

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF HENRY COUNTY WATER)
DISTRICT NO. 2 TO AMEND ITS POLICY) CASE NO. 2009-00440
REGARDING CERTIFICATION OF WATER)
AVAILABILITY)

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**PUBLIC SERVICE
COMMISSION**

**RESPONSES TO INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

As Ordered November 30, 2009

HENRY COUNTY WATER DISTRICT NO. 2

RESPONDENT CERTIFICATION

PSC Interrogatories – Case 2009-00440

I certify that, on behalf of Henry County Water District No. 2, I have prepared or supervised the preparation of the responses to Items 1 through 8, and that these responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

Tom Green
Thomas Green
Tetra Tech, Inc.

Dec 17 2009
date

CASE NO. 2009-00440

Responses to November 30, 2009 Interrogatories

1. Provide all correspondence with the Henry County Planning Commission in which the certification of subdivision plats is discussed.

Several times since 1999, representatives of the Henry District have asked the Planning Commission for clarification of the meaning of the plat certification of Henry County subdivisions. The Planning Commission has consistently instructed us that a plat certification in Henry County means the unconditional commitment of hydraulic capacity held in reserve for the certified subdivision. Greg Derossett, Administrator and Enforcement Officer of the Henry County Planning Commission, attended the December 8, 2009 board meeting of the Henry District, and informed our commissioners that the permanent reservation of hydraulic capacity has been, and remains, the required level of commitment which the subdivider must obtain for plat certification. Mr. Derossett has provided the letter attached hereto as appendix A.

2. Provide all policy statements, regulations, and other guidance that the Henry County Planning Commission has issued regarding the certification of water availability.

As mentioned above, the District has been painstaking in confirming the meaning of the Planning Commission's certification note. During his initial work on the Offsetting Improvement Charge, Tom Green, representing the engineering firm on behalf of the District, attended a Planning Commission meeting and raised this question. He was instructed clearly in the matter of reserving capacity via plat certification.

During the OIC Case, 2006-00191, the question of plat certification was examined in several PSC interrogatories and explained in our responses. The District contacted the Planning Enforcement Officer, at that time William Peyton, who confirmed that the Henry Planning Commission policy had remained the same: plat certification in Henry County is the permanent reservation of capacity for the certified subdivision.

3. State whether Henry District, by the filing of its proposed revision, is requesting that the Commission strike from its current tariff Section 1 of "Plat Certification Requirements" of its "Procedures and Requirements for the Development of Water Line Extensions."

"Procedures and Requirements for the Development of Water Line Extensions" is a guidance document limited in its scope to the design, construction, and approval of water mains. It states:

‘The intent is to establish uniform policies and procedures for the construction and acceptance of water lines that will provide efficient, reliable service and are compatible with the existing water system.’

This “Procedures” document contains is a series of mileposts and the specific line design/construction requirements which are expected at each point. Like the preliminary review, the application, and the preparation of plans, the plat certification stage has its own requirements for the line design/construction process *only*. “Procedures” neither states, nor intends, that there shall be no other requirements for plat certification.

If the Commission had considered this section of the “Procedures” tariff to represent the entirety of allowable plat certification requirements, the Offsetting Improvement Charge could not have been approved. It is not necessary to strike the “Procedures and Requirements” plat certification section. These requirements remain pertinent to, as well as limited to, the line design/construction process.

However, until the PSC approves a system development charge by which the developer pays to offset the impact of the District’s certification of the reservation of capacity, these line design requirements will remain in place as a dormant set of provisions.

4. Provide the format of the certification that Henry District presently uses to certify the availability of water to a subdivision plat.

It is essential to understand that the District is not the author of plat certification notes. The District is presented with subdivision plats which already bear the certification notes dictated by planning commissions in the jurisdictions within the District’s service area.

For example, the Henry County Planning Commission’s regulations include this certification:

CERTIFICATION OF AVAILABILITY OF WATER SERVICES

I hereby certify that (name of agency or company) shall supply the (name of subdivision) with services and that the water distribution system of said subdivision meets the requirements of this agency and all other requirements of the proper distribution of water.

5. Explain why the existence of an impact fee or system development charge is essential to the certification of the availability of water to the local planning commission.

The impact fee is essential to the *equitable* certification of water availability.

As discussed in our responses to interrogatories 1 and 2, certification means hydraulic capacity must be held in reserve in order to serve hypothetical future customers in the subdivision, if and when homes are built and sold. But the District’s ability to serve *real*

customers is restricted by this commitment. The District's capacity is being diminished, not by actual demand which produces revenue, but by the ongoing reservation of capacity. The value of our system lies in its capacity to provide service; the permanent reservation of capacity diminishes our system's value. It is inequitable that this be done at no offsetting cost to the subdivider.

