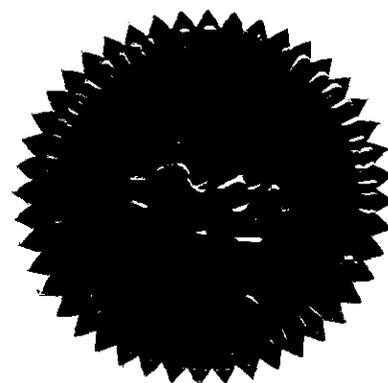


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----  
In the Matter of  
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



PROCEEDINGS: FORT MYERS SERVICE HEARING

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

DATE: Wednesday, July 15, 1998

TIME: Commenced at 1:30 p.m.  
Concluded at 7:20 p.m.

PLACE: Amtel Marina Hotel  
Aqua Dome  
2500 Edward Drive  
Fort Myers, Florida

REPORTED BY: H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporter

DOCUMENT NO.  
07965  
7-28-98

1 **APPEARANCES:**

2                   **ROSANNE GERVASI**, Florida Public Service  
3 Commission, Division of Legal Services, 2540 Shumard  
4 Oak Boulevard, Tallahassee, Florida 32399-0870,  
5 appearing on behalf of the **Commission Staff**.

6                   **HAROLD McLEAN**, Associate Public Counsel  
7 Office of Public Counsel, 111 West Madison Street,  
8 Room 812, Tallahassee, Florida 32399-1400, appearing  
9 on behalf of the **Citizens of the State of Florida**.

10                   **B. KENNETH GATLIN**, Gatlin, Schiefelbein and  
11 Cowdery, 3301 Thomasville Road, Suite 300,  
12 Tallahassee, Florida 32312, appearing on behalf of  
13 **Florida Cities Water Company**.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1	<b>I N D E X</b>	
2	<b>MISCELLANEOUS</b>	
3	<b>ITEM</b>	<b>PAGE NO.</b>
4	CERTIFICATE OF REPORTER	70
5	<b>WITNESSES</b>	
6	<b>NAME</b>	<b>PAGE NO.</b>
7	LUCILLE EBIE	
8	Direct Statement	16
9	HARRY GREEN	
10	Direct Statement	21
11	LOUIS SPINO	
12	Direct Statement	29
13	GERALD KUHN	
14	Direct Statement	31
15	CHERYL WALLA	
16	Direct Statement	50
17	DON SKIBA	
18	Direct Statement	58
19	MARGE JORDAN	
20	Direct Statement	60
21	ED CRIMMINS	
22	Direct Statement	63
23	DAWN COWARD	
24	Direct Statement	65
25		

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

(Hearing convened at 1:30 p.m.)

CHAIRMAN JOHNSON: Ladies and gentlemen, if everyone can settle into your seats, we're going to go ahead and start the public hearing today.

I wanted to go over a couple preliminary matters. This proceeding is being transmitted over the Internet to allow those that could not attend but they wanted to listen and they have the capability at home through the Internet process. This is being transmitted; your testimony will be transmitted, all of the information will be transmitted via the Internet.

We also have a court reporter here that will be transcribing all of the testimony that's presented today so that it can become an official part of the record.

Let me go ahead and have counsel read the notice and go ahead and go on the record.

MR. VACCARO: Pursuant to notice, this time and place have been designated for a public service hearing in Docket 971663-WS, Petition of Florida Cities Water Company for limited proceeding to recover environmental litigation costs for North and South Fort Myers Divisions in Lee County and Barefoot Bay

1 Division in Brevard County.

2           **CHAIRMAN JOHNSON:** Thank you. My name is  
3 Julia Johnson. I'm the Chairman of the Florida Public  
4 Service Commission, and today we have the entire  
5 Commission sitting to hear your concerns, your  
6 statements regarding this particular case and any  
7 other matters regarding this utility that you'd like  
8 to bring to our attention.

9           Seated to my far left is Commissioner Leon  
10 Jacobs. Seated next to him -- walking up here waving  
11 is Commissioner Susan Clark. Seated to my right is  
12 Commissioner Terry Deason, and to my far right is  
13 Commissioner Joe Garcia.

14           Can you all hear me? I just wanted to make  
15 sure we were checking with the sound system, because  
16 we're getting a little echo up here, and perhaps  
17 they'll be able to clear that up for us.

18           When you walked into the room, Ms. Crump  
19 greeted you, and we had a special report that was  
20 available. This report codifies the issues that the  
21 Commission is being presented with today. It gives  
22 you quite a bit of background on the company and the  
23 company's requests. If you have any questions, you  
24 can refer to this document. You can ask the  
25 Commissioners when you come forward.

1           If you don't want to testify today, there's  
2 also a place on this particular document where you can  
3 provide written comments. If you'd like to write  
4 those up and just hand them to Ms. Crump or to myself,  
5 we will accept those, or if you'd just like to think  
6 about it perhaps later and send them to the  
7 Commission, that's also an avenue that's available.

8           You'll also notice on the blue sheet that we  
9 have our 1-800 number to which you can call and  
10 address any concerns. We have our Internet site, if  
11 you want to just file something over the Internet, and  
12 we also have some individual names of people that work  
13 with the Commission that you can contact with any of  
14 your comments or concerns.

15           Let me give you a little background  
16 information about the case. On December 29th, the  
17 Florida Cities Water Company filed with the Public  
18 Service Commission an application seeking recovery of  
19 environmental litigation costs from its water and  
20 wastewater customers in North and South Fort Myers and  
21 Barefoot Bay. That's in Brevard. We were there  
22 yesterday.

23           They are asking to have the expenses that  
24 they incurred in the defense of a legal action brought  
25 against the company by the U.S. Environmental

1 Protection Agency and that was prosecuted by the  
2 Department of Justice.

3 The total legal expense is \$3,826,210, and  
4 they're seeking recovery of \$3,589,368 from all of  
5 their customers in Florida. Of that \$3,500,000  
6 number, they're seeking \$2,265,833 plus rate case  
7 expense from the customers in Lee and Brevard  
8 Counties.

9 Now, the company will have to put on a case  
10 before the Public Service Commission. They will have  
11 to prove that case to us. As a part of that process,  
12 we wanted to come and hear from the customers, hear  
13 your concerns, hear your statements. They will be a  
14 part of our official record. And for that reason,  
15 when the time is appropriate I'll ask you to stand,  
16 we'll swear you in to make sure that your testimony  
17 can be used as a basis for us to make our decisions.

18 It's also an opportunity for Public Counsel  
19 and for the company to present you with any  
20 information that they may have, or if you have  
21 questions of the Commission or of the company or of  
22 Public Counsel, it's an opportunity for that kind of  
23 dialogue too.

24 And with that, if we could have all of our  
25 members, interested parties, introduce themselves. I

1 will after that swear you in and then allow the  
2 company and Public Counsel to make any opening  
3 statements that they might have.

4 And with that, I guess we can start with  
5 Commission Staff.

6 **MR. VACCARO:** I'm Tim Vaccaro, and I'm the  
7 attorney representing Public Service Commission Staff.

8 **MR. McLEAN:** Ladies and gentlemen, I'm  
9 Harold McLean from the Office of Public Counsel.  
10 We're opposed to the rate increase, and in a few  
11 minutes I'll tell you a little more about why.

12 Thanks.

13 **MR. GATLIN:** I'm B. Kenneth Gatlin, 3301  
14 Thomasville Road, Tallahassee, Florida, appearing on  
15 behalf of Florida Cities Water Company.

16 **CHAIRMAN JOHNSON:** Thank you. There are  
17 several Staff members here also that I'd like to  
18 introduce at this time that can assist you with any  
19 questions that you might have.

20 Mr. Vaccaro introduced himself. He's the  
21 lead attorney on this case. Marshall Willis is the  
22 bureau chief of the economic regulation bureau. Sally  
23 Moniz is one of our accountants working on the case.  
24 Bart Fletcher is also an accountant. He's seated here  
25 to my far left. Neil Bethea is a supervisor. Stan

1 Rieger an engineer.

2           Sandy Simmons is also helping us today.  
3 She's standing with our sound system individual trying  
4 to make sure that the accommodations and the acoustics  
5 are proper for us today. And, again, Ms. Thelma  
6 Crump. She's standing at the doorway there, and she  
7 has not only the special reports, but other  
8 information relevant to the Commission that you may  
9 need in any way in which we can assist you with any  
10 other consumer affairs type issues.

11           With that -- I'm sorry. I don't have John  
12 Starling, who is an engineer with the Commission  
13 Staff, who is looking over here. He just stood.  
14 Sorry, John. I didn't see you there. Are there any  
15 other Commission Staff members here?

16           Seeing none, if you'd like to testify, if  
17 you could stand at this time, I'll go ahead and swear  
18 you in. Any members of the public that would like to  
19 testify if you could stand and raise your right hand.

20           (Witnesses collectively sworn.)

21           **CHAIRMAN JOHNSON:** Are there any other  
22 preliminary matters?

23           Seeing none, one other point of direction.  
24 When you come forward, Public Counsel will call your  
25 name. When you come forward if you could state your

1 name and perhaps the spelling of your name and your  
2 address for the record, that would be helpful before  
3 you begin your testimony.

