

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC INVESTIGATION OF A	)	
POSSIBLE ASSET ACQUISITION AND	)	
TRANSFER OF CONTROL OF CUNNINGHAM	)	CASE NO.
WATER DISTRICT TO THE CITY OF	)	2021-00264
BARDWELL ON BEHALF OF BARDWELL	)	
UTILITIES PURSUANT TO KRS 278.020(6)	)	
AND KRS 278.020(7)	)	

ORDER

By letter dated May 11, 2021, Cunningham Water District (Cunningham District) Board members, Casey, Brown, Dan Bowles, Klint DeJarnett, Billy Viniard, and Lloyd Presson, advised the Commission that Cunningham District had reached an agreement with the city of Bardwell, on behalf of Bardwell City Utilities (Bardwell Utilities) to transfer control of all assets and liabilities.<sup>1</sup> Mr. Bowles subsequently informed Commission Staff (Staff) by telephone conversation that the members of the board of commissioners had resigned and due to the dates of resignation, he was the sole remaining member until June 30, 2021. According to Mr. Bowles, negotiations took place with the Mayor of Bardwell, Phillip King. Mayor King informed Staff that he agreed that Bardwell Utilities would perform testing for Cunningham District so that the utility did not become out of compliance with state regulations. The work to read meters and bill the 158 customers is currently performed by Landon Blank and Curtsinger/Duncan Financial Services. Repairs are performed by L & L Construction and are paid for per job.

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<sup>1</sup> A copy of the letter is attached as an Attachment.

KRS 278.020(6), which addresses the transfer of water districts, states:

(6) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

KRS 278.020(7) states:

No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an “acquirer”), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. . . .

KRS 278.020(7) makes it clear that the city of Bardwell, on behalf of Bardwell Utilities is an “acquirer” subject to the statute and any transfer of ownership of Cunningham District to Bardwell Utilities must be approved by the Commission pursuant to KRS 278.020(6).

Accordingly, the Commission finds that this proceeding should be initiated to determine whether the proposed transfer of ownership of Cunningham District to Bardwell Utilities should be approved. The Commission will make the city of Bardwell, on behalf of Bardwell Utilities, a party to this case and requests that it provides certain information, which is set forth in a request for information attached hereto as an Appendix.

The Commission also will direct that a copy of this Order be served upon the Carlisle County Judge/Executive, the Carlisle County Fiscal Court, the Carlisle County Attorney, the Mayor of Bardwell, the Bardwell City Attorney, and the remaining representatives of Cunningham District to notify them of this proceeding.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether the proposed transfer of ownership of Cunningham District to Bardwell Utilities should be approved.

2. The city of Bardwell on behalf of Bardwell Utilities is made a party to this proceeding.

3. Bardwell Utilities is made a party to this proceeding.

4. Cunningham District and Bardwell Utilities, pursuant to 807 KAR 5:001, is to file with the Commission an electronic version of the information requested in the Appendix. The information requested herein is due as soon as possible but no later than June 30, 2021.

a. Pursuant to the Commission's Orders in Case No. 2020-00085,<sup>2</sup> issued March 16, 2020, and March 24, 2020, Cunningham District and Bardwell Utilities SHALL NOT FILE the original paper copy of all requested information at this time, but rather shall file original paper copies within 30 days of the lifting of the current state of emergency. All responses in paper medium shall be appropriately bound, tabbed, and indexed. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

b. Each response shall include the name of the witness responsible for responding to the questions related to the information provided. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on

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<sup>2</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1–3.

behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Cunningham District and Bardwell Utilities shall make timely amendment to any prior response if Cunningham District and Bardwell Utilities obtain information that indicates the response was incorrect when made or, though correct when made, is now incorrect in any material respect. For any request to which Cunningham District and Bardwell Utilities fail or refuse to furnish all or part of the requested information, Cunningham District and Bardwell Utilities shall provide a written explanation of the specific grounds for their failure to completely and precisely respond.

d. Careful attention shall be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations. When filing a paper containing personal information, Cunningham District and Bardwell Utilities shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

5. Service of all documents shall be made in accordance with 807 KAR 5:001, Section 4(8).

6. The Executive Director shall serve a copy of this Order upon the Carlisle County Judge/Executive, the Carlisle County Fiscal Court, the Carlisle County Attorney, the Mayor of Bardwell, the Bardwell City Attorney, and the remaining representatives of Cunningham District to notify them of this proceeding.

By the Commission

ENTERED  
JUN 25 2021 rCS  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

ATTACHMENT

ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2021-00264 DATED JUN 25 2021

ONE PAGE TO FOLLOW

RECEIVED

MAY 11 2021

PUBLIC SERVICE  
COMMISSION

Cunningham Water District  
P O Box 644  
Cunningham, Kentucky 42035

Kentucky Public Service Commission

P O Box 615

211 Sower Boulevard

Frankfort, Kentucky 40602-0615

Commission,

The Cunningham Water District commissioners have reached an agreement with the Bardwell City Utilities for the purchase of the water service in Cunningham.

We are asking for you the Public Service Commission to release the Cunningham Water District so that Bardwell City Utilities can take over the service.

All assets and liabilities will be transferred to the Bardwell City Utilities. Both parties are in full agreement with this move. Both parties are financially sound.

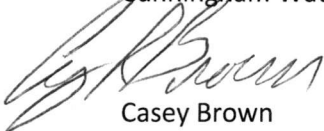
This move will ensure that the service will continue to serve the people of Cunningham.

The action will take place upon the approval of the Public Service Commission.

All past records will be retained by the Cunningham Water District.

Sincerely,

Cunningham Water District Commissioners



Casey Brown



Dan Bowles



Klint DeJarnett

Billy Viniard



Lloyd Presson

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2021-00264 DATED JUN 25 2021

1. Provide any agreements, contracts, or documentation of the terms of the agreement to transfer ownership of Cunningham District to Bardwell Utilities.
2. Provide the financial documentation, including but not limited to audit reports for the past two years, tending to show whether Bardwell Utilities has the financial ability to provide services to existing customers of Cunningham District.
3. Provide the technical and managerial documentation, including but not limited to policies, procedures, compliance histories tending to show whether Bardwell Utilities has the technical and managerial abilities to provide services to existing customers of Cunningham District.
4. Provide all Orders of the Carlisle County Judge/Executive or the Carlisle County Fiscal Court and all minutes for meetings of the Carlisle County Fiscal Court that address the transfer of ownership of Cunningham District to Bardwell Utilities.



Jason Batt  
City Attorney Bardwell  
City of Bardwell  
City Hall Bardwell  
225 Front Street  
Bardwell, KENTUCKY 42023

Dan Bowles  
Chairman  
Cunningham Water District  
P. O. Box 644  
Cunningham, KY 42035

\*City of Bardwell  
City Hall Bardwell  
225 Front Street  
Bardwell, KENTUCKY 42023

\*Phillip King  
Mayor  
City of Bardwell  
City Hall Bardwell  
225 Front Street  
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\*Bardwell City Utilities  
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