

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CUNNINGHAM WATER)
DISTRICT REQUESTING DEVIATION FROM)
REQUIREMENTS OF 807 KAR 5:006,) Case No. 2016-00422
SECTION 14(1)(b)(2))

ORDER

On December 5, 2016, Cunningham Water District, (“CWD”) tendered an application to the Commission requesting a deviation from 807 KAR 5:006, Section 14(1)(b)(2), which requires that a utility shall make a designated representative available during the utility’s established working hours not fewer than seven hours per day, one day per week, excluding legal holidays.¹ After curing filing deficiencies, the application was considered filed on January 31, 2017. CWD responded to one Commission Staff Request for Information. No person has sought intervention in this matter, and CWD has not requested a hearing. The record for this case is complete, and the matter stands ready for a decision.

807 KAR 5:006 is the Commission’s administrative regulation containing the general rules required for the performance of a service or the furnishing of service by a utility. 807 KAR 5:006, Section 14(1)(b)(2) states:

Each water, sewer, electric, or gas utility having annual operating revenues of less than \$250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each utility providing gas or electric service shall make available the designated representative

¹ CWD incorrectly referenced 807 KAR 5:006, Section 14(2), in the December 5, 2016 filing.

during the utility's established working hours not fewer than five (5) days per week, excluding legal holidays.

CWD has requested a deviation that would allow it to have no regular office hours.² CWD stated that customers will be able to reach the designated representative of the utility through telephoning the representative's cellular phone; further, CWD stated that the representative can be reached via the cell phone 24 hours a day.³ The cellular phone number used by CWD belongs to Eric Young, the system operator.⁴ Per CWD, Mr. Young is familiar with all applicable regulations and has the authority to implement partial payment plans, answer questions, and resolve disputes.⁵ CWD stated that a customer may also call the CWD office and leave a message on an answering machine which is checked for messages approximately five times a week.⁶

The primary reason offered in support of the deviation is the expense to CWD if it is required to hire an additional employee to be in the office for the required one day a week for seven hours in order to comply with 807 KAR 5:006, Section 14(1)(b)(2). CWD estimated that the wages of such an employee would cost CWD an additional \$4,000 to \$5,000 per year.⁷

807 KAR 5:006, Section 28, provides that the Commission may grant a deviation from its general rules in special cases for good cause shown. Based on the evidence of

² Application (filed Jan. 31, 2017) at 1.

³ *Id.*

⁴ Cunningham Water District's Answers to Commission Staff's First Request for Information ("Staff's First Request") (filed May 30, 2017) at Item 2.d.

⁵ *Id.* at Items 1.d., 1.e., and 2.

⁶ *Id.* at Item 1.e.

⁷ *Id.* at Item 3.

the record and being otherwise sufficiently advised, the Commission finds that CWD should be allowed to deviate from the requirements of 807 KAR 5:006 Section 14(1)(b)(2).

The Commission finds that the hiring of an additional employee to meet the requirement is a significant financial burden to CWD. Per its 2015 annual financial report filed with the Commission, CWD has only 161 customers and lists operating expenses of \$42,771.36 for the 2015 calendar year. Adding approximately \$4,000 to \$5,000 on top of this amount would be a significant increase in CWD's expenses. Using the low-end of the range identified by CWD, the additional employee would increase CWD's annual operating expenses by \$4,000 or approximately 9.35 percent.⁸

The Commission finds that CWD has a very small customer base. CWD is providing its customers with a reasonable means of direct access to CWD's designated representative 24 hours a day through providing the representative's cell phone number to its customers. The Commission finds that, in view of the small number of customers and the ability to directly access the designated representative, CWD's proposed alternative to the hiring of an additional employee is reasonably calculated to permit customers ready access to a CWD representative capable of answering questions, resolving disputes, and negotiating partial payment plans.