4 After you've testified, if there are any  
5 questions, if you could just pause and I'll let you  
6 know. If there are no questions, I'll just thank you,  
7 but if there are questions, then we'll try to  
8 entertain those questions.

9 And with that, I think we're then prepared  
10 for any opening statements. Mr. Gatlin, on behalf of  
11 the company, are there any opening statements?

12 **MR. GATLIN:** None at all.

13 **CHAIRMAN JOHNSON:** Public Counsel, any  
14 opening statements?

15 **MR. MCLEAN:** Yes, ma'am. I'll try to be  
16 brief.

17 **CHAIRMAN JOHNSON:** Certainly.

18 **MR. MCLEAN:** Ladies and gentlemen, my name  
19 is Harold McLean. Can you all hear me okay? Can I  
20 see a show of hands who the customers are of Florida  
21 Cities Water Company so I'll know which way to turn?  
22 Okay. Good. I think I got it down.

23 I want to tell you all first who I am, what  
24 I do, and then I'm going to tell you a little bit  
25 about our view of the case, okay?

1           Back in the mid-'70s the Legislature noticed  
2 that at these kind of hearings right here, the utility  
3 would be over on one side and the Public Service  
4 Commission would be in the middle as judges, but there  
5 wasn't anybody with a clear mandate to speak on you  
6 folk's behalf, and they established the Office of  
7 Public Counsel; and that's the office I work for.

8           Mr. Jack Shreve holds that office now, and I  
9 account to Jack for what I say to you all and for many  
10 other things as well. But what we do is represent  
11 your interests before the Public Service Commission  
12 and the courts.

13           So if we look today, we see my good friend,  
14 Mr. Gatlin, represents the utility, the Commissioners  
15 sit as judges pretty much, and these folks right here  
16 advise the Commissioners. They listen to the evidence  
17 and they try to help the Commissioners reach a good  
18 decision.

19           This is an unusual case because we have all  
20 five Commissioners here, so it's an indication that  
21 they're pretty interested in what's going to go on in  
22 this case, and I'm glad to see it.

23           So if you read your little blue sheets right  
24 there, you'll have an account of the case that is  
25 pretty neutral. It's presented by the Staff of the

1 Commission, and they haven't heard the evidence yet,  
2 so they have a fairly neutral view, and they just want  
3 to tell you all what's going on.

4 But my job is a little different than that.  
5 I want to tell you about the case that I want to put  
6 on before the Commission, and it will just take a  
7 couple seconds.

8 The first thing I have done is to file a  
9 motion to dismiss. If the Commissioners are persuaded  
10 by my motion to dismiss, the case will be dismissed  
11 and it will be at an end, at least for purposes of the  
12 Public Service Commission. It could be appealed. But  
13 I have filed that motion to dismiss. If successful,  
14 through the courts and so forth, it won't cost you  
15 anything.

16 I also want to make sure that you understand  
17 what's actually going on here. In our view, the  
18 utility got itself in a serious bind with the United  
19 States Environmental Protection Agency. The  
20 Department of Justice looks out for their interest,  
21 and the utility got itself in a serious bind with the  
22 Department of Justice. That led to an extremely  
23 expensive fight.

24 Number one, and foremost, the most important  
25 aspect of this case, I think, is it was the utility's

1 fight. When I walked in, Ms. Ebie says to me, she  
2 says, "Look, if I get a ticket, who is going to pay  
3 the fine?" And I said, "Well, Ms. Ebie, there's good  
4 news and bad news. They don't want you to pay the  
5 fine. They want you to pay the attorneys' fees that  
6 it took to avoid the fine."

7 Understand that this case is not about that  
8 \$309,000 fine. They violated the Clean Water Act of  
9 the United States 2,300 times, and they got fined  
10 \$309,000 for it. This isn't what that case is about.  
11 This case is about the \$3.8 million they spent  
12 fighting off the Federal Government.

13 We hope to show to the Commission that that  
14 fight was improvidently undertaken, that it was  
15 avoidable, that had the utility behaved correctly,  
16 they might have avoided that whole fight.  
17 Irrespective of whether the fight took place,  
18 irrespective of how well they fought it, whether the  
19 Federal Government was right or wrong or in the  
20 middle, it wasn't your fight.

21 They were in there protecting the interests  
22 of the stockholders of the company, and they were not  
23 protecting your interest by any stretch of the  
24 imagination. They're going to tell you, they're going  
25 to tell the Commissioners that had they lost that

1 fight, they would have gone into bankruptcy.

2 Well, I'm sorry for anybody going into  
3 bankruptcy. It's not a good deal. But I'm here to  
4 tell you that someone would have stepped into their  
5 shoes and taken over your utility. Utilities simply  
6 don't go neglected. Effluent does not reach the river  
7 without the Federal Government making sure that  
8 someone has treated it correctly. Someone would go to  
9 jail before that happened. So we don't accept that  
10 claim.

11 The way that they get to you water  
12 customers -- this was a wastewater problem -- this is  
13 water which arose -- this is a problem which arose  
14 because of discharge of sewage, yet the company wants  
15 money not only from the wastewater customers, but from  
16 the water customers as well.

17 Now, the Staff has filed testimony that  
18 opposes that particular notion. But their notion is  
19 that since they would have gone out of business had  
20 they not carried on this fight, that that's why you  
21 folks ought to pay for it; and we vehemently disagree  
22 with that particular point of view.

23 There's another thing that I'd like you all  
24 to know. What we're going to hear this afternoon and  
25 this evening is from you customers. You won't see

1 much of a fight here, because we are listening to  
2 customers today.

3           The real fight will take place in  
4 Tallahassee. And when I say fight, maybe I shouldn't  
5 use that term. It will be litigation. It will be  
6 experts. The utility has five. We have one. The  
7 Commission is going to call two. And up in  
8 Tallahassee me and Mr. Gatlin and Mr. Vaccaro will  
9 question those witnesses and so forth, and that's  
10 where the real fight is going to take place.

11           Ms. Johnson told you all how you can hear  
12 that over the Internet. Tallahassee is a long ways  
13 away, but you're all welcome to come up and hear that  
14 fight, too. But what I want you to understand is you  
15 won't hear a whole lot from me today in terms of  
16 cross-examining witnesses and so forth. That won't  
17 take place here. That will take place up there.

18           So the purpose of this hearing -- and I want  
19 to help you all do it -- is to tell the Commission  
20 what you think about the scheme that you should pay  
21 for a fight which, number one, never should have taken  
22 place; number two, one you'll fight anyway.

23           Thanks a lot. (Applause)

24           **CHAIRMAN JOHNSON:** I think we're prepared  
25 for the first witness. Public Counsel?



1 They have got -- had to put out some money, but it's  
2 not our job to pay for that. And, in other words,  
3 it's up to them to keep their working capital and not  
4 make their mistakes. Because if we make a mistake, we  
5 pay for it. If we took garbage and dumped it in  
6 somebody's lot and they sued us for it, we'd have to  
7 pay it. It's just the same thing. We don't have  
8 anybody to back up to do that.

9           And also I understand they're run by Avatar,  
10 which is a stock company, which should be able to give  
11 them enough adequate backing to help them out of a  
12 situation like this. It's not up to poor people like  
13 us to do this.

14           And not only that, who with a little bit of  
15 education would take and dump raw sewage in a river?  
16 That's a question I'll never understand, how they  
17 thought they could get by with it, because that water  
18 is tested, I understand, and so that way they would be  
19 caught. And it was kind of a dumb move on their part  
20 to even think of getting by with it. We would never  
21 get by with anything like that.

22           And, also, this is -- every time they get in  
23 a little hot water, like they have interest to pay on  
24 their debts come up before that that we were supposed  
25 to pay. Well, we fought that and fought that.

1           Now they're coming with up with this deal  
2 for us to pay and thinking they'll get it out of some  
3 poor suckers when they've got all kind of money that  
4 they could do it for. And if they went bankrupt,  
5 maybe that would be more power for us to have a better  
6 company and maybe not pay as much as we had this way.  
7 So you've got different angles to look at it.

8           And to me, if I was on a Commission board,  
9 without any hearing or anything, I would just  
10 automatically think to myself, well, what common sense  
11 would tell me, that's a no-no. They don't need to be  
12 paid for something that wasn't our doings.

13           So that's about all I have to say. Thank  
14 you very much. (Applause)

15           Oh, I forgot tell you. I'm Lucille Ebie.

16           **CHAIRMAN JOHNSON:** How do you spell the last  
17 name?

18           **WITNESS EBIE:** L-U-C-I-L-L-E, E-B-I-E, 5965  
19 Sonnet Court, North Fort Myers, Florida.

20           **MR. GATLIN:** I cannot hear the witness when  
21 she spells her name. I didn't get it.

22           **CHAIRMAN JOHNSON:** Ms. Ebie -- is it Ebie?  
23 Could you give the spelling of your name again and  
24 your address? It's the microphones. We're having a  
25 hard time hearing you.

1                   **WITNESS EBIE:** Okay. It's Lucille,  
2 L-U-C-I-L-L-E, E-B-I-E, 5965 Sonnet Court, North Fort  
3 Myers, Florida 33903.

