

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: FEBRUARY 22, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (RIEGER, JOHNSON) *bl of*
DIVISION OF LEGAL SERVICES (BRUBAKER) *GB*

RE: DOCKET NO. 001450-WU - APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 427-W TO EXTEND SERVICE AREA IN MARION
COUNTY BY WINDSTREAM UTILITIES COMPANY.
COUNTY: MARION

AGENDA: MARCH 06, 2001 - REGULAR AGENDA - PROPOSED AGENCY ACTION
FOR ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\001450.RCM

CASE BACKGROUND

Windstream Utilities Company (Windstream or utility) is a Class C utility which provides water service to approximately 683 customers in three separate service areas in Marion County. These areas include the Windstream-Carriage Hills system, the Majestic Oaks-Pigeon Park system, and the Paddock Downs-Sun Country Estates system. The utility also serves a fourth system in non-jurisdictional Citrus County. The utility's Dunnellon Hills system in Citrus County provides water service to approximately 35 customers. All four systems have separate water treatment plants and distribution systems. The wastewater service to these areas is provided by septic tanks. The utility's 1999 annual report shows an annual operating revenue of \$262,482 and a net operating income of \$23,497.

Windstream's current rates for service in all its systems, were approved by the Commission in an administrative price index

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proceeding effective August 24, 1999. The Windstream-Carriage Hills system and the Majestic Oaks-Pigeon Park system have identical monthly rates and service availability charges. The Paddock Downs-Sun Country Estates system and the Dunnellon Hills system have distinct monthly rates and service availability charges. Windstream intends to charge the customers in the amended territory the applicable rates and charges of the Windstream-Carriage Hills system.

Pursuant to Section 367.045, Florida Statutes, on September 25, 2000, the utility applied for an amendment to Water Certificate No. 427-W to add a small subdivision in Marion County called Bellwether. The utility proposes to provide potable water service and fire protection to a new subdivision being developed by Bellwether Investments, Inc. (Developer). It will include eighteen single family homes in a gated residential community. In order to have available capacity to accommodate Bellwether's water supply needs, it will be necessary for Windstream to expand its existing Windstream water treatment plant facility. This plant presently serves the Windstream-Carriage Hills water system. The Developer has agreed to pay for the plant expansion. Bellwether is located adjacent to the Carriage Hills subdivision. The wastewater service to this area will be provided by septic tanks.

Pursuant to Rule 25-30.036(2), Florida Administrative Code, the Commission has the authority to administratively approve applications for amendment when no protest has been filed, the requirements of Rule 25-30.036, Florida Administrative Code, have been met and the application is otherwise without controversy. A letter of protest to the utility's application was timely filed on October 23, 2000, by Mr. Thomas L. Fisher, a customer of the utility. During subsequent conversations with staff, Mr. Fisher clarified that he did not wish to pursue his objection to hearing. Accordingly, Mr. Fisher's comments were placed in the correspondence section of the docket file, with his status designated as that of an interested person rather than as a party to the case. This case is being brought to the attention of the Commission to approve a special service availability agreement with the utility and the developer of Bellwether. Staff will address the agreement in Issue 2. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Windstream Utilities Company's application for amendment of Water Certificate No. 427-W be approved?

RECOMMENDATION: Yes, Windstream Utilities Company's application should be granted for the additional territory described in Attachment A. Windstream should charge the customers in the territory added herein the rates and charges contained in its tariff for the Windstream-Carriage Hills system until authorized to change by this Commission in a subsequent proceeding. (RIEGER)

