

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF HENRY)	
COUNTY WATER DISTRICT #2 FOR APPROVAL)	CASE NO.
OF A WATER SUPPLY AGREEMENT WITH)	2025-00225
SUNANZA, INC.)	

ORDER

On June 2, 2025, Henry County Water District #2 (Henry District #2) filed a Water Supply Agreement (Agreement) with Sunanza, Inc. (Sunanza) that sets out the terms by which Henry District #2 will supply water to Sunanza. Pursuant to KRS 278.180(1), the earliest the Agreement could be effective is July 2, 2025, which is 30 days after the filing date. Included with the Agreement filing was a letter of support from Sunanza through their counsel, Dinsmore & Shohl, LLP. On May 23, 2025, the Commission received a public comment regarding the proposed Agreement from the law firm of Strobo Barkley, PLLC. The public comment is attached as Appendix B to this Order.

KRS 278.030(1)-(2) provides that a utility may collect fair, just and reasonable rates and that the service it provides must be adequate, efficient and reasonable. Having reviewed the proposed Agreement and being otherwise sufficiently advised, the Commission finds that an investigation is necessary to determine the reasonableness of the proposed Agreement and that such investigation cannot be completed by July 2, 2025. Pursuant to KRS 278.190(2), the Commission will, therefore, suspend the effective date of the proposed Agreement for five months, up to and including December 1, 2025.

The Commission directs Henry District #2 to the Commission's July 22, 2021 Order in Case No. 2020-00085¹ in which the Commission mandated the use of electronic filing procedures listed in 807 KAR 5:001, Section 8. Consistent with the filing procedures set forth in Case No. 2020-00085, the Commission finds that electronic filing procedures should be used.

The Commission further finds that a procedural schedule should be established to review the reasonableness of the proposed tariff. The procedural schedule is attached as Appendix A to this Order. In addition, the Commission directs the Executive Director to send this Order to Dinsmore & Shohl, LLP and Strobo Barkley PLLC.; however, unless otherwise ordered, future filings and orders sent by Commission Staff in this matter should only be served upon parties to the proceeding.

Additionally, any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing may be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing. Hearings are held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky. Witnesses who sponsor schedules, testimony, or responses to requests for information are expected to participate in person at a hearing.

¹ 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).

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the reasonableness of the proposed Agreement.
2. Henry District #2's proposed Agreement is suspended for five months from July 2, 2025, up to and including December 1, 2025.
3. Henry District #2 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.
4. 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.
5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of the date of service of this Order, Henry District #2 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 agent possess the facilities to receive electronic submissions.
6. 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 shall be served.

7. 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).

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

9. Henry District #2 shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

10. 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. 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 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.

11. 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.

12. Henry District #2 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, Henry District #2 shall forward a duplicate of the notice and request to the Commission.

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

14. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.

15. Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.

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

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


18. The Commission does not look favorably upon motions to substitute witnesses or excuse witnesses from testifying at Commission hearings. Accordingly, motions to substitute witnesses or excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing at least 14 days prior to the hearing and will be granted only upon a showing of good cause.

19. The Executive Director shall serve a copy of this Order upon Dinsmore & Shohl, LLP, and Strobo Barkley, PLLC.; however, unless otherwise ordered, future filings and orders sent by Commission Staff in this matter should only be served upon parties to the proceeding.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ATTEST:


Executive Director



APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2025-00225 DATED JUL 1 2025

Requests for intervention shall be filed no later than 07/09/2025

Initial requests for information to Henry District #2
shall be filed no later than 07/23/2025

Henry District #2 shall file responses to
initial requests for information no later than 08/06/2025

All supplemental requests for information to Henry District #2
shall be filed no later than 08/20/2025

Henry District #2 shall file responses to supplemental requests
for information no later than 09/03/2025

Intervenor testimony, if any, in verified prepared
form shall be filed no later than 09/10/2025

All requests for information to Intervenors shall
be filed no later than 09/24/2025

Intervenors shall file responses to requests for
information no later than 10/08/2025

Henry District #2 shall file, in verified form, its rebuttal
testimony no later than 10/15/2025

Henry District #2 or any Intervenor shall request either a
hearing or that the case be submitted for decision
based on the record no later than 10/22/2025

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2025-00225 DATED JUL 1 2025

SEVEN PAGES TO FOLLOW

May 23, 2025

Via Electronic Mail Only

Linda C. Bridwell, P.E., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602
PSCED@ky.gov

RE: Henry County Water District No. 2 – Special Contract

Dear Ms. Bridwell:

The Henry County Water District No. 2 (“HCWD” or “District”) is a non-profit water district whose rates and service are subject to the jurisdiction of the Kentucky Public Service Commission (“PSC” or “Commission”). Sunanza, Inc. (“Sunanza”) is a Kentucky corporation that is the owner of certain property within Oldham County, Kentucky that is located within the HCWD service area.