4                   **CHAIRMAN JOHNSON:** Thank you very much.

5                   **MR. GATLIN:** I do have a question.

6                   **CHAIRMAN JOHNSON:** Ms. Ebie, I'm sorry.  
7 Mr. Gatlin said he does have a question for you, if  
8 you could come back to the microphone.

9                   **MR. GATLIN:** I think Commissioner Garcia was  
10 about to ask a question.

11                   **COMMISSIONER GARCIA:** Oh, no.

12                   **MR. GATLIN:** Okay. Who told you that the  
13 company was discharging raw sewage into the river?

14                   **WITNESS EBIE:** We had heard that long time  
15 ago that they had got fined for dumping raw sewage and  
16 said they charged them \$3,000 -- \$3 million for  
17 dumping raw sewage in the river, and that was the  
18 story a long time ago. Now, I don't know what  
19 happened since.

20                   First thing we thought of they was wanting  
21 that money for the \$3,000 (sic). We didn't know this  
22 was for court fees.

23                   **MR. GATLIN:** But did somebody tell you that  
24 was happening?

25                   **WITNESS EBIE:** I don't know where I heard

1 it.

2 MR. GATLIN: All right. Well --

3 WITNESS EBIE: Or if I read it somewhere.  
4 There's a lot of these little papers that go around  
5 Fort Myers. I read a little bit of all of it.

6 MR. GATLIN: The testimony that has been  
7 offered in this -- did you know that the testimony  
8 that's been offered in this proceeding, the evidence  
9 does not show that there was ever any raw sewage  
10 dumped into the river.

11 WITNESS EBIE: Well, I didn't know, but I  
12 just heard after I got here that this was for -- to be  
13 used for -- to help pay their fines or whatever -- or  
14 the legal fees.

15 MR. GATLIN: And did you know that the judge  
16 in this case did not find that Florida Cities Water  
17 Company ever dumped raw sewage in the river?

18 WITNESS EBIE: I don't know.

19 MR. GATLIN: Okay. Thank you.

20 CHAIRMAN JOHNSON: Thank you, ma'am.

21 MR. McLEAN: Citizens call Harry Green,  
22 please.

23

24

25

**HARRY GREEN**

1  
2 was called as a witness on behalf of the Citizens of  
3 the State of Florida and, having been duly sworn,  
4 testified as follows:

**DIRECT STATEMENT**

5  
6 **WITNESS GREEN:** Hi. My name is Harry Green,  
7 and I live at 4443 North Pacific Circle, North Fort  
8 Myers, in Waterway Estates. I've been there nine  
9 years.

10 I had some notes. I didn't put them in -- I  
11 just wrote them. I didn't mean to get up and speak  
12 today, but I decided I better.

13 Mr. Ytterberg of Florida Cities Water was  
14 nice enough to fax me a copy of the testimony of  
15 Patricia Merchant of the Public Service Commission  
16 that was filed June 19th of this year relative to how  
17 the litigation fees should be assessed, in her  
18 opinion.

19 I'm surprised that that had not been  
20 publicized so that we, the users, would know it before  
21 this meeting. And I was also surprised to hear  
22 Ms. Johnson say that the company's position is going  
23 to be presented after you hear our position. And, in  
24 my opinion, it should be the other way around. We  
25 should know what the company's position is so we can

1 comment on that to you and not have the company  
2 present their position without us being allowed to  
3 comment on that.

4 I was dismayed when I heard that this  
5 company, Florida Cities Water, is going to appeal the  
6 hearings that the Public Service Commission has  
7 established to revisit the rate case. There are more  
8 litigation fees in the work for us in the future, I  
9 guess.

10 And, Mr. McLean, you stated that you filed a  
11 motion to dismiss. I don't know what you want to have  
12 dismissed. Is it this litigation fee case?

13 **MR. McLEAN:** May I answer? Well, Mr. Green,  
14 I'd like to have everything dismissed, to tell you the  
15 truth. But yes, sir, there is a motion to dismiss  
16 directed specifically to this case.

17 With respect to that other case, as I  
18 advised some other gentleman, there's still a piece of  
19 it which is yet to be resolved. It has run a course  
20 through the courts for a while, and the Commission is  
21 going to hear that case, that small part of that case,  
22 again sometime in the future. I'm told it's  
23 December 8th, but I don't know that independently; but  
24 there's still a little piece, part of that case out  
25 there which will be heard by the Commission, I

1 believe.

2           **WITNESS GREEN:** When will the motion to  
3 dismiss be heard and by who?

4           **MR. McLEAN:** That depends pretty much on how  
5 the Commission wants to handle it. The utility has  
6 not yet had time to respond to it. They have an  
7 opportunity to respond, and we will eventually, I  
8 think, argue the motion to dismiss to the Commission,  
9 and Mr. Gatlin will obviously have his opportunity to  
10 respond to the Commission as well.

11           I think it will be a while. My guess is it  
12 is somewhat customary for that to be heard maybe  
13 before the hearing, the technical hearing. But  
14 sometime in the future, to answer your question maybe  
15 more directly, not here and not today probably.

16           **WITNESS GREEN:** Okay. Well, I hope we, the  
17 users, will hear about the results of the motion  
18 before testimony from the company is heard.

19           I'd like the Commission to know that in my  
20 nine years in the neighborhood our bills have  
21 increased two to three times. A large part of that  
22 increase in fees is due to the most recent upgrade of  
23 the facility for the reuse facility and the piping of  
24 the reuse to the golf -- to Lochmoor Golf Club.

25           And what makes it even more ridiculous is

1 the golf club isn't using the reuse water because they  
2 claim that the Public Service Commission put too high  
3 a cost on the use, or on the reuse water, and they can  
4 use their wells free of charges for the time being,  
5 except for electricity, instead of reuse water, which  
6 they have to pay for.

7 I would hope that -- and I don't know --  
8 that the testimony of Ms. Merchant is going to be  
9 presented today and argued today in front of you or  
10 not.

11 **CHAIRMAN JOHNSON:** Mr. Green, I think you're  
12 referring to Ms. Merchant's prefiled testimony. That  
13 testimony will be presented at the case in  
14 Tallahassee. Although I do have a Staff member  
15 here -- Mr. Willis, could you explain more about that  
16 testimony and the content of the testimony, because I  
17 understand that Mr. Green did review it and he had  
18 some concerns with that.

19 Now, Mr. Green, let me explain again.  
20 Mr. Willis is the bureau chief. He works for the  
21 Commission. He's head of -- he is the chief over the  
22 Staff, and he is very familiar with the filings that  
23 have been made.

24 Ms. Merchant isn't here today. None of the  
25 testimony from any of the witnesses will be heard

1 today. That hearing will take place on August 12th  
2 through 14th.

3 WITNESS GREEN: Thank you.

4 CHAIRMAN JOHNSON: Mr. Willis?

5 MR. WILLIS: Sure. Ms. Merchant works for  
6 me as a member of my Staff. And the purpose of  
7 Ms. Merchant's testimony was to basically explain to  
8 the Commission methods by which she, in her opinion,  
9 believed if any of the costs were to be allowed in  
10 this case should be allocated.

11 Her whole testimony is basically based upon  
12 allocating any costs that might be approved by the  
13 Commission. Her testimony doesn't deal anything with  
14 whether or not the costs ought to be approved or not.  
15 She's not offering any opinion on that in her  
16 testimony. It only covers allocation.

17 WITNESS GREEN: Thank you.

18 MR. WILLIS: That's the main purpose of it.

19 WITNESS GREEN: Thank you, sir. As I  
20 understand it from the company's publicity to the  
21 users, they were recommending that the litigation  
22 fees, if approved, would be distributed amongst a much  
23 wider population than just the population of the North  
24 Fort Myers wastewater treatment plant and would  
25 amount -- as I remember the literature that was

1 rules and regulations relative to the notices.

2 The other thing, reference has been made a  
3 couple times to OPC's motion to dismiss. I think it  
4 ought to be pointed out that the application in this  
5 case was filed on December 29th of last year, and I  
6 received a copy of the motion to dismiss Monday as I  
7 was leaving the office to come to the hearing. So we  
8 have not replied to the motion yet, and we certainly  
9 will at the appropriate time.

10 CHAIRMAN JOHNSON: Mr. McLean?

11 MR. McLEAN: Well, with respect to the  
12 motion, Mr. Gatlin is certainly right. They've not  
13 had time to respond to it, and we wouldn't expect them  
14 to. But I do have a question for Mr. Green.

15 Mr. Green, do you see -- considering the  
16 literature that you received from the utility,  
17 irrespective of by whom it was approved, did you see  
18 anything in that literature which apprised you of the  
19 notion that your liability could be higher than  
20 42 cents per month?

21 WITNESS GREEN: No, sir.

22 MR. McLEAN: Do you understand the effect of  
23 Ms. Merchant's testimony, if accepted by the  
24 Commission, to drive that number higher than 42 cents,  
25 all else equal?

1           **WITNESS GREEN:** Yes, like 20 times higher.

2           **MR. McLEAN:** Sorry, sir?