STAFF ANALYSIS: On September 25, 2000, the utility applied for an amendment to Water Certificate No. 427-W in Marion County, Florida. The purpose of this amendment application is to provide service to a small subdivision called Bellwether. This application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning applications for amendment of a certificate. The application contained a check in the amount of \$100 which is the correct filing fee pursuant to Rule 25-30.020(2)(b), Florida Administrative Code. The utility has provided evidence that it owns the land upon which its facilities are located as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. The maps and territory description submitted with the original amendment application were not properly formatted pursuant to Rule 25-30.030, Florida Administrative Code. The utility corrected the deficiencies by amending its application, which included revised maps and territory description, tariff sheets, and the resubmittal of the legal notice in accordance with Section 367.045, Florida Statutes, and Rule 25-30.030, Florida Administrative Code. A description of the territory to be added by the utility is appended to this recommendation as Attachment A. The utility has filed an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The local planning agency was provided notice of the application and did not file a protest to the amendment. The utility states that it will be providing water service that is consistent with the water sections of the local comprehensive plan at this time. The Department of Community Affairs has reviewed the

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proposed territory expansion and found it consistent with the applicable comprehensive plan. As discussed earlier a protest to the utility's application was timely filed on October 23, 2000, by Mr. Thomas L. Fisher, a customer of the utility. After several conversations with staff, Mr. Fisher stated that he did not wish to pursue his objection to hearing. Mr. Fisher's comments have been placed in the correspondence section of the docket file, with his status designated as that of an interested person rather than as a party to the case.

The utility indicates that this extension will not have a substantial impact on its monthly rates and charges. The territory to be served in this amendment is located adjacent to the utility's Carriage Hills service area. Water supplied to Carriage Hills and to the proposed area comes from the utility's water treatment plant located at the nearby Windstream service area. The proposed extension, as per the special service availability agreement between the Developer and the utility, will be mostly financed by the Developer. The agreement requires the utility to expand its existing water treatment plant sufficiently to provide potable water flows capable of meeting domestic needs and fire flow requirements for the proposed subdivision. Each of the 18 single family residences will be serviced through a one and one-half inch connection. The existing water treatment plant located at the Windstream system is composed of two wells. One is a six inch well with a ten horsepower (hp) motor rated at 110 gallons per minute (gpm), and the other is a four inch well with a five hp motor rated at 60 gpm. For pressure control there is a 3,000 gallon hydropneumatic tank. Liquid chlorination, used for disinfection, is the only form of treatment provided at this facility. The plant expansion will include a new eight inch well rated at 700 gpm, with a 10,000 gallon storage tank. In addition, Windstream will also extend its water main to the point of connection at the Bellwether subdivision. The Developer will be responsible for installing the water distribution system throughout the proposed development. Upon completion, ownership of this system will be transferred to the utility. Maintenance of the distribution system inside the Bellwether subdivision will then become the responsibility of the utility.

The utility's operator, Mr. John Wayne, holds a Class C drinking water permit, license number C-7566. The Department of Environmental Protection has no outstanding violations, citations, or notices of violation issued for this system. Therefore, it appears that the utility can continue to provide water service to its existing customers, and with the proposed water treatment plant expansion, the utility will be able to adequately serve the

proposed Bellwether subdivision. Consequently, staff believes the utility has demonstrated the financial and technical expertise to provide quality service to these customers.

Windstream should charge the customers in the amended territory the applicable rates of the Windstream-Carriage Hills system. The utility's initial rates and charges were established in Order No. 13639, issued September 29, 1984, in Docket No. 840126-WU. Over the years the utility has filed numerous indexes to adjust the rates for inflation. Windstream's current rates for service were approved by the Commission in an administrative price index proceeding effective August 24, 1999.

Based on the above information, staff recommends that Windstream's application for an amendment to expand its territory as described in Attachment A, should be granted pursuant to Section 367.091, Florida Statutes. Windstream should charge the customers in the territory added herein the rates and charges contained in its Windstream-Carriage Hills tariff until authorized to change by this Commission in a subsequent proceeding. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

ISSUE 2: Should the Commission approve the Special Service Availability Agreement between Windstream Utilities Company and Bellwether Investments, Inc.?

