

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 001450-WU
ORDER NO. PSC-01-0716-PAA-WU
ISSUED: March 22, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER AMENDING CERTIFICATE NO. 427-W
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING SPECIAL SERVICE AVAILABILITY AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding approval of the special service availability agreement is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Windstream Utilities Company (Windstream or utility) is a Class C utility which provides water service to approximately 683 customers in three separate service areas in Marion County (County). These areas include the Windstream-Carriage Hills system, the Majestic Oaks-Pigeon Park system, and the Paddock Downs-Sun Country Estates system. The utility also serves a fourth system in non-jurisdictional Citrus County. The utility's Dunnellon Hills system in Citrus County provides water service to approximately 35 customers. All four systems have separate water

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treatment plants and distribution systems. The wastewater service to these areas is provided by septic tanks. The utility's 1999 annual report shows an annual operating revenue of \$262,482 and a net operating income of \$23,497. It does not appear that the utility is earning in excess of its authorized rate of return.

The utility's initial rates and charges were established in Order No. 13639, issued September 29, 1984, in Docket No. 840126-WU. Over the years, the utility has filed numerous indexes to adjust the rates for inflation. We approved Windstream's current rates for service in a price index proceeding, effective August 24, 1999. The Windstream-Carriage Hills system and the Majestic Oaks-Pigeon Park system have identical monthly rates and service availability charges. The Paddock Downs-Sun Country Estates system and the Dunnellon Hills system have distinct monthly rates and service availability charges. Windstream intends to charge the customers in the amended territory the applicable rates and charges of the Windstream-Carriage Hills system.

Pursuant to Section 367.045, Florida Statutes, on September 25, 2000, the utility applied for an amendment to Water Certificate No. 427-W to add a small subdivision in Marion County called Bellwether. The utility proposes to provide potable water service and fire protection to the new subdivision, which is being developed by Bellwether Investments, Inc. (Developer). It will include eighteen single family homes in a gated residential community. In order to have available capacity to accommodate Bellwether's water supply needs, it will be necessary for Windstream to expand its existing water treatment plant facility. This plant presently serves the Windstream-Carriage Hills water system. The Developer has agreed to pay for the plant expansion. Bellwether is located adjacent to the Carriage Hills subdivision. The wastewater service to this area will be provided by septic tanks.

A letter of protest to the utility's application was timely filed on October 23, 2000, by Mr. Thomas L. Fisher, a customer of the utility. During subsequent conversations with Commission staff, Mr. Fisher clarified that he did not wish to pursue his objection to hearing. Accordingly, Mr. Fisher's comments were placed in the correspondence section of the docket file, with his status designated as that of an interested person rather than as a

party to the case. We have jurisdiction pursuant to Section 367.045, Florida Statutes.

AMENDMENT APPLICATION

The amendment application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules. The application contained a check in the amount of \$100, which is the correct filing fee pursuant to Rule 25-30.020(2)(b), Florida Administrative Code. The utility has provided evidence that it owns the land upon which its facilities are located, as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. The maps and territory description submitted with the original amendment application were not properly formatted pursuant to Rule 25-30.030, Florida Administrative Code. The utility corrected the deficiencies by amending its application, which included revised maps and territory description, tariff sheets, and the resubmittal of the legal notice in accordance with Section 367.045, Florida Statutes, and Rule 25-30.030, Florida Administrative Code. A description of the territory to be added by the utility is appended to this Order as Attachment A. The utility has filed an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with this Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The local planning agency was provided notice of the application and did not file a protest to the amendment. The utility states that it will be providing water service that is consistent with the water sections of the existing local comprehensive plan. The Department of Community Affairs has reviewed the proposed territory expansion and found it consistent with the applicable comprehensive plan.

The utility indicates that this extension will not have a substantial impact on its monthly rates and charges. The territory to be served in this amendment is located adjacent to the utility's

Carriage Hills service area. Water supplied to Carriage Hills and to the approved area comes from the utility's water treatment plant located at the nearby Windstream service area. The extension, as provided by the special service availability agreement between the Developer and the utility, will be financed mostly by the Developer. The agreement requires the utility to expand its existing water treatment plant sufficiently to provide potable water flows capable of meeting domestic needs and fire flow requirements for the subdivision. Each of the 18 single family residences will be serviced through a one and one-half inch connection. The existing water treatment plant located at the Windstream system is composed of two wells. One is a six inch well with a ten horsepower (hp) motor rated at 110 gallons per minute (gpm), and the other is a four inch well with a five hp motor rated at 60 gpm. For pressure control, there is a 3,000 gallon hydropneumatic tank. Liquid chlorination, used for disinfection, is the only form of treatment provided at this facility. The plant expansion will include a new eight inch well rated at 700 gpm, with a 10,000 gallon storage tank. In addition, Windstream will also extend its water main to the point of connection at the Bellwether subdivision. The Developer will be responsible for installing the water distribution system throughout the development. Upon completion, ownership of this system will be transferred to the utility. Maintenance of the distribution system inside the Bellwether subdivision will then become the responsibility of the utility.

