

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 960867-WU
amendment of Certificate No.) ORDER NO. PSC-97-0430-PCO-WU
427-W to add territory in Marion) ISSUED: April 16, 1997
County by Windstream Utilities)
Company.)
_____)

ORDER REVISING ORDER ON PROCEDURE, GRANTING WINDSTREAM'S
SECOND MOTION FOR EXTENSION OF TIME TO FILE REBUTTAL TESTIMONY
AND MARION COUNTY'S REQUEST FOR EXTENSION OF TIME IN PART

By Order No. PSC-96-1273-PCO-WU, issued October 10, 1996, this matter was set for a June 18, 1997 hearing in Marion County. The Order further established March 10, 1997 as the date to prefile rebuttal testimony. By Order No. PSC-97-0306-PCO-WU, issued March 21, 1997, Windstream Utilities Company's (Windstream or the utility) first Motion for Extension of Time to File Rebuttal Testimony was granted until April 9, 1997. At the April 1, 1997 Agenda Conference, this Commission voted to grant Marion County's Petition for Leave to Intervene, and on its own motion, to hold a hearing in this matter. The County had previously filed its direct testimony.

On April 3, 1997, the utility filed its Second Motion for Extension of Time to File Rebuttal Testimony until May 5, 1997. The utility states that had the Commission voted to adopt the Commission staff's recommendation to not allow a hearing in this case, the filing of costly rebuttal testimony would not have been required. Further, the utility states that in anticipation that the Commission would follow previous precedent and not require a hearing in this matter, it did not begin preparation of its rebuttal of the County's testimony, incurring the substantial related cost, as such would have been imprudent on its part, given that the County was not yet recognized as an intervenor by the Commission.

The utility further argues that the schedule, as revised by Order No. PSC-97-0306-PCO-WU, only grants it one week from the date of the Commission's vote to prefile rebuttal testimony, which is insufficient time to begin to hire the appropriate experts and prepare and submit that testimony. Finally, the utility states that there is substantial free time available in the schedule to allow for adjustment of the rebuttal testimony due date, and that no party will be prejudiced by the short delay.

DOCUMENT NUMBER-DATE

03848 APR 16 97

FPSC-RECORDS/REPORTING

On April 10, 1997, Marion County filed its Response to Windstream Utilities' Second Motion for Extension of Time to File Rebuttal Testimony and a Request for Extension of time. The County states that it is not opposed to extending the date for filing Windstream's rebuttal testimony, so long as all other dates following are extended an equal amount of time, or such other time as deemed just, fair, and convenient. According to the County, the time period between when rebuttal testimony is due and when prehearing statements are due constitutes time in which to conduct discovery and prepare for the hearing, and it will be prejudiced in its efforts to adequately prepare for hearing if it is not accorded the time periods originally set forth in the Order Establishing Procedure. The County, therefore, requests an extension of time for prehearing statements from April 21, 1997 to June 16, 1997, the prehearing conference from May 28, 1997 to July 21, 1997, the hearing from June 18, 1997 to August 11, 1997, and the submittal of briefs from August 4, 1997 to October 13, 1997, or for such other extended period as deemed just and fair.

On April 11, 1997, the utility filed its Response to Marion County's Request for Extension of Time. The utility objects to a grant of the County's request for extension of time on the basis that delaying the hearing for nearly two months unfairly prejudices them. According to Windstream, intervenors are parties who choose not to intercede in a case until a later date, and as such, should not be allowed to disrupt pre-established time frames and schedules to their detriment.

Having reviewed the parties' requests and their respective responses, we believe that the requests of both parties can be accommodated without unduly delaying the case. Therefore, the utility's Second Motion for Extension of Time to File Rebuttal Testimony shall be granted in part until April 30, 1997. This will allow the utility an additional three weeks in which to file its rebuttal testimony. The County's Request for Extension of Time shall also be granted in part. The time for filing prehearing statements shall be extended until May 16, 1997. This will allow the County additional time to conduct discovery and to prepare for the hearing without changing the hearing and prehearing dates, especially in light of the limited availability of hearing dates on the Commission's calendar.

Accordingly, the dates established by Order No. PSC-96-1273-PCO-WU are revised as follows:

- 1) Rebuttal testimony and exhibits April 30, 1997
- 2) Prehearing Statements May 16, 1997
- 3) Prehearing Conference May 28, 1997
- 4) Hearing June 18, 1997
- 5) Briefs August 4, 1997

Order No. PSC-96-1273-PCO-WU is affirmed in all other respects.

Based upon the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Windstream Utilities Company's Second Motion for Extension of Time to File Rebuttal Testimony is granted in part as set forth herein. It is further

ORDERED that Marion County's Request for Extension of Time is granted in part as set forth herein. It is further

ORDERED that Order No. PSC-96-1273-PCO-WU is revised as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-96-1273-PCO-WU are affirmed in all other respects.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 16th day of April, 1997.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

DCW

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.