

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CARROLL COUNTY WATER)	
DISTRICT NO. 1)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2022-00351
)	
GALLATIN COUNTY WATER)	
DISTRICT)	
)	
DEFENDANT)	

VERIFIED COMPLAINT

Pursuant to KRS 278.040(3), KRS 278.260 and 807 KAR 5;001, Section 20, Carroll County Water District No. 1 (“Carroll District” or “Complainant”) for its complaint states:

Introduction

1. Complainant seeks relief from a consistent pattern of improper and unlawful conduct occurring over a twenty year period in which Defendant has sought: (a) through the construction of unnecessary, inefficient and wasteful facilities in violation of KRS 278.020, (b) the willful disregard of its own rules and regulations in violation of KRS 278.160, and (c) the granting of unreasonable and unlawful preferences to prospective customers in violation of KRS 278.170(1), to interfere with the service in an area that Complainant has long served in accordance

with certificates of public convenience that the Public Service Commission (“Commission”) has issued. Defendant’s unreasonable and unlawful construction of a water main to serve areas within Complainant’s longstanding service area and its subsequent efforts to promote the use of that water main has resulted in an unreasonable and wasteful expenditure of public funds and a diversion of funds away from projects that would better benefit the residents of Gallatin County.

Jurisdiction

2. The Commission has jurisdiction over this Complaint pursuant to KRS 278.040(3) and KRS 278.260.

a. KRS 278.040(3) authorizes the Commission to “investigate the methods and practices of utilities to require them to conform to the laws of this state.”

b. KRS 278.260(1) provides that the Commission shall have jurisdiction over complaints as to the service of any utility. It requires the Commission to proceed to make such investigation as it deems necessary regarding any complaint against a utility that “**any** regulation, measurement, **practice or act affecting or relating to the service** of the utility or any service in connection therewith is **unreasonable**, unsafe, insufficient or unjustly discriminatory.” A complainant does need not be a customer of a utility or have a direct financial interest

in the utility's rates or service.¹ The Commission has previously entertained and adjudicated complaints regarding a utility's interference with another utility's provision of utility service.²

c. KRS 278.280(1) provides that whenever the Commission upon complaint finds the practices of any utility subject to its jurisdiction are unjust, unreasonable, or improper, the Commission shall determine the just, reasonable, and proper practices to be employed and shall fix the same by order.

Parties

3. Carroll District is a utility subject to the Commission's jurisdiction. Its full name and post office address are: Carroll County Water District No. 1, 205 Main Cross Street, Ghent, Kentucky 41045.

4. Gallatin County Water District ("Gallatin District" or "Defendant") is a utility subject to the Commission's jurisdiction. Its full name and post office address are: Gallatin County Water District, 4500 Kentucky Highway 455, Sparta, Kentucky 41086.

¹ *Power Development Systems, Inc. v. Kentucky Utilities Company*, Case No. 9456 (Ky. Commission Feb. 27, 1986); *Hogan v. Spanish Cover Sanitation*, Case No. 94-346 (Ky. Commission Feb. 10, 1995); *Kentucky Industrial Utility Customers, Inc. v. Louisville Gas and Electric Company*, Case No. 99-082 (Ky. PSC Apr. 13, 1999).

² *See, e.g., Columbia Gas of Kentucky v. Kentucky-Ohio Gas Company*, Case No. 92-489 (Ky. Commission July 2, 1993); *Natural Energy Utility Corporation v. Columbia Gas of Kentucky, Inc.*, Case No. 2003-00422 (Ky. PSC Sept. 1, 2004); *Columbia Gas of Kentucky, Inc. v. Natural Energy Utility Corporation*, Case No. 2009-00340 (Ky. PSC Apr. 28, 2011).

5. Carroll District and Gallatin District are neighboring water utilities whose service areas overlap.

**Carroll District's Provision of Water Service
to Gallatin County Prior to 2002**

6. Carroll District is a water district organized pursuant to KRS Chapter 74. It owns and operates facilities used in production and distribution of water to or for the public for compensation in Carroll, Gallatin, and Owen Counties, Kentucky.

7. Carroll County Court created Carroll District in 1961. At the time of its creation, Carroll District's territory was confined to portions of Carroll County, Kentucky.

8. In 1983 at the urging of Gallatin County Judge Executive Clarence Davis, Carroll District petitioned for and was granted an enlargement of its territory to include the area extending east from the Carroll County-Gallatin County border to Kentucky Highway 35. The following year Carroll District obtained from the Commission a certificate of public convenience and necessity ("certificate") to construct in Gallatin County distribution facilities, including a 200,000-gallon water storage tank, a booster pumping station, and 41 miles of water distribution main, to serve the recently acquired area.³ The total cost of these facilities was \$1,208,000,

³ *Application of Carroll County Water District for a Certificate of Public Convenience and Necessity: (1) Approving the Construction of Major Additions, Extensions and improvements; (2)*

which was financed in part through the issuance of \$1,197,000 of bonds to the Farmers Home Administration (now Rural Development).

9. Judge Executive Clarence Davis subsequently recognized Carroll District's status as the water supplier to western Gallatin County when, on December 27, 1985, he issued an Order ratifying the creation of Gallatin District and establishing its boundaries. In his Order, he noted Carroll District's presence in western Gallatin County, describing Gallatin District's boundaries as:

Being all of Gallatin County, Kentucky, excepting therefrom the corporate boundaries of Glencoe and Sparta, Kentucky which are served by Tri-Village Water District, and the corporate boundaries of Warsaw, Kentucky, which is served by Warsaw Water Works and further excepting any other territory heretofore lawfully annexed by either Tri-Village Water District or Warsaw Water Works and further **excepting that part of the county lawfully annexed by Carroll County Water District** [emphasis added].

10. In 1997 Carroll District obtained a certificate from the Commission to construct a water treatment plant, 17 miles of various-sized distribution mains, and a 150,000-gallon water storage tank to serve its customers in western Gallatin County. The facilities in question were necessary to address additional demands that resulted from industrial development in Gallatin County.⁴ These facilities included

Seeking Approval of the Issuance of Certain Securities; and (3) For an Order Authorizing Adjustment of Water Service Rates and Charges, Case No 8960 (Ky. PSC Oct 19, 1984).

⁴ *The Application of Carroll County Water District No 1 of Carroll, Gallatin and Owen Counties, Kentucky, for a Certificate of Public Convenience and Necessity to Construct, Finance and Increase Rates Pursuant to KRS 278 023, Case No. 1997-00217 (Ky PSC May 19, 1997).*

the extension of a four-inch water main from Knox-Lillard Road and Drury Chapel Road to Kentucky Highway 1130. Crawford Junkyard, which is near the present intersection of Kentucky Highways 1130 and 1039, was the southernmost customer served through this extension. The total cost of these facilities was \$2,266,000, which was financed through the issuance of bonds to Rural Development.

Gallatin District's Main Extension to Kentucky Highway 1039

11. In January 1998, a group of investors announced plans to construct in Sparta, Kentucky, at a cost of \$153 million the Kentucky Speedway, a 1.5-mile oval motor speedway, to which the investors hoped to attract racing events sponsored by the Automobile Racing Club of America and the Indy Racing League. Construction of the Kentucky Speedway began in July 1998. At the time of the announcement and the commencement of the Kentucky Speedway's construction, the track site was in Carroll District's territory.

12. After the announcement of the Kentucky Speedway's construction and at the request of Gallatin County officials, Carroll District petitioned Judge/Executive Clarence Davis to diminish its territory within Gallatin County to permit Gallatin District to serve the track. On October 8, 1998, Judge/Executive Davis issued an order diminishing Carroll District's territory in Gallatin County, repositioning Carroll District's eastern boundary from Kentucky Highway 35 to

1,000 feet east of Kentucky Highway 1130 and placing the Kentucky Speedway approximately 5,000 feet outside of Carroll District's territory.

13. Subsequently, Gallatin District applied for and obtained a certificate to construct a ground water well system, treatment facilities and 30,000 linear feet of 10-inch transmission main facilities to serve the Kentucky Speedway and its surrounding areas.⁵ The cost of these facilities was approximately \$752,610. Construction of these facilities was completed in 2000.

14. In late 2000 Gallatin County Judge Executive George Zubaty encouraged Gallatin District's Board of Commissioners to extend its water mains west from the Kentucky Speedway to the area surrounding a proposed interchange for Interstate Highway 71 and new Kentucky Highway 1039. The proposed interchange was located west of Kentucky Highway 1130 and in Carroll District's territory. At a meeting held on September 14, 2000, Gallatin District's attorney informed Gallatin District's Board of Commissioners that "Judge Zubaty is very interested in trying to service the area around the new interstate exchange off HWY 1130" and believed the area was "going to be a huge area for growth." During that meeting, the Board discussed Carroll District's legal authority to serve the area and

⁵ *The Application of Gallatin County Water District for a Certificate of Public Convenience and Necessity to Construct and Finance an Improvements Project*, Case No. 99-493 (Ky. PSC Jan 25, 2000).

whether Gallatin District could gain a superior right to serve the area by constructing a water main to that area.

15. At subsequent meetings between October 2000 and September 2001, Gallatin District's Board of Commissioners ("the Board") continued these discussions.

a. In the Board's meeting on October 12, 2000, the Board's Attorney discussed with the Gallatin County Judge Executive's Order of October 8, 1998, which diminished Carroll District's territory in Gallatin County but identified areas of Gallatin County, including the area surrounding the propose interchanges, as within Carroll District's territory. In this meeting, he questioned the legality of that Order of October 8, 1998 and suggested that Gallatin District "proceed and get water to that area" to gain a superior right to serve the area.

b. At its meeting of January 11, 2001, the Board discussed plans to extend a water main to the proposed interchange. The Board was clearly aware that the area surrounding the proposed interchange was within Carroll District's territory.

The official minutes of that meeting note:

[Vice Chairman] Vic [Satchwell] asks if [District counsel] Steve [Huddleston] has found out anything about the Service Boundaries, Is that Carroll County's service area? Judge Zubaty stated that we have not found any paperwork giving them the exclusive rights to serve that area. They have applied for a KIA [Kentucky Infrastructure Authority) loan to extend their lines into that area, [District Manager] Morris [Courtney] commented that if we

already have a line there then they probably would not get approval.

During the Board meeting, at least one Board member expressed concern about the **lack of any customers and the limited use of the water main**. The official meeting minutes note that “[Vice Chairman] Vic [Satchwell] feels that we should go ahead with it but does have **concerns about spending that much money to run a dead-end line** [emphasis added].”

c. At the March 8, 2001 meeting of Gallatin District’s Board, Gallatin District’s general manager advised the Board that the project engineer was working on plans for the extension.

d. On April 13, 2001, the project engineer submitted these plans to the Kentucky Division of Water (“KDOW”) for the construction of a 6,600-foot 8-inch main extension. Included in the engineer’s submission was a letter from the Chair of Gallatin District’s Board dated April 2, 2001 accepting the plans and requesting their approval. On April 23, 2001, the KDOW approved the plans.

e. At the June 14, 2001 meeting of Gallatin District’s Board, the Board Chair Denny French advised the Board that the pipe for the proposed main extension had been purchased and an easement for the extension had been acquired.

f. On September 17, 2001, the Board held a special meeting “to discuss the feasibility of extending a water line from the backside of the KY [Kentucky] Speedway to the new road Ky. [Kentucky] 1039.” During this meeting,

Commissioner J.T. Dossett voiced concerns about the lack of any commitment from those developing the area. The minutes of the meeting note:

“J.T. feels that we still need some type of commitment from the developers that they will purchase the water from us. He would hate for us to invest that much money and then Carroll County beat us there and claims the territory.”

Despite these concerns, Gallatin District’s Board voted to request bids for the construction of a water main from the Kentucky Speedway to Kentucky Highway 1130.

g. Despite its acquisition of the materials to construct the water main and its vote to seek bids for the water main’s construction, Gallatin District did not proceed immediately with construction. At the Board’s December 13, 2001 meeting, the Board chair acknowledged having “dropped the ball on the project.” The official meeting minutes indicate that the need for an easement for the final 1,800 feet of the water main’s route, which would permit the water main to reach Kentucky Highway 1039, was delaying construction. Vice Chair Vic Satchwell agreed to approach Ms. Patsy Keeton, who owned the property for which the easement was sought and who was Mr. Satchwell’s sister, about granting an easement for the water main.

h. Ms. Keeton appeared at the Board’s meeting on January 10, 2002 and discussed with Board members granting an easement along her property for the water main extension. She noted her concerns about a potential legal dispute

between Gallatin District and Carroll District over the water main and sought assurances that granting an easement would not draw her into such dispute.

i. On April 6, 2002, Gallatin District's Board authorized engineering and design work on an additional 3,970-foot section of the water main extension. On or about July 30, 2002, Gallatin District's engineer applied to the KDOW for approval of the plans for an additional water main extension of 3,970 feet of 8-inch main. The KDOW approved these plans and specifications on August 5, 2002.

j. On September 12, 2002, Gallatin District's Board selected Lykins Construction to construct the water main extension.

16. Construction of the water main extension began in September 2002 and was completed in 2003 at a total cost of \$61,000. The water main extension involved the construction of approximately 10,600 feet of 8-inch polyvinyl chloride water main that ran from the Kentucky Speedway to an area west of Kentucky Highway 1130. It ran approximately 1,600 feet south from the Kentucky Speedway grounds to Kentucky Speedway Boulevard, then 5,000 feet west along Kentucky Speedway Boulevard until reaching the west side of Old Kentucky Highway 1130, then ran south along Old Kentucky Highway 1130 for approximately 1,800 feet, then ran west approximately 1,800 feet over a utility easement before dead ending approximately 150 feet east of Kentucky Highway 1039. Approximately 4,000 feet

of the water main was in Carroll District's territory. At the time of its construction, the main extension passed within 900 feet of Carroll District's nearest water main and terminated approximately 2,500 feet from that water main. The main extension ran along or through land on which there was no residential or commercial development.

17. At the time of main's construction:

a. Gallatin District's Board knew or should have reasonably known that the Interstate Highway 71/Kentucky Highway 1039 interchange and the surrounding area was located inside Carroll District's legal territory and in an area that Carroll District was currently providing service and outside of Gallatin District's legal territory and distant from areas Gallatin District was currently serving;

b. Carroll District had facilities in the general vicinity of the end point of Gallatin District's main extension and those facilities were capable of providing water service to the area surrounding the proposed interchange;

c. No person or entity along the water main extension's route had applied for or requested water service from Gallatin District;

d. Gallatin District officials had no specific knowledge or reasonable expectation the water main extension would serve any customer;

e. Gallatin District had no legal authority to serve the area surrounding the proposed interchange;

f. Gallatin District had undertaken no effort to enlarge its territory to include the area surrounding the interchange prior to construction; and,

g. The proposed interchange and significant sections of Kentucky Highway 1039 had yet to be constructed.

18. At the time of the construction of the main extension, KRS 278.020(1) provided:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

19. At the time of construction of the main extension, 807 KAR 5:001, Section 9 provided:

A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

20. The construction of the main was not an ordinary extension of an existing system in the usual course as it created the wasteful duplication of plant. The main extension was not required to provide service to any existing customer nor was there any reasonable expectation of serving any customer in the near future nor at the level requiring an 8-inch water main. The facilities were specifically constructed to serve an area served by another Commission-regulated utility and with the intention to prevent or interfere with that other regulated utility's service in that area.

21. Since the construction of the main extension was not an ordinary extension of an existing system in the usual course, KRS 278.020(1) required Gallatin District to obtain a certificate to construct the main extension. In failing to do so, Gallatin District willfully and knowingly violated KRS 278.020(1). Gallatin District officials willfully aided and abetted that violation.

Dispute over Service to Interstate 71/Kentucky Highway 1039 Interchange

22. The Interstate Highway 71/Kentucky Highway 1039 Interchange was opened in October 2006. Three months later, Whitehorse Development Group, LLC ("Whitehorse") approached Carroll District and Gallatin District regarding water service to a 51-acre tract of land situated north of Interstate Highway 71 and that Kentucky Highway 1039 bisected. Approximately 27 acres of this tract laid west of Kentucky Highway 1039. The remaining portion laid east of Kentucky Highway

1039. The entire tract was situated in Carroll District's territory and was approximately 4,700 feet from Carroll District's nearest water main.

23. On January 30, 2007, after discussions with each water district, Whitehorse wrote to Gallatin District to request that Gallatin District extend its 8-inch main to the Whitehorse property line.

24. On February 8, 2007, Gallatin District's Board voted to serve the proposed development and directed its attorney to inform Carroll District of its decision.

25. On March 8, 2007, after being advised of Carroll District's objections to Gallatin District's service to the Whitehorse property, Gallatin District's Board authorized Gallatin District's engineer to design the plans for the extension and submit to the KDOW. The plans and specifications for the extension were submitted to KDOW on March 30, 2007. They were approved on April 10, 2007.

26. On May 21, 2007, Carroll District filed with the Commission a formal complaint against Gallatin District in which it alleged that Gallatin District had violated KRS Chapter 74 by extending water service into Carroll District's territory and requested that Gallatin District be prohibited from serving the Whitehorse property. The Commission docketed the Complaint as Case No. 2007-00202.⁶

⁶ *Carroll County Water District No. 1 v. Gallatin County Water District*, Case No. 2007-00202 (Ky. PSC filed Mar. 8, 2007).

Carroll District further moved that Gallatin District be directed to cease construction of a water line to the Whitehorse property pending a ruling on its Complaint.

27. On August 1, 2007, the Commission issued an Order prohibiting Gallatin District from constructing any facilities within Carroll District's territory or permitting any third party from connecting its facilities to Gallatin District's existing water main that laid within Carroll District's territory.

28. Notwithstanding the Commission's Order of August 1, 2007, Whitehorse constructed an 8-inch water main from its property along state highway right-of-way to approximately 100 feet of the Gallatin District water main. In July 2007, Whitehorse contracted with former Gallatin District Board Chair Denny French to construct the main.⁷ At Gallatin District's Board of Commissioners meeting on July 12, 2007, Mr. French informed Gallatin District's Board of this contract and his intention to begin installing the water main upon obtaining the necessary easements. At that meeting, Gallatin District's Chair advised Mr. French that he was "not opposed to the contractors doing anything." Mr. French began construction on the connection on September 12, 2007, after notifying Gallatin District. He ceased construction on September 17, 2007.

