

COMMONWEALTH OF KENTUCKY

BEFORE PUBLIC SERVICE COMMISSION

RECEIVED

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PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF: )  
 )  
 JIMMY HARSTON and )  
 RANDY HARSON (RIVERBEND) )  
 )  
 COMPLAINANTS )  
 )  
 v. )  
 )  
 ALLEN COUNTY WATER DISTRICT (ACWD) )  
 )  
 DEFENDANT )

CASE NO. 2007-00310

**JIMMY HARSTON'S ANSWERS TO INTERROGATORIES  
 AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
 PROPOUNDED BY ALLEN COUNTY WATER DISTRICT**

\* \* \* \* \*

Complainant, Jimmy Harston, for his Answers to Interrogatories and Requests for Production of Documents propounded by Allen County Water District, states as follows:

**INTERROGATORIES**

1. State your name, address and phone numbers.  
**ANSWER: Jimmy Harston, 13020 Scottsville Road, Lucas, Kentucky 42150;  
 270-646-3199**
2. State what your capacity is with Riverbend Ridge, Inc..  
**ANSWER: Vice President.**
3. Does Riverbend Ridge, Inc. own and operate any developments other than Phase I and Phase II of Riverbend Ridge Subdivision on Erwin Road?  
**ANSWER: No.**
4. Please state in detail what negotiations, oral or written, you had with the Allen County Water District, its Manager, Bobby Petty, its Chairman, John H. Jones, or any of the members of the Board of Commissioners with regard to supplying water to Riverbend Ridge before you started developing Riverbend Ridge.

**ANSWER: I had no negotiations. I had some discussions.**

5. Please produce any written documents you presented to the Allen County Water District before or during the development of Riverbend Ridge.

**ANSWER: None that I recall or of which I have any record.**

6. Please produce any written documents you have received from Allen County Water District before or during the development of Riverbend Ridge Phase I and Phase II.

**ANSWER: See attached letter to Public Service Commission by Attorney James S. Secrest, Sr. dated June 5, 2006 and attached letter to James S. Secrest, Sr. by Public Service Commission dated November 8, 2006. If there were others, I do not recall them.**

7. Did you obtain a copy of the Allen County Water District's Tariffs before beginning the development of Riverbend Ridge Phase I and Phase II?

**ANSWER: Yes, at or immediately before the Phase II development.**

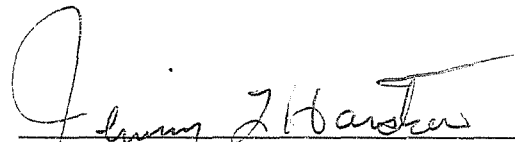
8. Have you had any estimates made of the costs of enlarging existing Allen County Water District's Transmission Lines to provide water to all of the lots in Phase I and Phase II of Riverbend Ridge? If so, please produce a copy of same.

**ANSWER: I had an estimate made, but I no longer have a copy. It was about \$47,000.00, but it was not for enlargement, but a new line.**

9. Have you had any engineering studies made that would conflict with or contradict the conclusion of Allen County Water District's engineers as to the cost of enlarging transmission lines so as to provide public water to all lots in Phase I and Phase II of Riverbend Ridge? If so, please provide a copy.

**ANSWER: No.**

This 23 day of January, 2008.


  
\_\_\_\_\_  
JIMMY HARSTON, COMPLAINANT

STATE OF KENTUCKY

COUNTY OF BARREN

On the 23 day of January, 2008, the foregoing instrument was subscribed and

sworn to before me by JIMMY HARSTON, who personally appeared before me and is known to me (or who produced sufficient evidence that they are the person(s) described in and who executed the foregoing instrument).

  
NOTARY PUBLIC, KENTUCKY AT LARGE  
My Commission Expires: 5-2-2011

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing Jimmy Harston's Answers to Interrogatories and Requests for Production of Documents Propounded by Allen County Water District has been mailed, postage prepaid to the following: Hon. James S. Secrest, Sr., Secrest & Secrest, 210 West Main St., P. O. Box 35, Scottsville, KY 42164-0035, Attorney for Defendant, and also ten (10) copies to the Public Service Commission, P. O. Box 615, Frankfort, KY 40602-0615.

This 23 day of January, 2008.

RICHARDSON, GARDNER,  
BARRICKMAN & ALEXANDER  
117 East Washington Street  
Glasgow, KY 42141  
(270) 651-8884, FAX (270) 651-3662

  
BOBBY H. RICHARDSON  
ATTORNEY FOR COMPLAINANTS

*Mr. Wuetcher*

Law Offices

# Secrest & Secrest

# FILE COPY

James S. Secrest  
James S. Secrest, Jr.

