

Reply to: Covington

November 28, 2007

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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

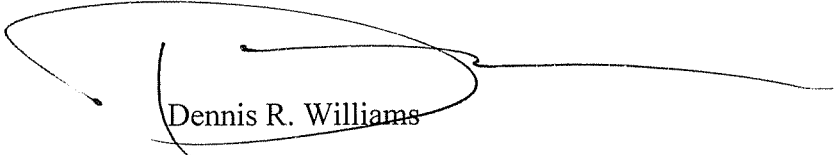
Dear Sir or Madam:

Enclosed please find an original and 11 copies of Intervening Complainant's Reply to Carroll county Water District No.1's Response to Emergency Motion for Modification of Order. 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.	:	

**INTERVENING PLAINTIFF, WHITEHORSE DEVELOPMENT GROUP, LLC'S
REPLY TO CARROLL COUNTY WATER DISTRICT NO. 1'S RESPONSE TO
EMERGENCY MOTION FOR MODIFICATION OF ORDER**

Comes now, the Intervening Plaintiff, Whitehorse Development Group, LLC, ("Whitehorse"), by and through counsel, and for its Reply to Carroll County Water District No.1's ("Carroll County") Response and Objection to Whitehorse's Emergency Motion for Modification of Order Prohibiting Gallatin County Water District ("Gallatin County") from Constructing Water Lines and Providing Water Services ("Emergency Motion"), hereby states as follows:

I. INTRODUCTION AND PROCEDURAL STATUS

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 Public Service Commission

("Commission"). In response, Whitehorse filed an Emergency Motion on November 13, 2007, in order to ensure that water services would be provided to the development area. Thereafter, on November 20, 2007, Carroll County filed a Response in opposition to Whitehorse's Emergency Motion. Whitehorse wishes to briefly address arguments presented by Carroll County in their Response in opposition.

II. FACTUAL BACKGROUND

The Intervening Plaintiff, Whitehorse, is the owner of over thirty (30) acres at the development site. At the present time both Carroll County and Gallatin County seek to provide water services. On November 1, 2007, a Public Hearing was held at which the parties presented witness testimony. Testimony at the hearing provided new evidence and also clarified factual issues that had been previously established in the pleadings. Nevertheless, Carroll County's Response continues to erroneously state multiple facts that must be corrected in order for this Commission to properly address the issues before them.

First, Whitehorse has recently closed with Love's Travel Stop and County Store ("Love's"), selling to them approximately twenty (20) acres, not fifty-one (51) acres as stated by Carroll County. Tr. 277. In fact, the entire development consists of only fifty-one (51) acres. Tr. 276. Second, Carroll County incorrectly asserts that Whitehorse has been attempting to sell developed lots at the development cite for over seven (7) years. In truth, Whitehorse has only been developing and attempting to sell parcels of land for the last eighteen (18) months. Tr. 277. Third, Carroll County states that Whitehorse has no present or future intention to purchase water for the site. This statement is in complete contradiction with Mr. Chaney's testimony. Whitehorse currently has plans to build on the land located at the development cite. Tr. 292.

Finally, Carroll County continues to inaccurately assert that they are capable of providing adequate water service to the development.

III. LEGAL ARGUMENTS

A. **Modification of the Order is Proper because Carroll County's Four-Inch Water Line is Unable to Meet Fire Suppression Needs or to Accommodate Additional Water Needs Arising in the near Future.**

Modification of the Commission's order is required because Carroll County's four-inch water line cannot meet the potable water and fire suppression needs of future end users at the development site. Carroll County's repeated claim that they can meet the water needs of the development site is not only wrong, but in complete contradiction with testimony provided by their own witness. Carroll County continues to state that they can meet the water needs of Love's because they can provide the 10,000 gallons of water per day that Love's is anticipated to use. However, such an assertion distorts the truth by failing to mention the fact that Carroll County cannot meet the state mandated fire suppression needs of Love's. Tr. 112.

It is undisputed that Carroll County's four-inch water line cannot meet the fire suppression needs that Love's requires. More specifically, fire suppression at Love's would require a fire hydrant capable of providing five-hundred (500) gallons of water per minute. Tr. 320. It is physically impossible for Carroll County's four-inch water line to provide five-hundred (500) gallons of water per minute. Tr. 320. Furthermore, an eight-inch water line is the minimum line size that can be connected to a water hydrant. Tr. 300-321. In fact, James L. Smith, Manager of Carroll County Water District No.1, stated the following,

I have said to everyone from day one, hour one, minute one, that a 4-inch line will not provide fire water in a fire hydrant and have a fire hydrant that could be certified through the state. It won't work. Tr. 111-112.

Mr. Smith went on to explain that in order to provide fire suppression service that could be certified through the State Fire Marshall's Office, Carroll County would be required to erect a water tank. Tr. 112. Such a water tank would cost approximately \$400,000.00 to construct. Tr. 113. Furthermore, Whitehorse and Love's would be required to fund approximately fifty percent of the \$400,000.00 construction cost. Id. In contrast, Mr. Smith admits that Gallatin County's eight-inch line is capable of meeting fire suppression needs without any substantial financial expenditure. Id. Therefore, Carroll County's water line not only fails to meet the appropriate fire suppression needs, but also fails to meet the physical capability of being able to be connected to a water hydrant. As a result, it is evident that Carroll County cannot meet the water requirement needs of Love's without spending approximately \$400,000.00.