The utility's operator, Mr. John Wayne, holds a Class C drinking water permit, license number C-7566. The Department of Environmental Protection has no outstanding violations, citations, or notices of violation issued for this system. Therefore, it appears that the utility can continue to provide water service to its existing customers, and with the proposed water treatment plant expansion, the utility will be able to adequately serve the Bellwether subdivision. In light of the foregoing circumstances, we find that the utility has demonstrated the financial and technical expertise to provide quality service to these customers.

Based on the foregoing, we hereby approve Windstream's application for an amendment to expand its territory as described in Attachment A, pursuant to Section 367.045, Florida Statutes. Windstream shall charge the customers in the territory added herein

the rates and charges contained in its Windstream-Carriage Hills tariff until authorized to change by this Commission in a subsequent proceeding. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

SPECIAL SERVICE AVAILABILITY AGREEMENT

Pursuant to Rule 25-30.515(18), Florida Administrative Code, a special service availability agreement is defined as an agreement for charges for the extension of service which is not provided for in the utility's tariffed service availability policy. We must approve these contracts prior to their becoming effective, pursuant to Rule 25-30.550(2), Florida Administrative Code. The agreement between the Developer and Windstream includes charges that are outside of the approved tariff. Windstream's current service availability policy and charges were approved effective September 19, 1984, pursuant to Order No. 13639, issued August 29, 1984, in Docket No. 840126-WU. The utility is authorized to charge \$515 per equivalent residential connection (ERC) as a system capacity charge for the Windstream-Carriage Hills system, which is immediately adjacent to the proposed development. The system capacity charge is designed to cover the cost for reserving plant and line capacity.

As stated previously, on July 11, 2000, the Developer of Bellwether entered into a special service availability agreement with Windstream, in which the Developer will provide primary funding for the expansion of the utility's existing water plant facility and distribution system, which includes the installation of fire hydrants in the new development.

The provisions of the special service availability agreement require the developer to pay a lump sum of \$85,000 and install and donate the water distribution system and fire hydrants in the Bellwether development. The utility agreed to extend the water main to the development and install at its Windstream water treatment plant a new eight inch well, rated at 700 gpm, and a 10,000 gallon storage tank. It will also waive the cost of one system capacity fee and refund 70% of the remaining system capacity fees to the developer as customers connect for a period of five years from the date of completion of the distribution system.

The \$85,000 for the expansion of Windstream's utility plant and the extension of the utility's existing water main to the Bellwether development includes the following costs:

- \$ 5,000 for the execution of the special service availability agreement which is paid directly to Windstream.
- \$30,000 for deposits on labor and materials for plant construction to be paid directly to the vendors. If the total cost of deposits is less than \$30,000, the difference will be paid to Windstream.
- \$15,000 for a new water storage tank to be paid directly to vendor. If the actual cost of the tank is less than \$15,000, the difference will be paid to Windstream.
- \$30,000 upon completion of the water plant expansion is payable to Windstream.
- \$ 5,000 upon receipt of all permits and approvals from all governmental agencies is payable to Windstream.

If the actual cost for any of the items listed above should be greater than the allocated amount, the difference will be paid by Windstream. In addition, the Developer is responsible for installing the water distribution system and fire hydrants throughout the agreed upon service area, which is estimated to cost \$57,000. Upon completion of the installation and our approval of the utility's amendment application, the ownership of the water distribution system and fire hydrants will be donated to Windstream.

The contracted amounts were agreed upon after both parties acknowledged that they received a mutual benefit. The Developer desired service as quickly as possible, at a lesser cost than the installation of a new, independent system. The utility would be

able to implement plant expansions and fire flow upgrades required by the County, which would be substantially paid for by the Developer. At this time, the utility estimates the total costs of the improvements will be \$125,000.

