

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 MOTION TO DISMISS PROTESTS
FILED BY WINDSTREAM UTILITIES**

Marion County, Florida, (hereinafter "Marion County"), by and through undersigned
counsel, files this Memorandum in Opposition to the Motion to Dismiss Protests filed by
Windstream Utilities Company ("Windstream") and states:

1. On December 20, 1996, Marion County filed its Petition for Leave to Intervene
(the "Petition") in this proceeding, requesting that it be granted full party status to participate in
this proceeding.

2. Marion County duly served via U.S. Mail a copy of its Petition upon all parties of
record to this docket, including, but not limited to, counsel for Windstream. Counsel for Marion

ACK _____
AFA _____ County personally notified counsel for Windstream of the impending filing of Marion County's

APP _____
CAF _____ Petition by telephone on December 18, 1996.

CMU _____
CTR _____
EAG _____ 3. However, despite the fact that counsel for Windstream had actual and formal
notice of Marion County's participation in this docket, when Windstream filed its Motion to

LEG 1 Dismiss Protests on December 30, 1996, ten days after Marion County's filing of its Petition,

LIN 3
OPC _____ Windstream failed to provide copies to counsel for Marion County, and failed to indicate on the

RCH _____

SEC 1

WAS 2

OTH _____

DOCUMENT NUMBER-DATE

00254 JAN-96

FPSC-RECORDS/REPORTING

Certificate of Service that Marion County had been served with a copy of the Motion to Dismiss Protests. Marion County received its copy as a courtesy from Mr. Joe Lettelleir, on January 2, 1997.

4. Marion County is entitled to notice and opportunity to be heard with regard to any pleading or paper filed in this proceeding unless and until its Petition is denied, and is thus entitled to receive copies of any and all papers filed in this docket. Windstream's failure to serve Marion County with a copy is in flagrant violation of Rule 25-22.0375, Florida Administrative Code, which mandates that all parties are to be served with copies of pleadings.

5. As stated in its Petition, Marion County's substantial interests will be affected by the proposed extension requested by Windstream. Marion County hereby realleges and incorporates the allegations made in its Petition for Leave to Intervene in connection with this Memorandum.

6. Marion County hereby adopts the arguments set forth in the Memorandum In Opposition and Response to Motion to Dismiss Protests filed by Petitioner, Barrett Family Partnership, IV, LTD (hereinafter referred to as "JB Ranch").

7. In addition, Marion County asserts that just as JB Ranch remains substantially affected by Windstream's proposed expansion, despite the purported amendment to its application, so are Marion County's interests substantially affected. As Marion County has stated in its petition, granting Windstream the certificate amendment is inconsistent with the Marion County Water Resources Protection and Utilities Plan adopted May 21, 1996, is inconsistent with the Marion County Comprehensive Plan (the "Comprehensive Plan") and will frustrate Marion County's ability to implement the Comprehensive Plan as required by its terms, Chapter 163,

Florida Statutes, and the Florida Department of Community Affairs.

8. Marion County contends, as set forth more particularly in its Petition, that the proposed extension of certified service area (as amended or otherwise) violates Chapter 367, Florida Statutes for all the reasons cited in the Petition.

9. In addition to the deficiencies with the application, (and also as set forth more particularly in the Petition) Marion contends that the application must be denied because the proposed amendment is not consistent with the Marion County Comprehensive Plan; Windstream cannot provide adequate fire flow; all necessary agreements are not in place to provide the service; if the extension is granted, residents in the proposed service area will be forced to be served by Windstream at unreasonable rates; the application is incomplete and blatantly misrepresents facts known to the applicant; the residents in the proposed extension area prefer to be served by others, or by no utility at all; Windstream has failed to prove compliance with applicable statutes and rules of the Public Service Commission; this application is in direct conflict with the Marion County Comprehensive Plan, the Game Plan, existing contracts, sound planning, engineering, financing and permitting presently underway, and future construction anticipated to be completed in 1997 and 1998. Further, because Windstream's application is substantially, recklessly, and deliberately inadequate, incomplete and misleading, Marion County reserved in its Petition the right to raise additional issues, as they arise and appear through the course of discovery and further investigation into Windstream's application.

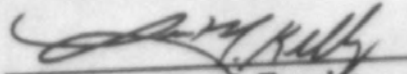
10. In addition, Marion County asserts that Windstream's application, even as amended, will substantially affect the rights and relationships between Marion County and JB Ranch under the Marion County/Barrett Family/Zacco Subregional Water and Wastewater

Utilities Agreement, Contract No. 96-5, a copy of which is attached to Marion County's Petition, as well as to JB Ranch's Memorandum in Opposition and Response to Motion to Dismiss Protests herein. If Windstream is allowed to expand its service area by amendment of its certificate, such an expansion will adversely affect Marion County's ability to comply with that contract, will adversely affect Marion County's ability to realize economies of scale that it otherwise would be able to use to benefit its customers in its service area now and in the future. In addition, Marion County's contract costs for the full development of its water and wastewater service may increase as a result of Windstream's proposed expansion, thereby requiring that Marion County increase its charges to its customers in the future, for no benefit, and will adversely affect Marion County's ability to realize and comply with its long-term plans for development of its publicly-owned system as contemplated in its Comprehensive Plan.

WHEREFORE, Marion County respectfully requests:

1. That Windstream's Motion to Dismiss Protests be denied, at least as to the JB Ranch Petition;
2. That a hearing be convened to examine Windstream's Application for Amendment of Certificate 427-W to Add Territory in Marion County, Florida, that Marion County be allowed to participate in that proceeding as a full party, and to present evidence, testimony, and cross-examine witnesses presented by other parties to this action, and that Windstream's application for Amendment be denied; and
3. That an Order be entered requiring Windstream and its counsel to serve copies of all papers filed by it in this docket on Marion County's counsel of record.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was served on the 9th day of January, 1997, on the following:

Original and 7 copies, together with the document on diskette, via hand delivery / U.S. Mail to:

Blanca S. Bayo, Director
Division of Records and Reporting
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
904-413-6770

With a copy via hand U.S. Mail to:

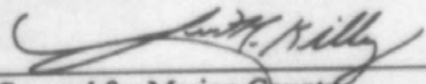
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