Additionally, Carroll County's four-inch water line is not capable of being adapted to meet sanitary sewer water requirements of future end users located at the development site. Tr. 326. Testimony established at the hearing confirmed that all parties agree future development at the site is expected, if not imminent. Tr. 75. As a result, serving not only the existing needs but also the future needs of the site is important to consider. As established, Carroll County's four-inch line can barely meet the sanitary water needs of the development site at the present time. Tr. 326. In fact, any development beyond Love's would result in the four-inch line being unable to meet the sanitary water needs. Id. The most likely remedy for such a situation would be for Carroll County to remove the four-inch line and replace it with an eight-inch line. Tr. 328. Thus, even if Carroll County could meet the present requirement needs, future development at the site would require Carroll County to expend massive sums of money to replace inadequate infrastructure.

In conclusion, it must be reiterated that no matter how many times Carroll County asserts to the contrary, the evidence as a whole clearly establishes that they cannot provide the required water services.

B. The Motion for Modification of the Order Must be Granted because the Need for Water Service at the Development Site is Immediate.

Once again, Carroll County continues to disregard evidence and asserts that there is not an immediate need for water service at the development site. In fact, Carroll County makes this assertion with full knowledge that Love's and Whitehorse desperately need water service.

Love's has completed the purchase of land at the development site and is seeking to begin construction at the site as soon as possible. Tr. 294. However, construction of Love's facility cannot begin until a building permit has been acquired. Tr. 296. Such a building permit can only be acquired if Love's can establish that they have an appropriate fire suppression plan in place. Id. Love's cannot establish this because they have NO water service. Id. Thus, it is quite evident that Love's need for water service is immediate. Furthermore, construction cannot begin at the site until the subcontractors are capable of accessing water service. Tr. 287. Water service is needed by all of the subcontractors in order to proceed on construction of Love's facility. Tr. 287. In conclusion, Love's need for water service is not only immediate, but two fold.

Whitehorse is also in immediate need of water at the development site in order to facilitate the sale of the remaining land. As explained by Mr. Chaney, Whitehorse cannot sell the existing pads at the site until water service has been established. Tr. 284. The reason for such is that entities are not willing to gamble on whether or not they will be able to receive water service. This is because they understand that there is the possibility that they could end up like

Love's. More specifically, they could expend great sums of money to purchase land and not be able to begin construction due to not having water services. Furthermore, although Whitehorse is not currently building on the development site, Whitehorse does have plans to build on the site in the future. Tr. 292.

In conclusion, Carroll County's contention that water service is not needed because no one has applied for water service is moot, as it is readily apparent that both Love's and Whitehorse seek water service.

C. The Motion for Modification of the Order Must be Granted because Permitting Gallatin County to Service the Water Needs of the Development Site on a Temporary Basis is in the Best Interest of All Parties.

Upon receipt of Carroll County's Response, Whitehorse was startled to find that Carroll County did not even address or attempt to respond to Whitehorse's assertion that permitting Gallatin County to service the water needs of the development site on a temporary basis will prevent needless damage to numerous parties while causing no harm. Instead, Carroll County attempted to distort the truth by commenting on facts that are uncontested. More specifically, that Gallatin County constructed water lines within Carroll County's boundaries without a certificate of convenience. In an attempt to further distort the truth, Carroll County implies that the Commission has no authority to permit Gallatin County to provide water services within Carroll County's territory. Such could not be farther from the truth, in fact, 807 KAR 5:006 permits the Commission to deviate from its administrative regulations when good cause is shown. This, taken into consideration with the Commission's fundamental principle of preventing wasteful duplication of utility facilities leads to but one conclusion. That being, the

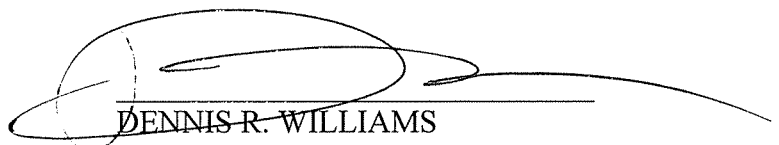
Commission must grant the Emergency Motion providing for temporary water service by Gallatin County.

Even with no reply being necessary, it is important to again look at the temporary solution of permitting Gallatin County to service the water needs of the development site until this Commission makes a ruling on the ongoing matter. Permitting Gallatin County to temporarily service the site will lead to several events taking place. First, Love's and Whitehorse will be able to receive water service. Thus, construction can began on Love's facility and Whitehorse can proceed to sell the land. Second, all remedies available to the Commission will remain in place. Third, no harm will be caused to any party.

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

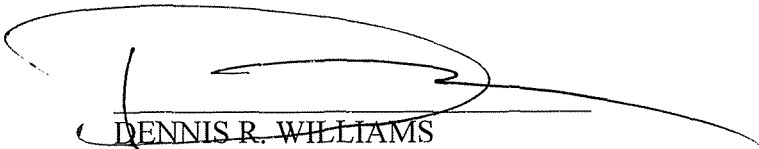
I hereby certify that a true and correct copy of the foregoing was faxed and mailed via regular U.S. Mail, postage pre-paid, this 27th day of November, 2007 to:

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