

**FILE OR RECORDING DOCUMENTS**

Date: November 19, 2007

**SUBJECT: Carroll County Water District vs. Gallatin County Water District 2007-00202**

FILING OR RECORDING OF DOCUMENTS:

**Response to Emergency Motion for Modification of Order**

**Ruth H. Baxter/dmp**

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**TO: Public Service Commission  
P.O. Box 615  
Frankfort, KY 40601**

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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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 )

CASE NO. 2007-00202

**CARROLL COUNTY WATER DISTRICT NO. 1'S RESPONSE TO EMERGENCY MOTION FOR MODIFICATION OF ORDER FILED BY WHITEHORSE DEVELOPMENT CO.**

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Comes now Complainant Carroll County Water District No. 1, and objects to the Emergency Motion for Modification of Order Prohibiting Gallatin County Water District from Constructing Water Lines and Providing Water Services filed by Whitehorse Development Co., and as grounds therefore states as follows:

**STATEMENT OF FACTS**

Complainant Carroll County Water District No. 1 (hereinafter "CCWD") seeks sanctions against the Defendant Gallatin County Water District (hereinafter "Gallatin County") as a result of its violation of KRS Chapter 74 through its deliberate intrusion into the CCWD service territory without a certificate of convenience and necessity from the Kentucky Public Service

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Commission (hereinafter PSC). The PSC entered an Order dated August 1, 2007, which prohibits Gallatin County from constructing water lines and providing water service within the ‘disputed area’ pending a resolution by the PSC.

At a hearing convened before the PSC, testimony from Adam Chaney, a member of the Intervening Complainant Whitehorse Development Group, LLC, (hereinafter “Whitehorse”) disclosed:

1. That the “disputed area” had been owned by Whitehorse for a period of in excess of seven (7) years, and that despite its marketing efforts, no one had purchased any of the tract until the day prior to the PSC hearing when Luv’s Country Store had acquired a fifty-one (51) acre portion of the Whitehorse tract;

2. That Whitehorse has no present intention and no future intention of purchasing water for the site, as it is not constructing any building on the property, nor operating any business at the site. Instead, it continues to market the disputed area for others to purchase the land and make financial investments to operate businesses at the site. There were no other contracts to sell or pending offers to purchase the Whitehorse land, or any portion thereof, at the time of the PSC hearing;

3. That Whitehorse has never applied for water service from the CCWD and has no intention of applying for water service from the CCWD or Gallatin County, as it has no need of water as it would not be operating a business at the disputed site;

4. That Luv’s Country Store had not applied for water service from the CCWD at the time the hearing was convened, and has not since applied for water service from the CCWD;

5. That the water requirements of Luv's Country Store as introduced at the PSC hearing can be met by CCWD;

6. That CCWD stands ready, willing and able to provide water to Luv's Country Store upon its applying for water service;

7. That Gallatin County has never filed for a certificate of convenience and/or necessity from the PSC to serve customers in the CCWD service territory; and,

8. That the construction by Whitehorse's agent of the water line from the end of Gallatin County's illegal water line that intrudes into the CCWD territory, which continues to the Whitehorse lands, were constructed without a permit from the Kentucky Division of Water as required by law.

**OBJECTION TO EMERGENCY MOTION**

Based upon the uncontraverted testimony at the PSC hearing, CCWD objects to the Whitehorse Motion for Modification of the Order which prohibits Gallatin County from constructing water lines and providing water service within the CCWD territory, and as grounds for its Objection states:

**A. NO 'EMERGENCY' EXISTS THAT NECESSITATES MODIFICATION OF THE PUBLIC SERVICE COMMISSION'S ORDER**

While Whitehorse contends that an 'emergency' exists which necessitates the PSC allowing Gallatin County to provide water service to it during the pendency of this action, in truth and in fact, no such 'emergency' exists. As testified by Adam Chaney, a member of the Whitehorse limited liability company, Whitehorse has no present need for water in CCWD's territory at the Interstate and Highway 1039 property. Indeed, there has been no application for water at the site

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according to his testimony because Whitehorse will not be using water at the site. Indeed, the site is unimproved real estate with no physical facility. Whitehorse has no present intentions to construct a building at the site, nor to use water at the site. Mr. Chaney also testified that it has no pending sales of any other tracts of land at its development, which confirms that there is no 'emergency' need for modification of this Order.

Further, if it is Luv's Country Store that requires water service, then Whitehorse has no legal standing to seek water service for Luv's Country Store. There has been no assertion that Whitehorse legally represents Luv's Country Store, nor is Luv's Country Store a party to these proceedings. Whitehorse simply sold the land to Luv's on which Luv's will build a truck stop with a convenience store. If Whitehorse misrepresented to Luv's the nature and extent of water service at the site, then it will have to deal with its misrepresentations. The PSC Order has been in place since August 1, 2007, and Luv's Country Store has been on 'notice' of these proceedings, but has never sought to intervene in this matter seeking water service to the site, nor apply to CCWD (or even to Gallatin County) for water service. If Luv's Country Store needs a modification of the PSC Order, then Luv's would be the proper party to intervene in these proceedings and seek a modification of the Order, not Whitehorse. As Whitehorse has no present or future intentions of utilizing water service itself at the site, then it cannot claim there is an 'emergency' necessitating a modification of the PSC's Order.

