land. Only the portion of land upon which the utility facilities are located will be transferred to ICO Enterprises by CFC Parent. Therefore, it will be necessary for the utility to prepare new warranty deeds representing those parcels of land. The utility has stated the new warranty deeds will be executed and recorded upon approval of the stock transfer by the Commission. The utility has submitted a copy of the draft warranty deeds, and will submit a copy of the executed and recorded warranty deeds to the Commission upon completion of the stock transfer.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. No objections to the notice of application have been received and the time for filing such has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A.

Mr. Robert M. Post, Jr., formed and is the sole officer of Postco. Additionally, Mr. Post is the current President of Indiantown, and has managed Indiantown and its subsidiaries for the last six years. The application states that the transfer of majority organizational control is in the public interest because the new corporate owner (Postco) is totally owned by the present Manager and President of Indiantown. The transfer will result in ownership and management of the utility being the same, which will permit faster response to decisions relating to capital expenditures and policy matters. Additionally, the Buyer has sufficient capital to assure the continued availability of adequate and reliable water and wastewater service to the utility's customers.

The application contains a statement that the Buyer will fulfill the commitments, obligations and representations of the Seller with regard to utility matters. ICO Enterprises, under the name Indiantown, will continue to furnish water and wastewater service pursuant to the authority granted by the Commission, and under the same tariffs now on file with and approved by the Commission. Also, the utility will continue to be managed and operated by the same people who are currently managing the utility. Further, all relationships with customers and developers with regard to matters such as customer deposits and developer agreements will remain as they were before the transfer.

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Regarding the Buyer's technical ability, as discussed above, the Buyer has been responsible for managing the utility for the last six years. The application states that the systems are in satisfactory condition, and there are no outstanding violations or consent orders with the Department of Environmental Protection (DEP.) Also, the systems are not in need of any repairs or improvements which are not already planned or under construction. Staff has contacted the DEP and learned that there are no outstanding notices of violation.

Regarding the Buyer's financial ability, as discussed above, the application states that the Buyer has sufficient capital to assure the continued availability of adequate and reliable water and wastewater service to the utility's customers. The application contains a copy of the Subsidiary Stock Purchase Agreement (Agreement) which includes the purchase price and terms of payment. According to the Agreement, the purchase price of the water and wastewater utility stock is \$1,280,000. The stock will be purchased with a single cash payment. Staff has reviewed Mr. Post's personal financial statement and determined that he has sufficient financial ability to purchase the utility's stock and ensure the continued operation of the utility.

Based on the above, staff believes the transfer of majority organizational control of Indiantown Company, Inc. to Postco, Inc. is in the public interest and should be approved. Therefore, staff recommends that the name change of Indiantown Company, Inc. to CFC Parent, Inc. should be approved. Also, the transfer of water and wastewater assets from CFC Parent, Inc. to its subsidiary ICO Enterprises, Inc. should be approved. Additionally, the transfer of majority organizational control of ICO Enterprises, Inc. to Postco, Inc. should be approved. Finally, the name change of ICO Enterprises, Inc. to Indiantown Company, Inc. should be approved. The utility should be required to file a copy of the certificates or other documents issued by the Department of State showing its acceptance of the utility's name changes, and an executed and recorded copy of the warranty deeds, within thirty days of the issuance date of the Order granting the certificate.

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ATTACHMENT A

INDIANTOWN COMPANY, INC.

MARTIN COUNTY

TERRITORY DESCRIPTION

Township 39 South, Range 38 East, Martin County

All of Section 22, South of State Road 710 R/W

Section 25, The South 1/2

Section 26, The West 1/2 of the South 1/2

All of Section 27, South of State Road 710 R/W

All of Section 34

All of Section 35, South of State Road 710 R/W

All of Section 36

Township 40 South, Range 38 East, Martin County

Section 1

The North 3/4 of the East 1/2, the East 1/2 of the North 1/2 of the West 1/2, and the West 1/2 of the North 1/2 of the West 1/2 lying North of West Farm Road. (West Farm Road can be described approximately as follows: From the Northeast corner of said section Run 3,309 feet South along the East line to the intersection of West Farm Road; thence North 86° West along said road a distance of 1,095 feet; thence North 59° West a distance of 3,017 feet; thence North 77° West a distance of 1,338 feet to the intersection of said road with the West line of said section. This point also being 1,314 feet South of the Northwest corner of said section.)

Township 40 South, Range 38 East, Martin County

Section 2

The area lying North of West Farm Road. (West Farm Road can be described approximately as follows: From the Northeast corner of

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said section run South along the East Section line a distance of 1,314 feet to the intersection of West Farm Road; thence North 77° West a distance of 1,241 feet; thence North 61° West a distance of 2,093 feet to the intersection of the North line of said section. This point also being 3,090 feet West of the Northeast corner of said section.)

