

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC INVESTIGATION INTO)
MILBURN WATER DISTRICT TO)
DETERMINE THE FEASIBILITY OF)
MERGER WITH A PROXIMATE UTILITY) CASE NO. 2021-00341
PURSUANT TO KRS 74.361 OR)
ABANDONMENT PURSUANT TO KRS)
278.020(6), KRS 278.021)

JOINT MOTION FOR STAY OF PROCEEDING

Pursuant to 807 KAR 5:001, Section 5(1), Graves County Water District (“Graves District”) and Milburn Water District (“Milburn District”) (collectively “the Districts”), by counsel, jointly move for a stay of this proceeding for 180 days to permit Carlisle County Fiscal Court to develop a comprehensive plan for water service to Carlisle County. They further move that the time to respond to the Commission Staff’s merger feasibility study be indefinitely extended, or should the motion for stay be denied, extended to the fourteenth day following the issuance of an order denying that motion.

In support of this motion, the Districts state:

1. On March 31, 2022, the Commission initiated this proceeding to investigate the feasibility of merging Milburn District with “a proximate utility.”¹
2. On August 30, 2022, the Commission identified Graves District as a potential candidate for such merger and ordered that Graves District be made a party to this proceeding to allow the Commission “to more thoroughly investigate the possibility of merging the two

¹ Order of March 31, 2022 at 1.

districts.”² It further noted its need for “studies, investigations, facts, historical data, and projects as may be required for the Commission to make an informed and proper decision regarding such merger.”³

3. While the Commission has provided notice of this proceeding to Carlisle County Fiscal Court and further found that Carlisle County Fiscal Court has a significant interest in this proceeding,⁴ Carlisle County Fiscal Court is not currently a party to this proceeding.

4. On April 27, 2024, Senate Bill 91 became law. This bill contained an appropriation of \$5,000,000 to Carlisle County Fiscal Court “to support the Carlisle County Water District [sic] in providing water treatment and water lines to schools in the county.”⁵ Carlisle County officials plan to use these funds to support the construction of a water treatment facility and water lines to serve Carlisle County’s schools and, if possible, to eventually serve Milburn District, the City of Arlington, and Cunningham Water District.

5. On May 31, 2024, Commission Staff issued its merger feasibility report in which it recommended that “the Commission initiate the necessary actions to effect a merger of Milburn District into [sic] Graves District.”⁶ The merger feasibility report does not mention or address Senate Bill 91 nor does it discuss the possible use of the recently appropriated funds to develop a county-wide water system. This silence suggests that Commission Staff was unaware of these developments when preparing its report.

² Order of August 30, 2022 at 2.

³ *Id.*

⁴ Order of March 31, 2022 at 2.

⁵ 2024 Ky. Acts Ch. 223, § 62. See Exhibit A.

⁶ Report at 2.

6. On July 30, 2024, counsel for Graves District and Milburn District⁷ held a videoconference with representatives of Bacon, Farmer, Workman Engineering and Testing, Inc. (“the Engineers”), the engineering firm that Carlisle County Fiscal Court has retained to prepare a plan for serving Carlisle County’s schools and various areas within Carlisle County, to discuss Carlisle County Fiscal Court’s plans. Carlisle County Judge/Executive Greg Terry authorized the conference.

7. During the videoconference, the Engineers explained that various scenarios to provide water service to the Carlisle County schools, some of which include Milburn District, the City of Arlington, and Cunningham Water District, were under consideration but no definitive plan had yet been developed. The funds to develop such a plan were only released on July 1, 2024. The Engineers stated that a plan that includes connecting Milburn District, the City of Arlington, and Cunningham Water District is possible and may be desirable for water quality reasons. The Engineers stressed, however, that a detailed plan must first be developed and that such plan would require approximately six months to prepare.