Based upon reasonable belief, on May 12, 2025, HCWD and Sunanza executed a Water Supply Agreement (“WSA” or “Agreement”). (A portion of the WSA is attached to this letter.) The recitals in the Water Supply Agreement acknowledge that Sunanza seeks to “construct a residential subdivision consisting of 46 lots to be used for [separate] single family residential purposes.” Per Numbered Paragraph 3 of the WSA, HCWD and Sunanza expressly agree that “Sunanza’s Property is within the District’s Service area and is subject to the District’s approved tariffs.”

In numerous instances, the WSA unmistakably identifies “hydrants” as an essential element or aspect to a proposed water facility for serving the proposed residential subdivision. As examples, hydrants are among other things listed in the recitals of the Agreement and expressly identified as part of the water facility. Further, Numbered Paragraph 1 states: “[T]he District acknowledges that the metered line will contain a number of hydrants of the size and configuration necessary to be considered ‘fire hydrants.’” Numbered Paragraph 2, additionally, confirms the intent to install hydrants and, moreover, that the installation of the hydrants expressly requires the participation of the District through the review and approval.

Henry County Water District # 2, Rates, Rules and Regulations for Furnishing Water at Henry, Carroll, Oldham, and Trimble Counties, Kentucky (“HCWD Tariffs”), contain the Commission-approved set of Procedures and

Requirements for the Development of Water Line Extensions; dated November 1997 as modified (Revision 1.0) January 1999 and (Revision 2.0) March 2000. With regard to Minimum Design Criteria, HCWD's existing tariff expressly states: "No fire hydrants shall be allowed to be installed in any proposed water facility except in the industrial park near Campbellsburg."

The WSA is an effort to do indirectly what the District's Commission-approved tariffs expressly forbid, specifically authorize the installation of fire hydrants on a proposed water facility (that is not located in the industrial park near Campbellsburg). The WSA expressly admits that "the District's tariff prohibits it from providing fire protection." The plain language of the District's Commission-approved tariffs demonstrates that the proposed fire service water line should not be allowed to connect to the District's system.

The purported foundation of the exercise of authority through the WSA is 807 KAR 5:095, the Commission's administrative regulation concerning fire protection service for water utilities. An examination of the plain language of this administrative regulation confirms that the regulation does not authorize the water facility that is the subject of the WSA.

807 KAR 5:095, Section 1(2) provides the following definition:

"Private fire service line" means a water line that is installed at the customer's expense and that extends from a water main to provide private fire protection service to a single customer, a single multi-unit building or complex, or a single commercial or industrial development.

The proposed development of a residential subdivision does not fall within the scope of the plain language coverage through any of the categories within the definition for a "private fire service line." If the scope of the administrative regulation were intended to extend to and include a single residential development, that type of development would have been included alongside the language defining a private fire service line to include a water line installed to provide fire protection service to "a single commercial or industrial development." Residential developments such as the one that is the subject of the Water Supply Agreement are not within the definition of developments corresponding to a "private fire service line."

Sunanza is not proposing a water facility for a single multi-unit building or complex; therefore, "a single customer" is the only other category available through 807 KAR 5:095. Nonetheless, developments (as a category) are specifically addressed through the regulation and include commercial or industrial developments but not residential developments. When read to give all parts of the regulation meaning, the phrase "single customer" is service to a customer for a single unique location (or lot) rather than service for multiple locations (or different

lots). “A single customer” is not within the same category or description intended for developments, and Sunanza’s proposal is for a residential development rather than a proposal for fire service to a “single customer.” The plain language of the WSA confirms this fact, particularly through the description that the water facility will provide fire service to “a residential subdivision consisting of 46 lots to be used for single family residential purposes.” The water facility is clearly not proposed for the benefit of a “single customer,” but rather is proposed for a multi-customer residential development. Again, water facilities for this type of development are not within the definition of 807 KAR 5:095(2) and, consequently, it is not a “private fire service line.”

Equally important to the analysis of 807 KAR 5:095 is the fact that the authority provided through the Commission’s administrative regulation concerns “the allocation of costs for system improvements necessary for private fire protection service.” See 807 KAR 5:095, Section 2. The District may not rely upon an administrative regulation that simply authorizes the allocation of cost as the foundation to authorize the District to engage in activity that is strictly prohibited by the District’s tariffs. Otherwise stated: If the authority to install hydrants is expressly denied to the District through its Commission-approved tariffs, 807 KAR 5:095 has no relevance. It is a cost allocation provision that does not apply in situations where there are no costs to allocate, such as when the water facilities are beyond the authority of the District to approve for installation.

