



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: March 16, 1998
TO: Division of Records and Reporting
FROM: Division of Water & Wastewater (Golden) *MAE*
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 Division in Lee County and Barefoot Bay Divisions in Brevard County

Please include the attached memorandum in the docket file. Please feel free to call me at 413-7015 if you have any questions.

Attachment

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FPSC-RECORDS/REPORTING

State of Florida

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(850) 413-6900

Public Service Commission

MEMORANDUM

MARCH 16, 1998

TO: ALL STATE UTILITY COMMISSIONS

FROM: CHARLES H. HILL, DIRECTOR, DIVISION OF WATER AND WASTEWATER

RE: UTILITY RECOVERY OF ENVIRONMENTAL LITIGATION COSTS - DOCKET NO. 971663-WS

A water and wastewater utility in Florida defended itself against a legal action brought by the Environmental Protection Agency relating to alleged violations of the Clean Water Act. Although the utility faced over \$100 million in potential civil penalties, the court found the utility guilty of only minor violations and assessed a final penalty of approximately \$300,000. The utility incurred over \$3.5 million in legal expenses defending itself and has petitioned the Florida Public Service Commission to recover the litigation costs through a surcharge to its customers over a ten year period.

We would like to know what other state commissions have done in similar cases. We would appreciate your response to the attached questionnaire. Please send your response by April 17, 1998 to:

Florida Public Service Commission
Division of Water and Wastewater
c/o Martha Golden
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Fax No. (850)413-7016

Thank you for your assistance in this matter. If you have any questions, please feel free to call Martha Golden at (850)413-7015.

Attachment

cc: Mr. B. Kenneth Gatlin, Esquire
Division of Legal Services (Jaber, Gervasi, Ottinot)
Division of Records and Reporting
Division of Water and Wastewater (Lowe, Willis, Williams, Bethea, Gilchrist, Golden)

Florida Public Service Commission
Questionnaire for State Utility Commissions
Utility Recovery of Environmental Litigation Costs

1. What is the policy of your commission regarding recovery of litigation costs when the case involves potential violations of health or environmental requirements?

2. Has your commission ever addressed a request for recovery of litigation costs incurred in a case brought against a utility by a health or environmental agency? If so, what were the circumstances of the case or cases? What were the outcomes? Please provide pertinent orders.

3. Has your commission ever denied recovery of all or a portion of such litigation costs? If so, on what grounds? Did the utility prevail on appeal? Please provide pertinent orders.

4. If your commission has allowed recovery of such litigation costs, how was the recovery achieved (e.g., included in monthly rates, charged as a separate surcharge?) Was the cost spread across all of the utility's customers or allocated only to the systems affected by the legal action? How many years were allowed for recovery of the litigation costs?