

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MURRAY NO. 2 WATER	)	
DISTRICT REQUESTING DEVIATION FROM	)	CASE NO.
REQUIREMENTS OF 807 KAR 5:066, SECTION	)	2016-00400
4(4)	)	

ORDER

On November 22, 2016, Murray No. 2 Water District (“Murray”) submitted an application (“Application”) requesting a deviation from 807 KAR 5:066, Section 4(4), which sets forth the Commission’s minimum water storage capacity requirements. The Application was deemed filed on March 13, 2017, the date that Murray submitted a filing that cured deficiencies identified in the Application. Murray responded to one request for information from Commission Staff. No party sought intervention in this case. The matter now stands submitted to the Commission for a decision.

BACKGROUND

Murray, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to approximately 289 customers in Calloway County, Kentucky.<sup>1</sup> Murray purchases water from the City of Murray Public Works and Utilities

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<sup>1</sup> *Annual Report of Murray No. 2 Water District to the Public Service Commission for the Calendar Year Ended December 31, 2015* (“Annual Report”) at 12 and 43. [Why is the 2016 annual report not showing up on our web site? I’m checking with Jeff Cline on the status.] (According to Jeff Cline, Murray has not uploaded its oath page, hence why it has not been deemed filed and does not appear on our website.)

("City of Murray"), and, according to its Application, has no independent storage of its own. Murray's average daily consumption is 41,355 gallons.<sup>2</sup>

807 KAR 5:066, Section 4, is the Commission's administrative regulation addressing continuity of service for water utilities. With respect to storage requirements, 807 KAR 5:066, Section 4(4), provides:

Storage. The minimum storage capacity for systems shall be equal to the average daily consumption.

Murray has no independent storage of its own, and is therefore deficient and out of compliance with the Commission's regulatory requirements. The Commission previously granted Murray a deviation from 807 KAR 5:006, Section 4(4), in Case Nos. 91-197<sup>3</sup> and 94-274<sup>4</sup>.

In requesting a deviation, Murray stated that its water supplier, the City of Murray, has storage capacity of 2.925 million gallons of potable water. Murray supplied a February 11, 2016 letter from the City of Murray that states:

The City of Murray Water System has an elevated storage capacity of 2.925 million gallons of potable water and 1.0 million gallons of treated potable water before high service pumping. Our water treatment plant is designed to treat up to 7.0 million gallons per day. We currently average between 3.0 and 4.5 MGD.

The City of Murray Water System agrees to provide potable water to Water District #2—121 South in sufficient quantity and pressure as it does to all of our water customers, both inside and out the City limits, and is subject to the rules and regulations governing water supply, distribution and usage under the authority of the Kentucky Division of Water.

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<sup>2</sup> Application (filed March 13, 2017) at unnumbered page 3.

<sup>3</sup> Case No. 91-197, *Application of Murray No. 2 Water District for a Deviation Pursuant to 807 KAR 5:066 Section 5(4), Regarding Water Shortage*, (Ky. PSC Oct. 21, 1991).

<sup>4</sup> Case No. 94-274, *Application of Murray No. 2 Water District for a Deviation Pursuant to 807 KAR 5:066 Section 4(4), Regarding Water Shortage*, (Ky. PSC Sept 27, 1994).

This agreement is for a period of three (3) years from January 1, 2016 and December 31, 2018, at which time the terms of the agreement may be reviewed and extended, if agreed to by both parties.

In its response to Commission Staff's request for information, Marty Futrell, chairman of Murray, states that to the best of his knowledge, the City of Murray has provided a continual supply of water to Murray for the last 20 years with no interruption, except for a 45-minute outage caused by a territorial pressure drop stemming from an automobile accident. He also asserts that Murray has never had independent water storage, since it has always relied on the City of Murray for its water supply, and that to acquire storage now would cause a significant financial hardship for the customers of the water district.<sup>5</sup>

#### DISCUSSION

807 KAR 5:066, Section 4(4), requires a water utility to have a minimum storage capacity equal to its average daily consumption, and the intent of this requirement is for the protection of the continuity of water service. The Commission finds that Murray has no independent storage, and therefore we find that Murray is out of compliance with regulatory water storage requirements.

In support of its request for a deviation, Murray relies upon the 2.925 million gallons of storage capacity provided by the City of Murray. The Commission has, in several instances, permitted a water utility to rely upon the storage capacity of an interconnected water utility as a means of addressing its own storage requirements.

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<sup>5</sup> Response to Commission Staff's First Request for Information ("Staff's First Request") (filed June 9, 2017) at Items 2, 3, and 4.