8. In light of these recent developments, this proceeding should be stayed for a sufficient period of time to permit Carlisle County Fiscal Court to develop its water supply plan. Only after that plan is developed can an accurate assessment of Milburn District’s status and the feasibility of an involuntary merger of the Districts be made. A stay will permit Carlisle County Fiscal Court to develop its plan. It will also permit Commission Staff to review that plan and determine whether, in light of Carlisle County Fiscal Court’s plan, revisions to the findings and recommendations of its report are necessary. A stay will also ensure that the resources of the

⁷ Mr. Hogancamp, counsel for Milburn District, also participated in the videoconference as counsel for Cunningham Water District.

Commission and the Districts are not unnecessarily expended on administrative proceedings whose results may be set aside because of the development of a better and more acceptable alternative.

9. The involuntary merger of two water districts can result in significant disruptions to the finances and operations of those water districts and affect not only the water districts, but the customers they serve. For that reason, an involuntary merger is viewed as measure of last resort, employed only after a thorough and complete review of each water district's operations and the likely consequences of the involuntary merger and after all other alternatives have been exhausted. Moreover, KRS 74.361(2) requires that the Commission thoroughly investigate the feasibility of an involuntary merger prior to holding any hearing on the proposed merger.⁸

10. The Districts respectfully submit that the Commission would not be acting consistent with KRS 74.361 if it continued with its investigation without giving adequate consideration to Carlisle County Fiscal Court's proposed water treatment and distribution facilities. To give adequate consideration to that proposal requires that the Commission afford Carlisle County Fiscal Court adequate time to develop its proposal for the use of the funds appropriated by Senate Bill 91.

11. A stay of these proceedings will not prejudice any party and will not adversely affect the interests of the customers of either District. In its earlier orders in this proceeding, the Commission has suggested that a merger of the Districts is necessary to ensure the provision of

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Prior to ordering a hearing with reference to the merger of any water district into one (1) or more additional water districts, the Public Service Commission shall cause to be prepared in writing a feasibility report and study regarding the proposed merger, containing such studies, investigations, facts, historical data, and projections as in the circumstances may be required **in order to enable the commission to formulate a proper decision regarding such merger** [emphasis added].

adequate service to Milburn District's customers. At this time, Milburn District is providing adequate service to its customers. In its report, Commission Staff reported no violations of water quality regulations on Milburn District's part. As of this date, Milburn District is not subject to any proceedings regarding any failure to operate in accordance with Kentucky Division of Water regulations and water quality standards. Milburn District employs a system operator and is continuing to perform normal business functions. In short, staying these proceedings for six months will not adversely affect Milburn District's operations or result in a decline in the current quality of water service. However, should a decline in the quality of that service occur during the six-month stay, the Commission may take appropriate action at that time.

12. The Districts' request for a stay of proceedings is made in good faith and not for purposes of delay.

13. The Commission's Order of June 14, 2024 requires the Districts to submit their responses to Commission Staff's merger feasibility study no later than August 13, 2024. In light of the Districts' motion for a stay of proceedings, they request that the Commission indefinitely extend the time to file their responses. Should the Commission grant the motion for a stay and await the completion of Carlisle County Fiscal Court's plan for the development of water service, Commission Staff's feasibility study will likely require revision to address that plan and its effect, if any, on the proposed merger. The Districts' submission of comments before Commission Staff's submission of a revised report, therefore, would serve no meaningful purpose. In the alternative, should the Commission deny the requested stay, the Districts request their time to submit comments on the feasibility study be extended to the fourteenth day after the date of an order denying their motion for stay.

Wherefore, Graves District and Milburn District request that the Commission issue an order (1) staying these proceedings for a period of 180 days, or until February 9, 2025; and (2) indefinitely extending the time in which the Districts must submit comments to the Commission Staff's merger feasibility study of May 31, 2024, or in the alternative, extending the time in which the Districts may submit comments on that study to 14 days following the issuance of an order denying the motion for stay.

Dated: August 7, 2024

Respectfully submitted,

/s/Michael W. Hogancamp

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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that this document was submitted electronically to the Public Service Commission on August 7, 2024 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.

/s/Glenn D. Denton

Counsel for Graves County Water District