Although the current Order in Case 2009-00440 states that our proposed plat certification tariff raises significant issues of first impression, plat certification was examined by the Commission as part of Case 2006-00191.

August 11, 2006 Interrogatories

4a. a. Explain how Henry District's certification to the Henry County Planning and Zoning Commission of the availability of water service to a lot "creates hydraulic impact on the system."

b. Explain why for single tracts of agricultural land it is not more reasonable to require payment of the Offsetting Improvement Charge when a service connection is made instead of when the water district certifies the availability of water service.

c. State whether it is Henry District's position that it may refuse water service to an applicant where actual usage, combined with certified commitments of usage, would result in pressures below state regulations even if the applicant's connection would not result in actual pressures below state regulations upon or after his connection.

December 22, 2006 Interrogatories

23. Provide all statutory and regulatory authority for the requirement that Henry District must certify the availability of water service to local planning commissions.

Also, during the September 13, 2007 PSC hearing in Case 2006-00191, Mr. Wuetcher asked numerous questions regarding plat certification and the reservation of capacity (see hearing transcript pages 57-72). Mr. Wuetcher implied that this policy originated with the District, but it is actually that of the planning commission.

We would like our responses in Case 2006-00191 to be made part of our response herein, and we would like to expand the discussion to one of the public interest.

Certification of water availability is not only being made to the Henry County Planning Commission. The certification is made on the final subdivision plat, which is then recorded and becomes the basis of the deed of each lot. So the water availability certification is really being made to the future owners of lots in the subdivision. The certified availability of water is part of what each homeowner pays for when he buys a property in the certified subdivision.

Assume an individual buys a lot and several years later builds a home and applies for a water meter. During those several years the District has not reserved capacity, and due to

other growth in the vicinity, water pressures have become marginal. The District lacks capacity to serve the homeowner when he applies for a meter, even though he bought a lot and built a home in a subdivision whose record plat includes certification of the availability of water.

This scenario illustrates the problem with plat certifications which state only that capacity existed on the day the plat was signed. This certification gives the prospective lot buyer and homeowner historical information only; it does not provide any assurance of the future availability of service. Moreover, unless the plat certification note clearly states that future service may not be available when requested because capacity is not being reserved, these certifications are actually likely to give a false impression. What value, purpose, or aspect of the public interest does such a certification serve?

6. List the other planning commissions that exercise authority within any portion of Henry District's territory.

Henry County Planning and Zoning

Shelby County Triple S Planning and Zoning

Oldham County Planning and Zoning

(Neither Trimble nor Carroll County has a planning commission.)

7. For each planning commission listed in item 6, describe the policy of that planning commission regarding the certification of water availability for a proposed real estate subdivision development.

The policy of the Henry County Planning Commission has been discussed in the responses to interrogatories 1 & 2, and in responses in Case 2006-00191 as noted.

Ryan K. Libke, Executive Director of Triple S Planning & Zoning of Shelby County, has informed us that the plat certification in Shelby County "requires the water company to provide service to those properties when they are requested to be served." The Triple S plat certification states that "...water shall be supplied."

Oldham County Planning and Zoning requires a letter from the water utility which certifies capacity. We have spoken with Oldham County Water District and their engineer and determined that when OCWD provides the required letter and the final subdivision plat is recorded in Oldham County, the capacity to serve that subdivision is then held in reserve in the engineer's hydraulic computer model of the OCWD system in order to assure the availability of adequate service when homes are eventually built and meters requested.

8. State whether Henry District agrees that a local planning commission has the legal authority to require water reserve requirements for a water utility. Explain.

We disagree that a planning commission has legal authority to require a water utility to reserve capacity. This question misidentifies the central issue.

The planning commission cannot and does not require anything of the utility. The planning commission requires of the *subdivider of land* that he *obtain* from the utility a reservation of hydraulic capacity. The planning commission exerts no authority whatsoever to compel the utility to make such a certification, and therefore the utility is completely free to refuse the subdivider's request to certify and reserve capacity.

This is true *unless* the Public Service Commission instructs the utility that the subdivider of land requesting plat certification holds the status of an actual water customer making application for service, which the District cannot refuse. This interpretation by the PSC represents the only authority which can obligate the District to certify subdivision plats, and thereby to hold capacity in reserve for hypothetical future customers.

It is the Henry District's view that the subdivider of land is plainly not a customer applying for water service. If he proposes a 50 lot subdivision, and signs a customer usage agreement, and pays to have 50 meters set, and pays 50 minimum monthly bills, he is a customer. This is clearly not the case.

The Kentucky Court of Appeals examined this question in the context of a municipal utility in its 2007 opinion in the *Georgetown and Bur-Wal Case*, 2006-CA-000278-MR. The court unambiguously stated "...from any vantage point it is evident that these developers are not customers..."