Previously, the Commission also has permitted reliance on the storage capacity of an interconnected water utility as a means of demonstrating good cause for permitting a deviation from 807 KAR 5:066, Section 4(4). In Case No. 2016-00114, Dexter-Almo Heights Water District (“Dexter-Almo”) had no storage capacity and an average daily consumption of 125,000 gallons of water.<sup>6</sup> Dexter-Almo purchased all of its water from the City of Murray, which had 2.925 million gallons of storage in its own system.<sup>7</sup> While Dexter-Almo and the City of Murray had a three-year agreement regarding the City of Murray’s provision of water, the agreement did not mention an allocation of storage by the City of Murray on behalf of Dexter-Almo.<sup>8</sup> Per the facts of that case, the Commission determined that the City of Murray’s ability to provide Dexter-Almo with storage capacity permitted the approval of a deviation from the water storage requirements of 807 KAR 5:066, Section 4(4), through the end of the three-year agreement between Dexter-Almo and the City of Murray.<sup>9</sup>

Murray entered into its current contract with the City of Murray for a term of approximately three years. The letter from the City of Murray attached to the Application sets out both daily use and storage capacity for the City of Murray; however, it does not reserve any portion of that storage to the exclusive use of Murray.

The Commission finds that there is no allocation of storage by the City of Murray for the exclusive use of Murray. While there is evidence in the record that the City of

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<sup>6</sup> *Application of Dexter-Almo Heights Water District Requesting Deviation from Requirements of 807 KAR 5:066, Section 4(4)*, Order (Ky. PSC June 6, 2016) at 1 and 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 4 and 5.

Murray has storage capacity sufficient to meet the storage requirements for Murray, we find that currently there is no written agreement regarding a reservation of water storage. For these reasons, the Commission cannot consider any storage in the City of Murray system to be part of the storage capacity of Murray. Consequently, Murray cannot rely upon water storage in the City of Murray's system for meeting the water storage requirements of 807 KAR 5:066, Section 4(4).

Murray requires additional water storage capacity of approximately 41,355 gallons in order to comply with 807 KAR 5:066, Section 4(4). The City of Murray has a requirement under the Water Purchase Contract to, at all times, maintain its system in an efficient manner and take actions reasonably necessary to perform its obligations, and it has sufficient storage capacity to provide Murray with access to at least 41,355 gallons of storage capacity. Based on these findings, it is reasonable to grant Murray a deviation from 807 KAR 5:066, Section 4(4), through January 31, 2021,, unless and until Murray is acquired by the City of Murray, whichever occurs earlier. Murray should advise the Commission in writing if any changes occur in either system that could cause the City of Murray to have insufficient storage to meet the storage requirements for Murray.

While the Commission will grant a deviation, we are concerned that Murray has let its prior deviation lapse and has taken no action until now to rectify the situation, leaving it open to the possibility of fines and penalties. Specifically, under KRS 278.990(1), "[a]ny officer, agent or employee of a utility . . . who willfully violates any of the provisions of this chapter, or fails to obey any order of the commission . . . shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500)." Water District Commissioners should be advised that fines and

penalties may be assessed against them individually for any such violations, as the Commission does not believe that Murray's customers should bear the cost of civil penalties in their rates for the negligence or malfeasance of the Water District Commissioners.

In addition, we are troubled that Murray does not have a written agreement supporting an allocation of storage by the City of Murray on behalf of Murray. Therefore, Murray should negotiate with the City of Murray to obtain a written agreement regarding the allocation of storage, and file the negotiated agreement with the Commission. The agreement should address, at minimum, the amount of the allocation, the duration of the agreement, including any renewal periods, and the rights and obligations of the parties concerning the allocation, including during an emergency. Murray should provide the Commission with written updates on its efforts to obtain a written agreement with the City of Murray.

The Commission is willing to grant a temporary deviation despite the lack of a formal allocation of storage agreement because both Murray and the City of Murray have represented to the Commission that negotiations are likely to start in the first quarter of 2018 that could result in the City of Murray's acquisition of Murray. Therefore, Murray should also provide the Commission with written updates of the progress of negotiations regarding the acquisition of Murray by the City of Murray. In the event that Murray is unable to secure a written agreement with the City of Murray or has not been acquired by the City of Murray by December 1, 2020, Murray should file another application for a deviation from 807 KAR 5:066, Section 4(4), on or before January 3, 2021. Murray is hereby placed on notice that a failure to file a written agreement regarding allocation of



storage prior to requesting a further deviation in January 2021, the Commission will examine why the proposed acquisition of Murray by the City of Murray has not taken place.

IT IS THEREFORE ORDERED that:

1. Murray's request to deviate from the water storage requirements of 807 KAR 5:066, Section 4(4), is granted and approved through January 31, 2021.

2. Murray shall inform the Commission in writing if changes occur in either system that would cause the City of Murray to have insufficient storage for Murray.

3. Beginning June 1, 2018, and every six months thereafter, Murray shall file with the Commission a written report of its efforts to obtain a written agreement regarding water storage and the progress of acquisition negotiations with the City of Murray. If these semi-annual reports are not timely filed, the Commission will initiate a show cause action against Murray's commissioners for failure to obey an Order of the Commission.

4. In the event that Murray has neither secured a written agreement with nor been acquired by the City of Murray by December 1, 2020, Murray shall file an application for a deviation from 807 KAR 5:066, Section 4(4), on or before January 3, 2021.

5. Any documents filed in the future pursuant to ordering paragraphs 2, 3, and 4 shall reference this case number and shall be retained in the utility's general correspondence file.

6. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon Murray's showing of good cause for such extension.

By the Commission

ENTERED  
JAN 05 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2016-00400



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