3           **WITNESS GREEN:** 20 times higher.

4           **MR. McLEAN:** 20 times? How do you reach  
5 that conclusion, the 20 times higher?

6           **WITNESS GREEN:** Well, as I said, the notice  
7 from the company said 42 cents per month, and I've  
8 heard figures of nine to \$10 per month if it was just  
9 North Fort Myers wastewater treatment plant residents.

10           **MR. McLEAN:** Do you understand that  
11 Ms. Merchant's testimony also supports the notion that  
12 Barefoot Bay should bear some of the load, and that  
13 Carrollwood should bear some of the load as right -- as  
14 well?

15           **WITNESS GREEN:** Well, that brings up another  
16 point, sir. It seems to me that, you know, the  
17 residents didn't bring this case to court, did we? It  
18 was the EPA and the Department of Justice. And  
19 apparently they lost, because they -- you know, the  
20 fine was reduced from over \$10 million to what, 300  
21 and some odd thousand dollars.

22           And, in my opinion, they lost the case, they  
23 should bear the price -- or bear the cost of the case  
24 directly, and it shouldn't be the residents or the  
25 customers of Florida Cities Water Company.



1 it's my understanding that that appeal was accepted  
2 and was put through.

3 It now appears that Florida Cities is  
4 appealing that appeal which was successful. On top of  
5 that, I'm reading that no matter how this comes out,  
6 the cost of the legal expenses seems to be shifted or  
7 trying to be shifted to the customers of Florida  
8 Cities Water Company. I think that's entirely  
9 abominable.

10 If you can't foster your legal expenses  
11 within the income of your own company, you shouldn't  
12 go trying to push it through. The customers should  
13 not have to bear the cost of legal expenses that are  
14 being put through by Florida Cities trying to appeal  
15 back against their own customers. That's about all I  
16 have to say.

17 I think it's wrong, and I don't think the  
18 customers should have to bear the brunt of that  
19 expense. Thank you. (Applause)

20 **CHAIRMAN JOHNSON:** Thank you very much.

21 **MR. McLEAN:** Citizens call Gerald Kuhn,  
22 K-U-H-N.

23

24

25

**GERALD KUHN**

1  
2 was called as a witness on behalf of the Citizens of  
3 the State of Florida and, having been duly sworn,  
4 testified as follows:

**DIRECT STATEMENT**

5  
6 **WITNESS KUHN:** Thank you. My name is Gerald  
7 Kuhn, K-U-H-N, 12461 Popash Court, P-O-P-A-S-H, North  
8 Fort Myers. And that's a gated community of  
9 Buttonwood Harbor, and the company's facility is  
10 within eyesight of where I live.

11 First of all, I'd like to thank the  
12 Commission, the entire Commission, for trekking down  
13 here to Fort Myers to hear this today, and I'd like to  
14 thank Amtel for the wonderful job they did of  
15 installing the new air conditioning system. Had you  
16 been here a few years ago, this room was not air  
17 conditioned.

18 I would not like to thank, however, the  
19 company for the manner -- when I say the company, I'm  
20 referring to Florida Cities Water Company -- for the  
21 manner in which they have handled this from the onset.

22 One other person I'd like to thank is, I  
23 believe, Bill Lowe of the Commission Staff for  
24 promptly responding to my June 25th letter advising  
25 that I did not receive an April notice from the

1 Florida Cities Water Company of their request for a  
2 rate increase.

3 Bonnie Lynn Raad of the company responded by  
4 letter stating that they had enclosed the notice as an  
5 insert with their April billing. She mentions the  
6 word "notice" four times in that letter, yet the April  
7 notice makes no mention of the fact that it was a  
8 notice.

9 I'd like to take a moment, please. May I  
10 approach the Commission?

11 **CHAIRMAN JOHNSON:** Please.

12 **WITNESS KUHN:** (Handing out documents.)

13 Okay. The reality is that the so-called company  
14 notice has the appearance of a newsletter. This is  
15 the way it was presented in with the bill when it was  
16 mailed to the customers. Nowhere in the newsletter  
17 does it indicate that this is a notice of a proposed  
18 rate increase.

19 "To cover environmental litigation costs" is  
20 all that the title says. One needs to read the small  
21 print to understand that it is, in fact, a proposed  
22 rate increase to be collected over a 10-year period.

23 It's interesting to note that the newsletter  
24 notice is dated April. In June we received this  
25 notice -- or newsletter -- from the company. And

1 notice the size of the lettering. And I'd like to  
2 present this -- introduce this as evidence, the size  
3 of the lettering, the fonts, on their newsletter that  
4 has nothing whatsoever to do with a rate increase.  
5 But when you look at the source dated in April,  
6 they've made the type small enough so that this, in  
7 fact, winds up in the round file.

8 Consumers are basically overwhelmed with  
9 advertising and newsletter enclosures. The Commission  
10 cannot expect consumers to read billing enclosures  
11 unless they are clearly titled "Notice of Pending Rate  
12 Increase." In that regard, all hearings related to  
13 petitioner's request before the Commission today  
14 should be postponed until Florida Cities Water Company  
15 properly notices its customers of the proposed rate  
16 increase.

17 Counsel just five minutes ago claimed that  
18 they did properly notice the customers. I don't  
19 consider this a notice. I hope the Commission finds  
20 in that regard, also.

21 The petitioner in its December 29, 1997  
22 filing states that it successfully defended a legal  
23 action brought by the United States relating to  
24 alleged violations of the Clean Water Act when, in  
25 fact, nothing could be farther from the truth. The

1 court assessed civil penalties directly related to  
2 that action. The victory that Florida Cities Water  
3 Company refers to is the reduction of fines and not a  
4 finding that it operated with clean hands.

5 It is inconsistent and unconscionable for  
6 the Commission to find that fines associated with  
7 violations of DEP and EPA should be borne by the  
8 shareholders of the utility while allowing the utility  
9 to recover legal costs related to the defense of said  
10 fines.

11 Now, I'm making -- for the benefit of the  
12 audience, I'm making reference specifically to  
13 information that is contained within the petitioner's  
14 filing, and the statement that I just read is a  
15 statement on Page 3 of that filing.

16 And that statement, as I understand it, is,  
17 in fact, Commission policy; is that correct, Madam  
18 Chairwoman? The statement that I'm reading is -- this  
19 is from the filing.

20 This is the Commission: "Although we find  
21 that fines associated with violations of DEP and EPA  
22 should be borne by the shareholders of the utility, we  
23 believe it is reasonable for UWF to recover the costs  
24 of defending such fines. As the Commission previously  
25 concluded, the legal expenses incurred for defending

1 fines from DEP and EPA could facilitate avoided or  
2 reduced amount of fines."

3 And is that the position of the Commission?

4 **CHAIRMAN JOHNSON:** I think what you're  
5 referring to is a particular case, and that was our  
6 finding in that particular case.

7 If you're stating whether or not we have a  
8 rule or anything to that regard -- and I think that  
9 particular statement that you're talking about was  
10 provided in the utility's original petition.

11 **WITNESS KUHN:** That's correct.

12 **CHAIRMAN JOHNSON:** And that's the  
13 information that they're trying to rely upon to say,  
14 well, you made a decision that allowed for the  
15 recovery of attorneys' fees in one case.

16 **WITNESS KUHN:** That's correct.

17 **CHAIRMAN JOHNSON:** And they're using that as  
18 precedent to say that we have to do it in this case.

19 Well, Public Counsel and our Staff and even  
20 our attorneys, I'm certain, will be laying out the  
21 legal arguments as to what they believe we can and  
22 cannot do.

23 That's why we're holding this proceeding.  
24 But that's not an absolute proposition. It's being  
25 put forth to support their position.

1           **WITNESS KUHN:** All right. That's the point  
2 I wanted to make, because otherwise this is an  
3 exercise in futility here. You would agree with me?

4           **CHAIRMAN JOHNSON:** Yes, sir.

5           **WITNESS KUHN:** Okay. Thank you. Let me  
6 continue, then.

7           The company would like the Commission to  
8 find that the company customers should bear the cost  
9 of defending its shareholders because it acted in good  
10 faith. Is this the same good faith that disguised the  
11 April notice to look like a newsletter? That's my  
12 question to the company.

13           Nothing in the petition indicates that the  
14 charges against the company were unfounded or with  
15 malice. Common sense dictates that the company  
16 shareholders are ultimately responsible for the legal  
17 operation of their facilities; therefore, they should  
18 bear all costs associated with the defense of the  
19 Clean Water Act violations brought against the  
20 facilities that they operate.

21           I would like to ask the Commission or the  
22 Staff to please explain what the rate case expense is  
23 and what does it amount to in dollars; the rate case  
24 expense being that item that they are also trying to  
25 recover in addition to their legal costs.

1           **CHAIRMAN JOHNSON:** Okay. Mr. Willis, do you  
2 have any information on the rate case expense? And  
3 I'm assuming what you're referring to is perhaps  
4 they're even talking about the rate case expense that  
5 might arise from this case, and that those -- and we  
6 don't know that amount yet, but I think the provision  
7 that you're referring to, they're talking about even  
8 the costs incurred in this action.

