

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 960867-WU
ORDER NO. PSC-97-1334-FOF-WU
ISSUED: October 27, 1997

The following Commissioners participated in the disposition of
this matter:

SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER ACKNOWLEDGING PROTEST WITHDRAWAL, APPROVING STIPULATED
AGREEMENT, AMENDING CERTIFICATE NO. 427-W TO INCLUDE ADDITIONAL
TERRITORY, AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Windstream Utilities Company (Windstream or utility) is a Class C utility which provides water service to approximately 472 water customers in Marion County and 48 water customers in Citrus County. Wastewater service is provided by septic tanks. The utility's 1996 annual report shows an annual operating revenue of \$161,454 and a net operating loss of \$2,112.

Pursuant to Section 367.045, Florida Statutes, on July 29, 1997, Windstream filed an application for amendment of Certificate No. 427-W to add territory in Marion County, including the proposed J.B. Ranch, a 459-acre development which will consist of 694 residential units and 165 general service units. In its application, the utility stated that the Marion County Land Development Code requires developments of more than 15 units located within one mile of an existing water system to connect to such water system. According to the utility, the requested amendment of its service area would implement the newly revised development code. On August 27, 1996, Barrett Family Partnership IV, LTD. (J.B. Ranch), timely filed a Petition in Opposition to Windstream's application. Accordingly, this matter was set for

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hearing and an order establishing procedure, Order No. PSC-96-1273-PCO-WU, was issued October 10, 1996.

On December 18, 1996, Windstream filed a Notice of Amendment to Application, whereby it modified its original application to remove the JB Ranch property from the proposed territory to be served. On December 20, 1996, Marion County (County) filed a Petition for Leave to Intervene or Alternative Petition in Opposition to Amended Application for Amendment to Certificate 427-W. On December 30, 1996, Windstream filed a Motion to Dismiss Protests. On December 31, 1996, we received a letter from JB Ranch, dated December 24, 1996, stating that if, in fact, JB Ranch is eliminated from the proposed territory, then its protest should be withdrawn. On January 8, 1997, and January 9, 1997, respectively, JB Ranch and the County filed a Memorandum in Opposition and Response to Motion to Dismiss Protests.

On January 13, 1997, Windstream filed a Response to the County's Petition for Leave to Intervene. On January 15, 1997, the County filed a Reply to Windstream's Response. On January 17, 1997, Windstream filed a Motion to Strike the County's Reply. On January 21, 1997, JB Ranch filed a Reply to Windstream's Response to the County's Petition for Leave to Intervene.

On January 21, 1997, we received another letter from JB Ranch, stating that its December 24, 1996, letter was not and should not be considered a notice to withdraw its protest, as it was in the nature of an inquiry only as to the status of the application. On January 23, 1997, the County filed a Memorandum in Opposition and Response to Windstream's Motion to Strike.

By Order No. PSC-97-0470-FOF-WU, issued April 23, 1997, we found JB Ranch's December 24 letter to be a withdrawal of its protest based on Windstream's amendment to its application, and thus found Windstream's motion to dismiss with regard to JB Ranch to be moot. Moreover, we granted the County's petition for leave to intervene and Windstream's motion to strike the County's reply, and set the matter for hearing on our own motion. Accordingly, the matter was scheduled for a prehearing on May 28, 1997, and a formal hearing on June 17, 1997.

On May 22, 1997, Windstream and the County filed a Joint Motion for Continuance of the prehearing and hearing to allow them time to settle their dispute. The motion was granted by Order No.

PSC-97-0605-PCO-WU, issued May 27, 1997, and the Chairman canceled the May, 1997, prehearing and hearing dates.

WITHDRAWAL OF PROTEST AND STIPULATED AGREEMENT

As discussed above, Windstream amended its original application on December 18, 1996, to remove the JB Ranch property from the proposed territory to be served, and we subsequently found that JB Ranch withdrew its protest to the application, as amended. The JB Ranch property is no longer included in the utility's amendment application.

