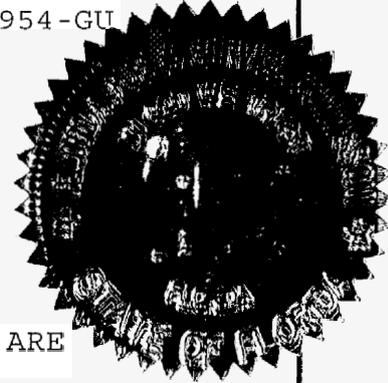


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030954-GU

In the Matter of:  
PETITION FOR RATE INCREASE  
BY INDIANTOWN GAS COMPANY.



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PROCEEDINGS:                   AGENDA CONFERENCE  
ITEM NO. 6

BEFORE:                         CHAIRMAN BRAULIO L. BAEZ  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE:                            Tuesday, May 18, 2004

TIME:                            Commenced at 9:40 a.m.  
Concluded at 10:25 p.m.

PLACE:                          Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY:                   LINDA BOLES, RPR  
Official FPSC Reporter  
(850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION 05941 MAY 25 2004

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2                   JOSEPH MCGLOTHLIN, ESQUIRE, McWhirter Law Firm, 117  
3 S. Gadsden St., Tallahassee, Florida 32301, appearing on behalf  
4 of Indiantown Cogeneration, L.P.

5                   ROBERT SCHEFFEL WRIGHT, ESQUIRE, Landers Law Firm,  
6 P.O. Box 271, Tallahassee, Florida 32302, appearing on behalf  
7 of Indiantown Gas Company.

8                   KATHERINE FLEMING, ESQUIRE, FPSC General Counsel's  
9 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
10 32399-0850, appearing on behalf of Commission Staff.

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## P R O C E E D I N G S

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2 CHAIRMAN BAEZ: And we are on Item 6, and I  
3 understand that there's a modification to the rec. Okay.

4 MS. MERTA: Commissioners, Item 6 is a petition for a  
5 rate increase by Indiantown Gas Company. The company requested  
6 a \$306,751 revenue increase. Staff is recommending a revenue  
7 increase of \$127,211. Staff has oral modifications to the  
8 recommendation. In Issue 32 on Page 43, the recommendation  
9 paragraph amounts should read \$1,876 each, for a total of  
10 \$3,752.

11 CHAIRMAN BAEZ: Can you give me that first number  
12 again, Ms. Merta?

13 MS. MERTA: \$1,876 each.

14 CHAIRMAN BAEZ: Okay.

15 MS. MERTA: For a total of \$3,752.

16 Then in Issue 35 on Page 46, the recommendation  
17 amount should read \$5,193. These two minor revisions affect  
18 the fallout calculation of several other issues, and staff can  
19 identify these issues, if requested.

20 CHAIRMAN BAEZ: Commissioners, do you need --

21 MS. MERTA: The rate structure --

22 CHAIRMAN BAEZ: I'm sorry. Commissioners, do you  
23 need, do you need her to walk through the fallout issues? Very  
24 well. Go ahead.

25 MS. MERTA: The rate structure issues are not

1 impacted. Staff has not recalculated rates at this time;  
2 however, we are requesting administrative authority to  
3 recalculate rates after the vote at agenda today. The net  
4 effect is an increase in the revenue requirement of \$2,318.

5 Mr. Schef Wright, representing the utility, and  
6 Mr. Joe McGlothlin, representing Indiantown Cogeneration, LP,  
7 are present and wish to address the Commission, and staff is  
8 prepared to answer any questions you may have.

9 CHAIRMAN BAEZ: Mr. Wright.

10 MR. WRIGHT: Thank you, Mr. Chairman. Schef Wright  
11 appearing on behalf of Indiantown Gas Company.

12 The company wishes to ask the Commission to deny the  
13 staff's recommendation with rate case expense and instead allow  
14 the company an additional \$2,000 per year based on the  
15 company's actual rate case expenses being \$8,000 more than what  
16 were originally projected in the staff's recommendation.

17 The bulk of, if not the entirety of, the difference  
18 between the projected rate case expenses and the actual rate  
19 case expenses incurred by the company were due to the  
20 intervention in the case by Indiantown Cogeneration, Limited  
21 Partnership. We met with them to try to resolve their concerns  
22 and ultimately, I think partly through our actions and partly  
23 through the staff's recommendations that we are not opposing  
24 today on the much bigger ticket issues, those have worked out.

25 But the bottom line is with respect to legal

1 expenses, my part of the extra \$8,000 was about \$2,000, which  
2 included two trips to Indiantown to meet with the folks at the  
3 cogen plant and my clients to try to work out our differences,  
4 plus another meeting that was held up here.

5       Mr. Householder, the economic and financial  
6 consultant for Indiantown Gas Company, incurred about  
7 approximately \$6,000 in additional costs also associated with  
8 addressing the cogen plant's concerns. He did some other  
9 analyses and other work, substantially more than I did, in  
10 connection with that, leading to an increase of \$6,000 above  
11 what had been projected in the original agreement between  
12 Mr. Householder's consulting firm and Indiantown Gas Company.

13       The staff requested and we furnished as soon as we  
14 had all the information in hand additional information  
15 regarding the additional rate case expenses. We furnished that  
16 to them unfortunately late yesterday, but that was because we  
17 got the specific request for the letter, I think, on Friday.  
18 It could have been on Thursday. And I furnished an e-mail to  
19 Mr. Powers explaining where we were. Because of my particular  
20 workload, I have not issued my bills yet for April, and I've  
21 also -- so that, those amounts are accrued but unbilled, as  
22 well as the time I have spent in May. As of today, well, as of  
23 last, last week I was at about \$10,400, and as of today I'm  
24 somewhere north of \$11,000 based on work done in the last week.  
25 And I've agreed to a cap of a total of \$12,000 above what staff

1 had -- which is \$2,000 above what staff had projected.

