

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment  
of Certificate No. 427-W to add  
territory in Marion County by  
Windstream Utilities Company.

Docket No. 960867-WU

MARION COUNTY'S MEMORANDUM  
IN OPPOSITION AND RESPONSE TO  
WINDSTREAM'S MOTION TO  
STRIKE PREFILED REBUTTAL TESTIMONY

MARION COUNTY, by and through its undersigned counsel files this Memorandum in Opposition and Response to Windstream's Motion to Strike Prefiled Rebuttal Testimony. For reasons which appear below, Windstream's Motion to Strike should be denied. In support thereof, Marion County states:

1. Absent any action from the Commission, the Order Establishing Procedure, PSC Order No. PSC-96-1273-PCO-WU ("Order") is still in effect. That Order provides that "rebuttal testimony and exhibits" there is significantly, three previous references to prefiled direct testimony all list the identity of the party that is to file the testimony. There is no such

ACK \_\_\_\_\_ limitation of party identity placed on the filing of rebuttal testimony, and the past agency  
AFA \_\_\_\_\_  
APP \_\_\_\_\_ practice has been to allow for rebuttal testimony to be filed by any party to the proceeding.

CAF \_\_\_\_\_ 2. Therefore, not only does the order establishing procedure allow for the filing  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_ of rebuttal testimony and exhibits by the County, it also expressly provides for the filing of  
EAG \_\_\_\_\_ rebuttal testimony and exhibits as long as it is done by March 10, 1997. There has been  
LEG 1 \_\_\_\_\_  
LIN 3 \_\_\_\_\_ no waiver on the part of the County for filing this prefiled rebuttal testimony.

OPC \_\_\_\_\_ 3. Significantly, Windstream fails to deny the information provided in the prefiled  
RCH \_\_\_\_\_

SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

testimony, which indicates that its prefiled direct testimony is in substantial error as to the existence of facilities in the area sought to be certificated, in direct conflict with the enabling statute, Section 367.045, Fla. Stat.

4. Ironically, Windstream has itself argued for the right to file motions not expressly mentioned in the Order and has been generously accorded that procedure by the staff of the FPSC. Windstream now takes the position that the County does not have the ability to file prefiled rebuttal testimony when there is no limitation on the filing thereof. Nor was there any objection filed by Windstream when the County filed its prefiled direct testimony.

5. Filing by Windstream of the Motion to Strike Prefiled Rebuttal Testimony is itself evidence and reason supporting Marion County's position before the PSC that it should be accorded a full hearing and full party objector status.

WHEREFORE, Marion County respectfully requests that the Commission deny Windstream's Motion to Strike Prefiled Rebuttal Testimony.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and 7 copies, was served via Federal Express overnight delivery/U.S. Mail to:

- (1) Blanca S. Bayo, Director  
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this 4<sup>th</sup> day of March, 1997.



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