29. While the Commission proceedings in Case No. 2007-00202 were pending, Gallatin District petitioned Gallatin County Judge Executive Kenny R.

⁷ At that time, Mr. French was no longer on Gallatin District's Board but was serving as Gallatin County Deputy Judge Executive.

French to enlarge its territory to include area surrounding the Interstate Highway 71/Kentucky Highway 1039 interchange, which was within the territorial boundaries of Carroll District. Over Carroll District's objection, Judge Executive French entered an Order on July 8, 2008, granting the petition and enlarging Gallatin District's territory to include:

All areas along Speedway Blvd. (a/k/a Jerry Carroll Blvd.) from KY 35 to KY 1039 and extending along the same projected line to a point 1000 ft. west of the junction of KY 1039 and Speedway Blvd., thence southwestwardly course to 1-71, AND including all of Gallatin County south of 1-71 from KY 35 and the Carroll County line; excluding any existing customers as of April 1, 2008.

A copy of this Order is attached to this Complaint as Exhibit A.⁸

30. The effect of County Judge Executive French's Order was to place areas of western Gallatin County within the territory of both water districts. This "shared territory" is shown at Exhibit B to this Complaint. This shared area consisted almost entirely of the area surrounding the Interstate Highway 71/Kentucky Highway 1039 interchange.

31. On September 15, 2008, after conducting a hearing on the Complaint, the Commission issued an Order in Case No. 2007-00202 in which it found that

⁸ Carroll District appealed this Order to Gallatin Circuit Court, which affirmed the County Judge Executive's Order. *Carroll County Water District No. 2 v. Gallatin County Judge Executive*, No. 08-CI-00194 (Gallatin Cir. April 13, 2009). The Kentucky Court of Appeals affirmed the Gallatin Circuit Court's Order. *Carroll County Water District No. 2 v. Gallatin County Judge Executive*, No. 2009-CA-000864 (Ky. Ct. App. Apr. 23, 2010), 2010 WL 1628711. A copy of the Kentucky Court of Appeals opinion is attached to this Complaint as Exhibit C.

Gallatin District's construction of the 10,600-foot main extension was not an ordinary extension in the usual course of business and required a certificate. It prohibited Gallatin District from constructing or installing any facility to provide water service within Carroll District's territory without first obtaining a certificate. It further prohibited Gallatin District from constructing any facility or installing any equipment to provide water service to the Whitehorse tract, including any facility or equipment necessary to connect its facilities to those that another party has constructed or installed without first obtaining a certificate. The Commission did not consider whether Gallatin District's actions were unreasonable. A copy of the Commission's Order is attached to this Complaint as Exhibit D.

32. Carroll District and Gallatin District brought in Franklin Circuit Court actions for review of the Commission's Order of September 15, 2008. In *Gallatin County Water District v. Public Service Commission*, No. 08-CI-01669, Franklin Circuit Court found that the Commission failed to properly consider the effects of the enlargement of Gallatin District's territory and vacated the Commission's Order of September 15, 2008. It further remanded the matter for rehearing on the question of whether the actions of Gallatin District required a certificate pursuant to KRS 278.020 and directed the Commission when addressing that question to acknowledge that "Gallatin District and Carroll District, by law have coextensive rights and duties to serve the area of Gallatin County in question." A copy of the

Franklin Circuit Court's Orders of September 15, 2009 and February 18, 2010 are attached as Exhibits E and F to this Complaint. No party appealed the Franklin Circuit Court's Orders.

33. The Commission has held no proceedings in Case No. 2007-00202 since the issuance of the Franklin Circuit Court's Orders.

**Carroll District's Current Service to the
Kentucky Highway 1039/Interstate 71 Interchange**

34. Carroll District currently provides water service to businesses located on the Whitehouse tract immediately north of Interstate Highway 71 and east of Kentucky Highway 1039. In late October 2007, Whitehouse sold 17-acres of the tract to Love's Travel Stops and Country Stores, Inc. ("Love's"). This tract is directly adjacent to Interstate Highway 71 and Kentucky Highway 1039. Love's subsequently constructed a truck stop and convenience store on the tract and contracted with Carroll District for water service. To provide water service to the Love's tract, Carroll District extended its existing water main south from Kentucky Highway 1130 along the east right-of-way line of Kentucky Highway 1039.

35. In 2014 with Commission authorization,⁹ it constructed approximately 8,280 feet of 8-inch water main running south along the west side of Kentucky Highway 1039 from the Gould Road intersection toward Kentucky Highway 1130,

⁹ *Carroll County Water District's Request for Amended Terms to Interlocal Agreements and Authority to Incur Debt Approved in Case No. 2014-00174, Case No. 2015-00125 (Ky. PSC July 6, 2015).*

then crossing Kentucky Highway 1039 just south of the Kentucky Highway 1130 intersection and running east along the south side of Kentucky Highway 1130 to provide an emergency 3-inch meter connection with Gallatin District at the intersection of Kentucky Highway 1130 and Speedway Boulevard. These improvements increased the available flow of water to the Interstate 71 interchange area, enhanced system reliability, and provided for an 8-inch main on both sides of Highway 1039 to serve future development in the interchange area.

36. Since its construction, the Gallatin District 2002 water main extension has provided very limited service. For several years, the water main extension remained a dry line, serving no customers. In recent years, Gallatin District used the water main to serve two properties, but presently serves no customers and, for water quality reasons, is valved off from the rest of Gallatin District's distribution system

**Gallatin District's Recent Efforts to Extend Service to the Northwest
Area of Interchange Area Are Unreasonable and Unlawful Acts**

37. Gallatin District has recently taken steps to extend its water main under Kentucky Highway 1039 to serve areas on the west side of Kentucky Highway 1039 where Carroll District facilities are located and are presently serving customers. On May 13, 2022, Gallatin District applied to the KDOW for approval of plans and specifications to extend its 2002 main extension approximately 361 feet due west under Kentucky Highway 1039.

38. Exhibit G to this Complaint shows the extension for which Gallatin District sought KDOW approval. Gallatin District proposed to install an eight-inch water main beginning at the point where its 2002 water main extension ended. The proposed extension would cross under Carroll District's existing eight-inch main, which runs in the highway right-of-way along the east side of Kentucky Highway 1039, and under the five lanes of Kentucky Highway 1039. The extension ends upon reaching the west side of Kentucky Highway 1039, to potentially provide service to a 5/8-inch x 3/4-inch water meter service to serve the property of Mr. David White. There are currently no structures on this property. According to Gallatin District, the water service will be used solely to provide water to a small number of livestock grazing on the property. On September 14, 2022, the KDOW approved the proposed plans and specifications. On or about October 29, 2022, contractors for Gallatin District completed the extension.

39. The extension represents an unreasonable and wasteful expenditure and constitutes inefficient investment. Based upon the awarded contract, the cost to construct the water main extension to serve a single property tract is approximately \$74,000. This amount does not include engineering, design and inspection cost. Water service will be provided to only one property. There are no structures on that property. The customer's intended use of the property suggests a limited water consumption. The expected revenue from water sales to the property is unlikely to

recover the cost of the extension and will require the Gallatin District's other customers to subsidize the extension's cost.

40. Furthermore, serving a single customer through the 2002 main extension will result in significant operating costs to Gallatin District. The White property will be the only customer served through an 11,000 foot 8-inch main. Gallatin District is likely to incur significant operating costs to maintain the quality of water provided to the White property. As a general rule, water systems "should be designed to maximize turnover and to minimize residence times while delivering acceptable pressures and flows."¹⁰ The KDOW generally requires that water distribution mains have a minimum 100% turnover rate once per 72 hours."¹¹ With only one residential user on the 2002 main extension, there will be insufficient water turnover to prevent disinfectant dissipation. Assuming average daily usage of 110 gallons, Gallatin District will be required to flush the main at least once every three days to maintain water within KDOW water quality standards. Accordingly, service to the White property will cost Gallatin District approximately \$12,000 annually. Under those conditions, service to the proposed applicant is not reasonable and

¹⁰ Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, *Recommended Standards for Water Works, 2012 Edition* §8.0 (Health Research, Inc. 2012). 401 KAR 8:100 requires that all drinking water facilities be designed and constructed in accordance with these standards

¹¹ Kentucky Division of Water, *General Design Criteria for Surface and Ground Water Supplies* (Apr. 1, 2010) at 8. 807 KAR 5:066, Section 3(1) requires Gallatin District to comply with all legal requirements of the Energy and Environment Cabinet.

subjects Gallatin District's other ratepayers to higher rates to subsidize the cost of serving the White tract.

41. The extension appears to violate Gallatin District's water main extension policy set forth in Gallatin District's filed tariff and constitutes an unreasonable preference for one customer. Gallatin District's filed tariff requires that for any main extension exceeding 50 feet, the prospective customer must deposit an amount equal to the full cost of the extension less the cost of 50 feet of the extension. Assuming the cost of the extension is \$74,000, Gallatin District's tariff required the customer to deposit \$71,950 with Gallatin District before making the extension. While Gallatin District's filed tariff permitted extension arrangements that differed from this arrangement, it required Gallatin District to obtain prior Commission approval of such arrangements. There is no record of such approval being sought or granted. In making the extension without requiring the White property to make the required deposit or seeking approval of a different extension arrangement, Gallatin District violated KRS 278.160(2) by failing to follow the terms of its filed tariff¹² and KRS 278.170(1) by giving unreasonable preferential treatment to Mr. White.

¹² See, e.g., *Kentucky Power Company: Alleged Violations of KRS 278.160 and Commission Regulation 807 KAR 5:041*, Case No. 93-380 (Ky. PSC Oct. 18, 1993) at 1 ("KRS 278.160 requires a utility to enforce the rules and regulations set forth in its filed tariffs."); *Regina Ann Morris v. Louisville Gas and Electric Company*, Case No. 2005-00010 (Ky. PSC Mar. 31, 2006) at 3 (a utility "is required to enforce and follow the provisions of its filed rate schedules.").

42. Gallatin District's provision of service to one customer through the 2002 main extension and the additional 361-foot extension constructed in October 2022 results in the wasteful duplication of facilities and inefficient investment. Carroll District already had an eight-inch main on the west side of Kentucky Highway 1039. Thus, it could have extended service to the White tract at a lower cost than \$74,000. Because there is significant water turnover on that water main, Carroll District's operational cost to provide that service would be *de minimus*.

43. Gallatin District has stated that the extension under Kentucky Highway 1039 is intended to provide for future development. By Gallatin District constructing the extension, it is engaging in the same unreasonable and speculative behavior that led to the construction of its unused and unnecessary 2002 water main extension and the wasteful use of public funds. Currently, there is no planned development on the west side of Kentucky Highway 1039. The most likely area to be developed is the tract of land on the west side of Kentucky Highway 1039 directly across from the Love's tract. Carroll District already serves the Love's tract and has an existing 8-inch water main on the east and west sides of Kentucky Highway 1039. It can likely extend service to any development on the west side of Kentucky Highway 1039 at a lower cost and without constructing costly, additional facilities that duplicate those already in the area and without the water quality problems that are likely to result from the use of the 2002 main extension.

44. Gallatin District has also stated to Carroll District officials that an additional purpose for the extension is to provide for a source of water for fire protection service to the proposed Gallatin County Airport. Gallatin District is considering extending an eight-inch main from the site of the Kentucky Highway 1039 crossing south along Kentucky Highway 1039 and under Interstate Highway 71 or one of its entrance or exit ramps to Interstate Highway 71 and then east towards the proposed airport site. Gallatin District anticipates reimbursement from the Federal Government for the cost of this extension.

45. Gallatin District proposal raises significant concerns. There are no federally obligated funds for any water infrastructure to serve the proposed Gallatin County Airport. Basing any construction upon such speculative funding is unreasonable. The proposed route, including the extension across Kentucky Highway 1039, involves a route that is the longest possible route to serve the proposed airport and has the most highway and water crossings. The route also serves the lowest ground elevation and therefore will result in much higher water pressures. Moreover, the water main is likely to experience significant water quality problems as the domestic water usage at the airport site will be limited and the primary use of the water in the water main serving the airport will be for fire protection and other emergency situations.

46. On October 6, 2022, prior to the start of construction by Gallatin District, Carroll District submitted a proposal to Gallatin District to address the issues presented to both water districts as a result of potential development in the area of Interstate Highway 71/Kentucky Highway 1039 Interchange and water service to the proposed Gallatin County Airport. A copy of this proposal is attached to this Complaint as Exhibit H. This proposal noted the problems with the 2002 water main extension and proposed to resolve these problems by Carroll District serving the west side of Kentucky Highway 1039 and purchasing sufficient volume of water from Gallatin District through the 2002 water main extension to ensure the water quality was within acceptable standards. The proposal would permit both utilities to avoid the wasteful duplication of facilities and excessive investment and allow Gallatin District to address the water quality problems associated with the 2002 water main extension.

47. On October 13, 2022, Gallatin District advised Carroll District that it would proceed with the proposed extension under Kentucky Highway 1039, effectively rejecting Carroll District's proposal. See Exhibit I to this Complaint.

Requested Relief

48. KRS 278.280(1) provides that whenever the Commission upon complaint finds the practices of any utility subject to its jurisdiction are unjust, unreasonable, or improper, the Commission shall determine the just, reasonable, and

proper practices to be employed and shall fix the same by order. Similarly, KRS 278.040 authorizes the Commission to enforce the provisions of KRS Chapter 278.

49. To allow Gallatin District to use the 2002 main extension to serve customers located in areas that Carroll District has facilities that can reasonably serve those customers is to permit Gallatin District to profit by its blatant violation of KRS 278.020(1) and its willful violations of KRS 278.160 and KRS 278.170. To avoid this result and to protect Carroll District from the adverse effects of those violations is to prohibit Gallatin District from serving any customers from the 2002 water main extension. The Commission has previously employed such remedy in cases involving similar circumstances.¹³

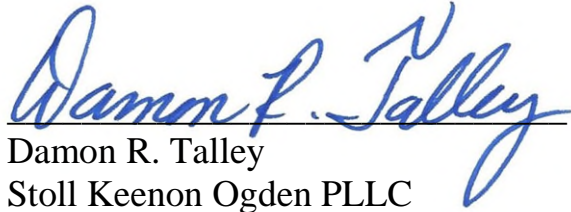
WHEREFORE, Carroll District requests that the Public Service Commission enter an Order:

1. Prohibiting Gallatin District from connecting any customer to the 361-foot water main extension running under Kentucky Highway 1039;
2. Requiring Gallatin District to comply with the provisions set forth in its filed tariff regarding the extension of water mains; and
3. Granting Carroll District any and all other relief to which it is entitled.

¹³ *Sigma Gas Corporation v. B.T.U. Gas Company, Inc.*, Case No. 2009-00018 (Ky. PSC June 30, 2009); *Columbia Gas of Kentucky v. Kentucky-Ohio Gas Company*, Case No. 91-138 (Ky. PSC Dec. 18, 1991); *Delta Natural Gas Company, Inc. v. Tranex Corporation*, Case No. 10419 (Ky. PSC July 16, 1990).

Dated: November 21, 2022

Respectfully submitted,



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Stoll Keenon Ogden PLLC
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Fax: (270) 358-9560
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523 Highland Avenue
P.O. Box 353
Carrollton, Kentucky 41009
Telephone: (502) 732-6688
Fax: (502) 732-6920
RBaxter@cbkylaw.com

*Counsel for Carroll County Water District
No. 1*

COMMONWEALTH OF KENTUCKY)
) ss
COUNTY OF CARROLL)


The undersigned, Joe Raisor, being duly sworn, deposes and states that he is the Chair of the Board of Commissioners of Carroll County Water District No. 1, the Complainant in the above proceedings; that he has read this Complaint and has noted its contents; that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, he believes same to be true.

IN TESTIMONY WHEREOF, witness the signature of the undersigned on this November 21st, 2022.



Joe Raisor
Chair, Board of Commissioners
Carroll County Water District No. 1

Subscribed and sworn to before me by Joe Raisor, Chair, Board of Commissioners, Carroll County Water District No. 1, on this November 21st, 2022.



Notary Public

Notary ID: KYNP 3305

My Commission Expires: 3/16/2024

CERTIFICATE OF SERVICE

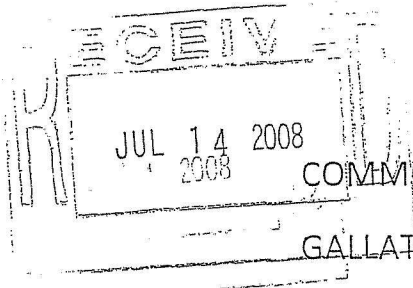
In accordance with 807 KAR 5:001, Section 8, and the Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document, including exhibits thereto, was submitted electronically to the Public Service Commission on November 21, 2022 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.


Counsel for Carroll County Water District
No. 1

EXHIBIT INDEX

<u>Exhibit</u>	<u>Exhibit Description</u>
A	Gallatin Judge Executive Order of July 8, 2008 In the Matter of Annexation of Territory by the Gallatin County Water District
B	Vicinity Map
C	<i>Carroll County Water District No. 2 v. Gallatin County Judge Executive</i> , No. 2009-CA-000864 (Ky. Ct. App. Apr. 23, 2010)
D	<i>Carroll County Water District No. 1 v. Gallatin County Water District</i> , Case No. 2007-00202 (PSC Ky. Sep. 15, 2008)
E	Gallatin County Water District v. Commonwealth of Kentucky, No. 2008-XI-01669, Order and Opinion (Franklin Cir. Ct. Sep. 15, 2009)
F	Gallatin County Water District v. Commonwealth of Kentucky, No. 2008-XI-01669, Order and Opinion (Franklin Cir. Ct. Feb. 18, 2010)
G	Aerial Photo of 360-foot Extension of Gallatin County Water District 2002 Main Extension
H	Carroll County Water District No. 1 Proposal to Gallatin County Water District Re: Water Service to Interstate Highway 71/Kentucky Highway 1039 Interchange Area
I	Gallatin County Water District Response to Carroll County Water District No. 1 Proposal

EXHIBIT A



COMMONWEALTH OF KENTUCKY
GALLATIN COUNTY FISCAL COURT

IN RE: The matter of Annexation of Territory by the Gallatin County Water District:

FINDINGS OF FACT

AND ORDER

THE Gallatin County Judge/Executive Kenny French received a request from the Gallatin County Water District to change the boundaries of the Gallatin County Water District by annexing areas within Gallatin County but within the territory of the Carroll County Water District, pursuant to KRS 74.110. The request seeks to accomplish two purposes, as it appears to this tribunal, to wit;

- 1) To clarify the status of customers in that area currently served by the Gallatin County Water District, and;
- 2) To avoid any future conflicts relative to users who might hereafter be located in the affected area.