2 Mr. Householder is, as I said, about \$6,000 above his  
3 original contract with the company, and accordingly we're about  
4 \$8,000 over what the staff had projected, and we're requesting  
5 that that be recognized as rate case expense. Certainly in my  
6 case I can furnish detailed bills, as I would normally, it's  
7 just that they haven't been generated yet, if that would help.  
8 And dividing by four, it gives us the extra \$2,000 per year in  
9 rate case expense.

10 COMMISSIONER BRADLEY: Mr. Chairman.

11 CHAIRMAN BAEZ: Commissioner Bradley.

12 COMMISSIONER BRADLEY: I have a question to staff.

13 The additional expenses that the attorney just mentioned, are  
14 those expenses that would ordinarily be included in rate base?

15 MS. MERTA: Well, without the invoices, we couldn't  
16 really say if they were. I would -- if they, if they were  
17 similar to the ones that we have analyzed, the invoices that we  
18 have looked at, I would say, yes, they are. But we don't have  
19 the invoices to look at the time spent and the subject matter.

20 COMMISSIONER BRADLEY: Okay. Mr. McGlothlin --

21 MR. WRIGHT: I'm sorry, Commissioner.

22 COMMISSIONER BRADLEY: -- is that something that you  
23 can reconcile with the documentation that staff needs to have  
24 in order to properly analyze these expenses?

25 CHAIRMAN BAEZ: Mr. Wright? Are you asking Mr.

1 Wright?

2 COMMISSIONER BRADLEY: Yeah. Mr. Wright. I'm sorry.  
3 Excuse me.

4 MR. WRIGHT: That's okay. Mr. Chairman, Commissioner  
5 Bradley, yes, sir. I think in fact that, that the staff  
6 received -- admittedly it was late yesterday. We got the  
7 request that they wanted a letter to be able to discuss this  
8 either Thursday or Friday. I received Mr. Householder's  
9 invoice by fax late yesterday, about 3:45, put it under a cover  
10 letter which we sent to the staff as quick as I could get it  
11 out the door thereafter. But I believe that they actually have  
12 Mr. Householder's invoice.

13 And the answer to your question with respect to mine  
14 is, of course, you know, I would normally generate an invoice  
15 for April by about now. I've been busy and haven't done it  
16 yet. But I can generate that within a couple of days, and I  
17 can generate a final bill for the case showing the cap that  
18 Mr. Powers and I have agreed to. Certainly, we can, we can  
19 furnish that by the end of the week.

20 COMMISSIONER BRADLEY: And I guess my final question  
21 would be is how do we deal with this issue so that we can make  
22 a decision?

23 MS. MERTA: Well, staff was aware or the company  
24 notified us that they were going to request some additional  
25 rate case expense a week or so ago. And we, we requested that

1 the company waive their time in order to give us the time to  
2 review and analyze the additional documentation that they would  
3 provide to us, but they declined to do this. And, you know,  
4 having looked at it for the first time this morning, it's  
5 difficult to determine if, if it's appropriate.

6 COMMISSIONER BRADLEY: Appropriate.

7 CHAIRMAN BAEZ: Okay.

8 COMMISSIONER BRADLEY: Yeah. At the proper time I'd  
9 just like to ask another question, but I see Commissioner Jaber  
10 has --

11 CHAIRMAN BAEZ: Commissioner Jaber.

12 COMMISSIONER JABER: Actually it's not a -- Mr.  
13 Chairman, it's not a question. When it's time to make a  
14 motion, I want to suggest some additional language. So I defer  
15 to Commissioner Bradley.

16 CHAIRMAN BAEZ: Go ahead, Commissioner Bradley.

17 COMMISSIONER BRADLEY: Well, I'm just trying to  
18 figure out if these are the only two fallout issues that are  
19 left that would settle this rate case. And, if so, I'm just --  
20 I'd be of the mind-set that maybe we give staff the time that  
21 it needs to have in order to, to either determine the  
22 invalidity or the validity of these two expenses. And maybe  
23 I'm off base, but --

24 CHAIRMAN BAEZ: I don't think you are, Commissioner.  
25 But I, I think what I heard is we have -- and, Commissioner

1 Deason or Commissioner Davidson, if you all have any questions  
2 and maybe we can get on to the discussion, but it's up --

3 COMMISSIONER DEASON: I'm just curious as to what  
4 Mr. McGlothlin's position is on this.

5 CHAIRMAN BAEZ: That's right, because Mr. McGlothlin  
6 hasn't had a chance to speak yet.

7 COMMISSIONER BRADLEY: That's right.

8 CHAIRMAN BAEZ: So, Mr. McGlothlin, I know we can get  
9 into, get into a discussion, Commissioner Bradley, but you  
10 raised some good points. Go ahead.

11 MR. MCGLOTHLIN: Joe McGlothlin for Indiantown  
12 Cogeneration. Commissioners, I take no position on this rate  
13 case issue. I'm here to speak to a different modification when  
14 it's, when it's my turn.

15 CHAIRMAN BAEZ: Okay. Well, your turn can be right  
16 now because I think we are moving, we are moving towards some  
17 kind of resolution. So let's get all the issues out on the, on  
18 the table so we can discuss them. Thank you.

19 MR. MCGLOTHLIN: Very good. Indiantown Cogeneration  
20 owns and operates a coal-fired power plant in Indiantown. It  
21 sells electrical power to Florida Power & Light Company under  
22 contract, it sells steam to the adjacent Citrus plant. It's a  
23 coal-fired unit, but it uses natural gas for flame  
24 stabilization and also for start-up after scheduled outages.