9           **WITNESS KUHN:** So they brought this action  
10 before the Commission, and then they even want to  
11 recover the cost of that action; is that correct?

12           **CHAIRMAN JOHNSON:** Mr. Gatlin?

13           **MR. GATLIN:** That's correct. We're asking  
14 for the litigation expense and the rate case expense  
15 in this case.

16           **WITNESS KUHN:** It's amazing. I have no  
17 further statement. If you have any questions, I'll be  
18 happy to answer them, and I would like to thank the  
19 gentleman for representing us. We are going to need  
20 your representation in this case.

21           **CHAIRMAN JOHNSON:** And, sir, we'll make sure  
22 that the documentation that you provided to us -- I'm  
23 going to forward this to the court reporter. And it  
24 will be put in the correspondence side of our record.

25           **WITNESS KUHN:** Thank you. (Applause)

1           **MR. McLEAN:** Madam Chairman, that's the last  
2 customer to sign up thus far.

3           **CHAIRMAN JOHNSON:** Are there any customers  
4 here today that did not sign up to testify but that  
5 would like to make a statement today? (No response.)

6           Again, there are other avenues. If you have  
7 written statements that you'd like to provide, if you  
8 have the blue forms you can provide those comments on  
9 the blue forms. You can call our 1-800 number.

10           We're also going to hold another hearing  
11 here tonight at 6:30, this same location. If there  
12 are any other questions that you have might have and  
13 you go home and think about it, we'll be back tonight  
14 to entertain those questions and hear further  
15 testimony.

16           Seeing that there are no other customers  
17 that would like to come before us now, what I'll do is  
18 convene this particular hearing until tonight. I'd  
19 like to thank you all for coming out. We appreciate  
20 all your comments and statements.

21           And let me give you some dates to make sure  
22 that you understand when this matter will be heard.  
23 We will hold our technical hearings August 12th  
24 through 14th. The Commission Staff will present a  
25 recommendation to the Commissioners on October 22nd,

1 and we when we vote, we will vote on this matter on  
2 November 3rd.

3 And with that, thank you for attending.

4 (Thereupon the hearing adjourned at  
5 2:25 p.m. to reconvene at 6:30 p.m.)

6 - - - - -

7

8

9

10

11

12

13 \* \* \* \* \*

14

15

16

17

18

19

20

21

22

23

24

25

1 (Hearing reconvened at 6:30 p.m.)

2 CHAIRMAN JOHNSON: Good evening, ladies and  
3 gentlemen. My name is Julia Johnson. I'm the  
4 Chairman of the Florida Public Service Commission, and  
5 tonight we have all of our Commissioners here to  
6 listen to you at this service hearing.

7 Could you please read the notice?

8 MR. VACCARO: Pursuant to notice, this time  
9 and place have been designated for a public service  
10 hearing in Docket No. 971663-WS, Petition of Florida  
11 Cities Water Company for limited proceeding to recover  
12 environmental litigation costs for North and South  
13 Fort Myers Divisions in Lee County, and Barefoot Bay  
14 in Brevard County.

15 CHAIRMAN JOHNSON: Thank you. As you  
16 entered, there was a place for you to sign in and  
17 there were the blue special report sheets. This  
18 provides a lot of background information on the case  
19 and why we're here today.

20 The main purpose of the hearing is for us to  
21 hear from you. We will allow both the company and  
22 Public Counsel the opportunity to make any opening  
23 remarks that they may want to make, but we're mainly  
24 here to hear your comments, your concerns.

25 I know we held hearings earlier here today

1 and yesterday in Brevard, and one of the questions  
2 that a customer asked is, well, what if I have  
3 something in addition to the issues raised in this  
4 report; what if I have quality of service questions,  
5 or what if I have other issues with the utility?

6 Well, please feel free to bring those  
7 forward, too. Certainly the hearing was noticed to  
8 discuss the application to recover the litigation  
9 costs, but if there are other issues that you want to  
10 bring before the Commission, feel free to do that,  
11 too.

12 Let me go ahead and introduce the  
13 Commissioners. Seated to my far left is Commissioner  
14 Leon Jacobs. Seated next to me is Commissioner Susan  
15 Clark. To my right is Commission Terry Deason, and to  
16 my far right is Commissioner Joe Garcia.

17 On the special report we have quite a bit of  
18 information. There's a 1-800 number. If you leave  
19 tonight and you have additional questions, please feel  
20 free to call that 1-800 number. There's also our web  
21 page and our Internet site, so to the extent that you  
22 wanted to file a complaint or receive additional  
23 information about the Commission, that information is  
24 available.

25 Let me interject one thing here. Also

1 you'll notice here that it talks about PSC events on  
2 the Internet. It's my understanding that tonight's  
3 hearing is being transmitted over the Internet, and  
4 that hearing -- so it will be -- it's being broadcast  
5 throughout your community. To the extent there are  
6 individuals who wanted to participate from their homes  
7 on their computer and didn't have the ability to come  
8 here, that vehicle and that mechanism was available to  
9 them.

10 Our actual proceeding for the technical  
11 portion of the hearing will be held in Tallahassee.  
12 That I believe, will also be available via the  
13 Internet, and also it's broadcasted over, I think --  
14 is it the Sunshine Network -- the Sunshine Network,  
15 and I believe that that is -- I know it's transmitted  
16 here. In fact, about an hour ago I was watching one  
17 of their programs just today. So please be aware.  
18 And if you want to know the exact time and date, you  
19 can call that 1-800 number.

20 This proceeding is being transcribed by our  
21 court reporter, because the comments that you provide,  
22 we can rely upon when we make our final decision in  
23 this particular case. For that reason, at the  
24 appropriate time those of you that would like to  
25 testify, we'll have you stand and I'll swear you in so

1 that that can be sufficient for purposes of us relying  
2 upon that when we have our final decision -- or our  
3 final deliberations and make our decision.

4 Let me give you just a brief background. I  
5 know you've received some literature and you do have  
6 the special report, but let me give you a little bit  
7 of background about the case.

8 On December 29 Florida Cities Water Company  
9 filed with the Public Service Commission an  
10 application seeking recovery of environmental  
11 litigation costs from its water and wastewater  
12 customers in North and South Fort Myers, Lee County,  
13 and in Barefoot Bay in Brevard County.

14 In the petition, the company is seeking  
15 approval from the PSC to recover a portion of the  
16 expenses incurred in its defense of legal actions  
17 brought against the company by the U.S. Environmental  
18 Protection Agency and which was prosecuted by the  
19 United States Department of Justice.

20 The company incurred legal expenses in the  
21 amount of \$3,826,210, and is seeking recovery of  
22 \$3,589,368 from all of its customers in Florida. Now,  
23 of that amount they are seeking to recover \$2,265,833  
24 plus rate case expense from the customers in Lee and  
25 Brevard County.

1           Now, with that background, let me make sure  
2 you understand the role that we will play. This is a  
3 petition or an application that's been filed by the  
4 company. They will have to prove that case. We have  
5 a formal hearing set, and in that hearing we'll hear  
6 from their witnesses, we'll hear from the Office of  
7 Public Counsel and their witnesses, and we'll also  
8 hear from some Staff witnesses.

9           But they do have to prove that case. They  
10 have to come forward with evidence to convince the  
11 Commission that these costs should indeed be  
12 recovered. Let me at this time go ahead and allow  
13 counsel to -- did you read the notice?

14           **MR. VACCARO:** Yes.

15           **CHAIRMAN JOHNSON:** Allow counsel to  
16 introduce himself, and then we'll have the parties all  
17 introduce themselves.

18           **MR. VACCARO:** I'm Tim Vaccaro, and I'm the  
19 attorney for the Public Service Commission Staff.

20           **CHAIRMAN JOHNSON:** Mr. Gatlin?

21           **MR. GATLIN:** I'm B. Kenneth Gatlin, and I'm  
22 appearing on behalf of Florida Cities Water Company.

23           **MR. McLEAN:** I'm Harold McLean, Office of  
24 the Public Counsel, appearing on behalf of the  
25 Citizens in opposition to the company's petition.

1                   **CHAIRMAN JOHNSON:** At this time I'll go  
2 ahead and swear the witnesses in, after which I'll  
3 allow both the company and Public Counsel to make any  
4 opening comments that they might like to make.

5                   Those that would like to testify, if you  
6 could, please stand and raise your right hand.

7                   (Witnesses collectively sworn.)

8                   **CHAIRMAN JOHNSON:** We'll begin with the  
9 opening statements. Mr. Gatlin?

10                  **MR. GATLIN:** We have no opening statement.

11                  **CHAIRMAN JOHNSON:** Okay. Public Counsel?

12                  **MR. McLEAN:** Yes, ma'am; briefly, I hope.

13                  Ladies and gentlemen, I want to tell you who  
14 I am and what I'm doing here so that you can  
15 understand the process a little bit.

16                  But, first, everyone who is a customer of  
17 Florida Cities Water Company, please raise your hand,  
18 if you will, please. Okay. Now, of those -- put your  
19 hands down, and then show me how many are North Fort  
20 Myers customers. And how many for South Fort Myers?  
21 Okay. Thanks.