The Gallatin County, KY area sought to be annexed is described as follows:

Beginning at Speedway Blvd. and 1000 ft., West of Junction 1039 and Speedway Blvd., Southwest Blvd., Southwest to I-71, all areas South of I-71 and all other areas south of the interstate excluding any existing customers as of April 1, 2008.

Gallatin County Judge/Executive received public comments until May 12, 2008. At 8:00 a.m. on May 12, 2008, Judge Kenny French held a public meeting to receive public comments (minutes attached of the May 12, 2008 meeting). A public hearing was duly advertised and held on May 23, 2008 at 2:00 p.m. at the Gallatin County Courthouse.

May 23, 2008 at 2:00 p.m. Gallatin County Judge/Executive Kenny R. French held a public Hearing at the Gallatin County Courthouse. This hearing was to receive both public and party testimony and any evidence on the redistricting of the Gallatin County Water District in the described areas not served by the Carroll County Water District #1 located in Gallatin County. Those in attendance were: Attorney Ruth Baxter, Judge/Executive Harold Tomlinson, Carroll County Water

District, #1 Manager Jim Smith, Carroll County Magistrate Mark Bates, Attorney Steve Huddleston, Gallatin County Water District Manager Morris Courtney, Gallatin County Water District Chairman Denny French, Gallatin County Water District Commissioner Vic Satchwell, Attorney John Wright, Judge/Executive Kenny R. French, Circuit Court Clerk Pam McIntyre, Deputy Fiscal Court Clerk & Financial Officer Elaine Lillard, and one visitor Fred Berkshire.

Gallatin County Water District was represented by Attorney Steve Huddleston. Carroll County Water District was presented to Ruth Baxter.

Both parties were given the opportunity to call and cross-examine witnesses. Questions were also asked by Judge/Executive Kenny R. French. Written comments had been received prior to the hearing from Jim Smith as Chairman of the Carroll County Water District dated May 5, 2008; Adam Chaney of Whitehorse Development dated April 18, 2008; and Carroll County Judge Executive Harold "Shorty" Tomlinson dated May 2, 2008. No comment was received from any resident of the affected area.

Based on the evidence before this hearing officer, I do hereby make the following FINDINGS OF FACT, TO WIT:

- 1) The described area is currently part of the territory of the Carroll County Water District #1. Whether a water district is entitled to exclusive rights to provide service within its territory is not an issue before this tribunal.
- 2) The area was served by Gallatin Water District at the time the first public notice was advertised in the Gallatin County News on April 16th, 2008.
- 3) Gallatin County Water District had provided service for several years in the territory in question without objection.
- 4) Gallatin County Water District has the present capacity to provide substantial volumes of water to the area, sufficient to meet current and anticipated needs of users in the area without an appreciable outlay of funds by that district or existing or future users. Carroll County Water District does not have that current capacity.
- 5) The existing new water user in the area has requested water service by the Gallatin County Water District.
- 6) Allowing the Gallatin County Water District to serve the area will enhance the desirability of Gallatin County for commercial

development, increased employment and tax base and that allowing the area to be served by Carroll County Water District will likely hinder and delay those beneficial effects.

- 7) The annexation of territory sought herein by the Gallatin County Water District is reasonably necessary to achieving the benefits set out in subparagraph (6) above.
- 8) The only debt incurred by Carroll County Water District in the described area is that associated with the recent extension of lines to serve Love's Truck Stop.

After viewing the exhibits presented in this hearing and consideration of the testimony given, and making the FINDING OF FACT set forth above, I do hereby Order as follows, pursuant to KRS 74.110.

- 1) The Gallatin County Water District's territory limits will now include the area as advertised and more clearly stated as follows: All areas along Speedway Blvd. (a/k/a Jerry Carroll Blvd.) from KY 35 to KY 1039 and extending along the same projected line to a point 1000 ft. west of the junction of KY 1039 and Speedway Blvd., thence southwestwardly course to I-71, AND including all of Gallatin County south of I-71 from KY 35 and the Carroll County line; excluding any existing customers as of April 1, 2008.
- 2) The Gallatin County Water District shall reimburse the Carroll County Water District all expenses incurred in connecting Love Brother's Truck Stop to their existing line at Tommy Crawford's residence.
- 3) The Clerk of the Gallatin County Clerk shall enter this Order in the appropriate County Order Book.

SO ORDERED this 8th day of July, 2008.


Kenny R. French
Gallatin County Judge/Executive

This is to attest that the foregoing is a true and correct copy of the FINDINGS OF FACT, and Order adopted by the Gallatin County Judge/Executive on the 8th day of July, 2008.

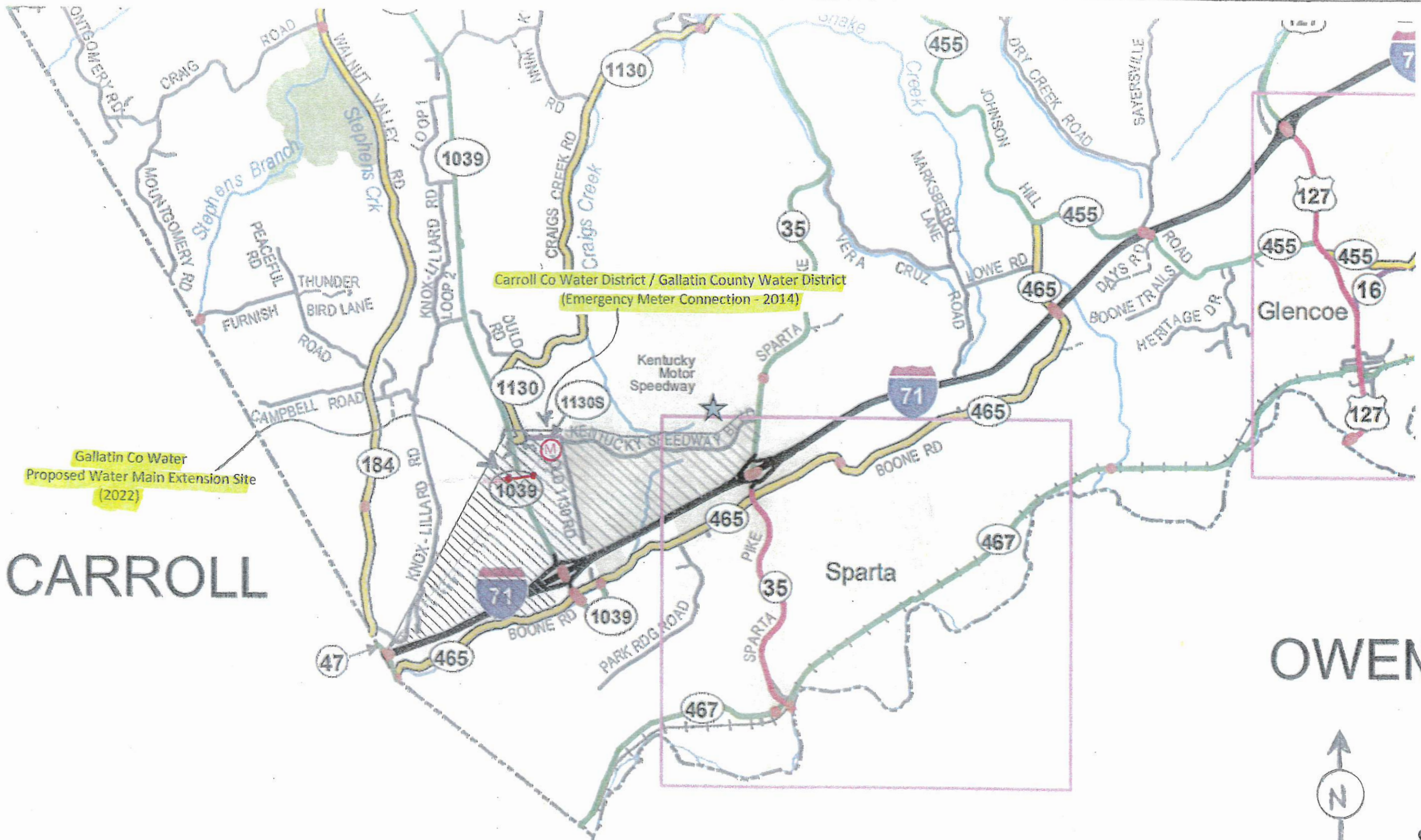
Tracy Miles
Clerk, Gallatin County Court

Copies to: Hon. John G. Wright
Hon. Stephen P. Huddleston
Hon. Ruth Baxter
Gallatin Co Water District
Carroll Water District
Carroll County Judge Executive

EXHIBIT B


CARROLL

OWEN



Gallatin Co Water
Proposed Water Main Extension Site
(2022)

Carroll Co Water District / Gallatin County Water District
(Emergency Meter Connection - 2014)

 Denotes area where Gallatin Fiscal Court expanded Gallatin County Water District's territorial limits in 2008 into Carroll County Water District's territory to create "shared territory".



Vicinity Map

CCWD
Carroll County Water District
P.O. Box 350, 205 MAIN CROSS STREET, GHENT, KENTUCKY 41045
Voice: 502.347.9500 Fax: 502.347.9333



GCWD Crossing Hwy.1039 & CCWD's Existing Water Main
CARROLL COUNTY WATER DISTRICT #1
205 MAIN CROSS STREET
GHENT, KENTUCKY 41045

Issue Date:	2022/10
Drawn By:	Obe Cox
Checked By:	DT
Revisions:	
Mark:	Date
Dwg:	CCWD-System.dwg
Project Number	00000.00
© 2011 CCWD	1

EXHIBIT C

RENDERED: APRIL 23, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000864-MR

CARROLL COUNTY WATER
DISTRICT NO. 1.

APPELLANT

v. APPEAL FROM GALLATIN CIRCUIT COURT
HONORABLE JAMES R. SCHRAND II, JUDGE
ACTION NO. 08-CI-00194

GALLATIN COUNTY JUDGE/EXECUTIVE;
GALLATIN COUNTY WATER DISTRICT;
TOMMY CRAWFORD; JOHN ZALLA;
LOVE'S TRAVEL STOPS & COUNTRY
STORE, d/b/a/ LOVE'S TRAVEL STOP #383;
AND WHITEHORSE DEVELOPMENT
GROUP, LLC.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

CLAYTON, JUDGE: This is an appeal of a decision of the Gallatin Circuit Court regarding an order of the Gallatin County Judge/Executive. Based upon the following, we affirm the decision of the trial court.

BACKGROUND INFORMATION

Carroll County Water District No. 1 (CCWD) is a public water district which originally operated in Carroll County. In 1984, however, it began to operate in Gallatin County as well. To facilitate operations in Gallatin, CCWD constructed a new water tank, booster pumps and water lines. These improvements were financed through the issuance of a bond in the amount of approximately \$1,208,000. The bond was issued through the United States Department of Agriculture's Farmers Home Administration, now the Rural Development Office, (USDA).

CCWD contends that it depends upon its existing water revenues as well as potential revenues from new customers to pay the debt owed to the USDA. Since CCWD operates in portions of Carroll, Owen and Gallatin counties, it was created by a joint order of the three counties by the County Judge/Executives located within each county.

In 1960, the Gallatin Fiscal Court established the Gallatin Rural Water District (GRWD). In September of 1998, Carroll, Owen and Gallatin Fiscal Courts

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

realigned CCWD's boundaries. The realignment in 1998 was at the request of the Gallatin Fiscal Court. CCWD asserts that this was to eliminate the area of the Kentucky Speedway from its district.

In 2002, Gallatin County Water District (GCWD) constructed an eight-inch water line from the Kentucky Speedway through CCWD's territory. This was done without first obtaining a Certificate of Public Convenience and Necessity (Certificate of Necessity). CCWD asserts that this was to service a proposed Love's Travel Stop at the intersection of I-71 and Kentucky Highway 1039. CCWD contends that this property was located within its territorial boundaries and that the anticipated revenues were what motivated GCWD to act as it did.

CCWD filed a complaint with the Public Service Commission (PSC).

On July 8, 2008, Gallatin County Judge/Executive Kenny French ordered that:

The Gallatin County Water District's territory limits will now include the area as advertised and more clearly stated as follows: All areas along Speedway Blvd. (a.k.a. Jerry Carroll Blvd.) from KY 35 to KY 1039 and extending along the same projected line to a point 1000 ft. west of the junction of KY 1039 and Speedway Blvd., thence southwestwardly course to I-71, AND including all of Gallatin County south of I-71 from KY 35 and the Carroll County line; excluding any existing customers as of April 1, 2008.

The PSC ruled on CCWD's complaint and did not allow GCWD to sell water within the area complained of until it applied for and received a Certificate of Necessity. The PSC order dated September 15, 2008, stated:

To the extent a water district lacks the legal authority to construct facilities outside its [territorial] boundaries to serve persons outside these boundaries, it cannot demonstrate a need for such facilities or an absence of wasteful investment. . . . Moreover, the construction of facilities to serve extra-territorial areas would result in wasteful duplication, as those facilities cannot lawfully be used to serve their intended customers.

CCWD brought an action in Gallatin’s Circuit Court attempting to negate the order of the Gallatin County Judge/Executive. The trial court held that the Judge/Executive’s order was proper.

This action arose from the CCWD’s appeal of the order of the Gallatin County Judge/Executive. The Gallatin Circuit Court upheld the order and this appeal followed.

DISCUSSION

Appellants first contend that CCWD has the exclusive right to provide water service within its service territory. “[A] fiscal court may create a water district in accordance with the procedures of KRS 65.810.” KRS 74.010. KRS 74.012 requires:

(1) Prior to the establishment of any water district as provided by KRS 74.010, and prior to the incorporation or formation of any nonprofit corporation, association or cooperative corporation having as its purpose the furnishing of a public water supply (herein referred to as a “water association”), a committee of not less than five (5) resident freeholders of the geographical area sought to be served with water facilities by the proposed district or the proposed water association shall formally make application to the Public Service Commission of Kentucky in such manner and following such procedures

as the Public Service Commission may by regulation prescribe, seeking from the commission the authority to petition the appropriate county judge/executive for establishment of a water district, or to proceed to incorporate or otherwise create a water association. The commission shall thereupon set the application for formal public hearing, and shall give notice to all other water suppliers, whether publicly owned or privately owned, and whether or not regulated by the commission, rendering services in the general area proposed to be served by said water district or water association, and to any planning and zoning or other regulatory agency or agencies with authority in the general area having concern with the application. The commission may subpoena and summon for hearing purposes any persons deemed necessary by the commission in order to enable the commission to evaluate the application of the proponents of said proposed water district or water association, and reach a decision in the best interests of the general public. Intervention by any interested parties, water suppliers, municipal corporations, and governmental agencies shall be freely permitted at such hearing.

(2) The public hearing shall be conducted by the commission pursuant to the provisions of KRS 278.020. At the time of the hearing, no employment of counsel or of engineering services shall have been made to be paid from water district funds, water association funds, or made a charge in futuro against water district or water association funds, if formation of such water district or water association is permitted by the commission.

(3) Before the Public Service Commission shall approve any application for creation of a water district or water association, the commission must make a finding and determination of fact that the geographical area sought to be served by such proposed water district or water association cannot be feasibly served by any existing water supplier, whether publicly or privately owned, and whether or not subject to the regulatory jurisdiction of the commission. If it shall be determined that the geographical area sought to be served by the proposed

water district or water association can be served more feasibly by any other water supplier, the commission shall deny the application and shall hold such further hearings and make such further determinations as may in the circumstances be appropriate in the interests of the public health, safety and general welfare.

(4) Any order entered by the commission in connection with an application for creation of a water district or water association shall be appealable to the Franklin Circuit Court as provided by KRS 278.410.

The appellant argues that the provisions of KRS Chapter 74, when read as a whole, give a comprehensive plan by which the legislature intended a water district to have that would provide it with the territorial integrity necessary to operate. It contends that the statutory provisions indicate that the legislature intended the water district to be granted an exclusive service area in which to provide water.

The PSC order dated September 15, 2008, opined as follows:

The Commission's powers are purely statutory. We possess only those powers that are conferred expressly or by necessary or fair implication. As water districts are utilities, Carroll District and Gallatin District are subject to our jurisdiction. Our jurisdiction extends to "all utilities in this state" and is exclusive "over the regulation of rates and service of utilities." We further have the statutory duty to enforce the provisions of KRS Chapter 278.

Except in the provision of retail electric service, the Commission lacks the authority to establish an exclusive service territory. Kentucky courts have

previously held that utilities do not “have any right to be free of competition.” The Commission has applied this principle to water and other types of utilities.

While the Commission lacks any authority to establish an exclusive service territory for water utilities, we clearly possess the authority to consider competing utilities’ claims to provide service to a prospective customer to prevent wasteful duplication of facilities or excessive investment. KRS 278.020 limits the construction that a utility may undertake without obtaining prior Commission approval in the form of a Certificate.