RECOMMENDATION: Yes, the Commission should approve the Special Service Availability Agreement between Windstream Utilities Company and Bellwether Investments, Inc. The agreement should become effective upon the date of the Commission's vote. (JOHNSON)

STAFF ANALYSIS: As stated earlier, on July 11, 2000, the Developer of Bellwether entered into a special service availability agreement with Windstream, which will allow Windstream to expand its plant to serve the subdivision. The specifics of the special service availability agreement are described below.

On July 11, 2000, the Developer entered into a special service availability agreement with Windstream to provide primary funding for the expansion of the utility's existing Windstream water plant facility, and distribution system which includes the installation of fire hydrants in the proposed new development. Pursuant to Rule 25-30.515(18), Florida Administrative Code, a special service availability agreement is defined as an agreement for charges for the extension of service which is not provided for in the utility's tariffed service availability policy. These contracts must be approved by the Commission prior to becoming effective, pursuant to Rule 25-30.550(2), Florida Administrative Code. The agreement between the Developer and Windstream includes charges that are outside of the approved tariff. Windstream's current service availability policy and charges were approved effective September 19, 1984, pursuant to Order No. 13639, issued August 29, 1984, in Docket No. 840126-WU. The utility is authorized to charge \$515 per equivalent residential connection (ERC) as a system capacity charge for the Windstream-Carriage Hills system, which is immediately adjacent to the proposed development. The system capacity charge is designed to cover the cost for reserving plant and line capacity.

The provisions of the special service availability agreement require the developer to pay a lump sum of \$85,000 and install and donate the water distribution system and fire hydrants in the Bellwether development. The utility agreed to extend the water main to the development and install at its Windstream water treatment plant a new eight inch well, rated at 700 gpm, and a 10,000 gallon storage tank. It will also waive the cost of one system capacity fee and refund 70% of the remaining system capacity fees to the developer as customers connect for a period of five years from the date of completion of the distribution system.

developer as customers connect for a period of five years from the date of completion of the distribution system.

The \$85,000 for the expansion of Windstream's utility plant and the extension of the utility's existing water main to the Bellwether development includes the following costs:

- \$ 5,000 for the execution of the special service availability agreement which is paid directly to Windstream.
- \$30,000 for deposits on labor and materials for plant construction to be paid directly to the vendors. If the total cost of deposits is less than \$30,000, the difference will be paid to Windstream.
- \$15,000 for a new water storage tank to be paid directly to vendor. If the actual cost of the tank is less than \$15,000, the difference will be paid to Windstream.
- \$30,000 upon completion of the water plant expansion is payable to Windstream.
- \$ 5,000 upon receipt of all permits and approvals from all governmental agencies is payable to Windstream.

If the actual cost for any of the items listed above should be greater than the allocated amount, the difference will be paid by Windstream. In addition, the Developer is responsible for installing the water distribution system and fire hydrants throughout the agreed upon service area, which is estimated to cost \$57,000. When the installation is completed and the utility's amendment is approved by the Commission, the ownership of the water distribution system and fire hydrants will be donated to Windstream.

The contracted amounts were agreed upon after both parties recognized they received a mutual benefit. The developer desired service as quickly as possible at a lesser cost than the installation of a new independent system. The utility would be able to implement plant expansions and fire flow upgrades required by the county, which would be substantially paid for by the developer. At this time, the utility estimates the total costs of the improvements will be \$125,000.

Staff reviewed Windstream's 1999 annual report. It appears the utility is not earning in excess of its authorized rate of return.

This special service availability agreement was necessary because Windstream's existing service availability policy does not provide for the acceptance of donated lines and the refunding of system capacity charges. The plant improvements are being made to provide water service, which includes county mandated fire protection to the customers of the amended territory. Staff believes that this arrangement between Windstream and the Developer is mutually beneficial for all parties concerned. Presently, the existing customers are not affected by the new plant expansion, because the Developer is paying for the majority of the costs. In addition, the existing customers of the Windstream-Carriage Hills system will also have fire protection benefits available through this expansion. The utility benefits because it now has a larger customer base and the cost of plant expansion is shared between the utility and the Developer.

