

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC INVESTIGATION INTO)	
CUNNINGHARM WATER DISTRICT TO)	
DETERMINE THE FEASIBILITY OF MERGER)	CASE NO.
WITH A PROXIMATE UTILITY PURSUANT TO)	2021-00451
KRS 74.361 OR ABANDONMENT PURSUANT TO)	
KRS 278.020(6), KRS 278.021)	

ORDER

The Commission, on its own motion and pursuant to KRS 74.361, establishes this proceeding to conduct a formal investigation into Cunningham Water District (Cunningham District), and the feasibility of merger with a proximate utility, or in the alternative whether Cunningham District has been effectively abandoned pursuant to KRS 278.020(6) and KRS 278.021. During Case No. 2021-00264,¹ the Commission was made aware that Cunningham District undertook an agreement with the city of Bardwell, on behalf of Bardwell City Utilities (Bardwell Utilities) to transfer control of all its assets and liabilities for the sum of \$1.00 due to the retirement of its manager and all but one or two board members.² Over the course of investigation, Bardwell Utilities filed a statement that it was not interested in acquiring Cunningham District and the Commission closed that case, but found that the record should be incorporated into and investigation.³

¹ Case No. 2021-00264, Electronic Investigation of a Possible Asset Acquisition and Transfer of Control of Cunningham Water District to the City of Bardwell on Behalf of Bardwell Utilities Pursuant to KRS 278.020(6) and KRS 278.020(7) (Ky. PSC Dec.20, 2021).

² *Id.*

³ *Id.*

The Commission finds that this separate proceeding should be established to investigate Cunningham District's ability to provide reasonable and adequate water services to its customers and finds the record in Case No. 2021-00264 should be incorporated by reference into this case in the interest of administrative efficiency.

The Commission finds that the Carlisle County Fiscal Court has a significant interest in this proceeding and should be served with a copy of this Order and presented an opportunity to intervene in this proceeding. The Commission finds that any interested party should file any motion to intervene, signed by counsel, no later than January 18, 2022.

As 807 KAR 5:001, Section 8, permits the Commission to direct the use of electronic filing procedures for proceedings that are initiated on our own motion, the Commission finds that electronic filing procedures should be used. As such, Cunningham District, and any intervening party, should follow the procedures set forth in 807 KAR 5:001, Section 8, when filing any document or paper in this matter. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The Commission directs the parties to the Commission's July 22, 2021 Order in Case No. 2020-00085⁴ regarding filings with the Commission.

The Commission further finds that a procedural schedule should be established to investigate Cunningham District's ability to provide reasonable and adequate water services, including whether the utility has an opportunity to merge with a proximate utility

⁴ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

or whether the utility has been effectively abandoned. The procedural schedule is attached as an Appendix A to this Order and is incorporated herein.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate whether merger between Cunningham District and a proximate utility is feasible of merger or abandonment.

2. Cunningham District is made a party to this proceeding.

3. The record in Case No. 2021-00264⁵ shall be incorporated by reference into this matter.

4. Any interested party may, by counsel, file a motion to intervene no later than January 18, 2022.

5. Cunningham District shall, by counsel, enter an appearance in this proceeding within seven days of the date of service of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.

6. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

7. Pursuant to 807 KAR 5:011, Section 8(9), within seven days of service of this Order, Cunningham District shall file by electronic means a written statement that it waives any right to service of Commission orders by United States mail and that it or its authorized agents possesses the facilities to receive electronic submissions.

⁵ Case No. 2021-00264, *Electronic Investigation of a Possible Asset Acquisition and Transfer of Control of Cunningham Water District to the City of Bardwell on Behalf of Bardwell Utilities Pursuant to KRS 278.020(6) and KRS 278.020(7)* (Ky. PSC Dec. 20, 2021).

8. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of service of an Order of the Commission, granting intervention, file with the Commission a written statement that: (1) It or its authorized agent possesses the facilities to receive electronic transmissions; and (2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

9. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

10. The procedural schedule set forth in Appendix A to this Order shall be followed.

11. Cunningham District shall file responses to the information request set forth in Appendix B no later than February 4, 2022.

12. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding which is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly

complicating or disrupting the proceedings. Further, KRS 278.040(2) requires that a person seeking intervention must have an interest in the rates or service of a utility, as those are the only matters that are subject to the Commission's jurisdiction. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding the potential impact of possible modification of rates will not be deemed sufficient to establish a special interest. In addition, any motion to intervene after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

13. Cunningham District shall give notice of the hearing in accordance with the provisions set forth in 807 KAR 5:001, Section 9(2). In addition, the notice of the hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, psc.ky.gov." At the time publication is requested, Cunningham District shall forward a duplicate of the notice and request to the Commission.

14. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

15. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video recording shall be made of the hearing.

16. The Commission does not look favorably upon motions of continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

17. The Executive Director shall serve a copy of this Order on Carlisle County Judge/Executive Greg Terry.

18. Nothing contained herein shall prevent the Commission from entering further Orders in this matter

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission

ENTERED
DEC 15 2021
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00451

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00451 DATED DEC 15 2021

Requests for intervention shall be filed no later than 01/18/2022

Cunningham District shall file its response to the Commission Staff's
request for information, attached as Appendix B, no later than 02/04/2022

Initial requests for information to Cunningham District
shall be filed no later than 02/18/2022

Cunningham District shall file responses to initial requests for
information no later than 03/04/2022

All supplemental requests for information to
Cunningham District shall be filed no later than 03/25/2022

Cunningham District shall file responses to supplemental
requests for information no later than 04/12/2022

Intervenors Testimony, if any, in verified prepared
form shall be filed no later than 05/06/2022

All requests for information to Intervenors
shall be filed no later than 05/27/2022

Intervenors shall file responses to requests
for information no later than 06/17/2022

Cunningham District or any Intervenors shall request either
a hearing or that the case be submitted for a decision
based on the record no later than 06/24/2022

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00451 DATED DEC 15 2021

COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION TO CUNNINGHAM WATER DISTRICT

Cunningham Water District (Cunningham District), pursuant to 807 KAR 5:001, is to file with the Commission an electronic version of the following information. The information requested is due on February 4, 2022. The Commission directs Cunningham District to the Commission's July 22, 2021 Order in Case No. 2020-00085⁶ regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

Each response shall include the question to which the response is made, and 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 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.

Cunningham District shall make timely amendment to any prior response if Cunningham District obtains information that indicates the response was incorrect when made or, though correct when made, is now incorrect in any material respect. For any

⁶ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

request to which Cunningham District fails or refuses to furnish all or part of the requested information, Cunningham District shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

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 shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

1. Identify the current board members of Cunningham District and their terms.
2. Provide the name of all commissioners for each of the five previous years, and state, individually, the total amount of each benefit paid to, or on behalf of, each commissioner during each year (i.e., wages, health insurance premiums, life insurance premiums, FICA taxes, etc.).
3. Provide the minutes of the Cunningham Board Meetings for 2020 and 2021.
4. Provide a copy of any notice given to the Carlisle Judge/Executive of the retirement of the utility's manager, the retirement of the utility's board members, and the transfer of Cunningham District to Bardwell Utilities.
5. Identify the dates of all the meetings between Carlisle Fiscal Court, Carlisle Judge/Executive Greg Terry, and Cunningham District regarding the retirement of the

utility's manager, the retirement the utility's board members, and the transfer of Cunningham District to Bardwell Utilities.

- a. Identify every individual attending these meetings.
 - b. Provide the minutes taken during these meetings.
6. Provide a copy of the contract for any contracted services purchased by Cunningham District to maintain compliance with state and federal safety regulations, including water testing and billing.
7. For the calendar years ended December 31, 2019, and December 31, 2020, provide the following information, and when appropriate, provide in Excel spreadsheet format with all formulas, columns, and rows unprotected and fully accessible:
 - a. Cunningham District's general ledger.
 - b. Cunningham District's audited adjusted trial balance showing unaudited account balances, audit adjustments, and audited balances.
8. Provide Cunningham District's 2020 financial audit, if one exists.

Billy Viniard
937 SR 1820
Cunningham, KENTUCKY 42035

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

*Cunningham Water District
7506 US Highway 52
P. O. Box 644
Cunningham, KY 42035

*Cunningham Water District
Cunningham Water District
7506 US Highway 52
P. O. Box 644
Cunningham, KY 42035

*Greg H Terry
Carlisle County Judge/Executive
P. O. Box 279
985 US Highway 62
Bardwell, KENTUCKY 42023