On June 5, 1997, Windstream filed a letter advising that it has entered into a stipulated agreement (agreement) with the County. The utility attached a copy of the agreement to the letter. By the agreement, dated June 3, 1997, Windstream agreed to modify its amendment application to remove certain other lands which the parties agree that the County should be allowed to serve in exchange for the County's agreement to withdraw its protest. In order to conform with the requirements of the agreement, by its June 5 letter, the utility again modified its application for extension of service territory to include only part of the area which it originally requested to serve, contingent upon our receipt of the County's withdrawal of protest. The utility also attached to the letter a revised territory description and tariff pages reflecting the modification of the requested territory. On June 17, 1997, the County filed its Notice of Withdrawal of Protest, based upon the agreement.

Upon review of the agreement, it appears that the parties have reached a reasonable compromise among themselves to resolve their dispute, which obviates the necessity of conducting a hearing and results in a saving of resources and time for both the parties and the Commission. We find that the agreement is an appropriate resolution to the parties' dispute. Accordingly, we hereby acknowledge the County's Notice of Withdrawal of Protest and approve the agreement.

AMENDMENT OF CERTIFICATE

On July 29, 1996, pursuant to Section 367.045, Florida Statutes, the utility filed an application for amendment of Certificate No. 427-W to add territory in Marion County. The application contained a check in the amount of \$1,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida

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Administrative Code. The utility has provided a copy of warranty deeds for the Majestic Oaks Water Treatment Plant and the Sun Country Water Treatment Plant, which provide for the continued use of the land, as required by Rule 25-30.036(3)(d), Florida Administrative Code.

The utility has provided adequate service territory and system maps and a territory description, in accordance with Rule 25-30.036(3)(e), (f), and (I), Florida Administrative Code. Descriptions of the water territory are appended to this Order as Attachments A and B, respectively. Attachment A includes the amended area. Attachment B includes a composite description of the utility's existing and new territory for the service areas of Sun Country and Majestic Oaks. This composite description includes the areas granted by Order No. PSC-94-0082-FOF-WU, issued January 24, 1994, in Docket No. 900496-WU (transfer of Sun Country); Order No. 24435, issued April 25, 1991, in Docket No. 900311-WU (amendment to add Majestic Oaks); Order No. 24375, issued April 17, 1991, in Docket No. 900455-WU (amendment to add Pigeon Park); and the new area requested in this docket, as modified by the utility. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission. The utility has returned its certificate for entry of the additional territory and has filed revised tariff sheets which reflect the amended territory description.

In addition, the application contains proof of compliance with the noticing provisions as set forth in Rule 25-30.030, Florida Administrative Code. As previously noted, two objections to the application were filed. However, by Order No. PSC-97-0470-FOF-WU, we found that JB Ranch withdrew its objection, and by this Order, we acknowledge the County's Notice of Protest Withdrawal. As such, there are no pending protests to the modified application. The local planning agency was provided notice of the application and did not file a protest. We have contacted the Department of Environmental Protection (DEP) and have learned that there are no outstanding notices of violation regarding this utility.

The utility has been in existence since 1984. According to the application, the utility has operated its systems in a professional manner in compliance with all regulatory requirements for providing service. Windstream will continue to utilize appropriate professional staff in order to provide service to the proposed area. According to DEP, the Majestic Oaks Water Treatment Plant has a capacity of 384,000 gallons per day (gpd) and the Sun

Country Estates (Paddock Downs) Water Treatment Plant has a capacity of 240,000 gpd. The hydropneumatic tanks are the limiting factor on the capacity of the plants at this time. Flows at the Majestic Oaks Plant are approximately 185,000 gpd. The utility plans to provide water service primarily from the Majestic Oaks Water Plant, and to use the Sun Country Water Plant for backup. These water plants are not interconnected at this time. The utility has plans to interconnect the water systems and to add equipment when additional water is needed. These facilities will be funded through a combination of required contributions and infusion of either debt or equity capital. For these reasons, we find that the utility has the capacity and the technical expertise to serve customers now and into the future.

Based on the foregoing, we hereby find that it is in the public interest to grant Windstream's modified application for amendment of Water Certificate No. 427-W, and we do so grant the modified application to add the additional territory described in Attachment A, and to approve the composite description in Attachment B of the utility's existing and new territory of Majestic Oaks and Sun Country.

RATES AND CHARGES

Windstream's approved rates and charges were approved for the Sun Country System by Order No. PSC-94-0082-FOF-WU. Windstream's Majestic Oaks' rates and charges were approved by Order No. 24435. Pigeon Park's approved rates and charges were approved by Order No. 24375. The utility has been indexing the rates to keep up with inflation. The last index was approved on August 11, 1997. The Majestic Oaks water plant serves the Majestic Oaks and the Pigeon Park subdivisions. The rates and charges are the same for both of these service areas.