25 As one of the large customers we, of course, have an

1 interest in this case. With respect to the revenue requirement  
2 issues, by and large we have not delved deeply into that.  
3 We've relied on staff to, to do that, and it's clear from the  
4 recommendation they've done that thoroughly and well.

5 With respect to a handful of concerns we did put on  
6 the table, staff listened to those, incorporated some, and  
7 commented on those that they didn't incorporate. So before I  
8 offer one modification, I wanted to make clear that we  
9 appreciate staff's diligence and thoroughness and the  
10 responsiveness they've shown us in this case.

11 The one modification I have is, is really in terms of  
12 a nuance or refinement because the dollar impact even on  
13 Indiantown Cogeneration's bills immediately will not be large,  
14 but we think that it will have the effect of making the  
15 recommended rate design more equitable under the circumstances.  
16 And by circumstances I mean this: Staff recommends that the  
17 Commission approve a demand charge as part of the overall rate  
18 structure in this case, and staff recommends pursuant to the  
19 company's initial suggestion that the billing determinant be  
20 the higher of the actual customers' demand or the maximum  
21 contract demand specified in the transportation contract.

22 As staff notes in this recommendation, Indiantown  
23 Cogeneration and Indiantown Gas Company negotiated a, an  
24 amended transportation contract in June of 2003, which the  
25 Commission approved in October of 2003 at a time when the

1 possibility of a demand charge was nowhere in sight. As a  
2 matter of fact, the idea of demand charges in a LDC's rate  
3 structure is a very new development. The first one you did was  
4 for NUI City Gas earlier this year in 2004. As a consequence,  
5 Indiantown Cogeneration had no ability to take that possibility  
6 into consideration when it renegotiated that contract.

7 I believe to render the rate design more equitable  
8 under those circumstances, the billing determinant should not  
9 be the higher of the contract demand or actual, but rather the  
10 Commission should look to the actual demand for this reason:  
11 Using the higher of results in a ratchet effect that only goes  
12 one way, and that way is the possibility of a higher bill,  
13 which under the circumstances could lead to overrecovery of  
14 those categories of costs designated for recovery through the  
15 demand charge. As the company said repeatedly in its prefiled  
16 submissions, its capacity costs are largely fixed in nature.

17 On the other hand, if one uses the actual demand,  
18 that at least gives the customer the opportunity to attempt to  
19 respond to and adapt to the signals sent by this rate design.  
20 And with respect to Indiantown Cogeneration, its peak demand,  
21 its data on peak demands are very, very seasonal in nature.  
22 During two weeks in the fall and during two weeks in the  
23 summer, in the spring, rather, its unit is down for scheduled  
24 maintenance. And when the unit comes back, that is when they  
25 use large quantities of gas for start-up. And, additionally,

1 every five years the unit is down for an additional six weeks  
2 of maintenance, and that is one occasion when it's in the  
3 nature of a true cold start-up, and that's when its peak demand  
4 is highest. But under those circumstances it does have some  
5 ability to control the amount of gas it would use. And  
6 under -- and with the knowledge that the gas usage is going to  
7 result in a billing determinant that will impact its bills in a  
8 significant way, it would try to modify its behavior.

9           And so my points are that because the renegotiation  
10 took place under circumstances under which my client had no  
11 advanced notice of the consequences of the maximum demand it  
12 was specifying in the contract, because the, to use the higher  
13 of the contract demand or the actual demand has this one-way  
14 street effect, and because the purpose of rate design is to  
15 send signals to customers to which they can respond, we  
16 recommend that the Commission modify the staff's recommendation  
17 to designate the actual demand as the billing determinant for  
18 purposes of demand charges.

19           Now as staff notes, Indiantown Cogeneration's actual  
20 demand was 8900 dekatherms per day as compared to its contract  
21 demand of 9500. So, again, the immediate impact of this will  
22 not be large, but in terms of ratemaking principles and in  
23 terms of overall equity under the circumstances, we think that  
24 that would at least give my client an opportunity to adapt to  
25 rate design in its operational modes. Thank you.

1 CHAIRMAN BAEZ: Thank you, Mr. McGlothlin.

2 Mr. Wright, do you have a comment or response?

3 MR. WRIGHT: Yes, sir. We don't agree with  
4 Indiantown Cogen's position on this for the following reasons.  
5 First, we have a contract with them. They originally wanted  
6 more than 9500 MMBtu per day of capacity. We -- 9500 MMBTUs  
7 per day. They wanted 12000. We suggested to them we thought  
8 they didn't need that much, and we eventually settled on 9500.

9 We are committed by contract to make available to  
10 them 9500 MMBtu of firm transportation capacity on our system  
11 per day. If they want it, they get it, and we have to reserve  
12 it for them. As we've all noted, and I think this is becoming  
13 increasingly clear in the local gas distribution utility  
14 business, the costs of providing transportation or service are  
15 almost entirely fixed. The only truly variable cost we've been  
16 able to identify is the cost of odorant, which on the --  
17 against the total revenue requirement of this company is a  
18 couple of hundred dollars a year out of several hundred  
19 thousand dollars a year. Yet, accordingly, we think demand  
20 charges are appropriate, and where we have a fixed cost driven  
21 system where the company, where the customer in this case,  
22 Indiantown Cogen has demanded and has a contract right to 9500  
23 MMBtu per day of firm capacity, we don't think it's appropriate  
24 to charge them for less than that.

