

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

CARROLL COUNTY WATER DISTRICT NO.1)
)
 COMPLAINANT)
)
 VS.)
)
 WHITEHORSE DEVELOPMENT CO.)
)
 INTERVENING COMPLAINANT)
)
 VS.)
)
 GALLATIN COUNTY WATER DISTRICT)
)
 DEFENDANT)

RECEIVED
 MAY 6 2008
 PUBLIC SERVICE
 COMMISSION

CASE NO. 2007-00202

**CARROLL COUNTY WATER DISTRICT NO. 1'S OBJECTION
 TO MOTION TO SET ASIDE PRE-HEARING ORDER
 FILED BY DEFENDANT GALLATIN COUNTY WATER DISTRICT**

** ** * * * *

Comes now the Complainant Carroll County Water District No. 1 (hereinafter "CCWD"), and for its Objection to the Motion of the Defendant Gallatin County Water District (hereinafter "GCWD") to set aside the Public Service Commission's ("Commission") Order entered August 1, 2007, states as follows:

STATEMENT OF FACTS

This action was initiated by CCWD when GCWD began construction of a water line to a potential commercial development located along Kentucky Highway 1039, near the I-71 interchange which is physically within the territorial boundaries of CCWD. At no time had GCWD obtained a 'Certificate of Convenience and Necessity' (hereinafter "Certificate") from the

Commission authorizing this construction. CCWD sought an interim Order from the Commission halting any construction during the pendency of these proceedings. While there was some question about the ability of the Commission to grant injunctive relief, although it does abide by the Kentucky Rules of Civil Procedure, it was acknowledged by all parties that if a Certificate was required for the construction of water lines into another water district's territorial boundary, then the Commission could take action and stop construction by a water district that had not obtained such a Certificate as required by its regulations.

GCWD agreed not to enter the CCWD's territory and/or to provide water service to customers within CCWD's territory until the issue of the exclusivity of the water district territories and the necessity, or lack thereof, of obtaining a Certificate was resolved. Thus, the status quo was preserved by GCWD and CCWD each continuing to serve their respective water users within their respective territorial boundaries.

ARGUMENT

I.

THE COMMISSION ORDER SHOULD NOT BE SET ASIDE

GCWD offers no case law or statutory authority for the Commission to set aside its Order entered on August 1, 2007. GCWD had no legal right to enter into the territorial boundary of CCWD and to serve its customers, so it was correctly halted from extending its water line to serve a potential commercial customer in CCWD's territory by the Commission's Order. In asking the Commission's intervention prior to the hearing on its Complaint, the CCWD sought only to maintain the status quo by not allowing another water district into its territorial boundary with the entry of the Commission's Order. As a party to that Order, CCWD will not agree to set the Order aside.

Further, it was learned at the hearing held by the Commission, that GCWD had constructed an eight inch (8") line into the territorial boundaries of the CCWD several years ago, and without a Certificate. Thus, GCWD was already in violation of the Kentucky Revised Statutes and the Commission regulations prior to the Complaint being initiated by CCWD.

At the same time, GCWD's contention that CCWD has 'changed the status quo' is factually incorrect. CCWD has remained in operation within its own territorial boundaries, and has only served customers if requested for water service. GCWD has no legal right to construct water lines or to serve anyone within CCWD's territory – so it was GCWD that was proceeding without legal authority – not CCWD. At the time of the Commission's hearing, no one along Highway 1039 had applied for water service from either water district. Much of GCWD's arguments before the Commission were 'what if this happens' or 'who can best serve a then-fictitious water user'. GCWD, as well as Intervening Complainant Whitehorse Development Co., questioned at length the ability of CCWD to serve its own territory, arguing that its illegal water line was in a better position to provide the actual needs of potential water users. In fact, alleged expert testimony was offered that CCWD could not physically provide the water service, or the pressure needed for the proposed truck stop because of alleged fire protection requirements.

Following the Commissioner's hearing, however, on or about April 3, 2008, Love's Travel Stop (hereinafter "Loves") requested water service so that it could open for business on June 1, 2008. Affidavit of James L. Smith, CCWD Manager. CCWD followed procedure for a review of plans and specifications from the Kentucky Division of Water. After those plans were approved, the extension was advertised for bid, and constructed so as to extend its water line to Love's. Water

service is now provided to Love's in accordance with its specific requirements from its application for water service. Id.

II.