Township 39 South, Range 39 East, Martin County

All of Section 33

Section 31, The South 1/4

Township 40 South, Range 39 East, Martin County

All of Section 5

All of Section 6

All of Sections 4, 7, 8, 9, North of the St. Lucie Canal R/W

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ISSUE 2: Should rate base be established?

RECOMMENDATION: Yes. Rate base should be established as \$105,458 for the water system and \$511,793 for the wastewater system as of December 31, 1994. (GOLDEN)

STAFF ANALYSIS: The establishment of rate base is not normally conducted when the transfer involves the sale of stock. Stock is publicly traded and its price has no regulatory relationship to a utility's established rate base. In addition, stock sales and purchases have no immediate effect on a utility's assets and liabilities. However, as discussed in Issue 1, the Seller has proposed transferring the utility's assets to a newly formed subsidiary prior to selling the utility's stock. Therefore, staff believes it is appropriate to establish rate base for that portion of the transaction.

Indiantown's rate base was last established by Order No. PSC-96-0657-FOF-WS, issued May 10, 1996, in Docket No. 960011-WS, which was an overearnings investigation. The utility has stated that no adjustments have been or will be sought prior to closing. The utility acknowledges that there are some changes reflected on the utility's 1995 and 1996 Annual Reports as a result of depreciation and CIAC, and the Buyer has no objection to the Commission modifying the utility's rate base to reflect those items. Further, the utility is not requesting an acquisition adjustment.

Because the assets are not actually being sold, but rather are simply being transferred as part of a corporate reorganization, staff is inclined to agree with the utility that the rate base established by Order No. PSC-96-0657-FOF-WS is sufficient for the purposes of this case. Therefore, staff recommends that rate base be established as \$105,458 for the water system and \$511,793 for the wastewater system as of December 31, 1994.

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ISSUE 3: Should an acquisition adjustment be approved?

RECOMMENDATION: No, an acquisition adjustment should not be included in the calculation of rate base for transfer purposes.
(GOLDEN)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation. The Commission routinely makes determinations regarding acquisition adjustments in cases involving the transfer of certificates, assets, or facilities because the purchase price is considered when determining whether the transfer is in the public interest. Conversely, acquisition adjustments are never considered in stock transfers because Commission policy is that the price of stock has no regulatory relationship to a utility's established rate base. However, because the Seller has proposed transferring the water and wastewater assets to a subsidiary prior to selling the utility's stock, staff believes it is appropriate to discuss acquisition adjustments in this case.

As discussed in Issues 1 and 2, the utility has proposed to transfer the utility's assets to a newly formed subsidiary through a tax-free exchange so the assets will retain their same value. Because the assets are simply being transferred as part of a corporate reorganization, rather than being sold, there is no purchase price. Also, the ownership and control of the assets will be the same both before and after the transfer. Because the assets are not actually being sold and the value will remain the same after the transfer, staff believes that an acquisition adjustment does not result from this asset transfer. Additionally, the utility has stated that it is not requesting an acquisition adjustment in this case. Therefore, staff recommends that an acquisition adjustment should not be included in the calculation of rate base.

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ISSUE 4: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, the rates and charges approved for this utility system should be continued. (GOLDEN)

STAFF ANALYSIS: The utility's approved water rates were effective July 19, 1996 pursuant to Order No. PSC-96-0657-FOF-WS issued in Docket No. 960011-WS, which was an overearnings investigation. The utility's approved wastewater rates were effective May 13, 1994 pursuant to an administratively approved price index adjustment. Indiantown's current miscellaneous service charges were approved administratively and became effective January 8, 1992. The utility's current customer deposits for water service and service availability charges were effective January 28, 1994 pursuant to Order No. PSC-93-1732-FOF-WS issued in Docket No. 930171-WS, which was a service availability case.

Rule 25-9.044(1), Florida Administrative Code, provides that:

"In cases of change of ownership or control of a utility which places the operation under a different or new utility...the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)..."

The Buyer has not requested a change in the rates and charges of the utility, and staff sees no reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. Ordinarily in a transfer of majority organizational control, the issuing officer of the utility changes, and the utility is required to file a new tariff reflecting that change. However, because the issuing officer will remain the same in this case, no changes to the tariff are necessary at this time.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed if no timely protests are filed to the proposed agency action issues. (REYES)

STAFF ANALYSIS: If there are no timely protests filed by a substantially affected person to the proposed agency action issues (Issues 2 and 3), no further action will be required and the docket should be closed.