The PSC found that it was a wasteful duplication to have GCWD provide water in an area where CCWD already provided service. The Gallatin Circuit Court, however, held differently:

The courts have looked at cases where a municipality seeks to provide service to an area that is within the service area of a water district. The Kentucky Court of Appeals held that, “Surely if the legislature intended a water district to have an exclusive right, it would have so provided.” *City of Cold Spring v. Campbell County Water Dist.*, 334 S.W.2d 269, 273 (Ky. 1960), *overruled on other grounds by*, *City of Georgetown v. Public Service Commission*, 516 S.W.2d 842 (Ky. 1974). The Court further added that “[t]he statutes do not grant to water districts exclusive authority to operate in the territory comprising the district.” *City of Cold Spring*, 334 S.W.2d at 274. Although the issue in that case dealt with a conflict between municipalities and the water district, the Court does not find CCWD has the exclusive right to provide water service within its service territory.

As to this issue of territorial boundaries, the trial court found that:

GCWD does not seek to absorb CCWD or any of the customers that CCWD currently serves, GCWD is only

seeking to expand its territory, albeit into the territory of another water district. So, GCWD may expand its territory, but it cannot “take over” the territory already occupied by CCWD. The two water districts would share the territory and the Public Service Commission would assign the appropriate district to provide water.

We agree with the trial court that the CCWD did not prove that the GCWD was infringing on its territorial rights by servicing the property. Even according to the PSC, there does not exist a right to an “exclusive territory” for water service. Instead, there should not be a “wasteful duplication of services.” In this case, there was not as there was no service within the subject area.

Next, appellants argue that the trial court erred by failing to give federal law precedence. 7 U.S.C.A. § 1926(25)(C)(b) provides that:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

In *Le-Ax Water Dist. V. City of Athens, Ohio*, 346 F.3d 701, 705 (6th Cir. 2003), the Sixth Circuit Court of Appeals held that the above statute:

prevents local governments from expanding into a rural water association’s area and stealing its customers; the legislative history states that the statutory provision was intended to protect “the territory served by such an association facility against [other] competitive facilities” such as local governments, as otherwise rural water

service might be threatened by “the expansion of the boundaries of municipal and other public bodies into an area served by the rural system.”

We agree with the trial court that in order to prevail under 7 U.S.C.A. § 1926(25) (C)(b), the appellant would have to establish that: “1) it is an ‘association’ within the meaning of the Act; 2) it has a qualifying outstanding FmHA loan obligation; and 3) it has provided or made service available in the disputed area.” *Adams County Regional Water Dist. v. Village of Manchester, Ohio*, 226 F.3d 513, 517 (6th Cir. 2000). The trial court found that CCWD did not meet the third factor.

The trial court found that the third prong is interpreted to mean that the water district must have a legal duty to service the area and be prepared to do so. While the court found CCWD had the legal duty, it also found (as did the Gallatin County Judge/Executive) that it was not prepared to so service. We agree.

The Sixth Circuit has held that:

[W]hether an association has made service available is determined based on the existence of facilities on, or in the proximity of, the location to be served. If an association does not already have service in existence, water lines must either be within or adjacent to the property claimed to be protected by Section 1926(b) prior to the time an allegedly encroaching association begins providing service in order to be eligible for Section 1926(b) protection.

Lexington-South Elkhorn Water Dist. v. City of Witmore, Ky., 93 F.3d 230, 237 (6th Cir. 1996). The trial court appropriately applied Federal law and determined that

CCWD was not in a position to supply water to the affected area. Thus, it was not an encroachment for the GCWD to provide water to the area.

Finally, the appellant contends that the findings of the appellee Gallatin County Judge/Executive were not supported by the evidence at the hearing. The appellant contends the following errors in the findings of the Judge/Executive:

1. The area (in dispute) was served by Gallatin Water District at the time the first public notice was advertised in the Gallatin County News on April 16, 2008;
2. GCWD has provided service for several years to the territory in question without objection;
3. CCWD #1 does not have the current capacity;
4. The existing new water user in the area has requested water service by the GCWD;
5. Allowing the area to be served by (CCWD) will hinder and delay . . . beneficial effects (to Gallatin County);
6. The only debt incurred by (CCWD) in the described area is that associated with the recent extension of lines to serve Love's Truck Stop.

We find nothing in these facts which would indicate the trial court erred in affirming the order of the Judge/Executive. Thus, we affirm the decision of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Ruth H. Baxter
Carrollton, Kentucky

BRIEF FOR APPELLEE,
GALLATIN COUNTY WATER
DISTRICT:

Rhonda W. Huddleston
Warsaw, Kentucky

BRIEF FOR APPELLEE,
GALLATIN COUNTY
JUDGE/EXECUTIVE:

John G. Wright
Warsaw, Kentucky

NO BRIEF FILED FOR APPELLEE,
TOMMY CRAWFORD.

NO BRIEF FILED FOR APPELLEE,
JOHN ZALLA.

NO BRIEF FILED FOR APPELLEE,
LOVE'S TRAVEL STOPS &
COUNTRY STORE, d/b/a/ LOVE'S
TRAVEL STOP #383

NO BRIEF FILED FOR APPELLEE,
WHITEHORSE DEVELOPMENT
GROUP, LLC.

EXHIBIT D

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

Carroll County Water District No. 1 ("Carroll District") has filed a formal complaint against Gallatin County Water District ("Gallatin District") regarding Gallatin District's efforts to provide water service to a real estate tract within Carroll District's territory. At issue is whether a water district's construction of facilities in another water district's territory for the purpose of providing water service to persons located in that territory requires a Certificate of Public Convenience and Necessity ("Certificate"). Finding in the affirmative, we direct Gallatin District to refrain from constructing any facilities to provide water service to the tract in question until it has obtained a Certificate from the Commission.

STATEMENT OF THE CASE

Carroll District is a water district organized pursuant to KRS Chapter 74. It owns and operates facilities that produce and distribute water to approximately 2,764

customers in Carroll, Gallatin, and Owen counties, Kentucky.¹ Approximately 600 of these customers are located in Gallatin County.² Its board of commissioners is composed of five residents of Carroll County, two residents of Gallatin County, and two residents of Owen County.³

Carroll District was created in 1961⁴ and originally encompassed only portions of Carroll County. In 1983, Carroll District's territorial limits were enlarged to include the western portion of Gallatin County from the Carroll-Gallatin County boundary to Kentucky Highway 35. Following the enlargement of its territory, Carroll District constructed distribution facilities in Gallatin County, to include a 200,000-gallon water storage tank, a booster pumping station and approximately 41 miles of water distribution main to serve this area at a total cost of \$1,208,000.⁵ It financed construction of these facilities with the issuance of \$1,197,000 in bonds to the Farmers Home Administration.

In 1997 Carroll District constructed several improvements in Gallatin County, including a 150,000-gallon water storage tank, a pumping station, a new well and 17

¹ Annual Report of Carroll County Water District No. 1 to the Kentucky Public Service Commission for the Year Ended December 31, 2007 at 5, 27 (hereinafter Carroll District's Annual Report).

² Transcript of 11/1/2007 Hearing at 24 (stating that 21 percent of Carroll District's customers are in Gallatin County).

³ *Id.*

⁴ Carroll District's Annual Report at 4.

⁵ Case No. 8960, Application of Carroll County Water District for a Certificate of Public Convenience and Necessity: (1) Approving the Construction of Major Additions, Extensions and Improvements; (2) Seeking Approval of the Issuance of Certain Securities; and (3) For an Order Authorizing Adjustment of Water Service Rates and Charges (Ky. PSC Oct. 19, 1984); Carroll District's Responses to Commission Staff's First Data Request at Item 14.

miles of various-sized water main, at a total cost of approximately \$2,266,000.⁶ Carroll District financed these improvements with the issuance of bonds to Rural Development. The improvements were necessary to relieve strain on existing facilities due to industrial growth in Gallatin County.⁷

As part of this construction, Carroll District extended a 4-inch water distribution main from Knox-Lillard Road and Drury Chapel Road to Kentucky Highway 1330.⁸ Crawford Junkyard, which is near the present intersection of Kentucky Highways 1130 and 1039, is the southernmost customer served through this extension.⁹

Gallatin District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that produce and distribute water to approximately 1,827 customers in Boone, Gallatin, and Grant counties, Kentucky.¹⁰ The record is not clear as to the actual date that the water district was organized. Gallatin County Court records indicate that the Court established the "Gallatin Rural Water District" on September 12, 1960.¹¹ In 1969, a group of Gallatin County residents applied to the Commission for authority to petition Gallatin County Court to establish a water district to serve Gallatin County. After reviewing the feasibility of such a district, the Commission

⁶ Case No. 1997-00217, The Application of Carroll County Water District No. 1 of Carroll, Gallatin and Owen Counties, Kentucky, for a Certificate of Public Convenience and Necessity to Construct, Finance and Increase Rates Pursuant to KRS 278.023 (Ky. PSC May 19, 1997); Carroll District's Responses to Commission Staff's First Data Request at Item 14; Transcript of 11/1/2007 Hearing at 31-32.

⁷ Transcript of 11/1/2007 Hearing at 31; Frank Main, *New Industries in Gallatin Put Strain on Water*, Kentucky Post, June 27, 1995 at 1K.

⁸ Transcript of 11/1/2007 Hearing at 64.

⁹ *Id.* at 45.

¹⁰ Annual Report of Gallatin County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2007 (hereinafter Gallatin District's Annual Report) at 5, 27

¹¹ Gallatin County Court Order Book 22 at 132; Gallatin District's Response to Commission Staff's First Data Request, Item 1; Gallatin District's Annual Report at 4.

granted the application.¹² No further action appears to have been taken to establish a water district or construct facilities to serve Gallatin County for 15 years.

On December 27, 1985, Gallatin Judge/Executive Clarence Davis ratified the earlier creation of Gallatin District and established its boundaries. In his Order, he described these boundaries as:

Being all of Gallatin County, Kentucky, excepting therefrom the corporate boundaries of Glencoe and Sparta, Kentucky which are served by Tri-Village Water District, and the corporate boundaries of Warsaw, Kentucky, which is served by Warsaw Water Works and further excepting any other territory heretofore lawfully annexed by either Tri-Village Water District or Warsaw Water Works and **further excepting that part of the county lawfully annexed by Carroll County Water District #1.**¹³

Two years later, Gallatin District applied for a Certificate to construct its first facilities and for Commission approval for its initial service rates.¹⁴

In 1998, Carroll District petitioned Gallatin County Judge/Executive Clarence Davis to clarify and redefine its boundaries in Gallatin County.¹⁵ On October 8, 1998, County Judge/Executive Davis issued an order that diminished Carroll District's territory in Gallatin County and repositioned its eastern boundary from Kentucky Highway 35 to 1,000 feet east of Kentucky Highway 1130.

¹² Case No. 5233P, Application of Residents of Gallatin County for a Preliminary Hearing to Determine the Need for the Formation of a Water District (Ky. PSC Jan. 6, 1970)

¹³ Gallatin County Court Order Book 24 at 60 (emphasis added); Gallatin District's Response to Commission Staff's First Data Request, Item 1

¹⁴ Case No. 10194, The Application of Gallatin County Water District, Gallatin County, Kentucky, For (1) A Certificate of Public Convenience and Necessity Authorizing the District to Construct a New Water Distribution System; (2) Approval of the Proposed Plan of Financing Said Project; and (3) Approval of the Proposed Water Service Rates and Charges of the District (Ky. PSC Sept. 6, 1988)

¹⁵ Carroll District petitioned the county judge/executives of Carroll, Owen, and Gallatin counties for amendments and clarifications to its boundaries in each of these counties. These judge/executives jointly entered an Order that redefined Carroll District's territory. The Carroll County Judge/Executive and Owen County Judge/Executive signed the Order on September 8, 1998. The Gallatin County Judge/Executive signed it on October 8, 1998. See Carroll District's Complaint, Exhibit A.

Carroll District's action followed discussions with Gallatin County officials regarding the modifications of the water district's territory to permit Gallatin District to serve the Kentucky Speedway.¹⁶ A year earlier, a developer had selected a site in Gallatin County, near Sparta, Kentucky, to construct a motor speedway that would seat 175,000 spectators.¹⁷ This site was originally situated in Carroll District's territory. After the 1998 amendment of Carroll District's territory, it was approximately 5,000 feet east of Carroll District's eastern boundary.

Following the diminishment of Carroll District's territory, Gallatin District undertook steps to provide water service to the Kentucky Speedway and the surrounding area. It constructed a ground water well system, treatment facilities and 30,000 linear feet of 10-inch transmission main at a cost of approximately \$752,610.¹⁸ There is no record, however, that prior to 2008¹⁹ Gallatin District petitioned to enlarge its territory to include the area in which the Kentucky Speedway is situated or which Carroll District relinquished.

Beginning in late 2000, Gallatin District began focusing upon the provision of water service to areas west of the Kentucky Speedway, to include the area surrounding

¹⁶ Transcript of 11/1/2007 Hearing at 34. Carroll District officials also recognized that Gallatin District had already constructed facilities and provided water service to some locations along Kentucky Highway 35. *Id.* See also Gallatin District's Response to Commission Staff's First Data Request, Item 1 (containing the minutes of the meetings of Gallatin District's Board of Commissioners for the month of August 1998).

¹⁷ Monica Dias, *NASCAR May Roar into Sparta*, Kentucky Post, Oct. 17, 1997 at 1K.

¹⁸ Case No. 1999-00493, The Application of Gallatin County Water District for a Certificate of Public Convenience and Necessity to Construct and Finance an Improvements Project (Ky. PSC Jan. 25, 2000).

¹⁹ Since 1985, only two revisions to Gallatin District's territorial boundaries have occurred. On February 26, 2004, the Gallatin County Judge/Executive ordered the de-annexation of certain tracts of land adjacent to the city of Warsaw, Kentucky that received water service from that city. On July 8, 2008, the Gallatin County Judge/Executive ordered the annexation of the area along Speedway Boulevard from Kentucky Highway 35 to Kentucky Highway 1039 and extending along the same projected line to a point 1,000 feet west of the junction of Kentucky Highway 1039 and Speedway Boulevard.

a new interchange for Interstate Highway 71 and Kentucky Highway 1039. This interchange, which was intended to provide greater access to the Kentucky Speedway,²⁰ was located west of Kentucky Highway 1130. Seeing significant economic benefits in the development of the interchange area,²¹ Gallatin County Judge/Executive George Zubaty strongly encouraged Gallatin District to extend service to the area.

Gallatin District's Board of Commissioners first discussed water service to the area surrounding the interchange in September 2000. Their discussions centered around the water district's right to serve that area.²² In subsequent meetings, Gallatin District commissioners discussed the relative rights of Gallatin District and Carroll District to serve the area. Though eventually recognizing that the area fell within Carroll

²⁰ *New Interchanges Open For Kentucky Speedway*, Business First of Louisville, May 8, 2002, <http://louisville.bizjournals.com/louisville/stories/2002/05/06/daily32.html> (last visited Aug. 20, 2008).

²¹ Transcript of 11/1/2007 Hearing at 249, 252. Questioned why he supported the extension, Judge/Executive Zubaty testified:

Well, we already had the - the new interchange was there. I mean, it was there. Here's the new road coming. I mean, it doesn't take a brain surgeon to understand what's going to happen. This place is going to explode.

Id. at 252.

²² [Gallatin County Attorney] Steve [Huddleston] brought to the boards [sic] attention that [Gallatin County] Judge Zubaty is very interested in trying to service the area surrounding the new interstate exchange off HWY1130. He feels that this going to be a huge area for growth. Steve ask [sic] who sets up the boundaries to determine what water district serves each area. Is this something PSC decides? Morris commented that in 1985 the [Gallatin] County gave Carroll County [Water District No. 1] the authority to extend its water line to HWY 35. We made it to 1130 first so we were able to supply the area from HWY 35 west to 1130. Carroll County [Water District No. 1] serves anything west of 1130. No decisions were made at this time.

Minutes of Gallatin District Board of Commissioners' Meeting of 9/14/2000.

District's territory,²³ the Board of Commissioners concluded that Gallatin District facilities should be extended to that area before Carroll District constructed facilities in the vicinity. On September 17, 2001, Gallatin District's Board of Commissioners authorized the construction of a water main from Kentucky Speedway to an area west of Kentucky Highway 1130.

The following year, Gallatin District constructed an 8-inch water main extension of approximately 11,000 feet²⁴ westward from the Kentucky Speedway to Kentucky Highway 1039 at a total cost of \$61,000.²⁵ Gallatin District used internal funds to finance the water extension. The main extension ran 5,000 feet west along Speedway Boulevard, an access road to the Kentucky Speedway, until reaching Kentucky Highway 1130, then ran south along Kentucky Highway 1130 for approximately 1,800 feet, and then ran west approximately 1,800 feet over a utility easement. Approximately 5,000

²³ At their meeting on October 12, 2000, the Board of Commissioners and its legal counsel discussed Carroll District's boundaries. While apparently aware of the Order of October 8, 1998 that redefined Carroll District's territory, none of the participants appeared to understand the contents of the Order or the Order's legal significance. Gallatin District's counsel suggested that the water district "proceed and get water to that area." By the Board of Commissioners' meeting of January 10, 2001, the members were apparently aware that the area in question was within Carroll District's territory. The minutes state:

[Vice Chairman] Vic [Satchwell] asks if Steve [Huddleston] has found out anything about the Service Boundaries. Is that Carroll County's service area? Judge Zubaty stated that we have not found any paperwork giving them the exclusive rights to serve that area. They have applied for a KIA [Kentucky Infrastructure Authority] loan to extend their lines into that area. Morris commented that if we already have a line there then they probably would not get approval

On September 17, 2001, the Board held a special meeting to consider construction of a water main to Kentucky Highway 1039. One commissioner expressed concern that Carroll District would construct facilities in that vicinity and claim the territory before Gallatin District could complete its proposed water main. The Board voted to "get a bid to run the line from the new road [Kentucky Highway 1039] to the edge of the Speedway property." See also Transcript of 11/1/2007 Hearing at 147.

²⁴ Gallatin District's Board of Commissioners did not authorize engineering and design work on the water main extension until April 2002. The Kentucky Division of Water issued a permit for the water main extension on August 5, 2002. On September 12, 2002, the Board of Commissioners selected Lykins Construction to construct the water main extension.

²⁵ Gallatin District's Response to Commission Staff's First Data Request, Item 11(a).

feet of the water main extends into Carroll District's territory.²⁶ It passes within 1,100 feet of Carroll District's nearest water main and terminates approximately 3,000 feet from that water main.²⁷ Gallatin District did not apply for a Certificate of Public Convenience and Necessity to construct the extension.

