

Reply to: Covington

November 9, 2007

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NOV 13 2007

PUBLIC SERVICE  
COMMISSION

Commonwealth of Kentucky  
Public Service Commission  
Attention: Filings  
211 Sower Boulevard  
Frankfort, KY 40601

RE: Carroll County Water District, No. 1 v. Whitehorse Development Co. vs. Gallatin County  
Water District  
Case No. 2007-00202

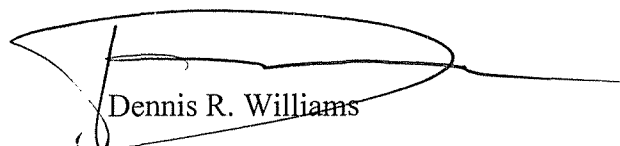
Dear Sir or Madam:

Enclosed please find an original and 11 copies of Intervening Complainant's Emergency Motion for Modification of Order Prohibiting Gallatin County Water District from Constructing Water Lines and Providing Water Service. Please file same and return to me a filed stamped copy in the self-addressed, stamped envelope enclosed for your convenience.

If you have any questions or comments, please feel free to contact me.

Sincerely,

ADAMS, STEPNER,  
WOLTERMANN & DUSING, P.L.L.C.

  
Dennis R. Williams

DRW:smg

Enclosure

Cc: Ruth H. Baxter  
Stephen P. Huddleston

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE 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  
:   
Complainant, :   
Vs. :   
WHITEHORSE DEVELOPMENT GROUP, LLC :   
:   
Intervening Complainant, :   
Vs. :   
GALLATIN COUNTY WATER DISTRICT :   
:   
Defendant. :

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**EMERGENCY**  
**MOTION FOR MODIFICATION OF ORDER PROHIBITING GALLATIN**  
**COUNTY WATER DISTRICT FROM CONSTRUCTING WATER LINES**  
**AND PROVIDING WATER SERVICES**

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Comes now, the Intervening Plaintiff, Whitehorse Development Group, LLC, (hereinafter referred to as “Whitehorse”), by and through counsel, and respectfully moves this Commission for a Modification of the Public Service Commission Order dated August 1, 2007, prohibiting Gallatin County from constructing water lines and providing water services to the development site. Modification of the existing Order is proper for the following reasons:

**I. INTRODUCTION AND PROCEDURAL STATUS.**

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 Districts (“Gallatin County”) as to who has the right to supply water service to an area lying in Gallatin County, but in the Carroll County Water District service area. 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 immediate water service.

This matter was heard by the Commission’s hearing officer on November 1, 2007, with all parties offering testimony regarding the issues raised before the Commission. A briefing schedule has been set for this matter, but a water connection is needed prior to the anticipated time for decision by the Commission.

## **II. FACTUAL BACKGROUND**

The Intervening Plaintiff, Whitehorse, is the owner of over fifty acres at this location. Whitehorse has recently closed with Love’s Travel Stop and County Store (“Love’s Country Store”) selling to them approximately twenty acres which has been prepared for development in reliance on the availability of utilities. At the present time both Carroll County and Gallatin County Water Districts 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 one-hundred feet away from connection to a line to the site. In contrast, Carroll County maintains only a four-inch water line that is some four thousand seven hundred feet away, which can not meet the estimated water flow needed for the development with fire suppression. For Carroll County to even begin to meet such needs, the evidence at the hearing on November 1 revealed that it would need to construct a 400,000 gallon water tank, on

some unknown location, at a cost of \$400,000.00. The evidence further reflected it would take approximately one (1) year to construct this tank, if a location and funding were even available.

On July 18, 2007, prior to Whitehorse intervening, The Public Service Commission held a hearing on Carroll County's motion to prohibit Gallatin County from constructing water lines and servicing the water needs of the development. During the course of the hearing, both Carroll County and Gallatin County agreed to two conditions. The first condition prohibited Gallatin County from constructing any water lines within the territory of Carroll County and also prohibited Gallatin County from allowing third parties to connect to its existing water line within the territory of Carroll County. The second condition mandated that Gallatin County would not furnish or sell water from its existing line within the territory of Carroll County to any customers not served by Gallatin County as of July 18, 2007. On August 1, 2007, the Public Service Commission issued an Order that required Gallatin County and Carroll County to follow the agreed upon conditions. The resulting effect of this Order is to deny any users located, or to be located at the development site, to receive any type of water service.

### **III. ARGUMENTS IN SUPPORT OF EMERGENCY MOTION TO MODIFY**

The existing Order prohibiting Gallatin County from constructing water lines or providing water services to the development area coupled with the timeline set for briefing the issues in the case before the Commission, threatens the development, and imposes an unintended result upon the user within the development area. It should therefore be modified to permit the construction of water lines and connection with Gallatin County's line at least on a temporary basis, for the following reasons. First, the facts upon which the Order was issued, were not

clearly understood and/or have changed. Presently, there is a user who has an immediate need to complete connection to a known existing sufficient water source.

There are three possible resolutions of the pending action. First, the Commission could decide that it does not have jurisdiction to decide the dispute, as raised by Gallatin County's counsel at the Hearing. Second, the Commission could decide, as Carroll County's counsel has argued, that the eight-inch water line built in their territory should be surrendered to them, with them being given access to buy water from Gallatin County. Third, the Commission could decide, I suppose, that the eight-inch water line be abandoned and that Carroll County can build in their district and that they would have to provide service to the development site.

Whatever the outcome of the case pending, it makes no sense to punish the developer or the end user while this case is pending. The eight-inch water line exists and has sufficient water flow for both the use and fire suppression. It is in the ground and a duplication of facilities in the service area is not only unnecessary, but against the well established policy of the Commission.