210 WEST MAIN STREET  
P.O. BOX 35

Office Staff

SCOTTSVILLE, KENTUCKY 42164-0035

Carrie B. Richards  
Caroline Hartmann  
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Phone 270-237-3616  
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email: jsecrest@nctc.com

5 June 2006

Hon. Gerald E. Wuetcher  
Assistant General Counsel  
PUBLIC SERVICE COMMISSION OF KENTUCKY  
P O BOX 615  
Frankfort, KY 40602-0615

In Re: ALLEN COUNTY WATER DISTRICT  
APPLICATION OF RIVERBEND RIDGE, INC.  
TO ALLEN COUNTY WATER DISTRICT TO  
PROVIDE WATER TO PHASE II OF RIVERBEND  
RIDGE SUBDIVISION

808 KAR 5:066, SECTIONS 10 AND 11

Dear Mr. Wuetcher:

This letter is written on behalf of the Commissioners of the Allen County Water District for the purpose of obtaining from the Commission advice as to the District's obligation to provide water to Phase II of Riverbend Ridge Subdivision, Phase II (32 lots).

Riverbend Ridge, Inc. has applied to the ACWD to supply water to **Phase II** of Riverbend Ridge Subdivision (32 lots). The ACWD presently supplies water to Phase I of Riverbend Ridge Subdivision (10) lots from its 3 inch transmission line which extends approximately 3 miles from Port Oliver Road along Erwin Road to the end of Erwin Road. Riverbend Ridge Phase I is at the end of the Erwin Road. See Plat attached.

Engineers for the ACWD advise that PHASE II of Riverbend Ridge Subdivision cannot be served from the ACWD's existing 3 inch transmission line; that in order for ACWD to serve Phase II, a new 4-inch "re-enforcement" transmission line must be laid along the 3" line for the entire 3 mile distance along Erwin Road. This 4" line would be "tied in" with the existing 3" line at both ends, so as not to comprise existing customers along the 3" line and in Phase I. See correspondence from Kenviron's attached.

ACWD's tariff provides: "It is the utility's policy that the infrastructure costs of residential developments should be paid by the developer rather than by the existing customers of the utility. Most of the utility's distribution lines were designed and constructed to serve farms with infrequently interspaced residential lots. For purposes of this rule a lot is considered more residential than agricultural in nature if the lot is less than 15 acres.

The developer of each residential development on an existing distribution line shall be required to pay to the utility a Line Enlargement Charge. Such charge shall be equal to the number of feet of road frontage of the residential development on the existing distribution line multiplied by 1/2 of the average costs of installing the utility's minimum size distribution water main. The charge will normally be charged only for the frontage of lots less than 15 acres. However, if a development contains lots both less than and greater than 15 acres, then the charge will be assessed for the frontage of the entire development if more than 1/2 of the frontage is occupied by lots of less than 15 acres. No charge will be made for the frontage of any tract served by an existing meter in front of that lot. However, such tract will be considered under the preceding sentence for the purpose of determining whether to charge for the remaining frontage of the development.

No preliminary plat will be signed until the developer has agreed in writing to pay the required Line Enlargement Charge. No final plat will be signed until the developer has paid the required Line Enlargement Charge.

The funds from the Line Enlargement Charge shall be placed in an Escrow Account. These funds shall be used only for enlarging distribution lines and, under exceptions circumstances, when the additional construction will be cheaper than enlarging the affected lines, and for installation of connections between water mains such as dead-end lines."

See Line Enlargement Charge Rule attached.

Of course, the developer seeks to have the ACWD provide water via the existing 3-inch Transmission Line and the new 4 inch Water Transmission Line to Phase II of its development at the expense of the District. The Commissioners believe that the Developers should pay the cost of the installation of the new 4" "reinforcement" transmission line along Erwin Road.

ON THE OTHER SIDE OF THE COIN, the Developers tell the ACWD that the Glasgow Water Company, which serves Barren County and is just across

the Big Barren River from Riverbend Ridge Phase II, has agreed to serve Phase II of Riverbend Ridge as a part of the Glasgow Water Company's service area if the Developers will pay the costs of laying the line across the River. The expense to the Developers of crossing Barren River is significantly less than the expense to the developers of installing "the reinforcement" 4-inch line along the Erwin Road. This would mean that the Allen County Water District would have to cede Phase II of its service area to Glasgow Water District. One of the problems with this is that ACWD's minimum residential bill is \$16.17, while Glasgow's Water Company is \$10.75.

