

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment)
of Certificate No. 427-W to add)
territory in Marion County by) Docket No. 960867-WU
Windstream Utilities Company.)
_____)

**WINDSTREAM UTILITIES COMPANY'S MOTION TO STRIKE
MARION COUNTY'S MOTION TO REQUEST OFFICIAL
RECOGNITION AND MARION COUNTY'S MEMORANDUM IN
OPPOSITION AND RESPONSE TO WINDSTREAM'S MOTION
FOR EXTENSION OF TIME TO FILE REBUTTAL TESTIMONY**

WINDSTREAM UTILITIES COMPANY ("Windstream"), by and through its undersigned attorneys, hereby files this Motion to Strike Marion County's Motion to Request Official Recognition ("Motion") and Marion County's Memorandum in Opposition and Response to Windstream's Motion for Extension of Time to File Rebuttal Testimony ("Memorandum and Response"), and in support thereof would state and allege as follows:

1. On March 12, 1997, Marion County (describing itself incorrectly as "Intervenor") filed a Motion to Request Official Recognition and a Memorandum in Opposition and Response to Windstream's Motion for Extension of Time to File Rebuttal Testimony. Marion County's Motion and Memorandum and Response should either be stricken from the record or ignored by the Commission as a nullity.

2. The Motion and Memorandum and Response are a clear and direct attempt to circumvent Rule 25-22.039, Florida Administrative Code ("F.A.C.") providing that "Intervenors take the case as they find it". The County does not yet have the status of an intervenor and has not been recognized as a proper intervenor by the Commission in this proceeding. The County's attempts to file

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[Signature]

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pleadings, in the form of memorandums, responses, and motions, when they are not a party to this proceeding and have no right or authority to file such pleadings, is a circumvention of the Commission's administrative code rule and a waste of time, effort, monies, and resources on behalf of the proper parties to this proceeding and the Commission and its Staff.

3. When (and if) Marion County's request to intervene in this proceeding is granted by the Commission, then Marion County may file motions to request official recognition, memorandums in opposition and response to the motions of Windstream, etc. Until that time, it is in bad faith for Marion County to file pleadings in this proceeding (even though it has no right to do so) which require response, and attention from Windstream's attorneys and the Commission and its Staff, even though the filings are clearly improper. Under the Florida Administrative Procedure Act, Florida Law, and the Commission's Administrative Code Rules, particularly Rule 25-22.039, each party to litigation before the Commission has the "luxury" of only having to worry about those issues and filings of proper parties. For a non-party or a person or entity who is only a potential party to assault the record with various pleadings is patently improper. Marion County, as a non-party, has no more right or privilege to file, by and through its counsel, pleadings in this proceeding then it would to walk into the middle of trial and begin addressing the Commission panel even though it was not a party. The Commission would not, and should not, tolerate such interference in its proceedings whether through the form of

improper "speaking motions" by a non-party or interference in an administrative proceeding by a non-party.

4. Marion County's Motion violates Rule 25-22.037(2)(a), F.A.C., which provides that "motions in opposition to an order, notice, complaint or petition, **which may be filed by any party**, include . . . ". Marion County's Memorandum and Response violates Rules 25-22.037(2)(b), F.A.C., in that only "**other parties to a proceeding may**, within seven days after service of a written motion, file written memoranda in opposition."

5. Marion County's actions reveal that it is clearly dissatisfied with the well established concept, as reflected in the Commission's Administrative Code Rule, that an intervenor "takes the case as they find it". Marion County's election, whether by sloth or intent, to not protest or intervene in this proceeding on an earlier date is the only fact which has placed it in its present circumstance. Until Marion County is a party in this proceeding, it may not file motions and it may not file memorandum in response and opposition to the motions of proper parties.

6. Under no interpretation of Florida Law, Commission precedent, or any administrative code rule, is Marion County, as of this date, and as of the filing of its Memorandum in Opposition and Response and its Motion, a "party". *Black's Law Dictionary* defines the term "party" as:

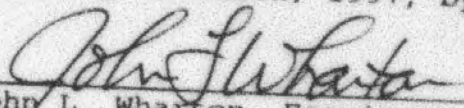
Party is a technical word having a precise meaning in legal parlance; it refers to those by or against whom a legal suit is brought, whether in law or in equity, the party, plaintiff or defendant, whether composed of one or more individuals and whether natural or legal person; all others who may be affected by the suit, indirectly and consequently, or persons interested but not parties.

Marion County may see itself as a "person interested" in this litigation, and even as a "potential intervenor", but it is not a party and does not have the rights and privileges (nor the duties or obligations) of a party.

7. The actions of Marion County, by and through its attorneys, are properly sanctionable by this Commission. However, Windstream only requests that the filings of Marion County be treated as the filings of any non-party; i.e. as a nullity. In the alternative, Windstream requests that the filings be stricken and that Marion County be admonished not to attempt to improperly participate in this proceeding until it has obtained party status.

WHEREFORE, and in consideration of the above, Windstream respectfully requests the Commission grant the relief requested herein and such other relief as the Commission deems proper.

Respectfully submitted on this
14th day of March, 1997, by:



John L. Wharton, Esquire
Martin S. Friedman, Esquire
ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(904) 877-6555

CERTIFICATE OF SERVICE
Docket No. 960867-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail (unless otherwise noted) to the following parties this 14th of March, 1997.

D. Cyrus-Williams
Florida Public Service Commission
Legal Division
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

VIA HAND DELIVERY

Carlyle Ausley
Ausley Construction Company
1107 E. Silver Springs Blvd., #2
Ocala, Florida 34470

Joseph Lettelleir
J.B. Ranch
300 S. Duncan Ave., #296
Clearwater, Florida 34615

Thomas A. Cloud, Esquire
Gray, Harris & Robinson, P.A.
201 East Pine Street
Suite 2100
Orlando, FL 32802

Lee M. Killinger, Esquire
Gray, Harris & Robinson, P.A.
225 South Adams Street
Suite 250
Tallahassee, FL 32301


JOHN L. WHARTON

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