25 With regard to the ratchet, I would point out that it

1 is the greater of the actual or the MDTQ, but -- maximum daily  
2 transportation quantity. But where a customer goes above the  
3 maximum annual to which they have contractually agreed per  
4 their setting of the amount, the amount can come back down on  
5 an annual basis. For example, the, the Citrus plant, we drive  
6 for Citrus, which is the other large customer on Indiantown's  
7 system, has a maximum daily transportation quantity under its  
8 contract of 800 MMBtu per day. Their actual maximum is  
9 currently 1612 MMBtu per day. If their demand, their, their  
10 peak daily demand this year were to come down to, say, 1200,  
11 then next year their demand would be 1200. So it's not  
12 strictly a one-way ratchet, as Mr. McGlothlin suggests.

13           Finally, if what he's really saying, and in substance  
14 it seems to me to be what it is, if what he is really saying is  
15 that he wants the opportunity to renegotiate the contract to  
16 lower their maximum daily transportation quantity, then there's  
17 a dispute resolution procedure that's clearly laid out in the  
18 agreement that y'all have approved that requires us first to  
19 negotiate in good faith and then next to arbitrate, and that  
20 would be the resolution of that. And if he's not asking for  
21 the ability to lower his maximum daily contract quantity under  
22 the contract, then I think that, that tells us all that they  
23 want to be able to call on the 9500 that they've asked us to  
24 agree to provide.

25           CHAIRMAN BAEZ: Commissioners, questions?

1 MR. MCGLOTHLIN: May I respond very quickly?

2 CHAIRMAN BAEZ: Seeing no hands, go ahead,

3 Mr. McGlothlin.

4 COMMISSIONER BRADLEY: I have a question.

5 CHAIRMAN BAEZ: Commissioner Bradley.

6 COMMISSIONER BRADLEY: As it relates to this issue,  
7 the company requested one amount and staff is recommending  
8 another amount?

9 CHAIRMAN BAEZ: I'm sorry.

10 COMMISSIONER BRADLEY: The gas company requested and  
11 it's -- as part of its rate base, I think, \$2.51.

12 MR. WRIGHT: That's the actual rate, yes, sir. We  
13 had requested a substantially higher rate. I believe that the  
14 staff's recommendation regarding the demand charge rate itself  
15 was based on adjustments reducing -- excuse me. I need, I need  
16 to back up.

17 When the staff recommended a significant reduction in  
18 the requested revenue requirement increase, I believe that they  
19 reduced the demand charges with that reduction, and that's why  
20 it went from \$2.51 to, I think, 53 cents.

21 COMMISSIONER BRADLEY: Okay. And what staff is  
22 recommending is \$53 a month.

23 MR. WRIGHT: I think it's 53 cents.

24 COMMISSIONER BRADLEY: I'm sorry. 53 cents, not \$53.  
25 That would be a radical increase.

1 MR. WRIGHT: 53 cents per dekatherm per month.

2 COMMISSIONER BRADLEY: And you all disagree even with  
3 that recommendation by staff?

4 MR. McGLOTHLIN: No, sir. That was one of the areas  
5 in which staff did respond to some of the things that we  
6 expressed to them. And my point goes not so much to the, to  
7 the --

8 COMMISSIONER BRADLEY: Okay. I'm on Issue 58: Is  
9 that the same issue that you all are on, the demand issue, the  
10 demand charge?

11 MR. McGLOTHLIN: Yes, it is a demand charge.

12 MR. WHEELER: I think what they're objecting to is  
13 not the level of the demand charge, but the manner in which  
14 it's, it's, it's billed.

15 COMMISSIONER BRADLEY: Okay.

16 MR. McGLOTHLIN: That's correct.

17 MR. WHEELER: So they're not taking issue with the  
18 reduction or the 53-cent demand charge per se, it's just the  
19 manner in which you determine what, what the -- the dekatherms  
20 to which to apply that demand charge.

21 COMMISSIONER BRADLEY: Okay. And how do we resolve  
22 that issue?

23 MR. McGLOTHLIN: Well, if I may just respond to Mr.  
24 Wright very quickly, I think I'll also answer that question.

25 Mr. Wright referred to the negotiations during which

1 at one point Indiantown Cogeneration was interested in 12000  
2 dekatherms and it was negotiated down. Well, he makes my  
3 point. It was because --

4 COMMISSIONER BRADLEY: Let me ask this question  
5 before you start to give your explanation. Is the issue use  
6 versus fixed?

7 MR. MCGLOTHLIN: Is the issue --

8 COMMISSIONER BRADLEY: That you all object to.

9 MR. MCGLOTHLIN: -- use versus fixed?

10 COMMISSIONER BRADLEY: Yes.

11 MR. MCGLOTHLIN: I'm not sure I understand. We do  
12 not object to the revised level of the demand charge. We do,  
13 we do take issue with the use of the maximum quantity specified  
14 in the contract as a billing determinant for determining what  
15 portion of that we pay because of the fact that we were not  
16 aware of the possibility of such a billing determinant when we  
17 negotiated the contract. We believe it's more appropriate to  
18 use the actual demand. And if my client uses more than 95 --  
19 9500 dekatherms in a day, then we agree that that higher amount  
20 should be used as the billing determinant. And if it is unable  
21 to use less than that, that becomes the billing determinant for  
22 that year.

23 On the other hand, if it is able to control this  
24 usage, we believe it should get the benefit of that in terms of  
25 designating the actual demand as the billing determinant for a

1 given year.

2           So we're -- you know, it may be -- the result of what  
3 I suggest possibly may be that we pay more than the 9500. But  
4 if we can pay less, we should get the benefit of that,  
5 particularly in light of the fact that this is being derived  
6 after the fact of the negotiated contracts.