Our questions are: (1) **Is the ACWD obligated under rules of the Public Service Commission to install at its expense the reinforcement 4" transmission line under these circumstances and considering that the 4" line is to be connected at both ends to the existing 3" ACWD Transmission Line?** (2) **If the ACWD refuses to install the 4" line at its expense, is the ACWD obligated to cede Phase II of its service area to the Glasgow Water Company, assuming the Glasgow Water Company contracts with developers to provide water for Phase II with the Developer paying only for the costs of crossing the river?**

I am under the impression that the Glasgow Water Company is not subject to the jurisdiction of the Public Service Commission.

Your kind attention to this matter and early reply will be greatly appreciated.

Thank you.

Yours truly,

SECRET & SECRET

James S. Secrets, Sr.

JSS:cbr

cc: ACWD

Mr. Carlos Miller, P.E.

**Enclosures** (1) Sheet No. 47 ACWD  
(2) Kenvirons Letter of 04/05/2006  
(3) Kenvirons Letter of 04/06/2006  
(4) Kenvirons Letter of 04/24/2006, with Plat attached  
Yellow is existing line along Erwin Road;  
Green is proposed 4-inch "reinforcement" line

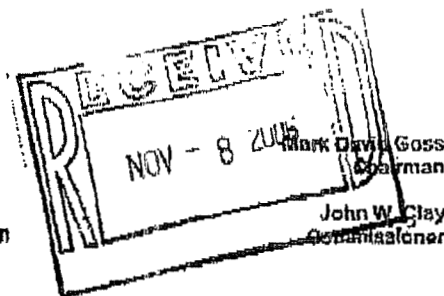
Ernie Fletcher  
Governor

Teresa J. Hill, Secretary  
Environmental and Public  
Protection Cabinet

Christopher L. Lilly  
Commissioner  
Department of Public Protection



Commonwealth of Kentucky  
Public Service Commission  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
pac.ky.gov



November 8, 2006

James S. Secret, Sr., Esq.  
Secret & Secret  
210 West Main Street  
Post Office Box 35  
Scottsville, Kentucky 42164-0035

Re: Riverbend Ridge Subdivision Extension

Dear Mr. Secret:

Commission Staff acknowledges receipt of your letter of June 5, 2006 regarding a request that Allen County Water District has received for a proposed water main extension to the Riverbend Ridge Subdivision in Allen County, Kentucky. I apologize for the delay in responding.

In your letter, you present the following facts:

Allen County Water District ("ACWD") is a water district organized pursuant to KRS Chapter 74. It provides water to the unincorporated areas of Allen County, Kentucky.

Riverbend Ridge, Inc. is a real estate subdivision developer that is developing a subdivision in Allen County. ACWD presently supplies water to Phase I of the Riverbend Ridge Subdivision from a 3-inch water distribution main that extends approximately 3 miles from Port Oliver Road along Erwin Road to the end of Erwin Road. Phase I consists of 10 tracts.

Riverbend Ridge, Inc. has applied to ACWD for water service for Phase II of the Riverbend Ridge Subdivision. Phase II consists of 32 tracts. ACWD's engineering consultant advises that the existing 3-inch distribution main that serves Phase I is inadequate to serve the new tracts and maintain water pressure at acceptable levels. He advises that approximately 14,000 feet of 4-inch

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reinforcement water distribution main must be installed along Erwin Road and connected to both ends of the existing 3-inch water distribution main to ensure adequate water service to customers in both phases of the development.

ACWD has in its rate schedule a "Line Enlargement Charge" that requires "[t]he developer of each residential development on an existing distribution line . . . to pay to the utility a Line Enlargement Charge . . . equal to the number of feet of road frontage of the residential development on the existing distribution line multiplied by 1/2 of the average cost of installing the utility's minimum size distribution main.

ACWD takes the position that Riverbend Ridge, Inc. should pay the cost of the installation of the new 4-inch reinforcement main. Reluctant to assume this cost, Riverbend Ridge, Inc. has advised ACWD that the City of Glasgow, a municipal utility that is not subject to Commission jurisdiction, is willing to provide service to Phase II if Riverbend Ridge assumes the cost of installing a water distribution main across the Barren River. The cost of installing a 4-inch water distribution main across the Barren River is significantly less than the installation of a 4-inch reinforcement main.

You present two questions for Commission Staff's consideration:

1. Does existing law require ACWD to install the 4-inch reinforcement water distribution main at its own expense?
2. If ACWD refuses to install the 4-inch reinforcement water distribution main at its own expense and Glasgow agrees to serve Phase II of the Riverbend Ridge Subdivision, must ACWD cede Phase II to Glasgow?