22                  In the early -- actually in the mid-'70s the  
23 Florida Legislature noticed that these hearings  
24 normally had a company representation and the  
25 Commissioners sitting up front as judges, and they

1 determined that it might be a good idea if customers  
2 had direct representation in these kind hearings. So  
3 they established the Office of the Public Counsel.

4           And after a bit of time they appointed  
5 Mr. Jack Shreve to that position, and I work for him.  
6 What we do is represent your interests before the  
7 Commissioners and before the courts of the state. So  
8 tonight what you see is Mr. Gatlin, my good friend  
9 Mr. Gatlin, representing the utility, the  
10 Commissioners who sit as judges, the Staff who helps  
11 the Commissioners reach their decision, and I, who  
12 take your case before the Commission and put the best  
13 face on it possible, just as Mr. Gatlin does for the  
14 utility.

15           I want to tell you just a couple things  
16 about the case from our point of view. You have a  
17 blue sheet there in front of you which gives you a  
18 very good account of what's going on in the case, but  
19 it's stated fairly neutrally, and much of it is taken  
20 from the utility's position; but I want to tell you  
21 about the case from our point of view, and I'm going  
22 to make it really brief.

23           First of all, we don't think that the fight  
24 with the Department of Justice and the EPA was at all  
25 necessary. It could have been avoided by prudent

1 business decisions on the part of the company. They  
2 were either negligent or imprudent in getting into  
3 that fight with the Department of Justice to begin  
4 with.

5           Secondly, irrespective of whether the fight  
6 was necessary or prudent or not, it wasn't your fight.  
7 When they were into this fight, they were protecting  
8 the interests of their shareholders. They weren't  
9 protecting any imaginable interest, in my view, or --  
10 and I don't think the evidence will show that they  
11 were showing any -- protecting any interest that you  
12 customers have, yet their petition asks you to pay  
13 money for the expenses which they incurred in the  
14 fight.

15           You should understand that they're not  
16 asking you to pay the fine, \$309,000. That's the fine  
17 that they incurred for violating the Clean Water Act  
18 on 2,300 instances, according to what the court found.  
19 What they're asking you for is the money they spent on  
20 their attorneys and the costs associated with the  
21 action.

22           We don't think that's at all appropriate.  
23 We think it should go the same way the fine went, and  
24 that is to be paid by the stockholders who, after all,  
25 control the management of the company.

1           None of you, no matter what you could have  
2 done one way or another, could have avoided this  
3 fight, could have lessened the fight, could have had  
4 any control over the fight whatsoever. We simply  
5 don't think you had a dog in the hunt.

6           I'd like to give you -- at the noon meeting  
7 it became apparent that a couple of the customers had  
8 gone to a good bit of trouble and gone and read the  
9 company's petition, and I think that's wonderful. It  
10 doesn't happen often, but it worries me a little bit,  
11 because you all don't get to see what we do.

12           I want to give you a 1-800 number when you  
13 get a moment -- get your pens ready -- because anyone  
14 who would like to see what we did in writing -- and  
15 Ms. Cheryl Walla here has copies of what we did -- but  
16 I want you all to understand that when the company  
17 files something, we too file a good bit.

18           We have filed a motion to dismiss in the  
19 case which, if granted by the Commissioners, would put  
20 an effective end to the case aside from appeals; but  
21 if that motion were granted it would put an end to it.  
22 But what I want you all to know is that we meet the  
23 company head to head and we file -- we do our filings,  
24 et cetera.

25           So let me give you the toll free number that

1 you can call. Anyone who calls the number, I will  
2 send a full set of the things we file in this case  
3 that are answers to what the company does. It's  
4 1-800-342-0222. Now, I'll be back in my office  
5 Monday. I may not get there -- I might not be able to  
6 honor your requests before then, but I would like you  
7 all to be able to read our motion to dismiss and our  
8 statement of the case before the Commission as well as  
9 other pleadings which they might file.

10 Now, with that, I'm just going to sit down  
11 and shut up and listen to you all, and I would  
12 encourage you -- there were only two customers signed  
13 up moments ago. The Commission has sent out all five  
14 Commissioners. It's very unusual for the Commission  
15 to do that. They're particularly interested in this  
16 case, and I can assure you they listen very carefully  
17 to your testimony.

18 So I would encourage any of you who have not  
19 signed up who would like to speak to the Commission to  
20 do so, because the Commission is interested in what  
21 you all have to say.

22 And with that, thank you very much for  
23 coming. (Applause)

24 **CHAIRMAN JOHNSON:** Any other preliminary  
25 matters, counsel?

1           **MR. VACCARO:** No preliminary matters.

2           **CHAIRMAN JOHNSON:** Okay. Public Counsel, if  
3 you can call the first witness.

4           **MR. McLEAN:** Yes, ma'am. Citizens call  
5 Cheryl Walla.

6   - - - - -  
7   **CHERYL WALLA**

8 was called as a witness on behalf of the Citizens of  
9 the State of Florida and, having been duly sworn,  
10 testified as follows:

11   **DIRECT STATEMENT**

12           **WITNESS WALLA:** Good evening. I'm not going  
13 to have room for my things here. Can I push this  
14 forward somehow? (Pause)

15           I want to thank the Commissioners for coming  
16 down to hear us on this case. It's very important to  
17 us that you're here.

18           First of all, let me say that I take  
19 exception to the vagueness in the notice of customer  
20 service hearing dated June 19th, 1998. Unless a  
21 customer of Florida Cities Water Company divisions had  
22 called or remembered from their April billing notice  
23 of what this docket was about or what kind of enormous  
24 monies Florida Cities Water Company was trying to  
25 extract from the ratepayers, they would have no idea

1 what this hearing entailed or what endeavor of Florida  
2 Cities Water Company we, the ratepayers, would be  
3 paying for now.

4 I have a copy of it. I'm sure you all read  
5 it. You know what it is. It gives us no money  
6 amounts. It gives us no rate amounts. It vaguely  
7 puts at the top "Litigation costs in a limited  
8 proceeding."

9 The customers just didn't know what this  
10 meeting was about. They were thinking it was still in  
11 regards to the 1995 case, which is still pending; and  
12 I had to inform everyone that I called that it had  
13 nothing whatsoever to do with that, it was a totally  
14 different case.

15 With that said, let me discuss the case at  
16 hand. Florida Cities Water Company once again led us  
17 down a path of deception starting with a fact sheet  
18 they dated back in July 19th, 1995. Now, this is when  
19 we were very involved with that rate case.

20 What they did on Page 2 of two is said  
21 there's no connection between Florida Cities Water's  
22 ongoing litigation with USEPA and in this rate case  
23 for North Fort Myers. This is a true fact. There are  
24 no litigation expenses included in this rate case. I  
25 don't know if that is a true fact.

1           EPA filed a civil action against Florida  
2           Cities Water Company on October 1st, 1993, and the  
3           complaint alleges that Florida Cities Water Company  
4           treatment plant in North Fort Myers violated Clean  
5           Water Act pertaining to the discharge of finished  
6           water. Florida Cities Water is vigorously contesting  
7           this case. This is what was put in their fact sheet  
8           to us.

9           **MR. McLEAN:** Would you identify the document  
10          from which you just read for the Commission? I don't  
11          think you said which one it was.

12          **WITNESS WALLA:** This was a fact sheet on  
13          Florida Cities Water's letterhead that was handed out  
14          to the customers on July 19th, 1995.

15          What Florida Cities Water Company neglected  
16          to say was that Florida Cities Water Company is  
17          vigorously contesting the case, and that we, the  
18          ratepayers, will be paying the attorney fees and fines  
19          reimbursing them for their poor judgment,  
20          mismanagement and continual violation of the Clean  
21          Water Act.

22          Now, again I'm also going back to the case  
23          that I was involved with. At the informal customer  
24          hearing of July 26th, 1995, at North Fort Myers High  
25          School -- (pause) -- okay -- we submitted a

1 40-question handout to Mr. Crouch and Mr. Jaeger of  
2 the PSC.

3 We had three questions that pertained to  
4 this EPA case, questioning the 29 -- 2,991 violations  
5 of the Clean Water Act, and Florida Cities Water  
6 Company -- if they're fined for the violation, is it  
7 true that they will pass the cost of fines on to the  
8 customers.

9 Now, this is what is said by your Staff  
10 member, Mr. Crouch, at this meeting. I just read the  
11 question that Witness Finney (phonetic), Page No. 47,  
12 Line 12, at that customer informal hearing had asked,  
13 and Mr. Crouch had told us that "It is our  
14 understanding that none of that is passed on at this  
15 time, but they are still fighting, and that is still  
16 in litigation. No decision has been made. By and  
17 large, if they are not managing the system correctly,  
18 if they are in violation, which I have heard that that  
19 is true, they were totally in violation of the Clean  
20 Water Act, then that should not be passed on."

21 At this point and up until this point when  
22 this case came before you with their filing  
23 requirements, we had all been led down the path that  
24 we were not going to have to incur these costs for  
25 anything having to do with their Clean Water Act

1 violations.

2           **MR. MCLEAN:** Harold McLean again. What you  
3 were just reading from, as I understand, was a  
4 transcript of an informal customer meeting which  
5 preceded the last rate case; is that correct?