7           COMMISSIONER JABER: Mr. McGlothlin, let me see if I  
8 can understand what your position is. I'm trying to get my  
9 hands around your argument. You have no objection to staff's  
10 recommendation per se with regard to the actual rate. You take  
11 issue with the input that goes into calculating the rate. Said  
12 a different way, you don't believe it should be calculated  
13 using what the contract says the company is required to  
14 provide, but rather you would want the rate to be calculated  
15 based on what your actual demand is.

16           MR. MCGLOTHLIN: That's correct, Commissioner.

17           COMMISSIONER JABER: And the difference in that  
18 amount would be what?

19           MR. MCGLOTHLIN: Well, the contract specifies a  
20 maximum quantity of 9500 dekatherms per day. The highest that  
21 we've used in the last 24 months is 8900 dekatherms per day.  
22 And that's why I'm saying this is more a matter of making  
23 principle than it is dollars and cents. The impact immediately  
24 would not be large. But in terms of having the ability to try  
25 to respond to this rate design by monitoring and, and possibly

1 affecting the usage in response to that, when, when that's  
2 locked in at the contract amount, we have no opportunity to do  
3 that. When it's pegged at the actual demand in future years,  
4 we do have some opportunity.

5           COMMISSIONER JABER: But, again, just as a follow-up,  
6 you don't take issue with the fact that if you requested a  
7 certain amount, this company is obligated to provide that under  
8 the contract.

9           MR. McGLOTHLIN: I do not take issue with that. But  
10 I would point out that that is not an essential component of  
11 this rate design. As a matter of fact, the company proposed in  
12 its original filing to apply a demand charge to TS3 also, and  
13 TS3 has no contract demand. And the company proposed that  
14 TS3's actual demand be used as a billing determinant. So this  
15 idea of contract/no contract is really a non sequitur. And  
16 we're not talking about the inability of the company to recover  
17 its full revenue requirements. All we're talking about is the  
18 determination of what terms to apply the demand charge to.

19           CHAIRMAN BAEZ: Mr. McGlothlin, you mentioned  
20 something at the beginning of your comments that, that there's,  
21 there was some information that wasn't available to you at the  
22 time that you renegotiated the contract. Can you explain that  
23 a little further?

24           MR. McGLOTHLIN: Well, specifically, Chairman Baez,  
25 at the time we negotiated the contract, that was in the time

1 period prior to the application of a demand charge to any local  
2 distribution company within the Commission's jurisdiction. And  
3 so the client was unaware of the future impact of its  
4 designation of contract quantity on its, on its future bills by  
5 virtue of that quantity becoming a billing determinant within  
6 the demand charge. That was nowhere in sight at the time.

7 CHAIRMAN BAEZ: But you're not, you're not saying  
8 that whatever staff's recommendation is in this regard is  
9 inconsistent with something that we may have done before;  
10 that's not, that's not what you're saying.

11 MR. MCGLOTHLIN: No. I'm only saying the demand  
12 charge as part of the rate structure is a new development, and  
13 that there was no ability at the time to foresee that the  
14 amount they were contracting for would, would be designated as  
15 a billing determinant that would impact its monthly bills in a  
16 significant way.

17 CHAIRMAN BAEZ: Were you -- at the time you were  
18 negotiating the demand charge in this, I guess, incomplete  
19 universe that you've presented us with, what significance did  
20 you ascribe to the demand charge at the time? I mean, what did  
21 it mean to you?

22 I guess if you're telling us, well, we had no idea it  
23 was going to be used against us is in essence what you're  
24 saying, and that might be true, but what meaning did it have, I  
25 guess?

1           MR. MCGLOTHLIN: I'm saying only that -- I'm only  
2 saying that if we had been aware of the rate structure  
3 environment in which the contract would operate, the client  
4 could have and would have taken that into account in  
5 quantifying the maximum contract quantity. It does have some  
6 ability to, to affect the quantities of gas it uses, having in  
7 mind the impact on its overall exposure to, to, to bills from  
8 the company.

9           CHAIRMAN BAEZ: And I think Commissioner Deason now  
10 has a question.

11           COMMISSIONER DEASON: I didn't have a question until  
12 you said that statement, Mr. McGlothlin. I think another  
13 reason for an appropriate rate structure would be to give the  
14 right pricing signals to individuals to negotiate contracts in  
15 the best interest of both parties; you would not agree with  
16 that?

17           MR. MCGLOTHLIN: I would.

18           COMMISSIONER DEASON: And if the demand charge is,  
19 remains as is, you would have the incentive then to negotiate  
20 your firm transportation in an appropriate manner, would you  
21 not?

22           MR. MCGLOTHLIN: Yes, with a caveat, and that is that  
23 I disagree with Mr. Wright's characterization. I'm not here  
24 asking for a chance to renegotiate the contract. I'm asking  
25 for the demand charge to be set in what we think would be a

1 more equitable way under the circumstances.

2 COMMISSIONER DEASON: But you would, you would agree  
3 that there are costs associated with providing firm  
4 transportation.

5 MR. McGLOTHLIN: Certainly.

6 COMMISSIONER DEASON: And the question is how is the  
7 most fairest way to recover those costs?

8 MR. McGLOTHLIN: Yes.

9 COMMISSIONER DEASON: Mr. Chairman, if there are no  
10 other questions, I could --

11 CHAIRMAN JABER: Let me throw out a suggestion to you  
12 all, Commissioners, and see if you agree. This is completely  
13 unrelated; on Issue 3, the meter test program. Staff -- Issue  
14 3, Commissioners, is Page 9. Staff recommends, I think  
15 appropriately so, that the company be ordered to accelerate the  
16 meter test program. They, they provide a deadline to the  
17 company to complete the testing. I think appropriately they've  
18 allowed the relevant salaries to be included in the rates,  
19 they've allowed for all of the relevant expenses to be included  
20 in the rates. They also make, I think appropriately, the  
21 recommendation that no show cause proceeding be initiated at  
22 this time.

