

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)	

COMPLAINANT CARROLL COUNTY WATER DISTRICT #1'S
RESPONSE TO ORDER OF THE PUBLIC SERVICE COMMISSION

Comes now the Complainant Carroll County Water District No. 1 (“Carroll District No. 1) and for its Response to the Order of The Public Service Commission (“Commission”) entered on July 19, 2023, states as follows:

KRS 278.260 vests exclusive jurisdiction to the Commission over complaints as to the service of any utility made against any utility , and concerning any service of the utility that is “... unreasonable, unsafe, (or) insufficient.”¹ The statute directs the Commission, stating that it “... shall proceed, with or without notice, to make such investigation as it deems necessary or convenient.”² Discretion is also given the Commission to make an investigation on its own motion,

¹KRS 278.260(1).

²Id.

absent a complaint.³ A Complainant shall be entitled to be heard in person and to introduce evidence about its complaint.⁴

Indeed, when a complaint is filed under KRS 278.260, or upon its own motion, the Commission then conducts a hearing to determine whether the rules, regulations, practices, or service, or the method of distribution employed by such utility subject to the Commission's jurisdiction "... are unjust, unreasonable, unsafe, improper, inadequate or insufficient..."⁵ KRS 278.280(2) then gives the Commission the power to fix the just and proper methods to be followed by the utility and command the utility to do so by order. "The Commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility, and, on proper demand and tender of rates, the utility shall furnish the commodity or render the service within the time and upon the condition provided in the rules."⁶

The Commission has previously determined that, despite the fact that it lacks authority to establish an exclusive territory for water utilities, it does "... 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."⁷ Whether a certificate of convenience and necessity is mandated pursuant to KRS 278.020 is a sole question for this Commission, and not

³Id.

⁴Id. at (3).

⁵KRS 278.260(1).

⁶KRS 278.260 (2).

⁷In the Matter of Carroll County Water District No. 1 vs. Gallatin County Water District, Case No. 2007-00202 at 14.

for the Courts.⁸ Without a doubt, where a proposed extension will conflict with another utility's existing service area, and that utility currently serves clients within and immediately adjacent to the area of the proposed extension, a utility's extension is not in the ordinary course of business eliminating the requirement to obtain a certificate of convenience and necessity.⁹

Kentucky Courts have confirmed the requirements for the issuance of a certificate to a utility through the Commission by requiring the utility to:

“ ‘... first (make) 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’ and second, (show that) the inadequacy ... (is) 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 as period of time as to establish an inability or unwillingness to render adequate service.

These factors

embod(y) the element of absence of wasteful duplication, as well as a need for service. Therefore, a determination of public convenience and necessity requires both a finding of the need for a new service system or facility from the standpoint of service requirements, and an absence of wasteful duplication resulting from the construction of the new system or facility.’ ”¹⁰

⁸Opinion and Order, Gallatin County Water District, Petitioner vs. Commonwealth of Kentucky, et al. Respondents, Franklin Circuit Court, Division II, Civil Action No. 08-CI-01669, entered February 18, 2010. The Franklin Circuit Court remanded the issue to the Commission for a re-hearing on the question of whether the actions of GCWD required a certificate of convenience and necessity pursuant to KRS 278.020. The Commission did not appeal the Franklin Circuit Court's decision, but it has never conducted the re-hearing despite this Order to do so.

⁹In Re: Columbia Natural Gas Company of Kentucky, Case No 1996-00015.

¹⁰Iola Capital vs. Public Service Commission of Kentucky, 659 S.W.3d 563, 571 (Ky. App. 2022) Disc. rev. denied February 8, 2023, quoting Kentucky Utilities Company vs. Public Service Commission, 252 S.W.2d 885, 890 (Ky. 1952).

As the consideration should be for services for consumers in general, as opposed to a special interest of a utility, whether the expansion of utility services is warranted is important because utilities can and will charge their customers more money based upon the cost to construct extensions of existing services.¹¹ Moreover, utility customers should not be required to pay for extensions of services when the person requesting those services can be served by another water district, especially when there is no benefit to the utility's general consumers.¹²

In its Verified¹³ Complaint filed herein, Carroll District No. 1 alleges that Gallatin District: 1. constructed unnecessary, inefficient and wasteful facilities in violation of KRS 278.020; 2. willfully disregarded its own rules and regulations in violation of KRS 278.160; and, 3. granted unreasonable and unlawful preferences to prospective customers in violation of KRS 278.170(1).

The Commission knows from its own records that Gallatin District did not apply for a certificate of convenience and necessity for the extension of its water main under Kentucky Highway 1039 where Carroll District No. 1 is presently serving customers with the Commission's authorization.¹⁴ In support of its Verified Complaint, Carroll District No. 1 stated:

1. Gallatin District applied to Kentucky Division of Water ("KDOW") for approval of plans to extend its 2002 water main extension approximately 361

¹¹Id. at 571.

¹²See, Kentucky Industrial Utility Customers, Inc. vs Kentucky Public Service Commission, 504 S.W.3d 695 (Ky. App. 2005).