6           **WITNESS WALLA:** That's correct.

7           **MR. MCLEAN:** And you are reading the words  
8 of Mr. Crouch?

9           **WITNESS WALLA:** Yes, I am.

10          **MR. MCLEAN:** Okay. Thank you.

11          **WITNESS WALLA:** Also, Ms. Marilyn Miller  
12 spoke at that evening meeting as well as speaking at  
13 our customer hearing, our formal customer hearing, in  
14 front of Ms. Johnson, Mr. Garcia, and I believe it was  
15 Ms. Kiesling at the time. I was going to read her  
16 testimony also, but I'm sure if you need to refer back  
17 to it, I can give you the transcript.

18                 Then on April 24th, 1996, the customer  
19 hearing here at the -- what was the Sheraton at the  
20 time, once again Witness Miller transcript, Page 451,  
21 Lines 9 through to Page 452, Line 6. The point of my  
22 raising these testimonies and the fact sheet is to  
23 show the Commission we were not uninformed of what was  
24 going on the with the violations of the Florida Cities  
25 Water Company.

1           We were trying to get answers on this case  
2 as far back as July 1995. We knew even then some way  
3 we, the captives of this company, would end up being  
4 the victims somehow in this litigation between Florida  
5 Cities Water Company and the Environmental Protection  
6 Agency and the Department of Justice, and as it turns  
7 out, we are the victims.

8           As far as the violations set forth in this  
9 case, it was the management of Florida Cities Water  
10 Company's choice to violate the Clean Water Act, not  
11 once, not 10 times, but 2,300 times, not the  
12 ratepayers choice. We had no say. We had no say as  
13 to whether they broke the Clean Water Act or not.

14           It was also Florida Cities Water Company's  
15 choice to hire six or more attorneys -- I'm not sure  
16 how many they hired -- to vigorously pursue this case  
17 at any cost; not the ratepayers's choice, Florida  
18 Cities Water Company's choice to hire these lawyers.

19           Now Florida Cities Water Company should not  
20 be allowed to also choose who would pay their costs  
21 for fines and litigations. They must take  
22 responsibility for their choices, not the ratepayers  
23 whom have had no choice. (Pause) I'm a little  
24 stressed.

25           I have actually four solutions to offer the

1 Commission to solve this case. Number one: Revoke or  
2 suspend Florida Cities Water Company's certificate or  
3 territory for their irresponsible management of this  
4 utility.

5 Number two, accept Office the Public  
6 Counsel's motion to dismiss filed July 10th, 1998, and  
7 throw this case out where it belongs.

8 Number three, do not give Florida Cities  
9 Water Company a penny and let the Avatar stockholders  
10 absorb the litigation fees, and/or let Florida Cities  
11 Water Company declare bankruptcy, because there are  
12 two other utilities in the wings, North Fort Myers  
13 Utilities and ST Environmental Services, whom provide  
14 for a good deal of Lee County, whom we as customers  
15 would welcome with open arms to take over our  
16 water/wastewater business.

17 Number four: Have Florida Cities Water  
18 Company give to their attorneys the deal that they  
19 expect us to swallow in payment for their fees. I  
20 believe that's what? 42 cents -- no. Now I heard  
21 it's 84 cents a month for 10 years or however many  
22 years it will take to pay them in full.

23 In conclusion, we ask the Commission not to  
24 open this door of retroactive ratemaking. This would  
25 then allow private for-profit utilities such as

1 Florida Cities Water Company to violate environmental  
2 laws at will, get their fines reduced by an entourage  
3 of attorneys, and then come to the PSC to reimburse  
4 their enormous and outrageous costs for attorneys from  
5 the ratepayers years down the line.

6           Also, if retroactive ratemaking is accepted  
7 in this case, the ratepayers may then feel the 1992  
8 rate case where our rates were increased over 100% and  
9 where many untruths and deceptions were brought to  
10 light in 1995 rate case, Docket No. 950387, should go  
11 another round with the Commission; i.e., number one,  
12 the amount of ERCs being served at that time; the  
13 amount of infiltration in their system inflating their  
14 flows; number three, the actual questionable upgrades  
15 to the system; and, number four, the fact that Clean  
16 Water Act violations at the time which should have  
17 been -- prevented them from getting an increase at  
18 all.

19           On a personal note, the reality is is that I  
20 still have to pay 95 to \$120 for a water/wastewater  
21 bill every month. Our rates are the highest in Lee  
22 County and probably still the second highest in the  
23 state of Florida.

24           My children are still nauseated by the  
25 smells coming from the plant and the lift stations

1 which interfere with our quality of life.

2 I will continue to pursue vigorously the  
3 injustices to the ratepayers from Florida Cities Water  
4 Company as long as they are supposedly serving us.

5 Thank you.

6 **CHAIRMAN JOHNSON:** Thank you, Ms. Walla.

7 Any questions --

8 **MR. McLEAN:** No questions.

9 **CHAIRMAN JOHNSON:** -- for Ms. Walla? (No  
10 response.)

11 Thank you very much for your testimony.

12 (Applause)

13 **MR. McLEAN:** Citizens call Don Skiba.

14 - - - - -

15 **DON SKIBA**

16 was called as a witness on behalf of the Citizens of  
17 the State of Florida and, having been duly sworn,  
18 testified as follows:

19 **DIRECT STATEMENT**

20 **CHAIRMAN JOHNSON:** Could you spell your last  
21 name for us?

22 **WITNESS SKIBA:** S-K-I-B-A, Donald.

23 **CHAIRMAN JOHNSON:** Thank you.

24 **WITNESS SKIBA:** We were poorly informed  
25 about the meeting, so I'm a little late on getting a

1 few of my thoughts on paper here, but -- I don't have  
2 a legal mind, and I don't know if the water company  
3 was negligent when this whole thing started eight or  
4 nine years ago; and I don't know if the EPA was a  
5 little overactive. But, ladies and gentlemen, the  
6 system has failed us.

7           You know, when we leave here tonight or in  
8 our thought process this evening, something is wrong.  
9 I listened about \$3 million figures. I listened about  
10 witnesses, court cases, the whole thing. I hope it's  
11 not all, because the end results can be hung on the  
12 backs of these people out here. The thinking has got  
13 to change.

14           I admit I don't have a legal mind, but with  
15 all the educated years that you people have got -- and  
16 I'm saying the water company, the EPA, the DEP and  
17 whoever is involved -- you're all here to service  
18 these people, and we can't expect to hang it all on  
19 them at the end, and that's where it's happening.

20           Like I say, I heard everything about the  
21 witnesses, the courts, the time, eight to nine years.  
22 Is all this time really necessary, or do we have to  
23 start refocusing, getting new goals, all of us.

24           Being a little simple-minded, we really are  
25 paying your wages up there, for the water company, for

1 the Public Service Commission and all the attorneys  
2 around, but you're not doing right by us. We're just  
3 almost innocent bystanders. You've got to start  
4 rethinking and think in terms of helping the public,  
5 or we're all in trouble.

6 It's all going to fall on retired people,  
7 people on fixed incomes, and those who are trying to  
8 raise a family. It's not fair. That's all I have to  
9 say.

10 Thank you. (Applause)

11 **CHAIRMAN JOHNSON:** Thank you, sir.

12 **MR. McLEAN:** Citizens call Marge Jordan.

13 **CHAIRMAN JOHNSON:** Is it Jordan?

14 **WITNESS JORDAN:** It's Jordan, J-O-R-D-A-N.

15 I'm a relatively new customer of Florida Water. We're  
16 from New Jersey.

17 **CHAIRMAN JOHNSON:** Let me go ahead and swear  
18 you in at this time.

19

20

21

22

23

24

25

1 MARGE JORDAN

2 was called as a witness on behalf of the Citizens of  
3 the State of Florida and, having been duly sworn,  
4 testified as follows:

5 DIRECT STATEMENT

6 COMMISSIONER GARCIA: Could you give me your  
7 full name?

8 WITNESS JORDAN: My full name is  
9 Margaret M. Jordan.

10 COMMISSIONER GARCIA: Margaret M. Jordan?

11 WITNESS JORDAN: Yes.

12 COMMISSIONER GARCIA: I'm sorry. Thank you.

13 WITNESS JORDAN: Okay?

14 CHAIRMAN JOHNSON: Yes, ma'am.

15 WITNESS JORDAN: There's absolutely no  
16 testimony. I'm just making a statement. We're from  
17 New Jersey where there's delicious, clear, delicious  
18 water. Not so here in Florida. It's funny looking,  
19 ill-tasting, and we've had to spend quite a bit of  
20 money to get a filter for drinkable water.

21 I've had some digestion problems. They  
22 stopped when I've gotten the filter. The other thing  
23 is, I'd like to know what is our percentage of paying  
24 your legal bills. I'd like to know what it is. I'm  
25 going to withhold it. I'll start an account. I'll

1 pay it. I'll put it in a separate account. I refuse  
2 to help you pay your legal bills.

3 My husband and I have quite a bit of medical  
4 bills, and I'd like to know if any of you would like  
5 to volunteer to help us pay our medical bills. I  
6 think it's called quid pro quo.