The jurisdiction of the Kentucky Public Service Commission over the rates and service is established by statute, KRS 278.040. Although the District expressly acknowledges that the Agreement is subject to the approval of the Kentucky PSC, Numbered Paragraph 8 of the Agreement purports to create a choice of law provision through which the parties to the Agreement seek to vest the Henry Circuit Court with jurisdiction over the Agreement.

Kentucky law prohibits the parties from such a choice of forum clause for vesting the Henry Circuit Court with jurisdiction over any aspect of the Agreement for which exclusive jurisdiction has been vested by the General Assembly with the Commission, in particular, exclusive jurisdiction over any questions or claims concerning rates or service such as the sizing of the line, pressure or flows, and residual pressure on the Districts’ lines in the area of the property. The WSA does not contain a severability clause. It is void in total.

Additionally, it is critical to point out that acceptance and approval of this Water Supply Agreement will create Commission precedent. HCWD, thereafter, will have an approved regulatory pathway for service to successive applicants for private fire service to residential communities. HCWD will have the authority to gain approval of successive applications, and, equally important, successive applicants will have a new right through which they may bring a complaint case should HCWD deny a request for service through a similar agreement.

807 KAR 8:0595 excludes “residential developments” from the enumeration of developments (“single commercial or industrial development”). HCWD’s Commission-approved tariffs expressly state, regarding development, that “[n]o fire hydrants shall be allowed to be installed in any proposed water facility except in the industrial park near Campbellsburg.” Acceptance and approval of the Water Supply Agreement will amend both 807 KAR 8:095 and HCWD’s tariffs outside of the proper method for amendments of either.

Numbered Paragraph 6 includes, among other things, the statement: “The District shall use good faith efforts to ensure that the Kentucky Public Service Commission reviews this Agreement in a timely manner and specifically agrees to submit this Agreement to the Public Service Commission within fourteen (14) days of the date of this Agreement.” Based upon reasonable belief, it is highly likely that the WSA will be tendered by HCWD, if not already filed.

The Commission should, at minimum, open an investigation into the WSA, and the Commission should reject or, alternatively, deny (for the above-stated reasons) the Water Supply Agreement if it is presented to the Commission for any type of review and/or approval. The plain language of the District’s Commission-approved tariffs demonstrates that the proposed residential development fire service water line should not be allowed to connect to the District’s system. Further, any choice of forum provision that stands to deny the Commission’s exclusive jurisdiction over the District’s rates and service is void. The Commission should declare the Agreement, in its entirety, unlawful, void, and unenforceable.

WHEREFORE, I respectfully request that the Commission take these written comments into consideration and open an investigation into the Water Supply Agreement. Please include these written comments in the tariff filing docket or case file docket for the WSA should it be tendered to the Commission. Please contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/ David E. Spenard

Randal A. Strobo

David E. Spenard

STROBO BARKLEY PLLC

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Louisville, Kentucky 40202

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Email: rstrobo@strobobarkley.com

Email: dspenard@strobobarkley.com

cc: Henry County Water District (via electronic mail)
Attachment (1)

Water Supply Agreement

This Water Supply Agreement is made and entered into this 12th day of May 2025 by and between Henry County Water District #2, a non-profit water district organized under KRS Chapter 74 (the "District"), with an address of 8955 Main Street, Campbellsburg, KY 40011 and Sunanza, Inc., a Kentucky corporation, with an address of 16900 Meeting House Road, Fisherville, KY 40023 ("Sunanza").

WHEREAS, Sunanza is the owner of certain property located on US 42 and Old Sligo Road in Oldham County, Kentucky but within the service area of the District (the "Sunanza Property"); and

WHEREAS, the District is the exclusive supplier of water within its service area, which includes the Sunanza Property, and is regulated by the Kentucky Public Service Commission and the Kentucky Division of Water; and


WHEREAS, Sunanza represents that it desires to construct a residential subdivision consisting of 46 lots to be used for single family residential purposes and to provide a separate dedicated line that will contain a private fire system (as that term is defined in 807 KAR 5:095) for a portion of the Sunanza Property located in Oldham County; and

WHEREAS, Sunanza and the District have agreed that the private fire system line can be connected to the District's line in front of the Sunanza Property on the conditions contained in this Agreement; and