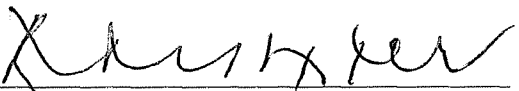
GCWD's REQUEST IS MOOT AS SERVICE IS BEING PROVIDED

GCWD requests the Commission to set aside its Order arguing that an 'innocent customer' was being denied water because of the pending proceedings. Notably, Love's Travel Stop should not be considered an 'innocent customer' as it was aware of the pending Commission proceedings and chose not to intervene. At the same time, it had not made an application for water service from either CCWD or GCWD, although it purchased real estate within the CCWD territory and had plans to construct a truck stop facility. However, CCWD is now serving the only applicant for water service that has been requested in that location since the filing of the Complaint herein, with the permission of Intervening Complainant Whitehorse Development Co., who constructed a portion of the water line in violation of the Commission's Order. Smith, affidavit. As stated infra, the Division of Water approved the installation of the water lines, the project was advertised, a bid received and awarded, and construction completed. Thus, there is no 'innocent customer' being deprived of water during the pendency of this matter, and GCWD's argument to that effect is mooted. CCWD has an obligation to serve those persons who request water within its territorial boundary, and has a financial obligation to repay its indebtedness to Rural Development for improvements made in Gallatin County. Accordingly, as CCWD is meeting its responsibilities within its territorial boundary and Love's is being served as it requested, this issue before the Commission is moot.

WHEREFORE, the Complainant Carroll County Water District No. 1 objects to the Motion of Defendant Gallatin County Water District

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E-mail Address: CBJ523@aol.com

Attorneys for Complainant
Carroll County Water District No. 1

By: 
Ruth H. Baxter

CERTIFICATE OF SERVICE

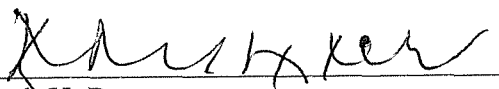
This is to certify that a true and correct copy of the foregoing Objection was mailed postage prepaid, on this the 5th day of May, 2008, to:

Hon. Stephen P. Huddleston
P.O. Box 807
Warsaw, Kentucky 41095
Attorney for Defendant

Hon. Dennis R. Williams
Adams, Stepner, Woltermann & Dusing, P.L.L.C.
40 West Pike Street
P.O. Box 861
Covington, Kentucky 41012-0861
Attorneys for Intervenor

and the original to:

Commonwealth of Kentucky
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

By: 

Ruth H. Baxter
Attorney for the Complainant
Carroll County Water District No. #1

AFFIDAVIT OF JAMES L.SMITH

The affiant, James L. Smith, after first having been duly sworn, states and deposes as follows:

1. I am the Manager of the Carroll County Water District No. 1 and have served in that capacity since 1994. Prior to that date, I served as a Commissioner on the Water District for a period of twelve (12) years. I am a chemical engineer by profession and hold a bachelor of science degree in Chemical Engineering from Purdue University;

2. The area which was the subject of the Order entered by the Public Service Commission is physical land within the territorial boundaries of the Carroll County Water District No. 1 as was agreed to by and between the County Judge-Executives and Fiscal Courts of Carroll, Gallatin and Owen counties;

3. The filing of this action was necessitated by the actions of the Gallatin County Water District as it was constructing water lines with the intention of serving water to potential customers within the Carroll County Water District No. 1's territorial boundaries without a certificate of convenience and necessity as required by Public Service Commission regulations;

4. The 'status quo' was being maintained by each District serving their respective customers within their designated territorial boundaries;

5. On or about April 3, 2008, the Carroll County Water District No. 1 received a request from Love's Travel Stops to provide water service for its Travel Stop located at 976 Highway 1039, Sanders, Kentucky. A copy of its request is attached hereto as Exhibit 1. This location is within the boundaries of our District'

6. Pursuant to the request of Love's Travel Stops plans and specifications were presented to the Environmental and Public Protection Cabinet, Division of Water, for the

construction of approximately 2,860 feet of 6 inch PVC waterline to serve them. These plans were approved by the Division of Water, and a copy of said approval letter dated April 18, 2008, is attached hereto as Exhibit 2;

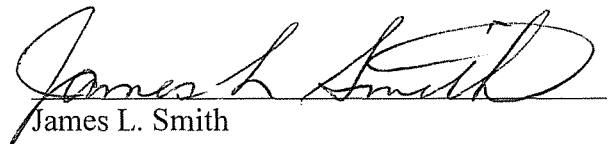
7. The current owner of the 8" water line installed to the utility easement crossing the Keaton farm in Gallatin County, namely Whitehorse Development Group, LLC, gave written permission for the Carroll County Water District to tie its service line into its existing pipe to complete installation of water service to Love's Truck Stop. A true and correct copy of this authorization is attached hereto as Exhibit 3;

8. Advertising for bids then followed, a bid was awarded and a contract for the construction of the water lines to Love's Travel Stops obtained by the District;

9. The water lines were constructed and water service was provided to the Love's Travel Stop on or about Tuesday, April 29, 2008, in advance of its requirement to have water service for its opening date of June 1, 2008;

10. The District objects to the Commission's setting aside its Order as it was put in place to avoid construction by Gallatin Water District into the territorial boundaries of Carroll County Water District No. 1 without a certificate of convenience and necessity. As this matter has been heard by the PSC and is awaiting ruling, the District would request that the Order stay in place pending that ruling.