**B. CCWD STANDS READY, WILLING AND ABLE TO PROVIDE WATER SERVICE TO LUV'S COUNTRY STORE WITHIN ITS TERRITORIAL BOUNDARIES**

If Whitehorse's concern is water service for Luv's Country Store, then Modification of the PSC's Order of August 1, 2007, is not required, as CCWD stands ready, willing and able to

serve the truck stop once applies for water service. However, as the PSC proceedings established, Luv's Country Store has never applied to the CCWD for water service. Jim Smith, CCWD Manager, testified that CCWD can provide the 10,000 gallons of water per day which was represented by its engineer, MTF Engineering<sup>1</sup>, to be the needs for the Truck Stop at the site. When Luv's Country Store applies for its water service, then the CCWD will confirm in writing its ability to provide the new business its water service, and can make its water line available in a very short time. Mr. Smith testified that CCWD can extend its existing 4 inch line to the site, approximately 4,700 feet within a matter of two (2) months. As Luv's Country Store has not at this point even began construction at the site, CCWD submits that there is more than ample time to provide the water service requested by Luv's Country Store.

Moreover, it is undisputed that the area within which Luv's Country Store is to be built is within the territorial boundaries of CCWD, said boundary having been established pursuant to KRS Chapter 74, upon the vote and approval of the Carroll, Gallatin and Owen Fiscal Courts. CCWD is thus the proper water district to provide water service to Luv's Country Store. Gallatin County has no legal authority to serve the area within which Luv's Country Store is to be located. Accordingly, there is no need for a 'modification' of the PSC Order, as Gallatin County is not the proper entity to serve Luv's Country Store with water.

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<sup>1</sup>MTF's report does NOT include any provision for fire service as Whitehorse contends, and the construction of a tank at the site will only be necessary if fire protection service cannot be accomplished through a sprinkler system. CCWD Manager Smith testified that CCWD could provide fire protection service through a sprinkler system, but as Luv's Country Store has never applied for water service, Whitehorse is only speculating about what Luv's needs or doesn't need and when those needs must be met.

**C. MODIFYING THE PSC ORDER IS NOT IN THE BEST INTEREST OF ALL PARTIES**

Whitehorse misrepresents the true nature of these proceedings, and fails to establish why the PSC can legally deviate from Kentucky law. First, the PSC is not being asked to ‘resolve territorial disputes’, as there is no ‘dispute’ that Gallatin County has constructed a water line within the physical boundaries of CCWD’s territory. Indeed, all of Gallatin County’s witnesses at the hearing confirmed that they were aware that its construction of the 8 inch water line was physically within the CCWD territorial boundaries. Thus, there is no dispute that the area within which Luv’s Country Store is to be located is within the service area of CCWD.

Second, there is no dispute that Gallatin County intruded into CCWD’s territory without first obtaining a certificate of convenience and necessity from the PSC which is a prerequisite for serving a customer within the territorial boundaries of another water district. Indeed, Gallatin County admitted at the PSC hearing that it had not applied for a certificate, and had no intention of seeking such a certificate. Instead, Gallatin County intends to defy Kentucky Revised Statutes Chapter 74, and construct water lines as it sees fit, without the PSC’s authority, and without complying with the Division of Water’s permitting requirements.

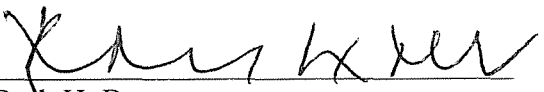
Third, there is no statutory authority for the PSC to order and/or allow Gallatin County to provide water service within CCWD’s territory absent compliance with its own regulations. If PSC modifies its Order, then it is announcing to all public utilities that its own regulations do not have to be followed, and that utility service can occur without the prerequisite of obtaining the required certificate of convenience and necessity, and the proper permits required by the Kentucky Division of Water. Modification of its Order would then send a message that a

business can ignore PSC rules and regulations even if it is caught attempting to circumvent the rules by proceeding illegally and pleading ignorance. No one is being denied water service as Whitehorse complains. Instead, no one has applied to CCWD for water service! CCWD has repeatedly stated that it operates on the basis of fact, not speculation. If an entity wants water service within its territorial boundaries, the CCWD stands ready, willing and able to provide such service. Until such point where CCWD refuses to provide the water service, or advises the PSC it cannot provide the requested water service, the PSC must honor its own rules and regulations, and deny the modification Whitehorse requested. Instead, the PSC should direct any potential water customer within the CCWD's territorial boundaries to file a request with CCWD for water service so it can provide such service as had been represented.

WHEREFORE, the Carroll County Water District No. 1 objects to the Motion for "Emergency" Modification of the Order of August 1, 2007, as stated herein.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Response was mailed postage prepaid, on this the 19th day of November, 2007, to:

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P.O. Box 807  
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