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April 11, 1997

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Windstream Utilities Company; Docket No. 960867-WU
Application for Amendment to Certificate
Our File No. 26067.01

Dear Ms. Bayo:

Attached for filing in the above referenced case are the original and 15 copies of Windstream's Response To Marion County's Request For Extension Of Time on behalf of Windstream Utilities Company.

Should you have any concerns regarding the above, please let me know.

Sincerely,
ROSE, SUNDSTROM & BENTLEY

John L. Wharton
John L. Wharton, Esq.
For The Firm

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____
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- EAG _____
- LEG 1
- LIN 3 Enclosures
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DOCUMENT NUMBER-DATE
03743 APR 11 97
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

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

Docket No. 960867-WU

WINDSTREAM'S RESPONSE TO
MARION COUNTY'S REQUEST FOR EXTENSION OF TIME

Windstream Utilities Company ("Windstream"), by and through undersigned counsel, hereby files this Response To Marion County's Request For Extension Of Time, and in support thereof would state and allege as follows:

1. Marion County has filed a Request For Extension Of Time, which really is nothing less than a Motion For Continuance of this case. Marion County's Motion states as much, in its final paragraph, when it asks that the hearing be delayed for nearly two months.¹ A Motion For Continuance should only be granted for good cause shown or upon stipulation of all parties. Rule 25-22.041, Fla. Admin. Code. Marion County has failed to state good cause for a continuance of this case.

2. Marion County accurately describes itself, in its Request For Extension Of Time, as an "intervenor." Rule 25-22.039, Fla. Admin. Code, provides that intervenors take the case as they find it. The Order which effectively granted Marion County's "intervention" into this proceeding has not even been received by counsel for Windstream, and yet Marion County is already asking

¹ Marion County suggested that the hearing commence on August 11, 1997. It is unknown whether Marion County determined this was an appropriate date for the Commission and its staff, but Marion County did not contact counsel for Windstream with regard to this suggestion.

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that the case be continued. There is a very sound policy behind the common law concept, embodied in the Commission's Administrative Code Rule, that "intervenors take the case as they find it." That policy is that intervenors, by definition, are persons who could have originally protested the administrative action at issue such that they would have become original petitioners, rather than intervenors. For whatever reason, by definition intervenors are parties who choose not to intercede in the case until a later date. It is unfair and prejudicial for the applicant to allow such an intervenor to first rest on his laurels, only to later proceed to intervene in the proceeding and disrupt pre-established time-frames, schedules, etc.

3. Paragraph 2 of the County's Request For Extension Of Time contains three sentences, each which does not accurately reflect the facts. The first sentence states that the County timely filed its direct testimony and exhibits on January 9, 1997. This statement is incorrect. The County could not "file" anything in this case before it was granted party status other than a petition for intervention. The County was not granted intervenor status in this case until late March, 1997. It would have been imprudent for Windstream to have expended time, effort and cost on review of "direct testimony and exhibits" filed by an entity which was not a party and preparing detailed responses to them given the

Commission's long-standing precedent of dismissing such protests and proposed intervenors.²

The next two sentences of paragraph 2 of the County's Request For Extension Of Time provide that the County "will be prejudiced" in its efforts to adequately prepare for the hearing if the time periods are not extended as requested, and that the County "stood ready and willing to perform the necessary tasks, but was prevented doing so by events outside of its control." Initially, it is Windstream, and not the County, that will be prejudiced if the proceeding is continued as the County has suggested. It is not the province of the finder of fact to avoid "prejudice" to any party at every stage. Assuming, arguendo, that the County may be more "prejudiced" given the present schedule than it would have been if it would have properly filed for an administrative hearing in the summer of 1996, as it had every right to do, this "prejudice" (if, in fact, any exists) is a briar patch of the County's own making.

Likewise, for the County to say that its present situation was due to "events outside of its control" is patently inaccurate since it was completely and entirely up to the County whether it chose to participate in this case at its inception, in the summer of 1996, or whether it should stand by such that its eventual desire to enter this case as a party would not mature until late March of 1997. No "events outside its control" contributed to this

² In fact, Windstream's theory that the original protestor, J.B. Ranch, as well as the "intervenor," the County, should both be dismissed from this docket was conceptually accepted by the Commission. It was only by the extraordinary step taken by the Commission of ordering a hearing on its own Motion, and allowing the County to participate, that the County even now enjoys "intervenor" status in this proceeding.

sequence of events. To the extent the County is prejudiced by the previously established hearing date, it is a prejudice solely of its own making.

4. In point of fact, if Windstream's Second Motion For Extension Of Time To File Rebuttal Testimony is granted, and all other dates in Procedure Order PSC-96-1273-PCO-WU are affirmed in all other respects, the County will still have more time for each substantive step in this proceeding than the Commission affords in the majority of similar cases. The County's eleventh hour intercession in this proceeding should not be allowed by the Commission to delay the implementation of the project proposed by Windstream's application. To do so would be to the prejudice of Windstream, whose actions do not merit the detrimental result a continuance would provide, while benefitting the County, who chose not, for whatever reason, to participate in this proceeding until many months after its inception. Such a result would not only be unfair, but would also not serve to create a more orderly proceeding. Current time-frames, after granting of Windstream's Second Motion For Extension Of Time, allow adequate time for thought, discovery and preparation for this case. If certain parties believe that a case such as this takes a significantly greater time to "prepare for" than the present schedule allows, then those parties should have been especially vigilant in participating in the case since its inception.

WHEREFORE, and in consideration of the above, Windstream respectfully requests the Commission grant its Motion For Extension

Of Time To File Rebuttal Testimony and deny Marion County's Request
For Extension Of Time.

DATED this 11th day of April, 1997.



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F. Marshall Deterding, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the
foregoing has been provided by the manner indicated below to the
following on this 11th day of April, 1997.

Donna Cyrus-Williams, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

VIA FACSIMILE & U.S. MAIL

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