23 My suggestion though is that we go ahead and make an  
24 affirmative statement in this order putting the company on  
25 notice that if the December -- I think it's December 31st,

1 2005. Staff, if the December 31, 2005, date is not met, the  
2 company should be put on notice that a show cause proceeding  
3 will be initiated.

4 CHAIRMAN BAEZ: Commissioner Jaber, you're just  
5 suggesting additional language as part of the --

6 COMMISSIONER JABER: As part of the recommendation on  
7 Issue 3. If a Commissioner would be willing to make a  
8 motion -- or certainly I could make the motion to incorporate  
9 that language. And actually, Mr. Chairman, to move this along,  
10 why don't I go ahead and throw something out.

11 CHAIRMAN BAEZ: At your, at your leisure.

12 COMMISSIONER JABER: You know, let me not step on any  
13 toes though. Commissioner Bradley, there was one outstanding  
14 issue, I don't want to preclude that discussion, the rate case  
15 expense.

16 CHAIRMAN BAEZ: The rate case expense. And I had  
17 some questions on it as well. **Maybe not questions, maybe just**  
18 **kind of exploring some solutions.** I mean, I heard, I heard  
19 staff -- I heard from staff that they might be willing to  
20 consider the additional documentation, but the only issue is,  
21 is that the company hasn't seen fit to extend their deadline.  
22 So perhaps if, if there were some discussion or at least some,  
23 some consideration of that sort, maybe that issue can get, can  
24 get resolved. Mr. Wright?

25 MR. WRIGHT: Mr. Chairman --

1           COMMISSIONER JABER: Mr. Wright, let me interrupt you  
2 for a minute.

3           MR. WRIGHT: Certainly.

4           COMMISSIONER JABER: Mr. Chairman and Commissioner  
5 Bradley, just for, to throw it out, the motion I was willing to  
6 make, just for purposes of discussion, was to move the staff  
7 recommendation with the language that I talked about in  
8 Issue 3, and I'll you why. That's not to say I'm not going to  
9 be open-minded about sending them off to talk about rate case  
10 expense. But the reason I was comfortable with that kind of a  
11 motion is because I note this is a PAA recommendation. If that  
12 issue is that important to Mr. Wright and others after they've  
13 had significant, a significant amount of time to get with  
14 staff, in my opinion then they know what their recourse is.  
15 But I think for purposes of keeping this case on the track it  
16 is, I'm willing to go with staff's recommendation with the  
17 modification in Issue 3. But, you know, that's not an official  
18 motion. I just wanted to let you know what I was willing to do  
19 at this point.

20           CHAIRMAN BAEZ: Commissioner Bradley.

21           COMMISSIONER BRADLEY: And basically what you're  
22 saying, not saying, but what you're suggesting is that we move  
23 all other issues and the issues that we've discussed today,  
24 give them time maybe to resolve them or --

25           CHAIRMAN BAEZ: Commissioner Bradley, I --

1 COMMISSIONER JABER: You know, I was, I was willing

2 --

3 COMMISSIONER BRADLEY: Or just move it as --

4 COMMISSIONER JABER: Right. I was willing to go  
5 forward.

6 COMMISSIONER BRADLEY: Since it's PAA, they can  
7 protest.

8 COMMISSIONER JABER: Right. Right.

9 COMMISSIONER BRADLEY: Okay. Okay. And that will  
10 get the ball to moving. Okay.

11 CHAIRMAN BAEZ: Commissioner Deason.

12 COMMISSIONER BRADLEY: Okay. I understand.

13 COMMISSIONER DEASON: I was going to make the  
14 observation that Commissioner Jaber already made that this is a  
15 PAA, but I was going to take the opposite view in the sense  
16 that I'm not inclined to be giving an incentive for the company  
17 to protest the PAA and then incur more legal fees. And I do  
18 understand the difficulty staff is in not seeing the, the  
19 backup documentation.

20 I've been persuaded by Mr. Wright's presentation that  
21 apparently the company was very frugal in negotiating the level  
22 of the fees because there are caps in place that cannot be  
23 exceeded given the current status of the case. Now if it goes  
24 to a full-blown hearing, those caps may or may not apply. I  
25 would think maybe they would not. I don't know the

1 particulars.

2           But I was inclined to allow most, if not all, of the  
3 additional expenses associated with that because I think there  
4 was an unanticipated event which took place, which was there  
5 was the inclusion of a different -- of an additional party and  
6 the issues that they brought to the table. And that's,  
7 Mr. McGlothlin, that's certainly within your right to do that.  
8 And apparently your participation has resulted in some  
9 modifications which have been, which staff has agreed to,  
10 which -- so your participation was a good thing. I'm not  
11 trying to lay the blame on you and your client that there are  
12 additional costs involved. But I think that it's reasonable  
13 that there would be higher costs incurred as a result of  
14 additional participation. So I would take a different  
15 position. You know, maybe a middle ground is an inclusion of a  
16 part. I'm not sure. But, you know, the inclusion of an  
17 additional \$8,000 did not strike me as unreasonable given the  
18 circumstances.

19           COMMISSIONER JABER: Actually, did I hear an  
20 additional \$2,000? Help me out. Was it an additional \$2,000?

21           COMMISSIONER DEASON: \$2,000 in legal, \$6,000 in  
22 technical expert support.

23           COMMISSIONER JABER: Okay. I'll defer to  
24 Commissioner Bradley.

25           COMMISSIONER BRADLEY: Right. And, Commissioner

1 Jaber, I really was inclined to not only agree with -- I'm  
2 inclined to not only agree with Commissioner Deason as it  
3 relates to the additional expenses, but also my inclination is  
4 to move staff as it relates to Issue 58 since this is a PAA.  
5 And if it's that horrendous to both parties, then there is  
6 another opportunity for additional discussion, or what may  
7 happen is that they may decide that this isn't such a bad  
8 conclusion after all.