This special service availability agreement was necessary because Windstream's existing service availability policy does not provide for the acceptance of donated lines and the refunding of system capacity charges. The plant improvements are being made to provide water service, which includes County mandated fire protection to the customers of the amended territory. We find that this arrangement between Windstream and the Developer is mutually beneficial to the parties. Windstream's existing customers are not affected by the new plant expansion because the Developer is paying for the majority of the costs. In addition, the existing customers of the Windstream-Carriage Hills system will have fire protection benefits available through this expansion. The utility benefits because it now has a larger customer base and the cost of plant expansion is shared between the utility and the Developer.

Based on the above information, we find it appropriate to approve the Special Service Availability Agreement between Windstream and Bellwether. If no protest is filed in accordance with the Notice of Further Proceedings or Judicial Review, attached hereto, the agreement shall become effective upon the date of issuance of the Consummating Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for amendment of Certificate No. 427-W to extend service area in Marion County by Windstream Utilities Company is hereby approved as set forth in the body of this Order. 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 Attachment A, attached to this Order, is incorporated herein by reference. It is further

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ORDERED that Windstream shall charge the customers in the territory added herein the rates and charges contained in its tariff for the Windstream-Carriage Hills system until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the special service availability agreement between Windstream Utilities Company and Bellwether Investments, Inc., is hereby approved as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order. It is further

ORDERED that the provision of this Order approving the special service availability agreement shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 22nd day of March, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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JSB

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.

As identified in the body of this order, our action approving the special service availability agreement is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 12, 2001. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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 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 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
ADDITIONAL WATER SERVICE AREA

TERRITORY DESCRIPTION

MARION COUNTY

TOWNSHIP 15 SOUTH, RANGE 22 EAST, IN SECTIONS 30 AND 31, AND PART OF THE **G. W. PERPALL GRANT** AND THE **CATALINA DE JESUS HIJUELAS GRANT** IN MARION COUNTY, FLORIDA;

FROM THE INTERSECTION OF THE NORTHEASTERLY BOUNDARY **G.W. PERPALL GRANT** AND THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 475C, ALSO KNOWN AS S.W. 42nd STREET, RUN S 36°20'34" E FOR A DISTANCE OF 1279.23 FEET TO THE SOUTHEAST CORNER OF THE **G.W. PERPALL GRANT** AND THE NORTHEAST CORNER OF THE **CATALINA DE JESUS HIJUELAS GRANT**; THENCE RUN N 36°20'34" W FOR A DISTANCE OF 219.42 FEET TO THE SOUTHWEST CORNER OF D.R.A. #3 IN THE SUBDIVISION OF **CARRIAGE HILL**, RECORDED IN PLAT BOOK Y, PAGE 47 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA AND THE POINT OF BEGINNING OF THE TRACT OF LAND HEREINAFTER DESCRIBED; THENCE RUN N 88°44'14" E FOR A DISTANCE OF 546.36 FEET TO A POINT; THENCE RUN S 01°16'22" E FOR A DISTANCE OF 420.30 FEET TO A POINT; THENCE RUN N 88°38'36" E FOR A DISTANCE OF 181.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF S.W. 7th AVENUE; THENCE RUN S 01°23'09" E ALONG SAID RIGHT-OF-WAY LINE FOR A DISTANCE OF 349.70 FEET TO A POINT; THENCE RUN S 88°18'47" W FOR A DISTANCE OF 453.41 FEET TO A POINT; THENCE RUN S 15°05'19" E FOR A DISTANCE OF 912.20 FEET TO A POINT; THENCE RUN S 53°23'19" W FOR A DISTANCE OF 1,711.33 FEET TO A POINT; THENCE RUN N 14°24'58" W FOR A DISTANCE OF 1,540.07 FEET TO A POINT; THENCE RUN N 53°37'09" E FOR A DISTANCE OF 217.37 FEET TO A POINT; THENCE RUN N 36°57'17" W FOR A DISTANCE OF 15.55 FEET TO A POINT; THENCE RUN N 53°49'03" E FOR A DISTANCE OF 329.31 FEET TO A POINT, SAID POINT HAVING STATE PLANE COORDINATES OF 1,750,785.796 NORTH AND 608,362.7423 EAST; THENCE RUN N 36°52'47" W FOR A DISTANCE OF 660.76 FEET TO A POINT; THENCE RUN N 53°47'07" E FOR A DISTANCE OF 1146.00 FEET TO A POINT; THENCE RUN S 36°20'36" E FOR A DISTANCE OF 452.87 FEET TO THE POINT OF BEGINNING, ALL LYING AND BEING IN MARION COUNTY, FLORIDA AND CONTAINING 81.49 ACRES, MORE OR LESS.