¹³While there is no requirement under the Commission's regulations for the complaint to be verified, Carroll District No. 1's Board Chair Joe Raisor verified the contents of the 27 page Complaint and the authenticity of the 9 exhibits attached to the Complaint.

¹⁴References is made to Case No. 2015-00125 (Ky. PSC July 6, 2015).

linear feet due west under Kentucky Highway 1039 to construct an 8" water main, with 130 linear feet of 16 inch steel encasement;

2. That the proposed construction by Gallatin District would cross under Carroll District No. 1's existing eight-inch main;
3. That the one customer Gallatin District was to serve, namely David White, who has no structures on the property, listed his use as "residential", and was using the water service only for grazing a small number of livestock;
4. That the cost to construct the water main extension to serve the single property was \$74,000.00;
5. That Gallatin District's public filing with KDOW includes David White's Water User Agreement with the District, and a check showing payment of \$802.00 for his water service;¹⁵
6. That with only one customer being served by Gallatin District with this extension, the Gallatin District will incur significant operating costs to maintain the quality of water provided to the White property, and that service for the White property will cost Gallatin District approximately \$12,000.00 annually;
7. That the extension is being constructed in violation of Gallatin District's tariffs which provide that for any main extension exceeding 50 feet, the

¹⁵Exhibit A.

prospective customer must deposit an amount equal to the full cost of the extension less the cost of 50 feet of the extension, or \$71,950, for the White extension;

8. That there is no record of Gallatin District of obtaining permission from this Commission to vary from its tariff requirements, nor of any payment made by David White of the \$71,950.00 sum;¹⁶
9. That Gallatin District has stated that this extension under Ky Highway 1039 is intended to provide for future development. However, there is no current planned development;
10. That there is no record of any written agreement in the minutes of Gallatin District or in the filings with the KDOW showing any other written agreement for the payment of the extension that complies with the terms of its tariff; and,
11. Gallatin District did not file for a certificate for convenience and necessity for this extension which is clearly not an 'ordinary extension in the usual course of business.

These basic facts establish at least three (3) violations of KRS 278.020, KRS 278.160 and KRS 278.170(1), as a result of Gallatin District's construction of an unauthorized water main extension into an area where service is already available for customers, and without requiring the customer to pay the cost of the extension as required by its own tariff.

¹⁶Reference is made to Exhibit 1.

As the Commission acknowledges in its Order, under 807 KAR 5:001, Section 20(4)(a), when a complaint is filed, the Commission is required to examine the complaint to determine if it establishes a *prima facie* case that the utility which is the subject of the complaint has violated a statute, regulation, tariff or order of the Commission. While that term is not defined by the Commission's regulations, "A litigating party is said to have a *prima facie* case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side."¹⁷ Thus, one is not required by a *prima facie* requirement to prove the matter complained of beyond a reasonable doubt, but to have 'sufficiently strong evidence' for the other side to answer the complaint.

Carroll District No. 1 has provided a *prima facie* case to the Commission that Gallatin District has violated at least three (3) statutory and/or tariff provisions, requiring the Commission to initiate an investigation to the matter. This Commission has the authority to demand all records of Gallatin District: a.) concerning its decision to extend the water main line to David White for his residential use; b.) the cost of the construction of the extension and its future maintenance expenses for the extended 8 inch water line; c.) the payment of David White as required by its tariff and/or alternate financing for the cost of the construction of the extension; d.) the cost of servicing this lone customer as it impacts the other customers of the District, and e.) why Gallatin District failed to apply for a certificate of convenience and necessity to the Commission — all information needed to ascertain if the Gallatin District can rebut the evidence provided by Carroll District No. 1. If the Commission's investigation determines that there is no 'rebutting evidence', then Carroll District

¹⁷Black's Law Dictionary, 2nd Edition.

No. 1 requests the Commission proceed to a hearing at which witnesses can be sworn and placed under oath, and documents can be produced corroborating Carroll District No. 1's Verified Complaint.

Carroll District No. 1 submits it has provided the Commission evidence in excess of that required to meet its *prima facie* requirement under the Commissioner's regulations. Carroll District No. 1 restates and reiterates each and every allegation made in its Verified Complaint filed herein. To the extent that any statement, allegation or exhibit made in this Response which supplements or provides new information to the Commission that it did not believe it had otherwise, then this Response is to be considered an 'amended Complaint'.

Dated: August 4, 2023

Respectfully submitted,



Ruth H. Baxter
Crawford & Baxter, P.S.C.
523 Highland Avenue
P.O. Box 353
Carrollton, Kentucky 41008
Phone: (502) 732-6688
Fax: (502) 732-6920
E-Mail: Rbaxter@cbkylaw.com

and

Damon R. Tilley
Stoll Keenon Ogden PLLC
P.O. Box 150
Hodgenville, Kentucky 42748-0150
Phone: (270) 358-3187
Fax: (270) 358-9560
E-Mail: damon.talley@skofirem.com

Counsel for Carroll County Water District No. 1

CERTIFICATION

The undersigned attorney hereby certifies that this electronic filing was transmitted to the Commission on August 4th, 2023, that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding and that pursuant to the Commission's July 22, 2021, Order in Case No. 2020-00085, no paper copies of the following will be made.



