


ORIGINAL

M E M O R A N D U M

July 7, 1998

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (GERVASI, VACCARO) 

RE: DOCKET NO. 971663-WS - PETITION OF FLORIDA CITIES WATER COMPANY FOR LIMITED PROCEEDING TO RECOVER ENVIRONMENTAL LITIGATION COSTS FOR NORTH AND SOUTH FT. MYERS DIVISIONS IN LEE COUNTY AND BAREFOOT BAY DIVISION IN BREVARD COUNTY.

Attached is COMMISSION STAFF'S PREHEARING STATEMENT, to be filed in the above-referenced docket.

(Number of pages in document - 5)

RG/TV/dr

Attachment

cc: Division of Water and Wastewater (Willis, Bethea, Crouch, Fletcher, Gilchrist, Golden, Merchant, Moniz, Rieger, Starling, Williams)

I:\FCWCISSU.RG

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DIVISION OF RECORDS AND REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of FLORIDA
CITIES WATER COMPANY for limited
proceeding to recover
environmental litigation costs
for North and South Ft. Myers
Divisions in Lee County and
Barefoot Bay Division in Brevard
County.

DOCKET NO. 971663-WS

FILED:

COMMISSION STAFF'S PREHEARING STATEMENT

Pursuant to Orders Nos. PSC-98-0277-PCO-WS, issued February 12, 1998, and PSC-98-0807-PCO-WS, issued June 11, 1998, the Commission staff (staff) files its prehearing statement as follows:

A. All Known Witnesses

Staff intends to call Patricia W. Merchant and Sarah H. Moniz as witnesses. Ms. Merchant will testify about Florida Cities Water Company's (FCWC or utility) requested method of allocating litigation fees incurred to all FCWC water and wastewater customers, when or if environmental legal fees should be recovered by a utility's customers, and about the accounting classification of any revenues which may be collected from the customers. Ms. Moniz's testimony will address the regulatory treatment utilized by the Commission or reflected in prior Commission orders relating to FCWC's defense to the lawsuit filed by the Environmental Protection Agency/Department of Justice (EPA/DOJ) and the approved regulatory treatment of FCWC's facilities in past rate cases.

B. All Known Exhibits

There are no known exhibits. However, staff reserves the right to identify exhibits at the Prehearing Conference and at hearing for purposes of cross-examination.

C. Staff's Statement of Basic Position

If the utility can show that the legal fees incurred were prudent, sufficiently documented and benefitted the customers by maintaining environmental compliance or minimized or avoided increased plant or operational costs, then a rate increase may be warranted.

COMMISSION STAFF'S PREHEARING STATEMENT
DOCKET NO. 971663-WS

D. Issues & Staff's Respective Positions

Other than for issues 2, 5, 8, and 9, staff's positions are preliminary and based on materials filed by the parties and on discovery. These preliminary positions are offered to apprise the parties of those positions. Staff's final positions will be based upon an analysis of the evidence presented at the hearing.

ISSUE 1: Since FCWC has already expensed the litigation costs which it seeks to recover in this docket, would recovery of these costs constitute retroactive ratemaking?

POSITION: No position pending further development of the record.

ISSUE 2: Is it appropriate to recover from ratepayers litigation costs associated with a utility's defense of a legal action brought by an environmental agency?

POSITION: It may be appropriate on a case-by-case basis, if a utility can show that the legal fees incurred were to obtain or maintain environmental compliance or to minimize or avoid increased plant or operational costs. In either case, it is the utility's burden to show that the legal fees incurred were prudent and sufficiently documented. (MERCHANT)

ISSUE 3: Was FCWC's failure to challenge the EPA's 1986 NPDES permit denial a prudent decision?

POSITION: No. In 1986, FCWC had substantial evidence in its possession that refuted the EPA's basis for its decision to deny the permit. FCWC should have challenged the EPA's 1986 tentative denial of Waterway Estates' (Waterway) NPDES permit renewal, pursuant to Title 40, Section 124.13, Code of Federal Regulations. FCWC should also have challenged the EPA's 1986 final denial of Waterway's NPDES permit renewal, pursuant to Title 40, Section 124.74, Code of Federal Regulations.

ISSUE 4: Should any portion of FCWC's litigation costs be recovered through rates, and if so, how much?

POSITION: No position pending further development of the record.

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ISSUE 5: Should FCWC's request to allocate the costs among all of its customers be approved?

POSITION: No. These legal fees are not a cost of providing water service, nor are they a cost of wastewater service to any of the other FCWC wastewater facilities which were not penalized. Any allowed costs should only be recovered from the North Ft. Myers, Barefoot Bay, and Carrollwood wastewater customers. However, the fees should only be allocated to these customers if the evidence in the record shows that the costs were prudently incurred to maintain compliance or minimize or avoid increased plant or operational costs. (MERCHANT, MONIZ)

ISSUE 6: Should FCWC's request for a ten-year recovery period be approved?

POSITION: No position pending further development of the record.

ISSUE 7: What is the appropriate amount of rate case expense?

POSITION: No position pending further development of the record. However, only prudently incurred rate case expense should be allowed.

ISSUE 8: Should FCWC's request to amortize rate case expense over ten years be approved?

POSITION: No. The Commission does not have the authority to waive a statute. FCWC must amortize any approved rate case expense over four years, pursuant to Section 367.0816, Florida Statutes, and Rule 25-30.470, Florida Administrative Code.

ISSUE 9: Should FCWC be required to pay regulatory assessment fees on any revenues that may be approved in this docket?

POSITION: Yes. Any amounts collected from the customers to reimburse the utility for litigation costs incurred should be considered utility operating revenues and as such regulatory assessment fees are required to be collected on those amounts. (MERCHANT)

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ISSUE 10: What is the appropriate revenue requirement?

POSITION: The final amount is subject to the resolution of other issues.

ISSUE 11: What are the appropriate rates?

POSITION: The final amounts are subject to the resolution of other issues.

ISSUE 12: Should FCWC's proposed accounting treatment be approved?

POSITION: No position pending further development of the record.

ISSUE 13: If a rate increase is approved, should FCWC be required to reduce its rates to remove the litigation costs when the recovery is complete?

POSITION: Yes.

ISSUE 14: If a rate increase is approved, should FCWC be required to file an annual statement of total costs recovered at the time that it files its annual report?

POSITION: Yes.

ISSUE 15: If a rate increase is approved, should FCWC's request that the rate be listed as a separate item on the customers' bills be approved?

POSITION: Yes.

E. Stipulated Issues

There are no issues that have been stipulated at this time.

F. Pending Matters

There are no matters pending at this time.

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FILED:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
COMMISSION STAFF'S PREHEARING STATEMENT has been furnished by U.S.
Mail, on this 7th day of July, 1998, to the following:

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