

Matilda Sanders

From: Mike Twomey [miketwomey@talstar.com]
Sent: Friday, December 29, 2006 2:47 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing in Docket No. 060644-TL
Attachments: Southerland, Sugarmill Woods petition to intervene in Embarq storm case.doc

ORIGINAL

A. Person responsible for this electronic filing:

Michael B. Twomey
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B. Docket No. 060644-TL Petition by Embarq Florida, Inc. to recover 2005 tropical system related costs and expenses.

C. Document being filed on behalf of Joanna Southerland and Sugarmill Woods Civic Association, Inc..

D. There are a total of 6 pages.

E. The document attached for electronic filing is ~~Petition of Joanna C. Southerland and Sugarmill Woods Civic Association, Inc. to Intervene.~~

The parties/individuals indicated on the certificate of service are being served both electronically and by U.S. Mail today.

Thank you for your attention and assistance in this matter.

Mike Twomey

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DOCUMENT NUMBER-DATE

11877 DEC 29 08

FPSC-COMMISSION CLERK

12/29/2006

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by Embarq Florida Inc.
to Recover 2005 Tropical System
Related Costs and Expenses.

DOCKET NO. 060644-TL

FILED: December 29, 2006

**PETITION OF JOANNA C. SOUTHERLAND AND SUGARMILL WOODS CIVIC
ASSOCIATION, INC. TO INTERVENE**

Pursuant to Section 120.57(1), Florida Statutes and Rule 25-22.039, Florida
Administrative Code, Joanna Southerland and the Sugarmill Woods Civic Association, Inc.,
through their undersigned attorney, file their Petition to Intervene, and in support thereof, state as
follows:

1. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. The name and address of the petitioners are:

Joanna C. Southerland
1117 Sandhurst Drive
Tallahassee, Florida 32312
Telephone 850-386-1984

and

Sugarmill Woods Civic Association, Inc.
108 Cypress Boulevard, West
Homosassa, Florida 34446

3. All pleadings, motions, orders and other documents directed

to the petitioners should be served on:

Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256
Phone: (850) 421-9530
Email: miketwomey@talstar.com

DOCUMENT NUMBER-DATE

11877 DEC 29 8

FPSC-COMMISSION CLERK

4. Embarq Florida, Inc. ("Embarq") is an incumbent local telecommunications exchange company ("ILEC") regulated by the Florida Public Service Commission ("Commission") for certain purposes. Embarq, in the docket cited above, despite the fact that it is a price-regulated, incumbent local exchange company, not subject to rate of return regulation or the public examination of its profits, expenses or revenues, seeks to recover from its retail basic service customers approximately \$10,000,000 it alleges it has incurred in connection with repairs resulting from the 2005 hurricane season. Embarq proposes that it should be allowed to charge its retail basic service customers a surcharge of 50 cents per access line, per month, for a period of 12 months, which totals to \$6.00 per customer line, not counting applicable taxes and fees.

5. Petitioner Joanna Southerland ("Southerland") resides in Tallahassee at the address listed above and takes basic local service from Embarq at the number indicated above. She did not suffer any loss of telephone service from the 2005 hurricanes and is not desirous of being compelled to pay Embarq increased rates or charges irrespective of the basis Embarq gives for them being warranted. She is especially desirous of not being compelled to pay a second hurricane surcharge on top of the current surcharge of \$0.83 per month previously approved by this Commission, which surcharge will not cease being collected until approximately October, 2007.

6. Petitioner Sugarmill Woods Civic Association, Inc. ("Sugarmill Woods") is an incorporated, non-profit association representing the interests of many of the 4,400 households residing in the Sugarmill Woods community in Citrus County, Florida. Sugarmill Woods has earlier represented its members in many cases before this Commission involving water and wastewater utilities, electric utilities and telecommunications companies for approximately