**A. Factual Changes Occurring Since the Issuance of the Order Require a Modification Permitting Gallatin County to Construct Water Lines and Temporarily Service the Water Needs of the Development Site.**

Whitehorse Development and Love's Country Store are in immediate need of a connection to a known and sufficient water source. Evidence presented at the hearing on November 1 established that the only immediate source capable of servicing the existing and future water needs is Gallatin County. Gallatin County currently maintains an eight-inch line approximately one-hundred feet away from connection to a line to the site. As a result, Gallatin County is ready, able and willing to provide water service to the site. In contrast, evidence at the hearing on November 1 established that Carroll County would not be capable of providing water services to the site for at least one (1) year, and then only after significant capital investment.

Presently, Carroll County maintains only a four-inch water line that is some four thousand seven hundred feet away, which can not meet the estimated water flow needed for the development with fire suppression. In addition, Carroll County would need to construct a 400,000 gallon water tank at a cost of \$400,000.00.

Love's Country Store and Whitehorse Development cannot afford to wait over one year for water services. Whitehorse has recently closed with Love's Country Store selling to them approximately twenty acres which has been prepared for development in reliance on the availability of utilities. However, the existing Order prevents Love's Country Store from being able to acquire water service. The resulting damage to Love's Country Store is immediate, severe, and ongoing. Permitting the Order to remain unmodified will result in continuing damage to an innocent end user. Such a result is in opposition to the Public Service Commission's Mission Statement:

The mission of the Kentucky Public Service Commission is to foster the provision of safe and **reliable service** at a reasonable price to the customers of jurisdictional utilities while providing for the financial stability of those utilities by setting fair and just rates, and supporting their operational competence by overseeing regulated activities.

Furthermore, the existing Order also jeopardizes Whitehorse's ability to fully perform existing anticipated contracts. Presently, Whitehorse is undercontract to sell certain parcels of real estate at the development site. However, the existing Order prevents Whitehorse from being able to provide water services to such locations. As a result, Whitehorse's ability to operate and profit by developing the subject site is endangered by the present Order.

The Public Service Commission's fundamental principle of providing reliable water service must be followed. Preventing innocent end users from receiving water service that is readily available is in complete contradiction with the Commission's commitment to providing

reliable service. In addition, the Commission must abide by its well established policy of preventing wasteful duplication of utility facilities. Accordingly, the Emergency Motion For Modification of Order Prohibiting Gallatin County From Constructing Water Lines and Providing Water Services must be granted.

**B. Regardless of the Outcome of the Pending Case, Permitting Gallatin County to Service the Water Needs of the Development Site on a Temporary Basis Is in the Best Interest of All Parties.**

Permitting Gallatin County to service the water needs of the development site on a temporary basis will prevent needless damage to numerous parties while protecting the interest of all involved. Presently, there are three possible resolutions to the pending action. Modifying the existing Order will accommodate all three resolutions while permanently relieving end users of ongoing damage.

The first potential resolution would be a determination that the Public Service Commission does not have jurisdiction to decide the dispute. In this event, permitting Gallatin County to temporarily service the water needs of the development site would avoid needless damage to end users while still retaining all available remedies. A determination that the Commission does not have subject matter jurisdiction is likely, as previous cases have established that the Public Service Commission does not have the authority to determine service territories for water utilities. *See 2004 Ky. PUC LEXIS 216, 4 (Ky. PUC 2004)* (establishing that KRS Chapter 278 does not authorize the Public Service Commission to establish or enforce exclusive service territories for water utilities). *See also Georgetown v. Public Service Com., 516 S.W.2d 842, 845 (Ky. 1974)* (determining that Public Service Commission lacks any legal authority to resolve territory disputes that arise between municipal water utilities and public water utilities).

The second potential resolution would result in a ruling that the eight-inch water line built by Gallatin County would be surrendered to Carroll County, with Carroll County being given access to buy water from Gallatin County. If this was the case, permitting Gallatin County to temporarily service the water needs of the development site would cause no harm to any party. In fact, permitting Gallatin County to complete construction of water lines to the development site would eliminate the massive amount of funds that Carroll County would need to expend in order to develop infrastructure capable of serving the site. Any revenue from sale of water can be escrowed to be used as ultimately determined by the Commission.

Finally, it could be decided that the eight-inch water line constructed by Gallatin County be abandoned and that Carroll County build the necessary infrastructure to provide water service to the site. In this event, temporarily allowing Gallatin County to utilize their existing water line to service the area would alleviate the end users current suffering while causing no damages to any party. No damages would be incurred by Gallatin County as the infrastructure necessary to provide water services is already in place.

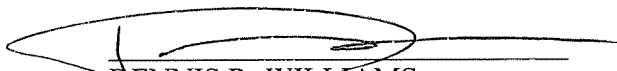
In any event, modifying the existing Order to permit Gallatin County to temporarily service the development site will cause no harm to any party involved. More importantly, it will resolve the unintended harm that is being caused by the existing Order. Whitehorse and Love's Country Store have an immediate need and legitimate right to receive water service. Failing to temporarily utilize the available source of water is inexcusable.



**IV. CONCLUSION**

Based upon the foregoing, Whitehorse asks that the Court grant the Motion for Modification and permit Gallatin County to construct water lines and provide temporary water service to the development site.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

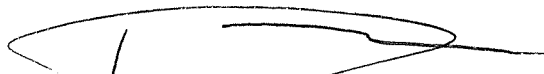
I hereby certify that a true and correct copy of the foregoing was faxed and mailed via regular U.S. Mail, postage pre-paid, this *9th* day of November, 2007 to:

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Original to:

Commonwealth of Kentucky  
Public Service: Filings  
211 Sower Boulevard  
Frankfort, KY 40601



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