

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICES COMMISSION
CASE NO. 2007-00202

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COMMISSION

IN RE: The Matter of:

CARROLL COUNTY WATER DISTRICT, NO. 1	:	CASE NO. 2007-00202
	:	
Plaintiff,	:	
Vs.	:	
	:	
WHITEHORSE DEVELOPMENT CO.	:	
	:	
Intervening Plaintiff,	:	
Vs.	:	
	:	
GALLATIN COUNTY WATER DISTRICT	:	
	:	
Defendants.	:	

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

The Intervening Plaintiff, Whitehorse Development Company (“Whitehorse”), by and through counsel, for its Memorandum in Support of its Motion to Intervene, states as follows:

I. INTRODUCTION

The Carroll County Water District No. 1 (“Carroll County”), brought the instant action on May 21, 2007, seeking a declaratory judgment and injunctive relief. The case originated when a dispute arose between Carroll County and the Gallatin County Water District (“Gallatin County”) as to who has the right to supply water service to an area lying in Carroll, Gallatin, and Owen Counties. The subject area consists of land at the intersection of Interstate 71 and Kentucky Highway 1039. Currently, the subject area is undergoing commercial development

that requires water service. The Intervening Plaintiff, Whitehorse Development Company, is the owner of over fifty acres at this location. Presently, Whitehorse has twenty acres undercontract and has been preparing the site for development in reliance on the availability of utilities.

At the present time both Carroll County and Gallatin County seek to provide water services. However, only Gallatin County has the current capacity and ability to serve the subject site. Gallatin County currently maintains an eight-inch line approximately eight-hundred feet away from the subject site. Furthermore, the prospective continuation of the existing line to the subject site has been fully engineered. In contrast, Carroll County maintains only a four-inch water line that is over three thousand four hundred feet away. In addition, Carroll County would be required to construct a water tank in order to serve the subject area.

II. ARGUMENT

Motions to Intervene are governed by Public Service Commission Regulation 807 KAR 5:001, Section 3(8). It provides in part:

If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

807 KAR 5:001, Section 3(8) (2007).

“Thus the regulation requires a person seeking to intervene to establish either (1) a special interest in the proceeding, or (2) that intervention is likely to develop facts and issues which assist the Commission in the case.” 1996 Ky. PUC LEXIS 191 (2007).

“The right of intervention in a Commission proceeding broadly parallels the right of intervention under Civil Rule 24.01(b).” Id. In interpreting Civil Rule 24, Kentucky courts have

construed it liberally to effect the general purposes of intervention. Yocom v. Hi-Flame Coals, Inc., 568 S.W.2d 757 (Ky. Ct. App. 1978). In pertinent part, Civil Rule 24.01, provides that

[u]pon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless that interest is adequately represented by existing parties.

CR 24.01(1)(b) (2006).

Thus, Civil Rule 24 permits a party to intervene in an action when he can establish that he (a) filed his motion timely; (b) has an interest relating to the subject of the action; (c) that his ability to protect his interest may be impaired or impeded; and (d) that none of the existing parties adequately represent his interest. 1996 Ky. PUC LEXIS 191 (2007).

A. Whitehorse Has Timely Filed its Motion to Intervene

The determination of timeliness for a Motion to Intervene is within the Commission's discretion. 1996 Ky. PUC LEXIS 178 (Ky. PUC 1996). Kentucky courts have used the following factors in determining whether a motion to intervene has been timely filed:

(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Grubbs v. Norris, 870 F.2d 343 (6th Cir. 1989).

Whitehorse's Motion to Intervene is timely because the proceeding is currently in the pleading phase of litigation and discovery has yet to begin. Furthermore, neither Carroll County nor Gallatin County will be prejudiced by Whitehorse's intervention in this lawsuit. This is

because Whitehorse has been present and active in the fact situation which gave rise to the pending litigation from its inception. Finally, there are no unusual circumstances militating against intervention.

B. Whitehorse Has A Special Interest In the Proceeding

In order to intervene in a lawsuit, the intervener must have a “special interest” in the proceeding. 1996 Ky. PUC LEXIS 191. “The term “interest” under CR 24.01(b) has been defined as a “significantly protectable interest.” Id. (citing Philipps, Kentucky Practice, 5th Ed., Civil Rule 24.01).

Whitehorse has a special interest in the proceeding because they are undercontract to sell over twenty acres at the subject site. The existing contracts are dependent upon appropriate water service being provided at the subject site. Accordingly, Whitehorse’s ability to fully perform existing contracts is jeopardized by the present case. Furthermore, Whitehorse’s ability to operate and profit by developing the subject site is endangered by the present case. This is because Carroll County does not have the appropriate infrastructure at the subject site and cannot build such infrastructure in time to meet the needs of the parties wishing to develop the area. In short, Whitehorse has a direct economic interest and a business interest which may become impaired by the Court’s disposition of this case.

C. Allowing Whitehorse to Intervene will Develop Facts and Issues Which Will Assist the Commission in the Case

The intervention of Whitehorse will develop facts and issues because Whitehorse is the only party that contains information regarding the entities that will be located at the site in the future. Currently, Whitehorse has twenty acres at the subject site undercontract with other entities. Whitehorse can provide information regarding the types of entities that will be located at the subject site and the specific water specifications that will be required. Therefore, the

intervention of Whitehorse is crucial to the determination of what infrastructure will be needed in order to provide adequate water service to the site. Such information is vital to the commission's decision due to the significant differences in existing infrastructure of the two disputing water districts.

D. Whitehorse's Ability to Protect Its Stated Interest Will Be Impaired If It Cannot Intervene In the Instant Action Because None of the Existing Parties Adequately Represent Whitehorse's Interest.

Whitehorse's ability to protect its interest will be impaired or impeded if it is not permitted to intervene in the instant action. More specifically, if the commission resolves the present action in Carroll County's favor, Whitehorse's right to develop its land could be severely impaired. This is because businesses will not seek to build on land that is incapable of servicing their water usage needs.

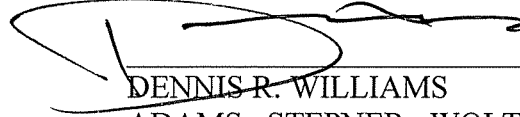
Secondly, Gallatin County cannot adequately represent Whitehorse's interest. This is because Gallatin County is not a party to the existing contracts that Whitehorse has entered into. Consequently, Gallatin County is not fully apprised of the business relations between Whitehorse and the entities that are undercontract with Whitehorse. As a result, Gallatin County cannot adequately represent Whitehorse's interests.

III. CONCLUSION

Based on the foregoing, each of the factors to be considered when determining whether a party should be permitted to intervene in a lawsuit weigh in favor of the Whitehorse

Development Company. Accordingly, Whitehorse respectfully requests that the Commission grants its Motion to Intervene.

Respectfully submitted,



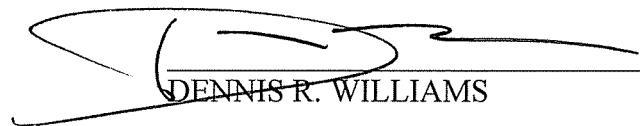
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed via regular U.S. Mail, postage pre-paid, this 20th day of September, 2007 to:

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