The Commission finds that, considering the significant financial burden to CWD of compliance with 807 KAR 5:006 compared to the proposed alternative for access to the designated representative, CWD has demonstrated good cause for a deviation from 807 KAR 5:006, Section 14(1)(b)(2). The Commission, however, finds that a permanent deviation is not warranted and that the deviation granted through this Order should be for

⁸ \$42,771.36 x 1.0935 = \$46,770.48.

a term of three years from the date of this Order. Prior to the expiration of the deviation, CWD should be required to provide written notice as to whether it will request a successive deviation. If CWD applies for a successive deviation, CWD should be prepared to demonstrate, among other things, that its alternative provides reasonable access to CWD's designated representative. If CWD does not apply for a successive deviation, CWD should advise the Commission, in the written notice, how it plans to meet the requirements of 807 KAR 5:006, Section 14(1)(b)(2).

Further, the facts presented in the instant case support a finding that CWD's request presents a special case. The Commission finds that if CWD's designated representative loses authorization to negotiate settlements, implement partial settlements, or resolve disputes, CWD should promptly inform the Commission through a written notice. Additionally, if CWD discontinues or terminates its practice of allowing customers direct access to its designated representative 24 hours a day, CWD should promptly inform the Commission through a written notice.

The application tendered by CWD on December 5, 2016, stated that it was a formal application for a deviation from 807 KAR 5:006, Section 14(2). The relief sought by CWD is a deviation from 807 KAR 5:006, Section 14(1)(b)(2). On its own motion, the Commission finds that, in order to avoid confusion regarding the deviation granted through this case, the case style for this proceeding should be modified to correctly reflect CWD's request. The Commission finds that the following case style shall be placed on this Order and hereafter used when referencing this case: "APPLICATION OF CUNNINGHAM WATER DISTRICT REQUESTING DEVIATION FROM REQUIREMENTS OF 807 KAR 5:006, SECTION 14(1)(b)(2)."

IT IS THEREFORE ORDERED that

1. CWD's deviation from the office hours requirements of 807 KAR 5:006 Section 14(1)(b)(2), is granted for a period of three years from the date of this Order.

2. The deviation is conditioned upon CWD's providing to the Commission within 30 days of the date of this Order Mr. Young's phone number, and the name and phone number of the individual who will be the alternative contact person for CWD when Mr. Young is ill or otherwise unavailable. CWD shall also send out a notice to all customers providing them with the details of this deviation and shall provide the Commission with a copy of the notice within 30 days of the date of this order.

3. The following case style shall be used when referring to this case: "APPLICATION OF CUNNINGHAM WATER DISTRICT REQUESTING DEVIATION FROM REQUIREMENTS OF 807 KAR 5:006, SECTION 14(1)(b)(2)."

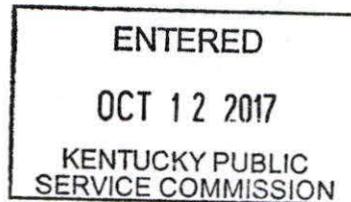
4. No less than three months prior to the expiration of the deviation granted through this Order, CWD shall file a written notice indicating whether it will submit a request for a successive deviation. If CWD, through the written notice, indicates that it does not plan to request a successive deviation, CWD shall state how it will comply with 807 KAR 5:006, Section 14(1)(b)(2).

5. If at any point while the deviation granted through this Order is in effect the designated representative loses authorization to negotiate settlements, implement partial settlements, or resolve disputes, CWD shall provide written notice to the Commission's Executive Director within seven days of the designated representative's loss of an authorization described above.

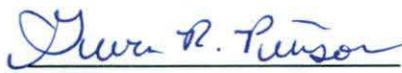
6. If at any point while the deviation granted through this Order is in effect CWD discontinues or terminates its practice of allowing customers direct access to its designated representative 24 hours a day, CWD shall provide written notice to the Commission's Executive Director within seven days of the discontinuance or termination of the practice.

7. Any document filed in the future pursuant to ordering paragraphs 3, 4, or 5 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:


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