If the PSC agrees that the subdivider of land is not a water customer applying for service, then the District is aware of no statutory or regulatory obligation to certify plats and make reservations of capacity.

Additional Statement

Although the eight interrogatories herein do not specifically refer to it, during the OIC hearing Mr. Wuetcher asked about a "middle course" in regard to plat certifications, which we would like to address here. As we understood it, this middle course would mean the District could certify both current and future availability of water service to a subdivision, but hold no capacity in reserve. The District could then allow other growth to diminish capacity, but make whatever future expansion improvements were needed to restore capacity and assure that service would be available to the subdivision when requested. This could be done by anticipating the construction status of subdivision lots, thus staying "ahead of the curve."

However, this middle course is unacceptable for several reasons.

When the planning commission's specific requirement is that the subdivider obtain a *reservation* of capacity, the District's certified intention to *restore* capacity in advance of meter requests does not meet that obligation. The District can either sign or refuse to sign, but not alter the certification.

The restoration of capacity in advance of meter requests presumes that the District's financial and manpower resources will be adequate at that time, and that the schedule of other HCWD projects will not conflict. These conditions cannot be predicted with the certainty which certification requires.

Certifying the restoration of capacity by future expansion projects as needed amounts to the reservation of resources, rather than the reservation of capacity.

Timing the restoration of needed capacity to anticipate each phase in the development of the subdivision would result in a series of small capacity-expanding projects, which by virtue of their poor economy of scale, would be a cost-ineffective and expensive approach.

Assigning District personnel to the task of advance-monitoring home construction throughout a 500 mile distribution system and then designing and installing needed improvements in the eleventh hour, would put the District in an unreasonable "hydraulic triage" role.

A subdivider who proposes development A on a road where capacity is not currently adequate would need to make appropriate capacity expansion improvements at his own expense in order to obtain the District's plat certification. However, if capacity is currently adequate in another area where development B is proposed, and the District certifies that it will restore capacity by expansion improvements as needed in the future when non-reserved capacity has been diminished, the District will in that case assume for subdivider B the necessary expansion costs which were entirely paid for in the first case by subdivider A. Since restoration of needed capacity is the object in both cases, the two subdividers will pay greatly inequitable amounts (all versus nothing) for the same thing.

Appendix A

Letter from Henry County Planning Commission

HENRY COUNTY PLANNING & ZONING

Greg Derossett
Administrator-Enforcement
g_derossett@yahoo.com

P. O. Box 686
NEW CASTLE, KENTUCKY 40050

(Phone) 502-845-7760
(Fax) 502-845-5743

December 10, 2009

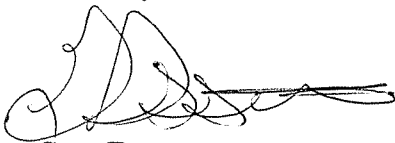
Mr. James Simpson
Henry County Water District #2
P. O. Box 219
Campbellsburg, Kentucky 40011

Re: Plat Certification

Dear Mr. Simpson:

This will clarify the language of plat certification. The Henry County Planning and Zoning Commission interprets this language that the Henry County Water District Number 2 will unconditionally commit to hold the required hydraulic capacity in reserve for said division or development. Without this unconditional commitment of the hydraulic capacity, there is no protection for the residents of Henry County as to the availability of this utility.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Derossett', with a long horizontal flourish extending to the right.

Greg Derossett



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PUBLIC SERVICE COMMISSION

LETTER OF TRANSMITTAL

DATE: December 17, 2009

TO: Mr. Jeff Derouen, Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

RE: *Case No. 2009-00440*
Henry County Water District No. 2
Responses to Interrogatories
Ordered November 30, 2009

WE ARE SENDING YOU THE FOLLOWING:

- Shop Drawings
- Prints
- Plans
- Copy of Letter
- Change Order
- Other
- Attached
- Specifications
- Under separate cover via _____
- Reports
- Samples

<u>Copies</u>	<u>Description</u>
1	Original of Responses
10	Copies of Responses

THESE ARE TRANSMITTED:

- For Approval
- For your use
- As requested
- For review and comment
- Approved as submitted
- Approved as noted
- Returned for correction
- Rejected
- Resubmit ____ copies for approval
- Submit ____ copies for distribution
- Return ____ corrected prints
- Other

COMMENTS:

As directed, we submit herewith one original and ten copies of the above referenced document in response to Order issued November 30, 2009. A copy has also been sent to Assistant Attorney General David Spenard.

Signed Thomas Green
Thomas Green

Copies to: David Spenard, Office of the Attorney General
Merle Brewer, Chairman, HCWD2
Greg Derosssett, Henry County Planning Commission
D. Berry Baxter, Counsel HCWD2