

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 98887-WU

MEMORANDUM IN OPPOSITION AND RESPONSE TO WINDSTREAM'S MOTION
FOR EXTENSION OF TIME TO FILE REBUTTAL TESTIMONY

Petitioner, **BARRETT FAMILY PARTNERSHIP IV, LTD.**, a Florida limited partnership (hereinafter "JB Ranch"), hereby files its MEMORANDUM IN OPPOSITION TO WINDSTREAM'S MOTION FOR EXTENSION OF TIME TO FILE REBUTTAL TESTIMONY ("Motion"), pursuant to Florida Public Service Commission ("Commission" or "PSC") Prehearing Procedure Order No. PSC-96-1273-PCO-WU, issued October 10, 1996, and as grounds therefor, says:

1. Commission Order No. PSC-96-1273-PCO-WU (the "Order Establishing Procedure") was issued on October 10, 1996, and established deadlines for various events in the instant proceedings. Among the deadlines established by the Commission's order was the March 10, 1997 due date for all parties to file their rebuttal testimony.

2. Windstream has previously suggested the procedural rules of the Commission should operate to exclude the timely filed objection by JB Ranch. Windstream has made this assertion notwithstanding the inadequacies of its still incomplete application. Windstream has failed to provide all materials and information requested by PSC staff. Windstream has also filed an unauthorized purported "amendment" to its application, claiming to delete the JBRanch Property from its application. Amendments to petitions and

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application may only be amended before a responsive pleading is filed or a presiding officer is designated, and then amendments may only be accomplished by filing and serving the amended initial pleading in the manner prescribed for filing and serving an original petition, application or complaint. After a presiding officer has been designated, a petitioner or applicant may only amend its application upon order of the presiding officer. Rule 25-22.036(8), Florida Administrative Code. A presiding officer has been designated in this case and no order has been issued by the presiding officer authorizing the amendment.

3. Windstream's unauthorized effort to "amend" its application is of no effect in this proceeding as a matter of law, because it was not filed and served in the manner prescribed for filing and serving an original application, and because it was submitted after a presiding officer had been designated in this proceeding without the presiding officer's order.

4. In addition, Windstream has failed to respond in a complete and timely fashion to various requests for information by the PSC staff. Notwithstanding Windstream's calling for rigid and strict application of PSC rules in an attempt to argue JB Ranch's objection should be dismissed, Windstream itself has played fast and loose with those same rules in filing its unauthorized "amendment" to the application, failing to timely and completely respond to PSC staff request for information, failing to copy the other parties to this proceeding when such information as was submitted was belatedly sent to Commission staff, and generally failing to observe those rules itself.

5. In addition to all the foregoing, Windstream filed its motion for extension of time to file rebuttal testimony on March 4, 1997, only six days before the Order Establishing Procedure required such testimony to be filed on March 10, 1997. Although counsel for

Windstream faxed a copy of its motion to JB Ranches on March 4, 1997, counsel for Windstream has never contacted JB Ranches in an attempt to discuss its request for an extension of time. Nevertheless, the practical effect of granting Windstream's motion for extension of time six days before the rebuttal testimony by all parties would be fundamentally unfair, because all parties other than Windstream have incurred the expense and effort necessary to comply with the Order Establishing Procedure by preparing their testimony. Windstream essentially wants all other parties to "lay their cards on the table," while Windstream seeks to exempt itself from the terms of the Order Establishing Procedure. The result of this would be to enable Windstream to view the prefiled direct testimony and rebuttal testimony, and then craft its own testimony after reviewing and examining the testimony filed by others well beyond the date for submittal. JB Ranch is thereby substantially prejudiced. Such a result is entirely inconsistent with notions of fundamental fairness, due process, and equity under the law.

WHEREFORE, JB Ranch respectfully submits Windstream's Motion for Extension of Time to File Rebuttal Testimony should be denied, and the express terms of the Order Establishing Procedure should be enforced.

Respectfully submitted,
BARRETT FAMILY PARTNERSHIP, IV

By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following: Original and 7 copies via hand delivery/U.S. Mail to:

- (1) Blanca S. Bayo, Director
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Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
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With a copy via hand delivery/U.S. Mail to:

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this 1st day of March, 1997.



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