At the time of this water main's construction, no person or entity within the area in which the water main extension was located had applied to Gallatin District for water service.²⁸ No Gallatin District official had any specific knowledge or expectation of when the water main extension would begin serving customers.²⁹ As of the time of the hearing in this proceeding, the water main had yet to serve any customers or to be placed into service.³⁰

In early January 2007, Whitehorse Development Group, LLC ("Whitehorse") approached Carroll District and Gallatin District and advised each that a commercial development planned for its property would require 10,000 gallons of water per day.³¹ At that time, Whitehorse owned a 51-acre tract of land in Gallatin County that lay north of Interstate Highway 71 and that Kentucky Highway 1039 bisected. Approximately 27 acres of this tract lay west of Kentucky Highway 1039; the remaining portion lay to the

²⁶ See Carroll District's Response to Commission Staff's First Data Request, Exhibit 3.

²⁷ See Transcript of 11/1/2007 Hearing at 28; Carroll District's Response to Commission Staff's First Data Request, Exhibit 3.

²⁸ See Transcript of 11/1/2007 Hearing at 147, 239.

²⁹ *Id.* at 195, 273-274.

³⁰ *Id.* at 148.

³¹ See Letter from James L. Smith, Manager, Carroll District, to Adam Chaney, Member, Chaney Land Developers (Mar. 23, 2007). The record contains conflicting evidence regarding the property's need for additional water capacity for a fire suppression system. See Letter from Adam Chaney, Member, Whitehorse Development Group, to Jim Smith, Manager, Carroll District (Aug. 1, 2007); Transcript of 11/1/2007 Hearing at 38, 284-86.

east.³² The tract was completely within Carroll District's territorial boundaries and was approximately 4,700 feet from Carroll District's 4-inch water main and approximately 1,700 feet from Gallatin District's 8-inch main.³³ On January 30, 2007, Whitehorse requested that Gallatin District extend its 8-inch water main to Whitehorse's property line at the intersection of Interstate Highway 71 and Kentucky Highway 1039.³⁴

On March 30, 2007, Gallatin District applied to the Kentucky Division of Water for a permit to extend its 8-inch water distribution main approximately 3,970 feet along Kentucky Highway 1039.³⁵ In its application, Gallatin District identified the project as the "KY 1039 Extension" and stated that the project had no customers.³⁶ On April 10, 2007, the Kentucky Division of Water issued a permit to Gallatin District for the water main extension.³⁷

On or after July 12, 2007, Whitehorse contracted with Denny French, the current Gallatin County Deputy County Judge/Executive and a former chairman of Gallatin District's Board of Commissioners, to provide the labor and materials to construct an 8-inch water main extension along Kentucky Highway 1039 north from its property to Gallatin District's 8-inch main. Mr. French advised Gallatin District's Board of Commissioners on July 12, 2007 that Whitehorse had retained him to construct the

³² See Letter from Dennis R. Williams, counsel for Whitehorse Development Group, LLC, to Stephen P. Huddleston, counsel for Gallatin District (Sept. 21, 2007) (found at Gallatin District's Response to Commission Staff's First Data Request, Item 5).

³³ Transcript of 11/1/2007 Hearing at 46, 158.

³⁴ Letter from Adam Chaney, Member, Whitehorse Development Group, to Denny French, Chairman, Gallatin District (Jan. 30, 2007).

³⁵ Transcript of 11/1/2007 Hearing at 139.

³⁶ *Id.* at 139-140.

³⁷ Letter from Donna Marlin, Branch Manager, Drinking Water Branch, Kentucky Division of Water, to Morris R. Courtney, Gallatin District (Apr. 10, 2007).

water main extension and that he intended to begin construction as soon as a highway easement was obtained.³⁸ Victor Satchwell, chairman of Gallatin District's Board of Commissioners, while noting the ongoing proceeding against Gallatin District regarding service to the Whitehorse property, advised Mr. French and the Board of Commissioners that he was "not opposed to the contractors doing anything."³⁹

Using the permit that Kentucky Division of Water had previously issued to Gallatin District as the basis for his authority to perform construction,⁴⁰ Mr. French installed the water main extension on September 11, 2007.⁴¹ He notified Gallatin District of the commencement of construction the same day.⁴² Seven days later, Gallatin District requested that Mr. French cease construction to comply with the Commission's Order of August 1, 2007 in this proceeding.⁴³

On October 31, 2007, Whitehorse sold an 18-acre lot to Love's Travel Stop and Country Store. Whitehorse is currently marketing its remaining property for commercial development.

On July 8, 2008, following Gallatin District's petition to the current Gallatin County Judge/Executive to annex the area in dispute, Gallatin County Judge/Executive Kenny

³⁸ Minutes of Gallatin District Board of Commissioners' Meeting of 7/12/2007.

³⁹ *Id.*

⁴⁰ Transcript of 11/1/2007 Hearing at 216-217. Gallatin District states that it never authorized Mr. French to use its permit and was unaware that he was using its permit as the basis for his construction activities. *Id.* at 175.

⁴¹ *Id.* at 232.

⁴² *Id.* at 217.

⁴³ *Id.* at 232.

R. French issued an Order enlarging the boundaries of Gallatin District's territory to include the Whitehorse tract.⁴⁴ Carroll District has appealed this Order.⁴⁵

A map of the disputed area is set forth at the end of this Order as Figure 1. It depicts Carroll District's boundaries prior to and after October 8, 1998. It further depicts Gallatin District's boundaries as of December 27, 1985 and after July 8, 2008. The map does not depict areas of Gallatin County that Warsaw or Sparta serve.

PROCEDURE

On May 21, 2007, Carroll District filed a formal complaint against Gallatin District in which it alleged that Gallatin District had violated KRS Chapter 74 by extending water service into Carroll District's territory and requested that Gallatin District be prohibited from serving the Whitehorse property. It further moved that Gallatin District be directed to cease construction of a water line to the Whitehorse property pending a Commission decision on Carroll District's complaint.

On July 17, 2007, the Commission held a hearing on Carroll District's motion. After presenting arguments on the motion, the water districts agreed that Gallatin District should not construct any water lines within Carroll District's territory or allow a third party to connect to its existing water line within Carroll District's territory. On August 1, 2007, the Commission entered an Order implementing this agreement and directed that a copy of that Order be served upon Whitehorse. Whitehorse subsequently moved for and was granted leave to intervene in this matter.

⁴⁴ For a description of the area annexed, see note 19

⁴⁵ *Carroll County Water District v Kenny R. French*, Civil Action No. 08-CI-00194 (Gallatin Circuit Court filed Aug. 5, 2008).

On October 10, 2007, while the parties and Commission Staff conducted discovery, Carroll District advised the Commission that Gallatin District was continuing to construct a water line in Carroll District's territory and moved for an Order to Show Cause against Gallatin District.⁴⁶ The Commission directed Gallatin District to respond in writing to the motion and ordered the parties to address the issue at the scheduled hearing.

On November 1, 2007, following completion of discovery, the Commission held a hearing in this matter. Presenting testimony were: James L. Smith, Carroll District Manager; Raymond D. Lykins, Carroll District Superintendent; Donna Shannon Marlin, Manager, Drinking Water Branch, Division of Water, Kentucky Department of Environmental Protection; Morris R. Courtney, Gallatin District Superintendent; Victor Satchwell, Jr., Chairman, Gallatin District; Denny French, Deputy Gallatin County Judge/Executive; George Zubaty, former Gallatin County Judge/Executive; Ron Gastineau, Professional Engineer; Adam Chaney, Principal, Whitehorse Development Group, LLC; Richard W. Carr, Professional Engineer; Lee L. Burgett, Gallatin District Commissioner; and David Franklin Easton, Gallatin District Commissioner. All parties subsequently submitted written briefs.

Following the close of the hearing, Whitehorse submitted an emergency motion for modification of the Commission's Order of August 1, 2007, in which the Commission prohibited Gallatin District from providing water service in Carroll District's territory. Following receipt of Gallatin District's and Carroll District's responses to the motion, the Commission denied the motion.

⁴⁶ The Commission interpreted this motion as a motion for the imposition of civil penalties against Gallatin District for failing to comply with the Commission's Order of August 1, 2007. See Order of October 22, 2007.

On April 28, 2008, Gallatin District moved to set aside the Order of August 1, 2007. It renewed this motion on August 12, 2008. Whitehorse has filed responses in support of these motions. Carroll District has filed a response opposing any modification to the August 1, 2007 Order.

DISCUSSION

We first address the Commission's authority to consider the issues presented in Carroll District's complaint. Gallatin District and Whitehorse argue that these issues are outside our jurisdiction. In support of this position, they refer to judicial and administrative precedent that the Commission may not establish an exclusive service territory for utilities.

The Commission's powers are purely statutory.⁴⁷ We possess only those powers that are conferred expressly or by necessary or fair implication.⁴⁸ As water districts are utilities,⁴⁹ Carroll District and Gallatin District are subject to our jurisdiction. Our jurisdiction extends to "all utilities in this state" and is exclusive "over the regulation of rates and service of utilities."⁵⁰ We further have the statutory duty to enforce the provisions of KRS Chapter 278.⁵¹

Except in the provision of retail electric service,⁵² the Commission lacks the authority to establish an exclusive service territory. Kentucky courts have previously

⁴⁷ *Boone County Water and Sewer Dist. v. Pub. Serv. Comm'n*, 949 S.W.2d 588, 591 (Ky. 1997).

⁴⁸ *Croke v. Pub. Ser. Comm'n*, 573 S.W.2d 927 (Ky. App. 1978).

⁴⁹ KRS 278.010(3)(d); KRS 278.015.

⁵⁰ KRS 278.040(2).

⁵¹ KRS 278.040(1).

⁵² KRS 278.016-.018.

held that utilities do not "have any right to be free of competition."⁵³ The Commission has applied this principle to water and other types of utilities.⁵⁴

While the Commission lacks any authority to establish an exclusive service territory for water utilities, we clearly possess the authority to consider competing utilities' claims to provide service to a prospective customer to prevent wasteful duplication of facilities or excessive investment.⁵⁵ KRS 278.020 limits the construction that a utility may undertake without obtaining prior Commission approval in the form of a Certificate. It states:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and **ordinary extensions of existing systems in the usual course of business**, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.⁵⁶

While exempting ordinary extensions from any requirement for Commission approval, the General Assembly did not define "ordinary extensions."

⁵³ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965).

⁵⁴ See, e.g., Case No. 1991-00359, Application of Kentucky-American Water Company For a Certificate of Public Convenience and Necessity Authorizing the Construction of Approximately 49,000 Feet of 24" Main, 400 Feet of 12" Main, 240 Feet of 8" Main with Associated Valves and Fittings, Known as the "Jack's Creek Pipeline" (Ky. PSC Apr. 17, 1992) at 4; Case No. 1991-00316, *Mountain Utilities, Inc. v. Equitable Gas Co.* (Ky. PSC Apr. 6, 1992) at 3.

⁵⁵ See *City of Cold Spring v. Campbell County Water Dist.*, 334 S.W.2d 269, 272 (Ky. 1960) (holding that the Commission has a duty to protect against "ruinous competition" and the power to determine the preferential right of service as between competing utilities), *overruled on other grounds by City of Georgetown v. Pub. Serv. Comm'n*, 516 S.W.2d 842 (Ky. 1974) (holding that KRS 278.020 is not applicable to cities and does not require a city to obtain a certificate of public convenience and necessity to serve an area that a public utility serves).

⁵⁶ KRS 278.020(1) (emphasis added).

To define "ordinary extensions," the Commission promulgated Administrative Regulation 807 KAR 5:001, Section 9(3), which provides:

Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

Under this definition, an extension is in the ordinary course of business if it (1) does not result in sufficient capital outlay to materially affect the constructing utility's financial condition or require an increase in the constructing utility's rates; (2) does not conflict with the service of a jurisdictional utility operating within the same area; and (3) does not result in wasteful duplication of plant.

The Commission has previously recognized that utilities have general service areas and that another utility's extension into that area cannot be considered an extension in the ordinary course. In *Columbia Natural Gas Company of Kentucky*,⁵⁷ Columbia Natural Gas Company ("Columbia") sought to construct a gas main to serve a customer in an industrial park that Delta Natural Gas Company ("Delta") already served. Rejecting Columbia's contention that the extension was in the ordinary course, the Commission stated:

Columbia's proposed extension will conflict with Delta's existing service in the area as Delta presently serves existing customers within and immediately adjacent to the industrial park. Since the construction will duplicate Delta's

⁵⁷ Case No. 1996-00015, The Application of Columbia Natural Gas of Kentucky, Inc. for an Order Issuing a Certificate of Public Convenience and Necessity to the Extent Such a Certificate Is Required to Construct a Pipeline to Service Cooper Tire, Inc. in Mt. Sterling, Kentucky (Ky. PSC July 10, 1996).

existing facilities and will interfere with Delta's existing obligation to serve the industrial park, the extension is clearly not in the ordinary course.⁵⁸

We have applied this principle in other proceedings.⁵⁹

In the case at bar, Gallatin District's construction of water main from the Kentucky Speedway to Kentucky Highway 1039 in 2002 and its subsequent efforts to extend this main to the Whitehorse tract clearly involve an extension into Carroll District's general service area. The Whitehorse tract falls completely within Carroll District's territorial limits. Carroll District has a duty to provide water service to all inhabitants within its territory.⁶⁰ It has a water distribution main within 4,700 feet of the Whitehorse tract and has incurred significant debt to provide service to western Gallatin County. It has approximately \$3,000,000 in outstanding long-term debt related to the construction of facilities to serve Gallatin County.⁶¹ Gallatin District's efforts to supplant Carroll District as the water service provider in Carroll District's territory will affect Carroll District's ability to meet those lending obligations and its obligations to provide service in the remaining portions of its territory. Accordingly, the construction of the water main extension in 2002 and any subsequent construction to connect facilities to this extension cannot be considered in the ordinary course.⁶²

⁵⁸ *Id.* at 4.

⁵⁹ See, e.g., Case No. 2003-00422, Natural Energy Utility Corporation v. Columbia Gas Company of Kentucky, Inc. (Ky. PSC Sept. 1, 2004).

⁶⁰ Ky. OAG 75-719

⁶¹ See Carroll District's Response to Commission Staff's First Data Request, Item 14

⁶² This result accords with our holding in Case No. 2004-00027, City of Hawesville v. East Daviess County Water Association (Ky. PSC. Mar. 25, 2004), in which a municipal utility brought a complaint against a water association over retail water service to a property. Holding that KRS 278.010(3) exempted municipal utilities from Commission regulation, we dismissed for lack of jurisdiction but noted that, notwithstanding that exemption, the Commission possessed jurisdiction over (Continued on Next Page)

Our examination of KRS Chapter 74 strongly suggests that Gallatin District lacks the legal authority to extend service outside its territorial boundaries. KRS 74.100 limits a water district's authority to extend water mains and laterals to those necessary "to supply water to the residents of the district." Kentucky courts have interpreted this statute as prohibiting a water district from acquiring and operating facilities outside of its territorial boundaries.⁶³ The Kentucky Attorney General has also opined that a water district may not provide service outside its boundaries and must first annex the area in which the new customers are located.⁶⁴ The Commission has previously reached the same conclusion.⁶⁵

While the Commission's jurisdiction does not extend to the enforcement of KRS Chapter 74, a water district's lack of authority to construct, install and operate water distribution mains to serve persons outside of its territorial boundaries has significant implications to issues within our purview.

No utility may construct any facility to be used in providing utility service to the public until it has obtained a Certificate from this Commission.⁶⁶ To obtain such

the dispute if the public utility's construction of facilities to serve the property was not in the ordinary course and a Certificate were required. *Id.* at 4 n.7.

⁶³ *Olson v. Preston St. Water Dist. No. 1*, 163 S.W.2d 307, 309 (Ky. 1942). KRS 74.280 does not abrogate this finding, as argued by Gallatin District: KRS 74.280 permits a water district to have a facility outside of its territory for the purpose of supplying water to the district. It does not authorize operating a water system that supplies water to the public outside of its territory.

⁶⁴ Ky. OAG 76-234.

⁶⁵ Case No. 1990-00220, Christian County Water District's Proposed Extension to Collins Bridge Road and the Provision of Service to Certain Customers Who Are Currently Served by South Hopkins Water District, at 5 (Ky. PSC Feb. 20, 1991); Case No. 8505, Application of Campbell County Kentucky Water District for Authority to Acquire and Operate the Silver Grove Water Distribution Facilities at Its Existing Rates; To Construct a Connecting Water Supply Main; and to Assume Certain Financial Obligations; and Also to Reinforce the District's Existing High and Low Pressure Service Systems as Needed (Ky. PSC Aug. 4, 1982).

⁶⁶ KRS 278.020(1). See also text accompanying footnotes 55 – 56.

Certificate, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁶⁷ "Need" requires:

a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.

. . . [T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁶⁸

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties."⁶⁹

To the extent a water district lacks the legal authority to construct facilities outside its boundaries to serve persons outside those boundaries, it cannot demonstrate a need for such facilities or an absence of wasteful investment. Since it has neither authority to serve the area nor any duty to make extensions to serve that area, it cannot demonstrate a substantial inadequacy of existing service based upon the extra-territorial area's needs. Moreover, the construction of facilities to serve extra-

⁶⁷ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d. 885 (Ky. 1952).

⁶⁸ *Id.* at 890.

⁶⁹ *Id.*

territorial areas would result in wasteful duplication, as those facilities cannot lawfully be used to serve their intended customers.⁷⁰

Gallatin District's recent actions to annex the area in question do not substantially alter our analysis. Significant questions exist regarding the lawfulness of the Gallatin County Judge/Executive's action.⁷¹ While KRS Chapter 74 sets forth a detailed process for the annexation of territory, it contains no provisions for the annexation of another water district's territory.⁷² The Attorney General has previously found that, given the absence of any express provision for the annexation of another district's territory, KRS 74.110 "cannot be construed to apply to the territory of another water district."⁷³ If the courts concur with the Attorney General's position, Gallatin District's construction of facilities to serve the area in question will result in wasteful duplication.