9 CHAIRMAN BAEZ: Let's try and, let's try and wrap all  
10 of this together so that we can understand. Because  
11 Commissioner Jaber's motion, I think, did include what you just  
12 suggested on Issue 58. The only thing -- the only place that I  
13 see some, some kind of discussions on, on the rate case  
14 expense -- and I don't know whether, if you've made an official  
15 motion or if you're entertaining suggestions. If not, I think  
16 --

17 COMMISSIONER JABER: Right. We're trying to build  
18 consensus.

19 COMMISSIONER DAVIDSON: Chairman, if I could jump in  
20 here. I have one question, if it's an appropriate time. I  
21 agree with Commissioner Deason, that the additional \$8,000  
22 didn't at all strike me as unreasonable, provided, of course,  
23 the parties get staff the documentation which they said.

24 If I could just ask Commissioner Jaber to -- I have  
25 the language, but just sort of repeat what the purpose of that

1 additional language would be from your perspective.

2 CHAIRMAN BAEZ: Are you talking about concerning  
3 Issue 3 on the meter program?

4 COMMISSIONER DAVIDSON: Yes, Chairman.

5 CHAIRMAN BAEZ: Okay.

6 COMMISSIONER JABER: Okay. Sure. I'll be glad to,  
7 Commissioner Davidson.

8 Before we get to that issue, let me just wrap up on  
9 rate case expense. I can be comfortable with allowing the  
10 additional amount. Commissioner Deason said middle ground; I  
11 think that's the way to go. The only reason I was willing to  
12 move staff the way it was, the way the staff recommendation was  
13 initially written is because staff hasn't seen all the  
14 invoices. So I'm looking for a way to get us -- I think we're  
15 all trying to get to the same place. So let me wrap that up,  
16 Mr. Chairman, and I'll be glad to go back to Issue 3.

17 Staff, what is the amount that you are comfortable  
18 with as we sit here today? I mean, we're trying to get to that  
19 point in forming a motion.

20 MR. RENDELL: Well, first I wanted to point out that  
21 it's an \$8,000 total, but it's amortized for four years, so  
22 it's \$2,000 annually amortized.

23 We, when we received the information late yesterday  
24 afternoon, we looked at it this morning, obviously we were  
25 uncomfortable with the legal expense because it was based in an

1 e-mail format with no justification. There is an invoice for  
2 the consulting, which is \$6,000. So we have a little bit more  
3 comfort level with the consulting part, which is the majority  
4 of the \$8,000. The legal part, now if we could see the backup  
5 for that, we'd be more comfortable, but we don't have that at  
6 this point in time.

7 CHAIRMAN BAEZ: Do you have, do you have any reason,  
8 and I think Ms. Merta was asked this question in a roundabout  
9 way, but do you have, Mr. Rendell, any, any reason to believe  
10 that, that the justification or the justifiability of these  
11 bills that aren't in format are any different than -- I mean,  
12 based on the history that you've seen up until now is there any  
13 reason to believe --

14 MR. RENDELL: Absolutely not.

15 CHAIRMAN BAEZ: Okay.

16 MR. RENDELL: We don't have -- you know, we're not  
17 prejudging, you know, if they're unreasonable. It's just we  
18 don't have it before us to look at.

19 CHAIRMAN BAEZ: I understand. I understand.

20 MR. RENDELL: We realize this is unique because we do  
21 have an intervenor in a PAA case, and they have been working  
22 with the intervenor and they have been meeting. We've been  
23 participating in those meetings, so we know that these events  
24 occurred. We just don't have the breakdown.

25 CHAIRMAN BAEZ: So you know -- and, again, I'm trying

1 to, I'm trying to get you comfortable with the idea. But  
2 understanding that they're not to format, obviously that's the,  
3 that's the main concern that, that you have, not anything  
4 substantive with what the bills -- and I think you've as much  
5 as recognized that there are additional circumstances that  
6 would have led to these, to the situation as well. I'm trying  
7 to get you comfortable with the fact that the only, the only  
8 concern that you have at this point is a format of the bill.

9 MR. RENDELL: Sure.

10 CHAIRMAN BAEZ: Is that fair? Okay.

11 MR. RENDELL: And we recognize that it's a very minor  
12 amount, it's less than one percent, it's a half a percent of  
13 the overall revenue requirement, but we still have to have that  
14 comfort level of looking at the breakdown.

15 CHAIRMAN BAEZ: Fair enough.

16 COMMISSIONER JABER: Commissioner Bradley and  
17 Commissioner Deason, whatever you want to do on the rate case  
18 expense issue will be fine with me.

19 CHAIRMAN BAEZ: I can tell you I can support that in  
20 the rate case, it's an additional rate case expense. That's  
21 not, that's not an issue for me, just so that you can --

22 COMMISSIONER JABER: I'll support the number that  
23 you're comfortable with. Let me go back and answer that  
24 question on Issue 3 now.

25 COMMISSIONER BRADLEY: Yes. That Issue 3 is what I

1 was going to.

2 COMMISSIONER JABER: Commissioner Davidson, I think  
3 you were asking, and you correct me if I'm wrong, but the phone  
4 was breaking out a little bit, but you asked what was my  
5 rationale for adding, suggesting that that additional language  
6 be added?

7 COMMISSIONER DAVIDSON: I just -- if you could  
8 just -- I jotted down the language on the issue. If you could  
9 just sort of go over what your intent is there again. I think  
10 I'm fine with that language. I just wanted to, to cover that  
11 one more time before it was brought up in a motion.