Windstream shall charge the customers in the amended territory the applicable rates of the water plant to which the customers are connected; either Majestic Oaks or Sun Country. These rates and charges are contained in the utility's tariff and shall be charged until authorized to change by the Commission in a subsequent proceeding. The utility estimates that these water plants will be interconnected in seven years. When the two water plants become interconnected, neighbors will have different rates and charges, although they will be receiving water from the same water line, and from the same water treatment plants (Sun Country and Majestic

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Oaks). Therefore, it will be appropriate to reevaluate the utility's rates after the interconnection takes place.

Because no further action is necessary, this docket shall be closed.

It is, therefore,

ORDERED by the Florida Public Service Commission that Marion County's Notice of Withdrawal of Protest is hereby acknowledged. It is further

ORDERED that the Stipulated Agreement entered into between Windstream Utilities Company and Marion County is hereby approved. It is further

ORDERED that Certificate No. 427-W, held by Windstream Utilities Company, 3002 N.W. 10th Street, Ocala, Florida 34475, is hereby amended to include the territory described in Attachments A and B of this Order, which are incorporated herein by reference. It is further

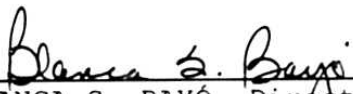
ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that Windstream Utilities Company shall charge the customers in the territory added herein the applicable rates of the water plant to which the customers are connected, as contained in the utility's tariff. These rates and charges shall be charged until authorized to change by the Commission in a subsequent proceeding. It is further

ORDERED that this docket is hereby closed.

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



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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.

WINDSTREAM UTILITIES COMPANY

MARION COUNTY

MAJESTIC OAKS AND SUN COUNTRY ESTATES

NEW WATER SERVICE AREA

AREA 1

From the South 1/4 Corner of Section 8, Township 16 South, Range 21 East, Marion County, Florida, and the Point of Beginning of the tract of land hereinafter described, run North 0°19'46" East along the West Line of the SE 1/4 of Said Section 8 for a Distance of 859.77 Feet to a Point on the Southeasterly Right-of-Way Line of State Road 200, (100'R/W); Thence run South 41°47'57" West along Said Right-of-Way Line for a Distance of 3803.85 Feet to a Point; Thence run South 89°45'19" East along the North Line of the South 1/4 of the NW 1/4 of Section 17, Township 16 South, Range 21 East, for a Distance of 2500.12 Feet to a Point; Thence run North 0°52'26" East along the East line of the NW 1/4 of said Section 17 for a Distance of 1986.87 Feet to the POINT OF BEGINNING.

AREA 2

From the SE Corner of Section 8, Township 16 South, Range 21 East, Marion County, Florida, and the Point of Beginning of the tract of land hereinafter described, run North 0°12'01" East along the East Line of the SE 1/4 of Said Section 8 for a Distance of 2666.18 Feet to the East 1/4 Corner of Said Section 8; Thence run North 0°11'53" East along the East Line of the NE 1/4 of Said Section 8 for a Distance of 1270.49 Feet to a Point on the Centerline of State Road 200; Thence run South 41°32'55" West along Said Centerline for a Distance of 2589.34 Feet to a Point; Thence run South 89°46'35" East for a Distance of 397.25 Feet to a Point; Thence run South 0°23'25" West for a Distance of 665.62 Feet to a Point; Thence run North 89°44'10" West for a Distance of 10 Feet to a Point, Thence run South 0°23'25" West for a Distance of 1331.23 Feet to a Point; Thence run South 0°28'47" West for a Distance of 1322.79 Feet to a

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NEW WATER SERVICE AREA

Point; Thence run North 89°55'07" East for a Distance of 1331.19 Feet to a Point; Thence run South 0°25'52" West along the West Line of the NW 1/4 of Section 16, Township 16 South, Range 21 East, for a Distance of 1321.26 Feet to the West 1/4 Corner of Said Section 16; Thence run South 0°26'43" West for a Distance of 660.84 Feet to a Point; Thence run South 89°47'48" East for a Distance of 1321.17 Feet; Thence run North 0°27'01" East for a Distance of 661.54 Feet to a Point; Thence run North 0°26'37" East for a Distance of 2644.80 Feet to a Point on the North Line of the NW 1/4 of Said Section 16; Thence run North 89°57'48" West along Said North Line for a Distance of 1321.84 Feet to the POINT OF BEGINNING.

