

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

NOVEMBER 3, 1998

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.

Issue 1: Does the proposed recovery by FCWC of the litigation expenses constitute retroactive ratemaking?

Recommendation: Yes. The proposed recovery by FCWC of the litigation expenses constitutes retroactive ratemaking and, for this reason, it should be denied. If the Commission disagrees that the utility's request is a request for retroactive ratemaking, staff recommends that the request should still be denied on the basis that FCWC management did not act in a reasonable or prudent manner to avoid the occurrence of federal prosecution.

**MODIFIED**

*Approved w/ modifications discussed at conference*

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

*[Handwritten signatures in majority column]*

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REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE  
**12329** NOV-4 1998  
FPSC-RECORDS/REPORTING

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Issue 2: Is there any requirement that this utility should have obtained an accounting order prior to filing this petition?

Recommendation: No.

*No vote*

Issue 3: Did FCWC act prudently and reasonably in defending the legal action brought by the United States Department of Justice on behalf of the Environmental Protection Agency?

Recommendation: Yes. However, in staff's opinion, prior effort to comply with EPA and FDEP mandates may have forestalled action by the DOJ.

*No vote*

Issue 4: Was FCWC's failure to challenge the EPA's 1986 NPDES permit denial a prudent decision?

Recommendation: No.

*No vote*

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Issue 5: Is the amount of litigation expenses incurred by FCWC in defending the complaint of DOJ fair and reasonable?

Recommendation: Staff is unable to quantify, from the information contained in the record, the amount of litigation expenses which may not have been fairly or reasonably incurred. Therefore, if the Commission disagrees with staff's recommendation in Issue 1 that recovery of these expenses should be denied, staff recommends that the record should be reopened in order to take evidence on the fairness and reasonableness of these expenses.

*No vote*

Issue 6: Does the potential recovery of litigation costs by FCWC provide a disincentive to comply with the Clean Water Act?

Recommendation: Yes.

*No vote*

Issue 7: Stricken.

*No vote*

Issue 8: Stricken.

*No vote*

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Issue 9: Would bankruptcy have seriously affected the quality of service provided to FCWC's customers?

Recommendation: The degree to which bankruptcy would have affected the quality of service provided to FCWC's customers is unknown.

*No vote*

Issue 10: Should recovery of litigation expenses from the ratepayers depend on whether the utility or the ratepayers benefitted from the litigation?

Recommendation: No. The recovery of litigation expenses from the ratepayers should depend on whether the litigation costs were reasonable and prudently incurred.

*No vote*

Issue 11: Are the litigation expenses sought in this case reasonably characterized as normal, recurring costs of doing business?

Recommendation: No.

*No vote*

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Issue 12: Should any portion of FCWC's litigation costs be recovered through a surcharge and, if so, how much?

Recommendation: No.

*No vote*

Issue 13: Did the DOJ litigation involve all of FCWC's wastewater systems?

Recommendation: No. It involved only three wastewater systems: Barefoot Bay, Carrollwood, and Waterway Estates.

*No vote*

Issue 14: Should FCWC's request to allocate the costs among all of its customers be approved?

Recommendation: No. The costs associated with the litigation, if allowed by the Commission, should only be allocated to the specific systems involved, consistent with the existing Commission methodology.

*No vote*

Issue 15: What is the appropriate amount of rate case expense?

Recommendation: None is appropriate.

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Issue 16: Should FCWC be required to pay regulatory assessment fees on any revenues that may be approved in this docket?

Recommendation: Yes.

*No vote*

Issue 17: What is the appropriate amount of revenue, if any, to be collected through the surcharge?

Recommendation: None.

*No vote*

Issue 18: Should FCWC's requested recovery period for litigation costs be approved?

Recommendation: Yes. Should the Commission decide to allow the recovery of some or all of the litigation costs in this docket, staff recommends that FCWC's requested recovery period of ten years for litigation costs should be approved.

*No vote*

Issue 19: What are the appropriate surcharges?

Recommendation: None.

*No vote*

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Issue 20: If the Commission issues an order that provides for the recovery of litigation costs, what is the appropriate accounting treatment?

Recommendation: Any allowance for litigation costs and rate case expense in this case should not be included as a rate base item and should be amortized, on a straight line basis, over a ten-year period.

*No vote*

Issue 21: Should FCWC be allowed to include any unrecovered litigation expenses being amortized in its next rate case in order to earn a rate of return on the unrecovered balance?

Recommendation: No.

*No vote*

Issue 22: Should FCWC's request to amortize rate case expense over ten years be approved?

Recommendation: Yes. If the Commission approves rate case expense in Issue 15 of this recommendation, FCWC's request to amortize such expense over ten years should be approved.

*No vote*

Issue 23: Stricken.

*No vote*

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Issue 24: Must FCWC allege and prove, as a prerequisite to the relief it seeks, that present rates cause it to earn below its last authorized rate of return?

Recommendation: No. Under Section 367.0822, Florida Statutes, FCWC is not required to allege and prove, as a prerequisite to the relief it seeks, that present rates cause it to earn below its last authorized rate of return.

*No vote*

Issue 25: Should this docket be closed?

Recommendation: Yes. Upon expiration of the time for filing an appeal, no further action will be necessary and this docket should be closed. If a party files a notice of appeal, this docket should be closed upon resolution thereof by the appellate court.

**MODIFIED**

*- approved w/ modification  
discussed at conference.*