

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 960866-WU  
amendment of Certificate No. ) ORDER NO. PSC-97-0095-FOF-WU  
427-W to add territory in ) ISSUED: January 27, 1997  
Parcels A, B, C, D, and E in )  
Marion County by Windstream )  
Utilities Company )  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
JOE GARCIA  
DIANE K. KIESLING

ORDER ACKNOWLEDGING NOTICE OF VOLUNTARY DISMISSAL OF  
APPLICATION FOR AMENDMENT OF CERTIFICATE

BY THE COMMISSION:

Windstream Utilities Company (Windstream or the utility) is a Class C water utility located in Marion County. On July 29, 1996, Windstream filed an application to amend its certificate to add parcels A, B, C, D, and E in Marion County. In its application, the utility stated that the Marion County Land Development Code requires that developments of more than 15 units located within one mile of an existing water system connect to such water system. The utility also stated that a 44 single family development unit, which would be in need of water service before the end of 1996, was proposed for the requested service area. According to the utility, the requested extension of service area would implement the newly revised development code.

On August 23, 1996, the City of Ocala (the City), a municipality located within Marion County, timely filed an objection to Windstream's application. On August 23, 1996, a Petition Against Windstream Utilities Company Connecting its Water Line into the Country Gardens Subdivision, containing the signatures of 34 residents, was also timely filed. Some of the petition signers also forwarded individual letters of protest to the Commission. Other letters in objection to the proposed extension were timely filed by residents of the Sherwood Hills and Lemonwood II subdivisions. Accordingly, this Commission, in Order No. PSC-96-1272-PC0-WU, issued an Order Establishing Procedure on October 10, 1996, setting this docket for hearing.

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On December 9, 1996, the utility filed a Notice of Voluntary Dismissal without prejudice, formally withdrawing its application from consideration by this Commission. As of the date the Notice Voluntary of Dismissal was filed, this Commission had not taken any action upon the application for amendment. Also, the utility is not currently serving the requested territory, and the potential customers state in their letters that they have their own wells and pumps; therefore, a withdrawal of Windstream's application will not impair water service in the area.

Rule 25-22.035(3), Florida Administrative Code, states that generally, the Florida Rules of Civil Procedure shall govern in proceedings before the Commission. Rule 1.420(a)(1), Florida Rules of Civil Procedure, allows a party to file a notice of voluntary dismissal without order of court any time before the case has been submitted for decision. Further, the Florida Supreme Court has interpreted Rule 1.420(a)(1), Florida Rules of Civil Procedure, liberally in favor of the movant, such that the movant has an unqualified right to a voluntary dismissal in Florida. See Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975); Freeman v. Mintz, 523 So. 2d 606, (Fla. 3rd DCA 1988). Once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act and cannot revive the original action for any reason. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978).

In Wiregrass Ranch, Inc. v. Saddlebrook Resorts, Inc., 645 So. 2d 374 (Fla. 1994), the Supreme Court held that the discretion of the agency to proceed with a formal proceeding is not lost by the action of a party (not the applicant) seeking to withdraw from the proceeding, where an objector filed a voluntary dismissal after an adverse factual finding by a hearing officer, but before the agency acted on the hearing officer's recommendation. Wiregrass, however, can be distinguished from this instance because 1) the Commission has not taken any action, and 2) the applicant, and not a third-party objector, is seeking voluntary withdrawal.

This Commission has accepted voluntary withdrawals or dismissals from applicants in the past. See Order No. PSC-96-1483-FOF-WS, issued on December 4, 1996 in Docket No. 96009, In Re: Request for Exemption from Florida Public Service Commission Regulation for Provision of Water Service in Pinellas County by Brookgreen Apartments; Order No. PSC-94-1352-FOF-SU, issued November 7, 1994 in Docket No. 930851, In Re: Application for Amendment of Certificate No. 249-S in Volusia County by North Peninsula Utilities Corporation.

Therefore, in accordance with the above, we acknowledge Windstream's Notice of Voluntary Withdrawal of its Application for

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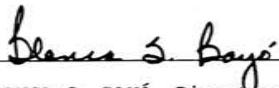
Amendment of Certificate No. 427-W to Add Territory in Parcels A, B, C, D, and E in Marion County.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the findings made in the body of this order is hereby approved in every respect. It is further

ORDERED that the Notice of Voluntary Withdrawal filed by Windstream Utilities Company is hereby acknowledged, and this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 27th day of January, 1997.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

DCW

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.