7 Anyway, that's about it. I don't want to  
8 pay your legal bills.

9 CHAIRMAN JOHNSON: Thank you very much.  
10 (Applause)

11 MR. McLEAN: Ed Crimmins, please.

12 CHAIRMAN JOHNSON: Public Counsel, how many  
13 other witnesses do you have?

14 MR. McLEAN: The second to last. There's  
15 just one more after Mr. Crimmins.

16 CHAIRMAN JOHNSON: Okay. Could the other  
17 witness also stand? I can swear you both in at this  
18 time.

19 (Witnesses collectively sworn.)

20 CHAIRMAN JOHNSON: Ma'am, you may be seated.  
21 And, sir, if you could state your name and spell that  
22 name for the record.

23

24

25

**ED CRIMMINS**

1  
2 was called as a witness on behalf of the Citizens of  
3 the State of Florida and, having been duly sworn,  
4 testified as follows:

**DIRECT STATEMENT**

5  
6 **WITNESS CRIMMINS:** My name is  
7 Edward J. Crimmings, C-R-I-M-M-I-N-S. I'm here on  
8 behalf of my neighbors in North Fort Myers.

9 I don't have much of a prepared statement.  
10 I talked to a few of them, and they said, well, we  
11 can't go down there. We don't even understand who to  
12 call.

13 And that's been sort of the history of the  
14 onerous rates that we pay. No one can be defeated at  
15 election time. No one can be called on the phone.  
16 There's always a Commission that's -- you know, we  
17 can't affect you. We don't have -- it's a long way  
18 around the barn to reach you and to affect you with a  
19 vote or anything like that.

20 But, personally, the rates that I pay are  
21 onerous. \$90 a month, \$80 a month. I'm a single  
22 person. I work in real estate in North Fort Myers,  
23 and a little known facet perhaps of this situation  
24 is -- the people who live in North Fort Myers are  
25 starting to realize it -- but market decisions are

1 made by buyers, potential buyers, based on the  
2 expenses it's going to cost them to live in our  
3 neighborhoods. And water and sewer in Cape Coral,  
4 which is about 75 yards away from where I live, is  
5 about \$30 a month.

6 When I have investors looking at duplexes on  
7 Frankie Court and they find out what they have to put  
8 up for a deposit for water service, that causes them  
9 to think twice about purchasing property in North Fort  
10 Myers.

11 On the face of it, the idea of paying  
12 \$3 million in legal fees on top of what we're already  
13 paying for water and sewer just didn't seem to be  
14 able -- I just couldn't let that go by without saying,  
15 hey, we're down. I mean, you know that's adding  
16 insult to injury.

17 There isn't -- doesn't seem to be any  
18 fairness in the system. There doesn't seem to be any  
19 equitability why you should be hung with these numbers  
20 and not have anyone to really talk to. This is the  
21 best we can do, so this is what we're doing.

22 I speak for about 20 of my neighbors, and I  
23 know from past meetings there that there are a lot  
24 more that wish they had a more direct forum, a more  
25 direct way to contact you.

1           But the great feeling in the community is  
2 that it's an unfair system, and the rate inequity just  
3 doesn't seem to be anything that can be borne in any  
4 fairness by the people that are out there.

5           Thank you. (Applause)

6           **CHAIRMAN JOHNSON:** Thank you.

7           **MR. McLEAN:** Citizens call Ms. Dawn Coward,  
8 please.

9

- - - - -

10

**DAWN COWARD**

11 was called as a witness on behalf of the Citizens of  
12 the State of Florida and, having been duly sworn,  
13 testified as follows:

14

**DIRECT STATEMENT**

15

**WITNESS COWARD:** Okay. I've been working on  
16 the committee with Cheryl Walla.

17

**COMMISSIONER GARCIA:** Ma'am, could you  
18 please state your name again so I can get it?

19

**WITNESS COWARD:** Dawn, D-A-W-N, Coward,  
20 C-O-W-A-R-D.

21

**CHAIRMAN JOHNSON:** You may continue.

22

**WITNESS COWARD:** Thank you. I've been  
23 working with Cheryl Walla on her committee for the  
24 past year and a half, and I agree with the facts that  
25 she has. We worked on them very hard to find the

1 truth.

2 I do agree with her that another more fair,  
3 just water company needs to be in charge. To me,  
4 water is a basic right, not to be made a huge profit  
5 on. That's my personal opinion.

6 We have mothers who have children, and those  
7 children need baths, they need water. We have elderly  
8 that can't afford the high prices. And I also speak  
9 for some of my neighbors. We've talked about this.  
10 Some of them are too elder to drive down here. They  
11 can't drive at night. They can't drive. So I think  
12 this meeting is probably missing a lot of concerned  
13 elderly citizens that just can't make it down here.

14 If I understand this right -- and I wasn't  
15 quite aware what this meeting was about either -- I  
16 thought it was the previous rate case. But now that I  
17 did some investigation, if I understand this, the EPA  
18 and the Justice Department charged Florida Cities  
19 Water Company with 2,300 violations, if I understand  
20 this correctly.

21 Florida Cities Water Company was found  
22 guilty in a court and fined millions of dollars, if I  
23 understand that correctly. Then Florida Cities Water  
24 Company hired many attorneys to fight this fee, this  
25 huge fee, and they did get it down to approximately

1 300,000. However, they incurred a \$3.8 million  
2 attorneys' fee, if I understand this.

3 Florida Cities Water Company now wants its  
4 customers, who are already gouged with the high prices  
5 of their water and sewer, which is an ongoing debate  
6 right now, they want to add another fee that we may  
7 charge their fines for their wrongdoings, nothing to  
8 do with what we did. Why should the innocent  
9 customers who are already paying a high price pay for  
10 their wrongdoing?

11 Clearly, Florida Cities Water Company do not  
12 care to do the right thing about our environment to  
13 protect the animals, to protect our children. They  
14 don't care about giving, getting and receiving a fair  
15 profit. They are the second highest water company in  
16 pricing in Florida and the highest in this area.

17 I believe -- and this is a personal opinion;  
18 I have no proof -- that they knew they were violating  
19 the laws, and it was more cost-efficient for them to  
20 make a higher profit. That's my personal opinion.  
21 Don't know if that was proved.

22 But how can a company be in violation of  
23 2,300 violations? That's a lot. It's not one or two,  
24 it's a lot. And they're supposed to know what they're  
25 doing. I don't know those laws.

1           We, the people, the customers of Florida  
2 Cities Water, we're counting on you, Public Service  
3 Commission, to look out for our best interests. If  
4 you don't, who will? Please don't make the innocent  
5 customers pay for this private, out-for-profit company  
6 who knowingly violated all these violations.

7           Why not let Florida Cities Water Company pay  
8 for their attorney fees with the high profits they've  
9 already gained from us? Customers of Florida Cities  
10 Water Company are already overburdened with their high  
11 price of water and sewer.

12           If I did something wrong and violated the  
13 laws, nobody would pay for my attorney fees. I can  
14 assure you of that. Not Florida Cities Water Company,  
15 anyway. Why should we pay for their mistakes? Please  
16 help us. (Applause)

17           Thank you.

18           **CHAIRMAN JOHNSON:** Thank you.

19           **MR. McLEAN:** Madam Chairman, that was the  
20 last customer to sign up to testify.

21           **CHAIRMAN JOHNSON:** Are there any other  
22 customers here that did not sign up, but that would  
23 like to testify this evening? (No response.)

24           Seeing none, I want to thank you all for  
25 coming out. Let me give you the dates of when this

1 case, the technical portions, when we'll hear the  
2 testimony from Public Counsel and the company. That  
3 proceeding will occur on August 12th, 13th and 14th.

4 Again it will be on the Sunshine Network, or  
5 at least -- I'm sorry. The hearing itself will not be  
6 on the Sunshine Network. I think that will be over  
7 the Internet. When we deliberate and decide the case  
8 on November 3rd, that will be broadcast.

9 And the Staff recommendation to the  
10 Commission will occur on October 22nd. That will be a  
11 filed recommendation. And our final decision, again,  
12 is on November 3rd.

13 Thank you again for coming out this evening.  
14 We appreciate your participation. Again, your  
15 comments that have been made will be a part of our  
16 official record. Those that did not testify, but that  
17 would like to provide any written comments, there's a  
18 blue sheet that you can add those written comments.  
19 Give them to us here tonight or mail them to the  
20 Commission.

21 Thank you again for participating. This  
22 hearing is adjourned. Thank you.

23 (Thereupon, the hearing concluded  
24 at 7:20 p.m.)

25

- - - - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF FLORIDA) : CERTIFICATE OF REPORTER  
COUNTY OF LEON )

I, H. RUTHE POTAMI, CSR, RPR Official  
Commission Reporter,

DO HEREBY CERTIFY that the CUSTOMER SERVICE  
HEARING was heard by the Florida Public Service  
Commission 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, consisting of 69 pages, constitutes a true  
transcription of my notes of said proceedings.

DATED this 29th day of July, 1998.

  
\_\_\_\_\_  
H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporter  
(904) 413-6734