WHEREAS, the parties hereto acknowledge that the District will not be providing any fire protection to the residents of the Sunanza property being developed as the District's tariff prohibits it from providing fire protection and further that the District will in no way be responsible for any maintenance, repair or upkeep of the private fire system including the line, hydrants or any related or appurtenant equipment beyond the meter installed at the inception of the private fire system; and

NOW, THEREFORE, in consideration of the duties and obligations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. District grants Sunanza the right to connect a metered line to the District's system generally in the location shown on Exhibit A. Further, the District acknowledges that the metered line will contain a number of hydrants of the size and configuration necessary to be considered "fire hydrants." The metered line shall be constructed to the specifications generally shown on Exhibit B attached hereto, which specifications are intended to ensure that the metered line will be sufficiently sized to carry a flow rate of at least 500 gallons per minute and to maintain a residual pressure on the District's lines in the area of the Sunanza Property of at least 20 PSI, which conditions are the same as set forth in the Hydraulic Analysis performed by Tetratch, Inc. dated July 15, 2022. It is specifically noted and agreed that the District in no way guarantees or warrants that the pressure or flows referenced herein will be available at any given time but the District will not restrict pressure or flows

5/12/25 

for reasons outside of routine maintenance, repair, or replacement of the District's lines. The District agrees that it will comply with the terms of its tariff concerning the provision of service for potable drinking water and specifically excludes any guarantees or warranties that regarding fire protection. The District's grant is conditioned upon Sunanza's satisfaction of the conditions set forth below.

2. Sunanza, its successors and assigns, shall be solely responsible for the installation, maintenance, repair and replacement of the metered line, any hydrants installed on said line and any other related or appurtenant equipment installed as part of said private fire protection system. The installation shall be made by a contractor of Sunanza's choosing subject to the approval of the District. Sunanza shall be solely responsible for the actual costs and construction of the meter vault and metered line and fire hydrants installed on the metered line and any other related or appurtenant equipment installed as part of said private fire protection system, including all costs of construction and connection. The meter used to connect the metered line to the District's line shall be subject to the District's "Standard Specifications and Drawings," and the costs of evaluating the meter used to connect the metered line to the District's system shall be initially borne by the District but reimbursed by Sunanza within fifteen (15) days of request. Sunanza shall further indemnify and hold District harmless for any and all liability arising from the installation of the metered line.

3. Sunanza and the District agree that Sunanza's Property is within the District's service area and is subject to the District's approved tariffs.

4. It is understood and agreed that Sunanza, its successors and assigns, including the Homeowner's Association contemplated to be formed herein, hereby assumes the entire responsibility and liability for any and all damage to persons or property caused by, resulting from or arising out of any act or omission related to the private fire protection system, including any loss by any person or entity that shall utilize said system in connection with this contract. Sunanza, its successor and/or assigns shall save harmless and indemnify the District from and against any and all claims, losses or expenses, including but not limited to counsel fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with any and all such damage, real or alleged, and Sunanza, its successor and/or assigns shall, upon written demand by the District, assume and defend, at Sunanza's sole cost and expense, any and all such suits or defense of claims.

5. District and Sunanza agree that, upon the subdivision of the Sunanza Property, Sunanza shall cause to be recorded a declaration of restrictions and articles of incorporation to create the Old Sligo Farm Estates Homeowners Association, including an obligation for said Homeowners Association to assume Sunanza's obligations under this Agreement. The declaration shall contain a paragraph concerning the obligations of the Old Sligo Farm Estates Homeowners Association substantially the same as the paragraph attached hereto as Exhibit C.

6. The parties understand and agree that District's grant contained in Paragraph 1 above is specifically subject to the acceptance of the Kentucky Public Service Commission of this Agreement. The District shall use good faith efforts to ensure that the Kentucky Public Service Commission reviews this

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5/12/25

Agreement in a timely manner and specifically agrees to submit this Agreement to the Public Service Commission within fourteen (14) days of the date of this Agreement.

7. This Agreement shall be for the benefit of the parties to this Agreement their successors and assigns. There are no third-party beneficiaries to this Agreement.

8. This Agreement may be enforced by an action in the Henry Circuit Court. This Agreement shall be interpreted in accordance with the law of the Commonwealth of Kentucky.

Witness the hands of the undersigned on the date first above written.

Henry County Water District #2

By: 

Date: 5/12/25

Sunanza, Inc.

By: 

Date: 5/12/25

Me 5/12/25

*Henry County Water District #2
8955 Main Street
P. O. Box 219
Campbellsburg, KY 40011

*Keith Morris
Henry County Water District #2
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P. O. Box 219
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