12 COMMISSIONER JABER: Okay. Yes. Page 9 of the  
13 recommendation.

14 The staff recommendation points out, appropriately  
15 so, that the company is in violation of the meter test program  
16 rules. But I think they appropriately give the company an  
17 opportunity to take some corrective actions, and in addition to  
18 that they've allowed salaries, which we didn't have to do, and  
19 they've also allowed the expenses associated with the  
20 appropriate testing of the meters. And I think, appropriately  
21 so, they say no show cause proceeding is warranted at this  
22 time. We have in the past though, in an effort to make sure  
23 that the companies comply with our rules, put the companies on  
24 notice that if the date suggested by a staff recommendation is  
25 not met, that a show cause proceeding will be initiated.

1 Frankly, I'm hoping we don't get to that point. But I think  
2 that that boilerplate language puts folks on notice.

3 And so the language I would suggest is, is simply  
4 that if you look at Page 9 of staff's recommendation, it says,  
5 "Meters should be tested at a rate that will assure full  
6 compliance by December 31st, 2005."

7 COMMISSIONER DAVIDSON: Yes.

8 COMMISSIONER JABER: I would, I would just add,  
9 "Indiantown Gas Company is put on notice that if full  
10 compliance is not achieved by December 31st, 2005, a show cause  
11 proceeding will be initiated."

12 COMMISSIONER BRADLEY: If -- go ahead. Commissioner  
13 Davidson, do you have additional comments or another question?  
14 All right.

15 No. What I was going to say is I would be in support  
16 of or in favor of that show cause language being inserted. I  
17 think that probably gets us to where we need to be as it  
18 relates to Issue 3, but I was waiting for Commissioner  
19 Davidson. Maybe he had a question about the specific language.  
20 I was just wondering if that meets his approval also.

21 CHAIRMAN BAEZ: Commissioner Davidson?

22 COMMISSIONER DAVIDSON: No. I think I'm fine with  
23 it. I just -- that clarification helps. So whatever the  
24 majority decides to do on that issue I'm fine with. My main  
25 concern was trying to make sure that the parties were able to

1 deal with this, the rate case expense issue which we've, which  
2 we've gone over.

3 CHAIRMAN BAEZ: Thanks. Thank you, Commissioner.  
4 Commissioner Jaber, you have your best hands on the motion.

5 COMMISSIONER BRADLEY: If you want to put that in the  
6 form of a motion as it relates to Issue 3, I will second it.

7 COMMISSIONER JABER: Okay. So you want to go issue  
8 by issue? I'd be willing to make a comprehensive motion if I  
9 knew what you were inclined to do on rate case expense. What  
10 are you inclined to support?

11 CHAIRMAN BAEZ: I don't -- I'll tell you where I'm  
12 coming from. I don't think \$2,000 was unreasonable, the  
13 additional \$2,000 a year. So if you --

14 COMMISSIONER JABER: Okay. Staff, does that, does  
15 that get us where we need to be? The language should be to  
16 modify -- what's the issue number, Troy?

17 MR. RENDELL: Issue 41.

18 COMMISSIONER JABER: And the language just needs to  
19 be an additional \$2,000 per year annualized?

20 MR. RENDELL: Correct.

21 COMMISSIONER JABER: Commissioner Deason, that does  
22 it? Okay. Commissioner Bradley, you're okay with that?

23 COMMISSIONER BRADLEY: Uh-huh.

24 COMMISSIONER JABER: All right. My motion would be  
25 to approve staff's recommendation -- Commissioner Davidson?

1 (Telephone connection difficulties.)

2 CHAIRMAN BAEZ: We'll stand down for a couple of  
3 seconds and see if we can get him back online.

4 (Pause.)

5 CHAIRMAN BAEZ: Commissioner Davidson, are you back  
6 with us? Hello? Commissioner, are you back with us?

7 COMMISSIONER DAVIDSON: I am.

8 CHAIRMAN BAEZ: Okay. Great. We're going to get  
9 going with a motion now.

10 COMMISSIONER JABER: Okay. The motion would be to  
11 approve staff's recommendation in the entirety with three  
12 modifications.

13 The first modification would be to Issue 3 to add the  
14 language putting the company on notice that future -- that if  
15 the December 31st, 2005, date is not met, a show cause, a show  
16 cause proceeding will be initiated.

17 The second modification would be to Issue 41, and it  
18 would be to modify staff recommendation to allow an additional  
19 \$2,000 per year in rate case expense, recognizing that's an  
20 annualized amount.

21 And the third modification would be to allow staff  
22 administrative authority to make the fallout calculations in  
23 rates. Have I covered everything?

24 CHAIRMAN BAEZ: And you might also -- we also need to  
25 include the modifications that staff made.

1           COMMISSIONER JABER: Yes. Yes. Administrative  
2 authority to make the fallout calculations, recognize that  
3 staff has requested administrative authority to make the  
4 modifications they discussed in their introduction. That would  
5 be my motion.

6           COMMISSIONER DEASON: Second.

7           CHAIRMAN BAEZ: A motion and a second. Thank you,  
8 Commissioners. All those in favor, say aye.

9           (Unanimous affirmative vote.)

10          CHAIRMAN BAEZ: Show the motion carried unanimously.  
11          And thank you all. And I think that, that closes us  
12 out. Thank you all for coming and for your input. Thank you,  
13 Commissioners.

14          (Proceeding concluded at 10:25 a.m.)

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STATE OF FLORIDA )  
 :  
COUNTY OF LEON )

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 25th day of May, 2004.

  
LINDA BOLES, RPR  
FPSC Official Commission Reporter  
(850) 413-6734