

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 960867-WU
amendment of Certificate No.) ORDER NO. PSC-97-0510-PCO-WU
427-W to add territory in Marion) ISSUED: May 5, 1997
County by Windstream Utilities)
Company)
_____)

ORDER DENYING WINDSTREAM'S MOTION TO STRIKE
PREFILED REBUTTAL TESTIMONY OF
MARION COUNTY

On July 29, 1996, Windstream Utilities Company (Windstream or the utility) filed an application for amendment of its certificate to add territory in Marion County. A timely protest was received from JB Ranch on August 29, 1996, and by Order No. PSC-96-1273-PCO-WU, issued October 10, 1996, this matter was set for a June 18, 1997 hearing in Marion County. This order also established all testimony filing dates. Pursuant to the order, rebuttal testimony was due on March 10, 1997. By Order No. PSC-97-0306-PCO-WU, issued March 21, 1997, the utility's request for an extension of time to file rebuttal testimony was granted until April 9, 1997. By Order No. PSC-97-0430-PCO-WU, issued April 16, 1997, the utility's second request for extension of time to file rebuttal testimony was granted in part until April 30, 1997.

On December 20, 1996, Marion County (the County) filed a Petition for Leave to Intervene. At the April 1, 1997 Agenda Conference, this Commission voted to grant the County's petition to intervene, and on its own motion, to hold a hearing in this matter.

Windstream filed its direct testimony timely on December 9, 1996 in accordance with Order No. PSC-96-1273-PCO-WU. The County and JB Ranch timely filed their direct testimony on January 9, 1997. The Commission staff did not prefile direct testimony. On February 19, 1997, the County filed rebuttal testimony of Gerald C. Hartman, which the County states, "indicates that previous portions of the . . . [utility's] prefiled testimony are in error and factually inaccurate."

On February 24, 1997, Windstream filed a Motion to Strike Prefiled Rebuttal Testimony of Marion County. The utility argues that the time established for rebuttal testimony is not applicable to the County because intervenors' testimony was not due for 30 days after the utility's direct testimony, which allows the County to rebut the utility's testimony in its direct testimony. The utility further argues that since Commission staff did not file direct testimony, there was no testimony for the County to rebut.

DOCUMENT NUMBER-DATE

04405 MAY-56

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On March 5, 1997, the County filed a Memorandum in Opposition and Response to Windstream's Motion to Strike Prefiled Rebuttal Testimony. The County argues that Order No. PSC-96-1273-PCO-WU places no "no such limitation of party identity . . . on the filing of rebuttal testimony, and the past agency practice has been to allow for rebuttal testimony to be filed by any party to the proceeding."

Having reviewed the motion and the responsive pleading, the utility's motion to strike is hereby denied. Rebuttal testimony is normally afforded only to the petitioner. However, because of the County's assertion that the Order Establishing Procedure does not specify which party may file rebuttal testimony, and because there is no harm to the parties to permit the County to file rebuttal testimony in this instance, the County's prefiled rebuttal testimony shall be allowed. Since the utility, by Order No. PSC-97-0430-PCO-WU, has been granted an extension of time to prefile its rebuttal testimony until April 30, 1997, it will have had ample opportunity to address the rebuttal testimony prefiled by the County.

Based upon the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Windstream Utilities Company's Motion to Strike Prefiled Rebuttal Testimony of Marion County is hereby denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 5th day of May, 1997.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

DCW

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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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.