fourteen years. Many of the residents of the Sugarmill Woods community, including many of the membership of Sugarmill Woods, take their basic local telephone service from Embarq. Sugarmill Woods is aware that Embarq purports to be a competitive telecommunications company, a reason advanced by Embarq, among others, to support the recent "rebalancing" basic local service rate increases approved by this Commission. Sugarmill Woods is also aware that Embarq is not profit-regulated by this Commission and that it is requesting that it be reimbursed for its alleged storm damage repairs without regard for the level of its current earned return on equity, which profit return is not available to the general public, including its customers. As with Ms. Southerland, Sugarmill Woods is not desirous of its members being compelled to pay for Embarq's 2005 storm repair costs, unless it can be shown that Embarq's profits will fall below a reasonable level for a firm of comparable risk, absent the recovery of the storm damages being sought here. Additionally, like Ms. Southerland, Sugarmill Woods is especially desirous of not having its members taking basic service from Embarq being compelled to pay a second hurricane surcharge on top of the current surcharge of \$0.83 per month previously approved by this Commission, which surcharge will not cease being collected until approximately October, 2007. If a second surcharge is compelled by law, or otherwise granted by this Commission, Sugarmill Woods would urge the Commission to not allow the second surcharge to begin until after collection of the current surcharge is at an end. Sugarmill Woods alleges, as it has demonstrated in many earlier cases, that it meets all the legal requirements for collectively representing through "associational standing" the interests of its many members taking local service from Embarq.

Petitioners' Substantial Interests Affected

7. Embarq proposes to charge all its basic service customers, regardless of their age,

income or other status, a monthly surcharge of 50 cents in order to recover expenses it alleges it incurred as a result of damages incurred during the 2005 hurricane season. Embarq does not allege, nor demonstrate factually, that it is not earning, or will not earn, a fair and reasonable rate of return on its used and useful investment necessary to provide service to its basic service customers if it is denied the revenues sought in this case. If Embarq's petition is approved by this Commission, as filed, then Ms. Southerland and each of the 4,400 households that are members of Sugarmill Woods and taking local service from Embarq will be compelled to pay to Embarq an additional \$6.00, plus the associated taxes and fees. The threat of payment of these amounts is unquestionably a "substantial interest" that qualifies them for party status in this proceeding.

Disputed Issues of Fact and Law

8. The following issues have been preliminarily identified by Petitioners as disputed issues of material fact or law:

- a. Whether Embarq actually incurred the storm damages alleged in its petition?
 - b. Whether the storm damages alleged by Embarq, even if true, would warrant the storm damage surcharge requested by it?
 - c. Whether the alleged storm damages would cause Embarq to earn what would be considered less than a fair and reasonable return on equity in today's market?
 - d. Whether Embarq, a telecommunications company purporting to be a competitive company operating in competitive markets is entitled to collect storm damage surcharges from its captive basic service customers?
- and

e. Whether a surcharge, if any, approved by this Commission pursuant to Embarq's instant petition should be allowed to be collected concurrently with the \$0.83 per month surcharge being collected now or only consecutively after the current surcharge expires in October, 2007?

Intervention Is Timely

9. Rule 25-22.039, Florida Administrative Code, provides, in relevant part:

Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing . . . and must include allegations sufficient to demonstrate . . . that the substantial interests of the intervener are subject to determination or will be affected through the proceeding.

The final hearing in this docket is scheduled to begin January 4, 2007 and this petition to intervene is being filed December 29, 2006, more than five days prior to the final hearing. Furthermore, the allegations that petitioners, either individually, or through associational standing in the case of Sugarmill Woods, will be required to pay at least \$6 more per year in local service charges, not counting additional applicable taxes and fees, if Embarq is granted its requested relief, is a per se statement that the petitioners' substantial interests "are subject to determination or will be affected through the proceeding" and that they are, therefore, entitled to participate as parties.

WHEREFORE, the Petitioners request that this Commission grant them intervenor status in this docket as full parties and compel Embarq to prove through testimony and other competent, substantial evidence in a Section 120.57(1), Florida Statutes, proceeding that it is factually and legally entitled to the approximately \$10 plus million of its customers' money that it claims it is due.

Respectfully submitted,

/s/ Michael B. Twomey
Michael B. Twomey
Attorney for Joanna Southerland and
Sugarmill Woods Civic Association, Inc.
Post Office Box 5256
Tallahassee, Florida 32314-5256
Telephone: 850-421-9530
miketwomey@talstar.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this petition has been served by

U.S. Mail and electronic messaging this 29th day of December, 2006 on the following:

Jason Fudge, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Vickie Gordon Kaufman, Esquire
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Tallahassee, Florida 32301

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111 West Madison Street
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2301 Lucien Way, Suite 200
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State Vice President – Florida
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LFTHZ0601
315 S. Calhoun Street, Suite 500
Tallahassee, Florida 32301

/s/ Michael B. Twomey
Attorney