AREA 3

From the NE Corner of Section 16, Township 16 South, Range 21 East, Marion County, Florida, and the Point of Beginning of the Tract of Land hereinafter described, run North 89°57'53" West along the North Line of the NE 1/4 of Said Section 16 for a Distance of 1982.73 Feet to a Point; Thence run South 0°27'46" West for a Distance of 3948.21 Feet to a Point; Thence run South 89°31'28" East for a distance of 660.61 Feet to a Point; Thence run South 0°28'31" West for a Distance of 1350.81 Feet to a Point; Thence run South for a Distance of 1320 Feet to a Point; Thence run East for a Distance of 1320 Feet to a Point; Then run North 0°01'32" E along the East Line of Section 21, Township 16 South, Range 21 East, for a Distance of 1311.83 Feet to the NW Corner of Said Section 21; Thence run North 0°29'40" East along the East Line of the SE 1/4 of Said Section 16 for a Distance of 2624.39 Feet to the East 1/4 Corner of Said Section 16; Thence run North 0°28'09" East along the East Line of the NE 1/4 of Said Section 16 for a Distance of 2687.09 Feet to the POINT OF BEGINNING.

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ATTACHMENT B
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COMPOSITE WATER SERVICE AREA

In all or parts of Township 16 South, Range 21 East, Sections 8, 16, 17 and 21.

The NE 1/4 of the NE 1/4 of Section 21, Township 16 South, Range 21 East, Marion County, Florida.

And

Section 16, Township 16 South, Range 21 East, Marion County, Florida, and That Part of Sections 8 and 17, Township 16 South, Range 21 East, Marion County, Florida, lying South and East of State Road 200.

Except the Following:

The South 1/2 of the SE 1/4 of Section 17, Township 16 South, Range 21 East, Marion County, Florida.

And Except:

The South 1/2 of the SE 1/4 of the SW 1/4 of Section 17, Township 16 South, Range 21 East, Marion County, Florida.

And Except: (Deer Creek and South Exception)

The West 1/2 of the SW 1/4 of Section 17, Township 16 South, Range 21 East, Marion County, Florida.

WINDSTREAM UTILITIES COMPANY

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MAJESTIC OAKS AND SUN COUNTRY ESTATES

COMPOSITE WATER SERVICE AREA

And Except: (Marion Landing Exception)

From the SW Corner of the SE 1/4 of Section 8, Township 16 South, Range 21 East, Marion County, Florida, and the Point of Beginning; run North 0°19'46" East for a Distance of 859.77 Feet to a Point on the Southeasterly Right-of-way Line of State Road 200; Thence run North 41°47'57" East along Said Right-of-Way Line for a Distance of 1017.47 Feet to a Point; Thence run South 0°26'05" West for a Distance of 1621.43 Feet to a Point on the South Line of the SE 1/4 of Said Section 8; Thence continue South 0°26'05" West for a Distance of 1323.60 Feet to A Point; Thence run South 89°43'37" East for a Distance of 651.34 Feet to a Point; Thence continue South 89°43'47" East for a Distance of 1377.18 Feet to a Point; Thence run South 0°25'25" West, along a Line Parallel to and 40.00 Feet West of the East Line of the NE 1/4 of Section 17, Township 16 South, Range 21 East, for a Distance of 1321.19 Feet to a Point; Thence run South 0°26'43" West, along a Line Parallel to and 40.00 Feet West of the East Line of the SW 1/4 of Said Section 17, for a Distance of 1321.50 Feet to a Point on the South Line of the North 1/2 of the SW 1/4 of Said Section 17; Thence run South 89°59'04" West along Said South line for a Distance of 2637 Feet ± to a Point; Thence continue South 89°59'04" West for a Distance of 290.40 Feet to a Point; Thence run North 0°31'41" East for a Distance of 1995.16 Feet to a Point; Thence run North 89°45'19" East for a Distance of 290.40 Feet to a Point; Thence run North 0°31'41" East along the West Line of the East 1/2 of Said Section 17 for a Distance of 1987 Feet ± to the POINT OF BEGINNING.

All lying and being in Marion County, Florida.