Assuming *arguendo* that KRS 74.110 permits a water district to annex the territory of another water district, Gallatin District must still apply for a Certificate before constructing any facilities to serve the Whitehorse tract. The Gallatin Judge/Executive's Order does not strike or otherwise remove the area in question from Carroll District's territory. Hence, Gallatin District's construction of any facilities to serve the Whitehorse tract involves an extension into Carroll District's territory, cannot be considered construction in the ordinary course, and still requires a Certificate.

⁷⁰ One possible exception is the provision of wholesale water service to another utility. In that instance, the need exists outside the water district's territory, but the point of delivery for service to the wholesale customer is generally within the water district's boundaries. Another exception is when a water district contracts with another water district or municipality to operate a water system in the other water district's or municipality's territory. See KRS 74.414.

⁷¹ Carroll District has appealed Gallatin County Judge/Executive French's order of annexation. See notes 44 – 45.

⁷² KRS Chapter 74 establishes a detailed process for the voluntary and involuntary merger of water districts. See KRS 74.361; KRS 74.363.

⁷³ Ky. OAG 63-666 (July 24, 1963).

Based upon the discussion above, we find that Carroll District's complaint should be granted and that Gallatin District should be prohibited from constructing any facilities to serve the Whitehorse tract until it has applied for and received a Certificate for such construction.⁷⁴ Construction includes any facilities necessary to connect Gallatin District's existing facilities to any facilities that another party has constructed or installed to serve the Whitehorse tract. We further find that the motions of Gallatin District and Whitehorse to set aside our Order of August 1, 2007 should be denied. Finally, the Commission finds insufficient evidence to warrant the imposition of civil penalties as Carroll District requested in its Motion to Show Cause.

The Commission is dismayed at the apparent disregard that both water districts have exhibited towards KRS Chapter 74 and their cavalier approach to the proper maintenance of their territorial boundaries. Gallatin District constructed a major water main extension with full knowledge that a major portion of this extension lay outside its territory. It made no attempt prior to the construction to amend its territorial boundaries to ensure the facilities were properly within its boundaries. Its officials appear completely unaware of the legal significance of the water district's territorial boundaries or chose to ignore them.

Gallatin District's action was not an isolated incident. On at least four other occasions, it constructed water main extensions outside its territory.⁷⁵ The record contains no evidence that, prior to July 8, 2008, it took any action to amend its boundaries to include these facilities. The record further indicates that Gallatin District

⁷⁴ We take no position in this proceeding regarding Gallatin District's contentions that Carroll District is unable to provide adequate service to the Whitehorse tract. Such issue involves the need for Gallatin District's proposed facilities and should be deferred until Gallatin District applies for a Certificate

⁷⁵ Gallatin District's Response to Commission Staff's First Data Request, Item 14.

has yet to annex a large portion of the territory in Gallatin County that Carroll District deannexed in 1998.

Carroll District appears to have had knowledge of some of these intrusions,⁷⁶ but took no action to protest these intrusions, to limit them through contractual agreements, or to request revisions to its territorial boundaries. While Carroll District protested against Gallatin District's attempt to serve the Whitehorse property, it appears to have been aware of the existence of Gallatin District's water main extension to Kentucky Highway 1039 for some period before January 2007.

The Commission places all water districts on notice that compliance with KRS 74.110 is not optional. A water district and its management should be fully aware of their territorial boundaries and the significance of those boundaries. They should exercise the highest effort to ensure that those boundaries are observed and remain current. In those instances where boundary revisions are required to ensure adequate and reliable water and sewer service, a water district and its management should act promptly to ensure those revisions are made in accordance with the procedures set forth in KRS Chapter 74. A water district may not provide water service to customers outside its boundaries except under the most extraordinary conditions. The construction of facilities outside those boundaries without proper authorization is unlawful and may serve as a basis for civil sanctions against the water district and its management.⁷⁷

⁷⁶ Transcript of 11/1/2007 Hearing at 88-96.

⁷⁷ See KRS 74.455; KRS 278.990(1).

CONCLUSION

Having considered the evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. Gallatin District shall not construct or install any facility⁷⁸ to provide water service within Carroll District's territory without first obtaining a Certificate from the Commission.

2. Gallatin District shall not construct any facility or install any equipment to provide water service to the Whitehorse tract, to include any facility or equipment necessary to connect its facilities to those that another party has constructed or installed, without first obtaining a Certificate from the Commission


3. The motions of Gallatin District and Whitehorse to vacate the Commission's Order of August 1, 2007 are denied.

4. Carroll District's Motion to Show Cause is denied.

Done at Frankfort, Kentucky, this 15th day of September, 2008.

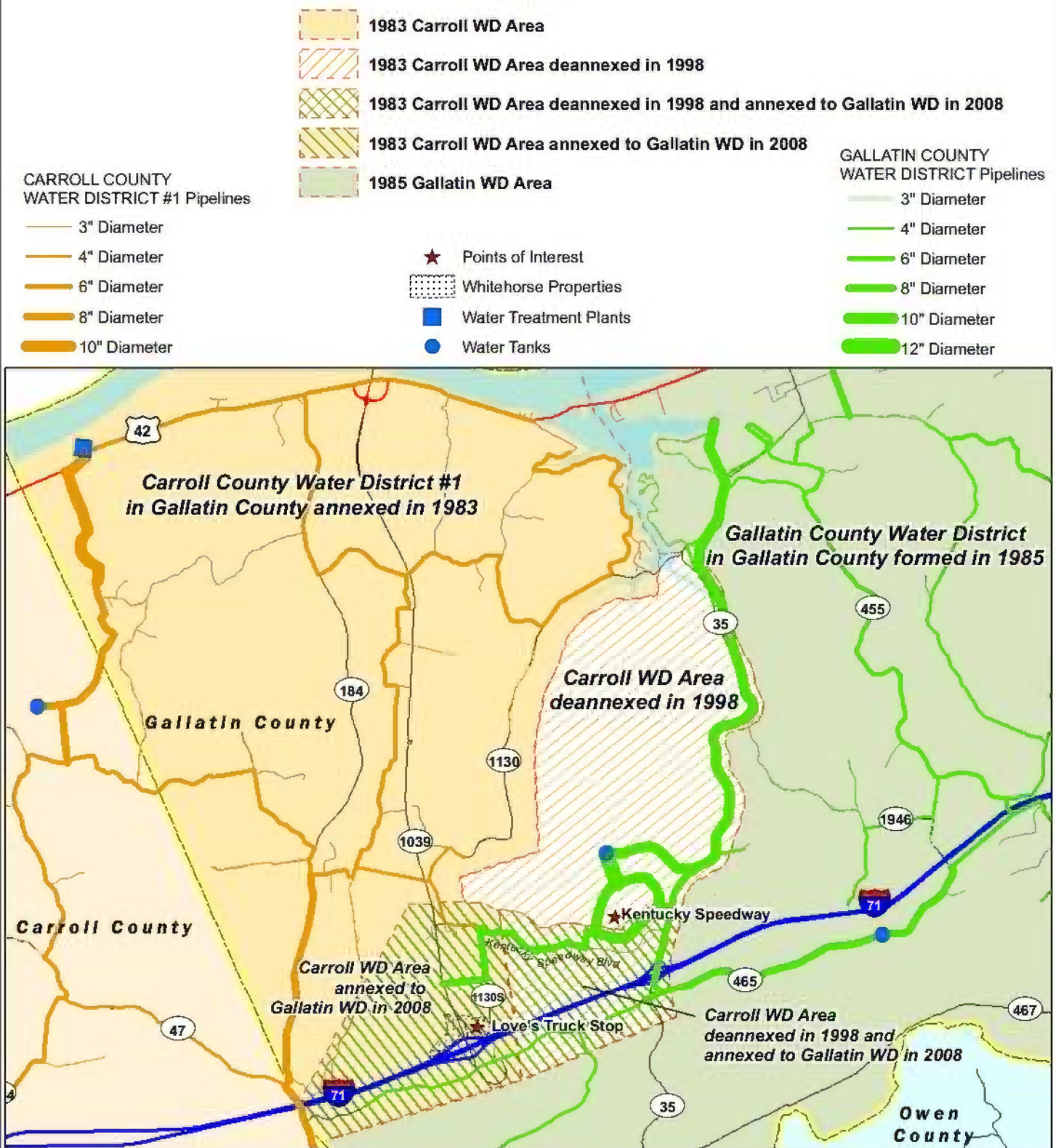
By the Commission

ATTEST:


Executive Director

⁷⁸ Any facility includes a meter installation or other equipment to connect a service line or applicant-donated water distribution main extension to the existing 10-inch water main extension that Gallatin District constructed in 2002.

Figure 1



CARROLL COUNTY WATER DISTRICT #1 Pipelines

- 3" Diameter
- 4" Diameter
- 6" Diameter
- 8" Diameter
- 10" Diameter

- 1983 Carroll WD Area
- 1983 Carroll WD Area deannexed in 1998
- 1983 Carroll WD Area deannexed in 1998 and annexed to Gallatin WD in 2008
- 1983 Carroll WD Area annexed to Gallatin WD in 2008
- 1985 Gallatin WD Area

GALLATIN COUNTY WATER DISTRICT Pipelines

- 3" Diameter
- 4" Diameter
- 6" Diameter
- 8" Diameter
- 10" Diameter
- 12" Diameter

- ★ Points of Interest
- ▨ Whitehorse Properties
- Water Treatment Plants
- Water Tanks

- Interstates
- State Roads
- US Highways
- Local Roads
- County Boundary Lines
- Natural Water Features (Rivers, Lakes)

0 5,000 10,000 15,000 20,000 Feet

Figure 1 of an Order of the Kentucky Public Service Commission for Case No. 2007-00202



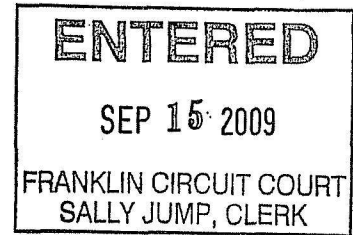
Information from the Water Resource Information System, maintained by the Kentucky Infrastructure Authority, and from maps and information in the record in Case No. 2007-00202.



EXHIBIT E

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II**

CIVIL ACTION No. 08-CI-01669



GALLATIN COUNTY WATER DISTRICT

PETITIONER

vs.

**COMMONWEALTH OF KENTUCKY,
PUBLIC PROTECTION CABINET,
PUBLIC SERVICE COMMISSION, and
CARROLL COUNTY WATER DISTRICT NO. 1**

RESPONDENTS

OPINION AND ORDER

This matter is before the Court upon the appeal of Gallatin County Water District (“Gallatin”) from a September 12, 2008 Order of the Public Service Commission (“the Commission”). This appeal requires the Court to determine (1) whether the Defendant Public Service Commission acted beyond its jurisdiction and authority in settling a territorial dispute between the Gallatin County Water District and Carroll County Water District No. 1 (“Carroll”); (2) whether the Commission misapplied the law in requiring that Gallatin obtain a Certificate of Public Convenience and Necessity before providing water service to areas within Carroll District’s territory; and (3) whether Gallatin was denied procedural due process by the Commission’s hearing and decision procedures. Additionally, we must address the cross petition of Carroll contending that the Commission’s order fails to accurately depict Carroll District’s boundaries. Upon review of the parties’ briefs and papers, and after being sufficiently advised, this Court hereby

GRANTS the appeal of Gallatin District and **VACATES** the Order of the Commission. Additionally, this Court **DISMISSES** Carroll's Cross-Petition.

STATEMENT OF FACTS

The relevant facts are as follows.¹ Respondent and cross-petitioner Carroll is a water district organized under Chapter 74. It owns and operates facilities that produce and distribute water to approximately 2,764 customers in Carroll, Gallatin, and Owen counties, Kentucky. In 1983, Carroll District's territorial limits were enlarged to include the western portion of Gallatin County, from the Carroll-Gallatin County boundary to Kentucky Highway 35. Currently, approximately 600 of Carroll's 2,764 customers are located in Gallatin County. Appellant Gallatin is also a water district organized under KRS Chapter 74. It owns and operates facilities that produce and distribute water to approximately 1,827 customers in Boone, Gallatin, and Grant counties, Kentucky. In 1985, the Gallatin Judge/Executive ratified the original creation of Gallatin District and established its boundaries as "excepting that part of the county lawfully annexed by Carroll County Water District #1."

In 1998, Carroll petitioned the Gallatin County Judge/Executive to clarify and redefine its boundaries in Gallatin County. The petition was based on discussions between Carroll and Gallatin regarding the construction of a motor speedway in Gallatin County and allowing Gallatin to serve the area. Accordingly, the Judge/Executive issued an order diminishing Carroll District's territory in Gallatin County and repositioning its eastern boundary from Kentucky Highway 35 to 1000 feet east of Kentucky Highway 1130. Gallatin then constructed a ground water well system, treatment facilities, and

¹ A more exhaustive and admirably catalogued accounting of the facts can be found in the Brief of Respondent Public Service Commission.

other improvements to provide water service to the Kentucky Speedway and the surrounding area. Gallatin did not at that time petition to enlarge its territory to include the area yielded by Carroll.

The central catalyst for this action involved a new interchange for Interstate Highway 71 and Kentucky Highway 1039. The interchange was to provide greater access to the Kentucky Speedway and was expected to bring significant economic benefits in the form of additional development to the interchange area. In 2002, Gallatin constructed an 8-inch water main extension from the Kentucky Speedway to Kentucky Highway 1039, part of which extended into Carroll District's territory. Gallatin did not apply for a Certificate of Public Convenience and Necessity, as it believed the extension to be an extension in the ordinary course pursuant to KRS 278.020(1). Carroll District remained silent about Gallatin's extension into its water district for the next five years. The line was installed by Carroll's Superintendent. Additionally, as late as 2005, Gallatin made incursions into Carroll's territory with the tacit or express approval of Carroll District.

In January 2007, Whitehorse Development Group approached Carroll and Gallatin to inform them of a commercial development planned for its property that would require 10,000 gallons of water per day. The tract in question was located in Gallatin County, within Carroll District's territorial boundaries. It lay approximately 4,700 feet from Carroll District's 4-inch water main and approximately 1,700 feet from Gallatin's 8-inch main. Based on the proximity and capacity of Gallatin's line, Whitehorse subsequently requested that Gallatin extend its 8-inch water main to Whitehorse's property line. Gallatin applied for a permit from the Kentucky Division of Water to

extend its 8-inch water distribution main, and the Division issued the permit on April 10, 2007.

On May 21, 2007, Carroll District filed a complaint against Gallatin District with the Public Service Commission. The complaint alleged that Gallatin District had violated KRS Chapter 74 by extending water service into Carroll District's territory and requested that Gallatin District be prohibited from serving the Whitehorse property. Additionally, Carroll filed a motion asking the Commission to order Gallatin to cease construction of a water line to the Whitehorse property pending a Commission decision on Carroll District's complaint. Carroll County did not file an action for a temporary or permanent injunction in an appropriate court, and it did not petition the Gallatin County Judge/Executive for a clarification of the respective water district boundaries of Gallatin and Carroll Districts or a ruling on the exclusivity of service rights. The Public Service Commission asserted jurisdiction over the Complaint.²

On July 17, 2007, the Commission held a hearing on Carroll District's motion to order Gallatin to cease construction. On August 1, 2007, the Commission entered an order directing Gallatin to refrain from constructing any water lines within Carroll District's territory, or to allow a third party to connect its existing water line within Carroll District's territory. Whitehorse had meanwhile contracted with Denny French³ to provide labor and materials to construct a water main extension from its property to Gallatin's 8-inch main. Mr. French installed the water main extension on September 11, 2007, notifying Gallatin of such. Seven days later, Gallatin District requested that Mr. French cease construction to comply with the Commission's August 1, 2007 Order. This

² The question of the Commission's jurisdiction over the Complaint is discussed further in Section II.

³ As both the Commission and Carroll stress, Mr. French was a former chairman of Gallatin District's Board of Commissioners. He was not a commissioner of Gallatin at the time of the construction.

request came after Gallatin learned of Carroll's protest, which was made despite its acknowledgment at the July 2007 hearing that a developer could lay the line. On October 10, 2007, Carroll District alleged to the Commission that Gallatin District was continuing to construct a water line in Carroll District's territory and moved for an Order to Show Cause against Gallatin. The Commission again asserted jurisdiction over Carroll's motion, apparently interpreting it as a motion for the imposition of civil penalties against Gallatin for failing to comply with the Commission's August 1, 2007 Order. A hearing was held on November 1, 2007. While the matter was pending with the Commission for decision, Gallatin petitioned Gallatin County Judge/Executive Kenny French to annex an area that included part of the Whitehorse tract. Pursuant to KRS Chapter 74, County Judge/Executive French ordered the enlargement of Gallatin District's territory to include the Whitehorse tract. Carroll District appealed this order in the Gallatin County Circuit Court, alleging that: (1) Carroll had the exclusive right to serve the territory annexed; (2) Federal law prohibits the annexation; (3) the annexation was procedurally defective; and (4) that the annexation order appealed from was not supported by substantial evidence.

On September 15, 2008, nearly a year after the hearing, the Commission issued its final Order, "granting" Carroll's Complaint. The Order found that Gallatin's construction of a water distribution main into Carroll District's territory was not an ordinary extension in the usual course of business and required a Certificate. Additionally, the Commission held that any subsequent construction to connect new facilities to the water distribution main would not be in the usual course of business and would require a Certificate. The

requirement of a Certificate was rendered moot, however, as the Order effectively ruled that water districts have exclusive rights to service customers within their territory.⁴

Gallatin District petitioned this Court for review of the Commission's Order of September 15, 2008 pursuant to KRS 278.410(1), leading to the instant action. Later, Carroll District filed a cross-petition, alleging that Figure 1 of the same Order contained factual errors in depicting the boundaries of each water district. On April 13, 2009, the Gallatin County Circuit Court issued a well-reasoned opinion ruling that: (1) Carroll District did not have the exclusive right to provide water service within its service territory; (2) Federal law did not prohibit the annexation; (3) County Judge/Executive French followed the appropriate annexation procedures; and (4) the annexation was supported by substantial evidence.