Counsel for Carroll County Water District No. 1

GALLATIN COUNTY WATER DISTRICT
WATER USER AGREEMENT

P A I D
SEP 01 2022
BY CK # 1084
302

This agreement entered into between David White, whose
address is P.O. Box 127 Colerose, Ky 41046
Hereinafter called "USER" and the Gallatin County Water District whose address is 4500 Hwy
455 Sparta, KY 41086, hereinafter called the "SUPPLIER".

Whereas, the USER desires to purchase water from the SUPPLIER the USER hereby enters into
this water user agreement as required by the bylaws of the SUPPLIER.

Now, therefore, in consideration of the mutual covenants, promises, and agreements herein
contained, it is here understood and agreed by the parties hereto as follows:

The SUPPLIER shall furnish subject to the limitations set out in its' Bylaws, Rules and
Regulations now in force or hereafter amended such quantity of water as the USER may desire in
connection with the property served by the agreement. The property to be served by this
agreement is a BUSINESS or RESIDENCE

(Circle One)

located at 1381 Hwy 1039 Sparta, Ky 41083 and the structure
type is _____

The USER shall install and maintain, at his/her own expense, a service line, which shall begin at

set out in the SUPPLIER'S Bylaws, Rules and Regulations or which have been or hereinafter adopted and imposed by the SUPPLIER.

In the event the USER shall breach this agreement by refusing or failing without just cause to connect his service line to the SUPPLIER'S distribution system as set forth above, the USER agrees to pay the SUPPLIER a lump sum of Three Hundred Dollars (\$300) as liquidated damages. It is expressly understood and agreed by the parties hereto that the said amount is agreed upon as liquidated damages in that a breach by the USER in either of the respects set forth above would cause serious and substantial damage to the SUPPLIER and it would be difficult, if not impossible to prove the amount of such damages. The parties hereto have computed, estimated and agreed upon said sum in an attempt to make a reasonable forecast of probable actual loss because of the difficulty of estimating with exactness the resulting damage.

The SUPPLIER shall determine the allocation of water to the USER in the event of a water shortage, and may shut off water to the USER in connection or extension to be made of his service line for the purpose of supplying water to another party. In the event the total water supply shall be insufficient to meet all the needs of the users, or in the event there is a shortage of water, the SUPPLIER may prorate the water available amount the various users on such basis as deemed equitable by the GOVERNING BODY, and if at any time the total water supply shall be insufficient to meet the needs of all the users, the SUPPLIER must first satisfy all the needs of the users for domestic purposes before supplying any water for livestock purposes and must satisfy all the needs of all the users for both domestic and livestock purposes before supplying any water for garden purposes.

The USER agrees that no present or future source of water will be connected to any water lines serviced by the SUPPLIER'S water lines and will disconnect from his present water supply prior to connecting to and switching to the SUPPLIER'S system and shall eliminate present or future cross-connections in his/her systems.

The failure of the USER to pay water charges duly imposed shall result in the automatic imposition of the following penalties:

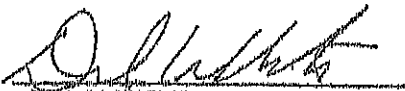
1. Non-payment after the 10th of the month will be subject to a ten percent (10%) penalty of the delinquent account.
2. Non-payment within twenty days (20) from the due date will result in the water line shutoff from the USER'S property.
3. In the event it becomes necessary for the SUPPLIER to shut off the water due to non-payment from the USER'S property, a fee of thirty five dollars (\$35) will be charged for disconnection and to restore the service a fee of thirty five dollars (\$35) will be charged for reconnection.

It is understood and agreed that the SUPPLIER reserves the right to determine the size of service to be used to supply water to the USER. A 5/8-inch by 3/4-inch meter will be used unless the USER contracts for a larger meter. A separate meter must be installed for each residence. A separate contract will be used by Trailer Parks when trailers are not supplied by individual meters.

The USER agrees to grant the SUPPLIER, its successors and assigns, a perpetual easement in, over, under and upon land owned by the USER, with the right to erect, construct, install, and lay, and thereafter use, inspect, repair, maintain, replace and remove water pipelines and appurtenant facilities, together with the right to utilize adjoining land belonging to the USER for the purpose of ingress to and ingress from the said lands.

I have received a copy of this Water User Agreement and a copy of the Payment Procedures and Water Rates.

IN WITNESS WHEREOF, we have executed this agreement this 1st day of September 2020.


SIGNATURE

SOCIAL SECURITY #

P.O. Box 127 Glencoe, Ky 41046
MAILING ADDRESS

858-444-7224
PHONE #

DAVID C. WHITE

PH. 859-447224
P.O. BOX 127
SCENOCIE, NY 41046

71-35628

1084

DATE 7-1-88

\$ 800.⁰⁰

PAY TO THE ORDER OF Callahan Co. W.A.

Eight hundred and no/100 DOLLARS

CHATHAM NATIONAL BANK

Banking & Insurance Services

MEMO 137 E. Hwy 1088 mch

[Handwritten Signature]