

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 RESPONSE TO
MARION COUNTY'S MOTION TO STRIKE PREFILED DIRECT
TESTIMONY OF GEORGE MCDONALD, OR IN THE ALTERNATIVE,
FOR EXTENSION OF TIME AND LEAVE TO FILE ADDITIONAL
PREFILED DIRECT AND/OR REBUTTAL TESTIMONY

WINDSTREAM UTILITIES COMPANY (hereinafter "Utility" or "Windstream"), by and through its undersigned attorneys, hereby files its Response to Marion County's (hereinafter "the County") Motion to Strike Prefiled Direct Testimony of George McDonald, or in the Alternative, For Extension of Time and Leave to File Additional Prefiled Direct and/or Rebuttal Testimony (hereinafter "Motion to Strike") and in support thereof states and alleges as follows:

1. On April 30, 1997, Windstream filed its Rebuttal Testimony by witnesses L.E. Dlouhy and George McDonald.

2. In filing that testimony, one typographical error exists in the title of the testimony of Mr. George McDonald. It refers to _____ that testimony as "direct" rather than as "rebuttal". However, the AFA _____ transmittal letter whereby that testimony was filed with the PSC APP _____ Clerk, and which was copied to both the Staff Counsel and Mr. CAF _____ CMU _____ Cloud, Counsel to the County, clearly states that these are CTR _____ rebuttal testimonies. EAG _____

3. Windstream had hoped to correct this typographical error LEG 1 _____ in the heading of Mr. McDonald's testimony at hearing. LIN 3 _____

OPC _____
RCH _____
SEC 1 _____
WAS _____
OTH _____

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

4. The County, has now made this one typographical error the basis for its Motion to Strike and, in the alternative, for extension of time to file additional testimony.

5. The County alleges that Windstream has waited for the County to disclose its case and then prefile direct testimony to support its flawed case. This statement is without foundation. Windstream has simply followed what is standard Commission practice, standard Administrative Law practice, and standard practice in all tribunals under the American system of litigation. The applicant has submitted its direct case in December, the County as the protestant/intervenor has presented its direct case in opposition to that application, and then the applicant and only the applicant is given an opportunity to file rebuttal. Windstream's opportunity to prefile rebuttal testimony in response to the County cannot prejudice the County as it is in accordance with standard procedures of the Public Service Commission and all other American tribunals of which the undersigned counsel is aware.

6. In no way does the action of the Utility in following the standard Commission practice of filing rebuttal testimony violate Commissioner Clark's statements, much less any of the Commission's decisions regarding the prefiling of testimony in this proceeding. The language quoted by the County in Paragraph 12 of its Motion, though not contained within an order of the Commission, in no way supports its contentions or its prayer for relief.

WHEREFORE, Windstream contends that the Motion of the County to strike the prefiled direct testimony and exhibits of George

McDonald is nothing more than a motion filed to strike that testimony and exhibits because of a typographical error involving one word. This borders on frivolous. The County's proposal to grant them additional time in which to file responsive testimony is nothing more than a request for an opportunity to provide surrebuttal testimony which is not only unprecedented, but is wholly inappropriate, especially in light of the basis for the County's motion. Therefore, the County's motion should be denied.

Respectfully submitted on this
22nd day of May, 1997, by:



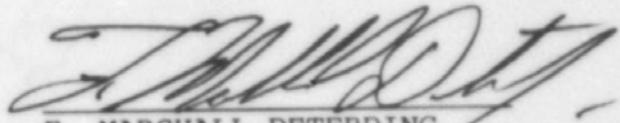
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CERTIFICATE OF SERVICE
Docket No. 960867-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery* or U.S. Mail to the following parties this 22nd of May, 1997.

*D. Cyrus-Williams
Florida Public Service Commission
Legal Division
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Tallahassee, FL 32399-0850

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F. MARSHALL DETERDING

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