I. STANDARD OF REVIEW

In reviewing an agency decision, this Court may only overturn that decision if: (1) the agency acted arbitrarily or outside the scope of its authority; (2) the agency applied the incorrect rule of law; or (3) the decision itself is not supported by substantial evidence on the record. *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 300-301 (Ky. 1972). Under KRS Chapter 278, the Commission is granted considerable authority to regulate public utilities. Consequently, the standard of review for an order entered by

⁴ The Order states that, while the Commission cannot enforce Chapter 74, a Certificate would be required for extra-territorial water service. Moreover, "a water district may not provide water service to customers outside its boundaries except under the most extraordinary conditions." Based on our review of the record, this Court is unable to discern any condition in which the Commission would grant such permission. Because the Commission then states that "[t]he construction of facilities outside those boundaries without proper authorization is unlawful and may serve as a basis for civil sanctions against the water district and its management," the Commission has effectively created solid boundaries between water districts.

the Commission is necessarily circumscribed. *Cincinnati Bell Telephone Co. v. Kentucky Public Service Com'n* 223 S.W.3d 829 (Ky. App. 2007).

This Court can vacate or set aside the order of the Commission only if it is unlawful or unreasonable. *Commonwealth ex rel. Stephens v. South Central Bell Telephone Co.*, 545 S.W. 2d 927, 931 (Ky. 1976). *See also* Murrell and Dexter, *Utility Law*, 70 Ky. L. J. 483, 486 (1981-82). A Commission order is unlawful if it violates a state or federal statute or constitutional provision. *National-Southwire Aluminum Co. v. Big River Elec. Co.*, 785 S.W.2d 503, 510 (Ky. App. 1990). A Commission order is unreasonable “only when it is determined that the evidence presented leaves no room for difference of opinion among reasonable minds.” *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980). Pursuant to KRS 278.430, any party seeking to set aside a determination of the Commission bears the burden of proof to show by clear and satisfactory evidence that the Commission’s determination is unlawful or unreasonable.

Although the scope of review of Commission decisions is limited, a reviewing court is not required to acquiesce in every factual determination by the Commission. *See, e.g., South Central Bell Tel. Co. v. Public Service Commission*, 702 S.W.2d 447, 454 (Ky. App. 1985). Moreover, judicial review of legal or constitutional issues is not circumscribed. *See Kentucky Power Co. v. Energy Regulatory Commission*, 623 S.W.2d 904, 907 (Ky. 1981). When dealing with issues of law, this Court may review them *de novo* without any deference to the agency. *Mill Street Church of Christ v. Hogan*, 785 S.W.2d 263, 266 (Ky. App. 1990). Interpretation of a statute is a question of law and a

reviewing Court is not bound by an agency's interpretation of the statute. See *Halls Hardwood Co. v. Stapleton*, 16 S.W.3d 327, 330 (Ky. App. 1996).

Notwithstanding its considerable authority, the Commission is a creature of statute. *Cincinnati Bell Telephone Co. v. Kentucky Public Service Com'n* 223 S.W.3d 829, 836. Therefore, it "has only such powers as granted by the General Assembly." *Id.* (citing *PSC v. Jackson County Rural Elec. Coop., Inc.*, 50 S.W.3d 764, 767 (Ky. Ct. App. 2000)). Whether the Commission exceeded the scope of its authority is a question of law that we scrutinize closely. *Cincinnati Bell Telephone Co. v. Kentucky Public Service Com'n* 223 S.W.3d 829, 836 (citing *Com'n., Transportation Cabinet v. Weinberg*, 150 S.W.3d 75 (Ky. Ct. App. 2004)).

II. STATUTORY AUTHORITY

Water districts are governed by KRS Chapter 74, which provides the proper procedure for the creation of water districts, an enlargement or diminishment of a water district, and the extension of a water district into an adjoining county. KRS 74.010, 74.012, 74.110, 74.115. The county fiscal court and judge/executive preside over both the creation and change of water district territories. KRS 74.010, 74.110, 74.115. Prior to the creation of a water district by the fiscal court, the Public Service Commission must hold a hearing "to evaluate the application of the proponents of said proposed water district ... and reach a decision in the best interests of the general public." KRS 74.012(1). This hearing is conducted pursuant to KRS 278.020, in which the Commission may issue or refuse to issue a certificate that public convenience and necessity require the service or construction. KRS 278.020(1). Any "ordinary extensions of existing systems in the usual

course of business” are excepted from the Certificate process. Under Chapter 74, the Commission is not involved in the enlargement, diminishment, extension, or other such territorial matters involving water districts.

The Public Service Commission is governed by KRS Chapter 278. The Commission’s jurisdiction extends to all utilities in Kentucky. KRS 278.040(2). The commission has “exclusive jurisdiction over the regulation of rates and service of utilities,” but nothing in Chapter 278 “is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.” *Id.*

The Public Service Commission has limited ability to enforce its orders within certain statutory bounds. Under 278.990(1), the Commission can impose civil penalties for willful violations of the provisions of KRS Chapter 278 or any regulation promulgated pursuant to it, and failure to obey an order of the commission “from which all rights of appeal have been exhausted.” Any action to recover these penalties must be brought in the name of the Commonwealth in the Franklin Circuit Court. Under 74.455, the Commission can remove a water commissioner or other governing persons of water associations for good cause. This removal cannot occur without a public hearing on the merits. In the case that the Commission wishes to enforce its orders using mandamus or injunction, the commission “may compel obedience to its lawful orders by mandamus, injunction or other proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction.” KRS 278.390.

III. ANALYSIS

A. The Scope of the Commission's Authority

The Public Service Commission is an administrative agency set up and appointed by law for the purpose of hearing facts and establishing reasonable rules, rates, and services to the public in order to secure conformity of services and rates affecting all classes of customers. *Smith v. Southern Bell Telephone & Telegraph Co.*, 104 S.W.2d 961, 962 (Ky. 1937). Its jurisdiction extends to all utilities in Kentucky, and it has “exclusive jurisdiction over the regulation of rates and service of utilities.” KRS 278.040(2). Gallatin and Carroll Districts, utilities within the definition contained in KRS 278.010(3), are within the Commission's jurisdiction. It does not matter whether the Commission exercises its authority in the context of quasi-legislative or quasi-adjudicative proceeding, so long as the exercise thereof is within the scope of its statutory authority.

Gallatin alleges the Commission exceeded its authority in exercising jurisdiction over a territorial dispute between two water districts. We agree. Were the issue presented to the Commission simply the question of whether a Certificate was required for Gallatin's extension of its main line, it may have been properly before the Commission. The heart of the issue here, however, was the territorial boundaries of water districts. This Order “granted” Carroll's Complaint asking for a ruling that their territory was exclusive, and for what was essentially injunctive relief, regardless of how it is couched by the Commission.⁵ The issue actually decided was whether Gallatin District was in violation

⁵ “[T]he Complainant Carroll County Water District No. 1 requests the Public Service Commission to determine: [...] That Gallatin County Water District *should be ordered to cease and desist* its construction of water lines and/or service to the commercial development along Highway 1039 in Gallatin County, Kentucky, within Carroll's territory.” Carroll County Water District No. 1 – *Complaint*, May 21, 2007

of Chapter 74 for extending water line services into Carroll's territory, and whether Gallatin County should be ordered to cease and desist. Effectively, the Commission, in its Order, established an exclusive territory for a water district, encroaching on the jurisdiction of the Courts. This matter was a territorial dispute. The Commission's authority to litigate complaints is confined to the issues of rates and services under KRS 278.260. The Commission asserts in page fourteen of its Order that "[w]hile the Commission lacks any authority to establish an exclusive service territory for water utilities, we clearly possess the authority to prevent wasteful duplication of facilities or excessive investment." The claimed authority does not extend to this territorial dispute.

The Supreme Court of Kentucky has noted that the Commission "acts as a quasi-judicial agency using its authority to conduct hearings, render findings of fact and conclusions of law, and using its expertise in area and to the merits of rates and service issues." *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 465 (Ky. 1994). The definition of "service" is a broad and comprehensive term, which includes "any practice or requirement in any way relating to the service of any utility." See KRS

(emphasis added). The subject of the July 18, 2007 hearing, was essentially based on a motion for a temporary injunction: "Comes now the Complainant Carroll County Water District No. 1 and requests that the Public Service Commission *enter an Order requiring the Defendant Gallatin County Water District to cease construction* of the water line to the commercial development located along Kentucky Highway 1039 ..." Carroll County Water District No. 1 – *Motion to Cease Construction*, May 21, 2007 (emphasis added). The Commission's ultimate order "grants" Carroll District's Complaint.

Any doubt as to injunctive relief was the issue is resolved by a review of the recording of the July 18, 2007 hearing, which resulted in the Commission's August 1, 2007 Order prohibiting Gallatin from constructing new lines. The "review standard" applied by the hearing officer to Carroll's *Motion to Cease Construction*⁵ was "some showing ... of irreparable injury, a substantial question on the merits, and that the equities play in favor of an injunction." *Video Transcript of July 18, 2007 Hearing* at 1:05. Mr. Huddleston, attorney for Gallatin, noted that the motion could be compared to injunctive relief. *Id.* at 1:07. When Mr. Huddleston questioned the Commission's authority to order Gallatin to cease construction, the Hearing Officer referred the question to Mr. Osterloh, counsel for the Public Service Commission, who said that the parties were free to "debate that," but that, as he understood it, he "would put forth that the Commission has jurisdiction over service and rates over utilities," and that it was "something the Commission could consider." *Id.* at 1:22 – 1:23. While there was no further debate of the authority of the Commission to order injunctive relief, the substance and relief requested in Carroll's *Motion to Cease Construction* is an integral part of its original *Complaint* and the relief ultimately granted by the Commission in its final Order.

278.010(11). See also *Kentucky CATV Association v. Volz*, 675 S.W. 2d 393, 396 (Ky. Ct. App. 1983) (discretionary review denied, 1984). In applying this definition of “service” to this case, however, this Court concurs with Gallatin that adjudicating territorial disputes between two water districts is not within the Commission’s jurisdiction.⁶

Kentucky’s highest court has held that a water district does not have the exclusive right to furnish services within its confines. *City of Cold Spring v. Campbell County Water District*, 334 S.W.2d 269, 274 (Ky. 1960).⁷ More importantly, the court held that “[w]here a controversy concerns the *general statutory right* or authority *of a city, water district* or public utility *to furnish service within a certain area*, the question is one of *law* and *must be determined by a court.*” *Id.* at 273-74. We find this conclusive. As was the case in *City of Cold Spring*, whether Carroll District has the exclusive right to furnish water within its confines “is a question of law pertaining to the general powers of ... the water district. It presents a question of the construction of statutes, and does not involve a question of fact which the Commission is pre-eminently qualified to determine. *The court has jurisdiction to determine the extent of the authority of* either or both the City and *the Water District.*” *Id.* at 271 (emphasis added).

Carroll District should have brought its original claim to the Gallatin County Judge/Executive pursuant to KRS Chapter 74. Moreover, the Commission should not have exercised jurisdiction over a territorial dispute, nor issued what was, in effect, an injunction against Gallatin. Gallatin District’s petition to the Gallatin Judge/Executive

⁶ Service has been held to apply to quality and adequacy of a utility service. *Benzinger v. Union L.H. & P.*, 170 S.W.2d 38, 41 (Ky. 1943); *Peoples Gas Co. v. City of Corbin*, 625 S.W.2d 848, 849 (Ky. 1981); *Carr v. Cincinnati Bell*, 651 S.W.2d 126, 128 (Ky. App. 1983).

⁷ Overruled by *City of Georgetown v. Public Service Commission*, 516 S.W.2d 842 (Ky. 1974), where the court held that the jurisdiction of the Commission did not extend to cities. The court’s holding with respect to the jurisdiction of the court was not overruled.

pursuant to KRS Chapter 74 was proper, regardless of the fact that it was brought after the commencement of the Commission action. Lastly, the real issues here, specifically, the territorial exclusivity of a water district, as well as the propriety of Judge/Executive French's ruling, have been litigated in the Gallatin County Circuit Court. The jurisdiction of that court was proper, and its ruling is conclusive.

B. Gallatin's Additional Claims

Because we find that Carroll's Complaint was not properly before the Commission, and that the Commission improperly asserted jurisdiction over a matter that belonged in the courts, we are not required to reach the issues of whether the Commission correctly applied the law or afforded Gallatin District due process of law.

C. Carroll's Cross Petition

Carroll District failed to bring its action for review in a timely manner. Carroll attempts to disguise what is essentially a separate appeal of the Commission's September 15, 2007 Order by claiming that, since KRS 278.410 is "void of any provision for a cross-appeal by a party named by the Petitioner/Appellant," a respondent can then resort to the Civil Rules "cross-appeal" seemingly at any time. This theory holds no weight. Kentucky's highest court has made clear that KRS 278.410 "provides the exclusive method by which an order of the commission can be reviewed by the circuit court." *Kentucky Utilities Co. v. Farmers Rural Electric Cooperative Corp.*, 361 S.W.2d 300, 301 (Ky. 1962). KRS 278.410(1) mandates that:

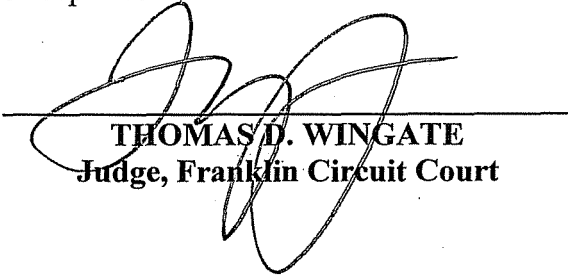
Any party to a commission proceeding or any utility affected by an order of the commission may, within thirty (30) days after service of the order,

or within twenty (20) days after its application for rehearing has been denied by failure of the commission to act, or within twenty (20) days after service of the final order on rehearing, when a rehearing has been granted, *bring an action against the commission in the Franklin Circuit Court* to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable. (emphasis added)

“The right of appeal [from a Commission order] is purely statutory and those who seek to invoke it must comply with the requirements set forth in the law.” *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 51 (Ky. 1961). Carroll attempts to appeal a completely separate issue by simply attaching it to Gallatin’s appeal. As a party affected by the Commission’s Order, Carroll had permission under the statute to appeal the order with the statute’s time limits. The thirtieth day after service of the Order fell on Saturday, October 18, 2008. KRS 446.030(1)(a) extended the period for bringing an action until Monday, October 20, 2008. Because Carroll District did not file its Answer and Cross Petition with this Court until October 22, 2008, we dismiss the Cross Petition.

CONSIDERING THE FOREGOING, the Petitioner’s appeal is **GRANTED** and the Commission’s Order dated September 15, 2008 is hereby **VACATED**. Additionally, the cross petition of Carroll County is **DISMISSED**. This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 15 day of September, 2009



THOMAS D. WINGATE
Judge, Franklin Circuit Court

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 15 day of September, 2009, to the following:

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Rhonda W. Huddleston, Esq.
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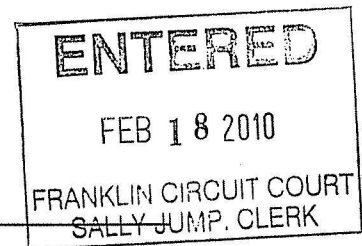
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Sally Jump, Franklin County Circuit Court Clerk


EXHIBIT F

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 08-CI-01669



GALLATIN COUNTY WATER DISTRICT

PETITIONER

vs.

COMMONWEALTH OF KENTUCKY,
PUBLIC PROTECTION CABINET,
PUBLIC SERVICE COMMISSION, and
CARROLL COUNTY WATER DISTRICT NO. 1

RESPONDENTS

OPINION AND ORDER

This matter is before the Court upon Respondent the Public Service Commission's *Motion to Alter or Amend* this Court's Order of September 15, 2009. Pursuant to CR 59.05, this Court may alter or amend a judgment, or vacate a judgment and enter a new one on a motion properly filed by a party within ten days after the entry of a final judgment. Upon review of the parties' briefs and papers, and after being sufficiently advised, this Court hereby **UPHOLDS** its previous Order in part and **MODIFIES** the Order in part, in that the matter is **REMANDED** for further proceedings in accordance with this Opinion.

DISCUSSION

In its *Motion to Alter*, the Public Service Commission ("PSC") focuses largely on the issue of whether or not its September 12, 2008 Order, in fact, established territorial boundaries for water districts and enjoined Petitioner Gallatin County Water District

("Gallatin District") from acting beyond its boundaries. In this respect, the PSC mistakes our discussion of the effect of the Order with a discussion of the express language of the Order. Consistent with this Court's responsibility to ensure that the PSC has acted within the scope of its authority, *Cincinnati Bell Telephone Co. v. Kentucky Public Service Commission*, 223 S.W.3d 829, 836 (Ky. App. 2007), we are concerned with the legal effect of the PSC's actions on the rights and duties of the parties, rather than the specific words chosen by the PSC. Further, the PSC argues that, although it granted the complaint of Respondent Carroll County Water District No. 1 ("Carroll District") – which alleged that Gallatin District was in violation of Chapter 74 and was therefore prohibited from providing water service within Carroll District's territory without approval of the PSC – the PSC nonetheless acted within the bounds of its authority. The PSC bases this argument on an assertion that it acted in accordance with KRS 278.020. While the PSC's authority is broad, that breadth does not entitle the PSC to create a boundary for a water district where the courts have determined a boundary does not exist.

In its Order, the PSC found that Gallatin District's "construction of the water main extension in 2002 and any subsequent construction to connect facilities to [that] extension cannot be considered in the ordinary course." September 12, 2008 Order at 16. The PSC's reasoning included that Gallatin District's actions "clearly involve[d] an extension into Carroll District's general service area," that "[t]he Whitehorse tract falls completely within Carroll District's territorial limits," and that Gallatin District's efforts would "supplant Carroll District as the water service provider in Carroll District's territory." *Id.* The PSC put significant emphasis on its view that "Gallatin District lacks the legal authority to extend service *outside its territorial boundaries.*" *Id.* at 17

(emphasis added). Additionally, the PSC found that “[t]o the extent a water district lacks the legal authority to construct facilities *outside its boundaries* to serve persons *outside those boundaries*, it cannot demonstrate a need for such facilities or an absence of wasteful investment.” *Id.* at 18 (emphasis added). As such, “the construction of facilities to serve *extra-territorial* areas would result in wasteful duplication” *Id.* at 18-19 (emphasis added).