In responding to your first question, Commission Staff assumes that the area in which Phase II of the Riverbend Ridge Subdivision is located entirely in ACWD's territory.<sup>1</sup> In Kentucky every utility has the duty to "render adequate, efficient and reasonable service . . . within the scope or area of service provided for in its certificate of convenience and necessity." City of Bardstown v. Louisville Gas & Electric Co., 383

<sup>1</sup> A water district's territory is established in the fiscal court ordinance that created the water district. After the water district's creation, the county judge/executive of the county in which the water district is located or an adjoining county may expand the water district's territory. See KRS 74.110-115.



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S.W.2d 918, 920 (Ky.1964).<sup>2</sup> For water districts, which are public utilities,<sup>3</sup> this duty to serve extends to all inhabitants within their territories.<sup>4</sup>

This duty to serve also requires that a public utility expand its services to meet increased customer demand. In Board of Fire Com'rs of Fire Dist. No. 3, Piscataway Tp. v. Elizabethtown Water Co., 142 A.2d 85, 87 (N.J. 1958) (citations omitted), the New Jersey Supreme Court noted that a utility's obligation extended to future demands:

The franchise thus created constituted a contract between the utility and the municipality, subject, of course, to the state regulatory power. The burden assumed thereby was a community service; it was not limited to the establishment of a system suitable only to the then current needs. Included also was the utility's duty to keep in view the probable growth of the township, both in population and in structural development, and to make gradual extensions of its mains to meet the reasonable demands that would inevitably result.

ACWD is obligated to serve Phase II of the Riverbend Ridge Subdivision and to install the facilities necessary to meet its demands. Absent any provisions in its filed rate schedules to the contrary, ACWD must bear the cost of the installation of all facilities necessary to ensure adequate service.

Commission Staff notes that ACWD's filed rate schedule provides for a "Line Enlargement Charge" Rate<sup>5</sup> and that the charge appears to be applicable to the proposed subdivision. KRS 278.160(2)<sup>6</sup> requires ACWD to assess Riverbend Ridge, Inc. a charge consistent with the formula set forth in the "Line Enlargement Charge" Rate Schedule. Based upon the limited information provided in your letter, Commission

<sup>2</sup> See also KRS 278.030(3); KRS 278.280.

<sup>3</sup> KRS 278.015.

<sup>4</sup> The Attorney General has opined that a "water district is under an obligation to serve all inhabitants . . . within its geographical area of service as fixed under KRS 74.010 and as defined by the certificate of convenience and necessity"

<sup>5</sup> The developer of each residential development on an existing distribution line shall be required to pay to the utility a Line Enlargement Charge. Such charge shall be equal to the number of feet of road frontage of the residential development on the existing distribution line multiplied by 1/2 of the average cost of installing the utility's minimum size distribution water main. The charge will normally be charged only for the frontage of lots less than 15 acres. However, if a development contains lots both less than and greater than 15 acres, then the charge will be assessed for the footage of the entire development if more than 1/2 of the frontage is occupied by lots of less than 15 acres. No charge will be made for the frontage of any tract served by an existing meter in front of that lot. However, such tract will be considered under the preceding sentence for the purpose of determining whether to charge for the remaining frontage of the development.

<sup>6</sup> No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

James Secrest, Sr., Esq.

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Staff is unable to ascertain whether this charge is equal to the cost of the required 4-inch reinforcement water distribution main.

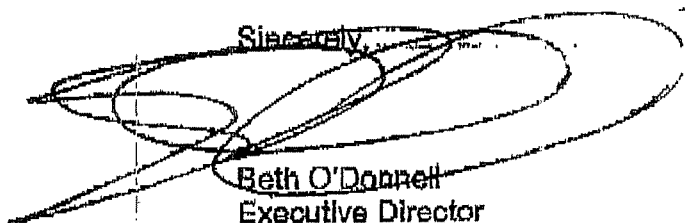
As to your second question, Commission Staff disagrees with its implied premise that ACWD may refuse to serve the proposed development or construct the necessary facilities to ensure that adequate water service is available within its territory. Notwithstanding this issue, Commission Staff is of the opinion that Glasgow lacks any legal authority to serve the territory in question without ACWD's consent. KRS 96.150(1) provides in pertinent part:

Any city that owns or operates a water supply or sanitary sewer system may extend the system into, and furnish and sell water and provide sanitary sewers to any person within, any territory contiguous to the city, and may install within that territory necessary apparatus; provided, however, that the extension of a water supply or sanitary sewer system shall not enter into any territory served by an existing water supply or sanitary sewer district unless such district requests the extension of water or sewer services from a city [emphasis added].

Moreover, since ACWD currently has loans with the U.S. Department of Agriculture, 7 U.S.C.A. §1926(b) also prevents Glasgow from extending service into any territory that ACWD presently serves without the water district's consent.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Deputy General Counsel, at (502) 564-3940, Extension 259.

Sincerely,



Beth O'Donnell  
Executive Director