Based on the above information, staff recommends that the Commission should approve the Special Service Availability Agreement between Windstream and Bellwether. The agreement should become effective upon the date of the Commission's vote.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if no protest is received to the proposed agency action issue, approved, no further action is required and the docket should be closed upon the issuance of a Consummating Order. (BRUBAKER, RIEGER, JOHNSON)

STAFF ANALYSIS: If no protest is received to the proposed agency action issue, approved, no further action is required and the docket should be closed upon the issuance of a Consummating Order.

WINDSTREAM UTILITIES COMPANY
ADDITIONAL WATER SERVICE AREA
TERRITORY DESCRIPTION
MARION COUNTY

TOWNSHIP 15 SOUTH, RANGE 22 EAST, IN SECTIONS 30 AND 31, AND PART OF THE **G. W. PERPALL GRANT** AND THE **CATALINA DE JESUS HIJUELAS GRANT** IN MARION COUNTY, FLORIDA;

FROM THE INTERSECTION OF THE NORTHEASTERLY BOUNDARY **G.W. PERPALL GRANT** AND THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 475C, ALSO KNOWN AS S.W. 42nd STREET, RUN S 36°20'34" E FOR A DISTANCE OF 1279.23 FEET TO THE SOUTHEAST CORNER OF THE **G.W. PERPALL GRANT** AND THE NORTHEAST CORNER OF THE **CATALINA DE JESUS HIJUELAS GRANT**; THENCE RUN N 36°20'34" W FOR A DISTANCE OF 219.42 FEET TO THE SOUTHWEST CORNER OF D.R.A. #3 IN THE SUBDIVISION OF **CARRIAGE HILL**, RECORDED IN PLAT BOOK Y, PAGE 47 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA AND THE POINT OF BEGINNING OF THE TRACT OF LAND HEREINAFTER DESCRIBED; THENCE RUN N 88°44'14" E FOR A DISTANCE OF 546.36 FEET TO A POINT; THENCE RUN S 01°16'22" E FOR A DISTANCE OF 420.30 FEET TO A POINT; THENCE RUN N 88°38'36" E FOR A DISTANCE OF 181.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF S.W. 7th AVENUE; THENCE RUN S 01°23'09" E ALONG SAID RIGHT-OF-WAY LINE FOR A DISTANCE OF 349.70 FEET TO A POINT; THENCE RUN S 88°18'47" W FOR A DISTANCE OF 453.41 FEET TO A POINT; THENCE RUN S 15°05'19" E FOR A DISTANCE OF 912.20 FEET TO A POINT; THENCE RUN S 53°23'19" W FOR A DISTANCE OF 1,711.33 FEET TO A POINT; THENCE RUN N 14°24'58" W FOR A DISTANCE OF 1,540.07 FEET TO A POINT; THENCE RUN N 53°37'09" E FOR A DISTANCE OF 217.37 FEET TO A POINT; THENCE RUN N 36°57'17" W FOR A DISTANCE OF 15.55 FEET TO A POINT; THENCE RUN N 53°49'03" E FOR A DISTANCE OF 329.31 FEET TO A POINT, SAID POINT HAVING STATE PLANE COORDINATES OF 1,750,785.796 NORTH AND 608,362.7423 EAST; THENCE RUN N 36°52'47" W FOR A DISTANCE OF 660.76 FEET TO A POINT; THENCE RUN N 53°47'07" E FOR A DISTANCE OF 1146.00 FEET TO A POINT; THENCE RUN S 36°20'36" E FOR A DISTANCE OF 452.87 FEET TO THE POINT OF BEGINNING, ALL LYING AND BEING IN MARION COUNTY, FLORIDA AND CONTAINING 81.49 ACRES, MORE OR LESS.