The PSC’s focus, quite clearly, was on the territorial boundaries of water districts. Its belief that Gallatin District was acting *outside* of the boundaries of its district formed the primary foundation for its holding that an extension to serve the Whitehorse tract could not be considered construction in the ordinary course. While the PSC noted Gallatin District’s annexation of the area of Gallatin County in question, it improperly discounted the effect of the annexation, stating that it questioned “the lawfulness of the Gallatin County Judge/Executive’s action.” *Id.* at 19. In fact, the PSC summarily stated that, *even post-annexation*, “Gallatin District’s construction of any facilities to serve the Whitehorse tract involves an extension into Carroll District’s territory,” and thus “cannot be considered construction in the ordinary course, and still requires a Certificate.” *Id.*

The Gallatin Circuit Court has upheld the annexation of the area in question. The Whitehorse tract lies within Gallatin District, and the actions of Gallatin District with respect to the tract *are not extra-territorial*, even if both Gallatin and Carroll Districts have coextensive rights to serve the area. The extension in question is an extension *within Gallatin District’s own district*. The PSC claims it has not created exclusive territories for water districts, yet the reasoning underlying its Order belies this claim.

The Court has not ignored the PSC's statutory authority to investigate and address violations of KRS Chapter 278, nor has it undermined the ability of the PSC to prevent wasteful duplication of facilities. The PSC remains free to act within the scope of its authority; the Court has merely held that the PSC's jurisdiction is not boundless. The involvement of KRS Chapter 74 affects the PSC's authority in that the PSC may not create a water district boundary where the courts have determined there is no boundary. The Court is aware that the Gallatin Circuit Court decision is currently on appeal. Should the courts ultimately rule that the annexation was unlawful, we acknowledge that the PSC may consider the unlawfulness of a water district's actions under Chapter 74 in determining whether an extension is in the ordinary course.

The Court now believes the proper way to remedy the September 12, 2008 Order of the PSC is not only to vacate that Order, but also to remand the matter for further proceedings.

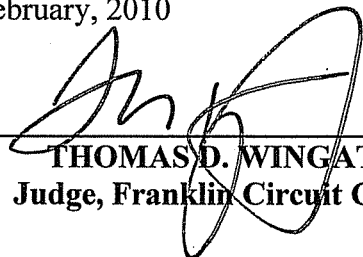
Accordingly, this matter is remanded for a re-hearing on the question of whether the actions of Gallatin District require a certificate pursuant to KRS 278.020. Upon remand, the PSC must acknowledge that the proposed extensions are within Gallatin District. Additionally, the PSC shall acknowledge that Gallatin District and Carroll District, by law, have coextensive rights and duties to serve the area of Gallatin County in question. The Public Service Commission may hold the proceedings in abeyance pending the outcome of the appeal from the Gallatin Circuit Court decision. Alternatively, the PSC may proceed with a hearing on claims limited to matters other than compliance with Chapter 74.

We note briefly that Respondent Carroll District has alleged that the Court erroneously stated that Carroll District had knowledge of Gallatin District's extension into the territory of Carroll District. This allegation is immaterial to the merits of our decision.

WHEREFORE, the September 15, 2009 Order of this Court is **UPHELD** in part and **MODIFIED** in part, in that the matter is **REMANDED** for further proceedings in accordance with this opinion.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 18 day of February, 2010



THOMAS D. WINGATE
Judge, Franklin Circuit Court

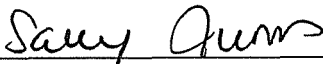
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 18 day of February, 2010, to the following:

Stephen P. Huddleston, Esq.
Rhonda W. Huddleston, Esq.
Attorneys for Petitioner
Gallatin County Water District
P.O. Box 807
Warsaw, KY. 41095

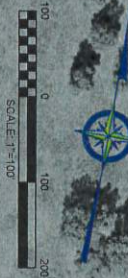
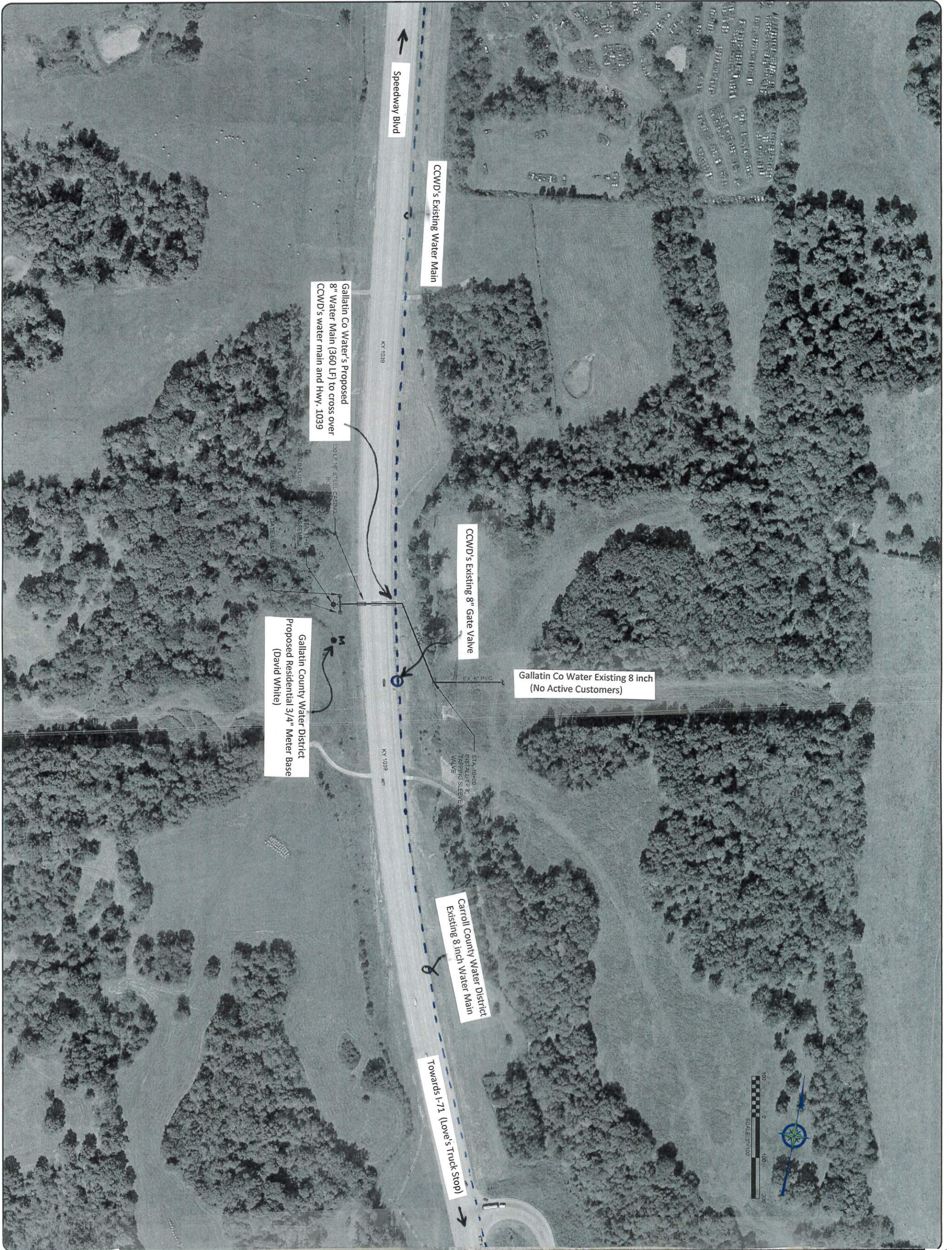
David. S. Samford, Esq.
Gerald E. Wuetcher, Esq.
M. Todd Osterloh, Esq.
Attorneys for Respondent
Public Service Commission
P.O. Box 615
Frankfort, KY. 40602-0615

Ruth H. Baxter, Esq.
Attorney for Respondent
Carroll County Water District No. 1
503 Highland Ave.
P.O. Box 353
Carrollton, KY 41008



Sally Jump, Franklin County Circuit Court Clerk


EXHIBIT G



Hwy. 1039 GCWD INTENT EXHIBIT

Carroll County Water District No.1
Hwy. 1039 Service Area

FAILURE TO ADHERE BY
DESIGN DOCUMENTS OR
TO OBTAIN GUIDANCE
THE USER ASSUMES ALL
RISK AND LIABILITY FOR
ANY AND ALL DAMAGES,
INCLUDING BUT NOT LIMITED
TO, PERSONAL INJURY, PROPERTY
DAMAGE, AND ECONOMIC LOSS,
WHICH MAY BE INCURRED BY
ANYONE USING THESE
DRAWINGS OR COMPLETE WHICH
ARE ALLOWED.

PO Box 350; 205 Main Cross Street; Ghent Kentucky 41045
Voice 502.347.9500 Fax 502.347.9333

Issue Date:	Rev. 20
Drawn By:	00C
Checked By:	00C
Revised:	
Mark:	Date:
Date:	02/10/09
Project Number:	00000.00
© 2001 CCWD	1

EXHIBIT H



205 Main Cross Street Ghent, Kentucky 41045 Phone: 502-347-9500 Fax: 502-347-9333

October 6, 2022

Chair Vic Satchwell and
Commissioners of the
Gallatin County Water District
Hand-delivered

As a follow up to our joint meeting of September 15, 2022, the Carroll County Water District (CCWD) Commissioners met last week and wants to propose the attached joint solution to the issues that Gallatin County Water District (GCWD) and CCWD are now facing. Please consider this proposal and let us have your response prior to our next meeting on Thursday, October 13th.

If you have any questions, please give me a call.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Obe D. Cox', is written over a horizontal line.

Obe D. Cox
General Manager
Email: ocox@carrollcountywater.com

cc: CCWD File w/a



October 6, 2022

Concern: Duplication of Services and Water Quality Issue for the public

Goal: Mutual Agreement to best serve 1.0 mile of Hwy. 1039 (Speedway Blvd. to I-71 South Bound Ramp) for all rate payers.

Background: Gallatin County sought to be part of Carroll County Water District (CCWD) prior to 1984 when then County Judge Executive Clarence Davis came to the Carroll County Water District (CCWD) and asked it to extend water lines into Gallatin County in order to serve the western section of the county. By joint resolution of Gallatin and Carroll Fiscal Courts, the boundaries of CCWD were extended into Gallatin County. Carroll County Water District borrowed approximately \$829,000 from USDA, which was the first of multiple investments, in order to make water available to those in Gallatin County who were not being served. Since that time, CCWD has made several investments to improve the distribution system in this region. The most recent improvement was for a pipeline extension in 2016 to create a path to connect an emergency (metered) connection with Gallatin County Water District at a point along Speedway Blvd. at Old Craig's Creek Road (Hwy. 1130) which is approximately 2,100 LF east of Hwy. 1039. Therefore, CCWD's line is approximately 2,100 feet east of the proposed Gallatin County Water District's proposed of an 8 inch water main for one residential customer, David White.

CCWD currently has a project called Water Production/Distribution Improvements that will improve services in the Carroll, Gallatin and Owen counties it serves by increasing storage to rural services areas, and producing lower energy water cost at its Gallatin treatment plant (B) located along Hwy. 42 in the western portion of Gallatin County. The Carroll County Fiscal Court assigned \$190,435 of Round 1 of ARPA Funds to this project. The Carroll County Judge Executive Harold Tomlinson verbally pledged additional monies of approximately \$400,000, of Round 2 ARPA funds; making a total of \$590,435 for this project. The Gallatin County Judge Executive Ryan Morris recently agreed to contribute \$77,871 to this project from Gallatin County's Round 2 ARPA funds.

CCWD has 479 active customers physically situated in Gallatin County, including 19 commercial accounts, 15 industrial accounts and 445 residential accounts.

Situation: Recently CCWD discovered that GCWD was in the process of crossing 5 lanes of Hwy. 1039 to serve one residential customer. After further investigation it appears GCWD has future plans to extend an 8" water main to serve potential developments and the airport under construction from this 8" line. A 09/15/2022 meeting with Gallatin Co Water District's Board Chair Vic Satchwell; GCWD's project engineer Paul Reynolds, GCWD field superintendent Willie Harmeling; Gallatin County Judge Executive Ryan Morris; CCWD's Chair Joe Raisor; CCWD's Board member representing Gallatin Co sector, Barry Brown, and CCWD General Manager, Obe Cox to discuss the GCWD extension and the boring under Highway 1039. CCWD already has an 8" line on both sides of Highway 1039 from which it currently serves customers.



At the meeting, Judge Morris stated he needed fire protection water to serve the local regional airport that is under construction. The project engineer, Paul Reynolds, said there were 3 proposed layouts and GCWD chose the option to cross Hwy. 1039 to serve 1 residential customer for time being then eventually go southward along Hwy. 1039 on the west side, even though CCWD already has an existing 8 inch water main on both the east and west sides of the same highway, serving Love's Truck Stop. A recent Gallatin County Planning and Zoning had denied a truck stop to locate at the Sparta exit, and there is evidence that a new proposed truckstop site development will be located across from Love's on the west side of Highway 1039. There are also wood survey markers with ribbon on the land that confirms this new location for a truck stop. At this meeting, both GCWD Chair Satchwell and Judge Executive Morris both denied of any other known prospective development other than the residential meter for David White for cattle watering purpose, and the anticipated airport. Running the line along this side of Highway 1039 will also eventually lead to boring under I 71 and/or its exit and entrance ramps to serve the airport from this route. CCWD expressed its opinion that GCWD's decision to cross under Highway 1039 in order to serve Mr. White and the airport involved the longest distance and has the most highway and waterway crossings, being approximately 1.9 miles. This route also serves the lowest ground elevation therefore will have much higher pipeline pressures. Even though the project engineer says they are removing two dead end caps, to create a loop line, the water hydraulics is being driven by the same tank which means the same hydraulic grade line (HGL). Therefore even if pipe is connected, the water will not circulate. Thus, the water quality issue will not be resolved and actually will increase because of the time the water will remain in a large pipeline due to the airport not having much domestic use for water, but only looking for water service for fire protection or other emergency situations.

CCWD Proposal to Best Serve All Water Rate Payers:

- CCWD understands that GCWD has an ongoing water quality issue by not having any customers on approximately 2.45 miles of an existing 8" water main on Speedway Blvd. Starting from Hwy. 35 intersection to old Hwy. 1130, then south along Hwy. 1130 for 2,200 feet; thence westerly direction for 1,700 feet on Patsy Keeton's property running parallel with a main electric transmission line and currently dead ends east of Hwy 1039 and east of CCWD's 8" water main.
- To fix the issue above, CCWD will agree to purchase potable water at a fair calculated wholesale rate approved by KY PSC in sufficient quantities to keep water safe for human consumption. (Quick calculation of aged water is at the bottom.)
- CCWD shall provide potable water service on the west side of Hwy. 1039 per its KY PSC approved line extension service policy. CCWD already has an 8-inch water main along the corridor of Hwy. 1039 with an existing water customer at the end of this water main. David White's proposed ¾" meter, as a "Residential" type account, can be easily served by CCWD and at a much lower cost than the expense projected for this extension to GCWD of at least \$74,000 for boring under Highway 1039 for 1 customer. While it was reported in the meeting that GCWD hoped to get reimbursed for this expense by the federal government if it decides to endorse this route to the airport for fire water



protection, GCWD has no written assurances that this will happen. Airport construction and the proposed operation of this airport has been a project in the work for many years with actual occupancy of the airport not projected for years to come.

- GCWD will be encouraged to do a water quality analysis and update the construction cost on all alternate routes. CCWD will work with GCWD to achieve the best possible reduction in the poor water quality it currently experiences by purchasing sufficient water to make this happen. Revisiting the service of the proposed airport and the section of the route by which it will be served also impacts poor water quality. Expenses for serving the airport are also a consideration especially for customers of both water districts which will bear the cost. GCWD's other proposed two routes for serving the airport are shorter in distance and avoid boring under I -71 entirely, and/or avoids boring under both its south bound and north bound exit / entry ramps to I-71. The second proposal route GCWD is considering would follow the old Craig's Creek Road crossing of I-71 and would be the same path of the existing sewer collection system that is owned by Carrollton Utilities. The conclusion of these two principled cost estimates and analysis will indicate that avoiding I -71 will be the least costly route, and will eliminate potential expenses down the road if there is a leak under I-71 which would have to be repaired.
- INNER MEMO NOTES:

Quick Calculation

GCWD 8" 2.45 miles = 12,936 LF (Age Water) = 33,778 gallons. (GCWD's existing water age issue.

Past existing emergency meter connection between GCWD and CCWD 3,900 LF (Age Water) = 10,183 gallons

Hwy 35 to existing emergency meter (location of proposed point of sale) 9,036 ft. = 23,595 gallons

Therefore approximately 23,595 gallons would need to be purchased to avoid waste. Thus, an agreement of 100,000 gallons of water sales/purchase agreement per month. (Approximate \$500/month; \$6,000 annually.)

EXHIBIT I

**Gallatin County Water District
4500 Ky. Hwy. 455
Sparta, Ky. 41086
859-643-5200**

October 13, 2022

Carroll County Water District
205 Main Cross Street
Ghent, Ky. 41045

Attn: Obe Cox; Joe Raisor

RE: Gallatin County Water District
Hwy. 1039 Bore Project

Dear Chairman Raisor,

The Commission of the Gallatin County Water District met at its regular meeting on October 13, 2022, during which a closed session conveyed to discuss the proposal and concerns expressed by Carroll County Water District relative to the above referenced project, which discussion was undertaken in depth and with respect.

Following that process, the Commission voted unanimously to proceed with its intended project as initially planned.

Very Truly Yours,



Victor B. Satchwell, Jr.
Chairman