



Steven L. Beshear
Governor

Robert D. Vance, Secretary
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Mark David Goss
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John W. Clay
Vice Chairman

Caroline Pitt Clark
Commissioner

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40 W. Pike Street
P.O. Box 861
Covington, KY 41012

February 6, 2008

RE: Case No. 2007-00202

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell".

Beth O'Donnell
Executive Director

BOD/tw
Enclosure



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Attorney at Law
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523 Highland Avenue
P. O. Box 353
Carrollton, KY 41008

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Caroline Pitt Clark
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Tammy Hendren
Secretary
Gallatin County Water District
4500 Highway 455
Sparta, KY 41086

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P.O. Box 807
Warsaw, KY 41095

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Mark David Goss
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Caroline Pitt Clark
Commissioner

James L. Smith
Manager
Carroll County Water District #1
205 Main Cross
P. O. Box 350
Ghent, KY 41045

February 6, 2008

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CARROLL COUNTY WATER DISTRICT NO. 1)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2007-00202
)	
GALLATIN COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

Whitehorse Development Group LLC (“Whitehorse”) has moved for modification of our Order of August 1, 2007 in this matter. At issue is whether emergency conditions exist that require modification of that Order in which we directed Gallatin County Water District (“Gallatin District”) to refrain, pending the final adjudication of this matter, from connecting any persons to a water main that Gallatin District has constructed and that is located within the territory of Carroll County Water District No. 1 (“Carroll District”). Finding no compelling basis to modify our Order, we deny the motion.

Carroll District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that produce and distribute water to approximately 2,677 customers in Carroll, Gallatin and Owen counties, Kentucky.¹ It is a utility subject to Commission jurisdiction.²

¹ Annual Report of Carroll County Water District No. 1 to the Kentucky Public Service Commission for the Year Ended December 31, 2006 at 5 and 27.

² KRS 278.010(3)(d); KRS 278.015; KRS 278.040.

Gallatin District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that produce and distribute water to approximately 1,794 customers in Boone, Gallatin and Grant counties, Kentucky.³ It is a utility subject to Commission jurisdiction.⁴

Whitehorse is a limited liability company that is organized pursuant to KRS Chapter 275. It owns approximately 33 acres of land that are located in Gallatin County, Kentucky and within Carroll District's territorial boundaries. Whitehorse is currently marketing this property for commercial development. It has constructed a water main from this property to the Gallatin District water main that is the subject of this proceeding.

On May 21, 2007, Carroll District filed a formal complaint against Gallatin District in which it alleged that Gallatin District had constructed a water main inside Carroll District's territory and was attempting to provide water service to a commercial development located within Carroll District's territory and outside of Gallatin District's territory.⁵ Carroll District alleged that Gallatin District's actions were contrary to KRS Chapter 74 and Chapter 278.

³ Annual Report of Gallatin County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2006 at 5 and 27.

⁴ See supra note 2.

⁵ The fiscal court that creates a water district establishes the territory in which that water district may operate. See KRS 65.805 - .830. KRS Chapter 74 establishes a process by which that territory may be altered or amended. See KRS 74.110 - .115. A water district may generally provide service only within this defined territory. Olson v. Preston St. Water Dist. No. 1, 291 Ky. 155, 163 S.W.2d 307 (1942). But see KRS 74.414 (permitting a water district to contract with municipalities, other water districts and sewer construction districts to operate water or sanitary sewer systems outside its territory).

When filing its formal complaint, Carroll District also moved that the Commission direct Gallatin District to cease construction of the water main in question until the Commission ruled upon Carroll District's complaint. After a hearing on the motion in which Gallatin District agreed to refrain from constructing any water facilities in Carroll District's territory and from permitting the connection of its existing water main to any other facilities, the Commission, inter alia, prohibited Gallatin District from permitting any third party to connect to the water main in question and from furnishing water service through the water main to any persons not receiving water service as of July 17, 2007. We further directed that a copy of this Order be served upon Whitehorse.