This the 5th day of May, 2008.


James L. Smith

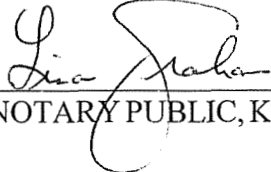
STATE OF KENTUCKY)

COUNTY OF CARROLL)

Subscribed and sworn to before me by James L. Smith, this the 5 day of May,

2008.

My commission expires: 8-1-2011



NOTARY PUBLIC, KY. STATE AT LARGE



10601 North Pennsylvania Avenue, 73120
PO Box 26210
Oklahoma City, OK 73126
Phone: (405) 302-6500
Toll free: (800) 388-0983
Fax: (405) 749-9155
www.loves.com

REC'd
4/3/08

March 31, 2008

Carroll County Water District #1
Jim Smith
P.O. Box 350
Ghent, KY 41045

RE: Love's Travel Stops & Country Stores, Inc. #383 Sparta, KY

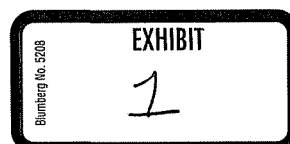
Dear Mr. Smith,

Enclosed you will find (8) eight executed contracts, one per each meter required for our Love's Travel Stop located at 976 Hwy 1039, Sanders, KY 41083. Please continue the process for the water line installation for this location as quickly as possible. We have an opening date scheduled of June 1, 2008. We appreciate all that you are doing to help us out. Please let me know if you need additional information and I will be looking for the invoice for the construction of this water line in the coming weeks.

Regards,

Barbara Knight
Executive Assistant to
Terry Ross, VP of Construction
& Environmental Services
Phone (405) 302-6774
Fax (405) 463-3774
E-mail barbarak@loves.com

cc: File





STEVEN L. BESHEAR
GOVERNOR

ROBERT D. VANCE
SECRETARY

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

DIVISION OF WATER

14 REILLY ROAD

FRANKFORT, KENTUCKY 40601

www.kentucky.gov

April 18, 2008

Mr. James L Smith, Manager
Carroll Co Water District 1
205 Main Cross St
Ghent, KY 41045

RE: Carroll Co Water District 1
AI # 694, APE20080002
PWSID # 0210066-08-002
HWY 1039 and Speedway Boulevard WLE
Carroll County, KY

Dear Mr. Smith:

We have reviewed the plans and specifications for the above referenced project. The plans include the construction of approximately 2,860 feet of 6-inch PVC waterline. This is to advise that plans and specifications for the above referenced project are APPROVED with respect to sanitary features of design, as of this date with the requirements contained in the attached construction permit.

Based on the hydraulic analysis/data submitted, the areas served by this extension (HWY 1039 and Speedway Blvd 6-inch waterline and the connecting 8-inch waterline along Speedway Blvd) are considered to be underserved. This designation indicates that without improvements to the existing infrastructure, future extensions may not be able to provide the required minimum pressure of 30 psi on the discharge side of customers' meters. Without improvements to the infrastructure, future extensions may be denied. The underserved designation may be used to help prioritize areas under the Governor's 2020 plan for funding future infrastructure improvements.

If you have any questions concerning this project, please contact Ms. Sarah Tucker at 502-564-8158 extension 482.

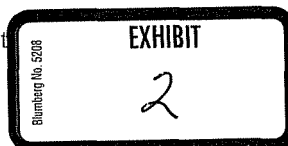
Sincerely,

for Donna S. Marlin, Manager
Drinking Water Branch
Division of Water

MR:ST

Enclosures

C: Viox & Voix Inc
Carroll County Health Department
Public Service Commission



jim smith

From: Adam Chaney [adamcwwb@fuse.net]
Sent: Monday, April 21, 2008 8:29 AM
To: carrollcountywat@bellsouth.net
Cc: Dennis Williams
Subject: 1039 Water Line

Jim,

Per our discussions, Whitehorse Development Group, LLC currently owns the 8" water line installed to the utility easement crossing Patsy Keaton's property. We have no contract in place or further obligations with regard to extending this line. Therefore, Carroll County Water has our permission to tie its service line into our existing pipe. If you have any other questions please give me a call.

Thank You
Adam Chaney
Whitehorse Development Group, LLC
802-4802

4/23/2008