Following the issuance of our Order of August 1, 2007, Whitehorse intervened in this proceeding. It appeared at the hearing that the Commission held in this proceeding on November 1, 2007 and presented testimony.

On November 13, 2007, Whitehorse moved to modify the Order of August 1, 2007 to permit Gallatin District to provide water service to its property through the water main that Whitehorse has constructed.⁶ In support of its motion, Whitehorse asserts that circumstances have changed since August 1. It states that it recently sold a portion of its property -- approximately 20 acres of land -- to Love's Travel Stop and Country Store ("Love's Country Store"). Love's Country Store, Whitehorse asserts, will suffer "immediate, severe, and ongoing" damage if it is unable to immediately obtain water service.⁷

⁶ Carroll District has responded in opposition to the motion. Gallatin District has not responded.

⁷ Whitehorse's Emergency Motion for Modification at 5.

Whitehorse further contends that it will suffer a significant loss if not allowed to receive water immediately. It asserts that it has contracted to sell certain parcels of its property, is obligated to ensure the availability of water service to those parcels, and cannot fulfill that obligation without modification of the Order of August 1. Modification of the Order, Whitehorse asserts, is necessary to prevent unintended and harmful damage to innocent end users and is consistent with the Commission's statutory obligation to ensure reliable service.⁸

Having considered the motion, the Commission finds that Whitehorse has failed to demonstrate a compelling need to amend the Order of August 1. We find little evidence in the record to support the proposition that a connection to Gallatin District facilities is immediately needed. There is no reliable evidence as to Love's Country Store's need for water. No representative of Love's Country Store has offered testimony in this proceeding. The record reflects no motion for intervention or a request to amend the Order from Love's Country Store. Whitehorse provides no meaningful information in its motion about the current needs of Love's Country Store. At the hearing in this matter, Whitehorse's principal witness conceded a lack of specific knowledge.⁹ Finally, the record is void of any evidence that Love's Country Store requested and was denied water service from Carroll District.

Whitehorse has also failed to present any evidence to demonstrate that it has requested and been denied water service from Carroll District. In addition, it has not

⁸ Id.

⁹ Questioned as to the need, Mr. Chaney stated: "I can't speak for them or what they're actually—I'm not building the building" Transcript of 11/1/2007 Hearing at 295.

produced or identified any existing contracts for the sale of real estate to support its position that a pending sale is dependent upon the immediate or future water service.

Our review of the record, furthermore, indicates that Whitehorse had adequate notice of the water districts' ongoing dispute prior to its sale of real estate to Love's Country Store. Whitehorse has owned the property since 2000.¹⁰ It had discussions with both water districts regarding water service beginning in 2006 and was aware of the Commission proceedings in July 2007.¹¹ It was served with the Order of August 1, 2007.¹² Despite receiving this Order and being placed on notice as to the restrictions that we had imposed on Gallatin District, Whitehorse proceeded to construct a water main to connect to Gallatin District's water main¹³ and to transfer a portion of its real estate to Love's Country Store with an alleged guarantee of water service.¹⁴

As at least one of Whitehorse's principals was experienced in commercial real estate development,¹⁵ Whitehorse should have recognized the potential problems that the water districts' dispute posed and any obligations to inform potential real estate purchasers. Its actions after having clearly received notice of the water districts' dispute indicates a deliberate and knowing course of conduct that cannot serve as a basis for modification of the Order of August 1, 2007.

¹⁰ Transcript of 11/1/2007 Hearing at 292.

¹¹ Id. at 277-280, 283-284.

¹² Order of August 1, 2007 at 2.

¹³ Transcript of 11/1/2007 Hearing at 297.

¹⁴ The transfer of real estate from Whitehorse to Love's Country Store occurred in late October 2007. Transcript of 11/1/2007 Hearing at 293.


¹⁵ Transcript of 11/1/2007 Hearing at 286-287.

IT IS THEREFORE ORDERED that Whitehorse's Emergency Motion for Modification of Order is denied.

Done at Frankfort, Kentucky, this 6th day of February, 2008.

By the Commission

ATTEST:


Executive Director

Case No. 2007-00202