

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF MUHLENBERG	)	
COUNTY WATER DISTRICT #3 REQUESTING	)	CASE NO. 2016-00421
DEVIATION FROM REQUIREMENTS OF 807 KAR	)	
5:066, SECTION 4(4)	)	

ORDER

On December 2, 2016, the Commission received a Water Storage Requirement Deviation Request Application (“Application”) submitted by Muhlenberg County Water District No. 3 (“Muhlenberg No. 3) requesting a deviation from 807 KAR 5:066, Section 4(4), which contains the Commission’s minimum water storage capacity requirements. The Application was determined filed on December 14, 2016, the date that Muhlenberg No. 3 submitted a filing that cured deficiencies identified in the Application. Muhlenberg No. 3 responded to one request for information issued by Commission Staff. No party sought intervention into this case. The matter now stands submitted to the Commission for a decision.

BACKGROUND

Muhlenberg No. 3, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to approximately 2,113 customers in Muhlenberg and McLean counties, Kentucky.<sup>1</sup> Muhlenberg No. 3 purchases water from Central City Municipal Water and Sewer System (“Central City”), and Muhlenberg No. 3’s

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<sup>1</sup> *Annual Report of Muhlenberg County Water District No. 3 to the Public Service Commission for the Calendar Year Ended December 31, 2015* (“Annual Report”) at 12 and 53.

storage facilities include two standpipes each having 250,000 gallons of storage capacity, for a total storage capacity of 500,000 gallons.<sup>2</sup> Muhlenberg No. 3's average daily consumption is 733,000 gallons.<sup>3</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.

Muhlenberg No. 3's storage capacity of 500,000 gallons is approximately 68 percent of the storage capacity required by 807 KAR 5:066, Section 4(4), and is, therefore, deficient and out of compliance with the Commission's regulatory requirements. The Commission previously granted Muhlenberg No. 3 a deviation from 807 KAR 5:006, Section 4(4), in Case No. 97-283.<sup>4</sup> In that proceeding, Muhlenberg No. 3 had storage capacity of 500,000 gallons and average daily usage of 533,546.<sup>5</sup> Thus, in Case No. 97-283, Muhlenberg No. 3's storage capacity was approximately 94 percent of the storage capacity required by our administrative regulations.

In requesting a deviation, Muhlenberg No. 3 stated that its water supplier, Central City, has 700,000 gallons of storage capacity for the benefit of Muhlenberg No. 3. Muhlenberg No. 3 supplied a November 22, 2016 letter from Central City that states:

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<sup>2</sup> *Id.* at 58 and 62.

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

<sup>4</sup> *The Application of Muhlenberg County Water District No. 3 for a Deviation of 807 KAR 5:066, Section 4(4), Regarding Water Storage*, Order (Ky. PSC July 3, 1997).

<sup>5</sup> *Id.* at 1.

The Central City Municipal Water and Sewer System has a storage capacity of 4.8 million gallons of water per day. Central City consumes an average 770,000 gallons daily.

The greater capacity in the system was built to accommodate the water needs of your district; therefore, we can and will reserve 700,000 gallons of water specifically for your system as storage.<sup>6</sup>

Muhlenberg No. 3 stated that it “has the exclusive use of 700,000 gallons of water storage in Central City’s system.”<sup>7</sup> Per Muhlenberg No. 3, “[t]here is nothing in the Storage Letter to indicate that Central City will withdraw the reserved capacity in the event on an emergency.”<sup>8</sup> Further, in support of its request, Muhlenberg No. 3 stated that “the Commission has previously granted storage deviations to utilities without requiring an explicit reservation of storage in the event of an emergency.”<sup>9</sup> Muhlenberg No. 3 also noted that, because of its own 500,000 gallons of storage capacity, it only requires approximately 233,000 gallons of the 700,000 gallons of storage identified as available from Central City.<sup>10</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 the protection of the continuity of water service. The Commission finds that Muhlenberg No.

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<sup>6</sup> Application at unnumbered page 5 and attachment, November 22, 2016 letter from David Rhoades, City Administrator, Central City, to Muhlenberg No. 3.

<sup>7</sup> Response to Staff’s First Request for Information (“Staff’s First Request”) (filed Mar. 10, 2017) at Item 4(a).

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

3 has 500,000 gallons of storage capacity and average daily consumption of 733,000 gallons; therefore, we find that Muhlenberg No. 3 is out of compliance with our water storage requirements.

In support of its request for a deviation, Muhlenberg No. 3 relies upon the 700,000 gallons of storage capacity provided by Central City, an interconnected water utility that is Muhlenberg No. 3's supplier. 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.

In one line of cases, we have permitted reliance on the storage capacity of an interconnected water utility as a means of obtaining compliance with 807 KAR 5:066, Section 4(4). In Case No. 2014-00306, Beech Grove Water System, Inc. ("Beech Grove") had 100,000 gallons of storage capacity and an average daily consumption of 154,133.<sup>11</sup> In addition to its own facilities, Beech Grove also had, among other things, a written agreement with the city of Henderson ("Henderson") through which Henderson agreed to reserve 100,000 gallons of water storage for a term of 25 years and for the exclusive use of Beech Grove in the event of an emergency.<sup>12</sup> We determined that the allocation of storage by Henderson for the benefit of Beech Grove was pursuant to a written agreement with terms that permitted the Commission to consider the 100,000 gallons of storage by Henderson to be part of the storage capacity of Beech Grove as long as the agreement was in effect.<sup>13</sup> We noted that, when combining the 100,000 gallons of storage within its

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<sup>11</sup> *Application of Beech Grove Water System, Inc. Requesting Deviation from Requirements of 807 KAR 5:066, Section 4(4)*, Order (Ky. PSC Dec. 5, 2014) at 2.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 4.

own system and the 100,000 gallons of storage allocated by Henderson, Beech Grove had storage in excess of its average daily consumption.<sup>14</sup> Because Beech Grove had storage sufficient to meet the requirements of 807 KAR 5:066, Section 4(4), no deviation was necessary.<sup>15</sup>

In the same case, nonetheless, we noted that Beech Grove had a second allocation of 100,000 gallons of water storage in a facility owned and operated by West Daviess County Water District (“West Daviess”).<sup>16</sup> Unlike the Henderson agreement, the West Daviess agreement allocating storage in favor of Beech Grove was “not through a written agreement that specifies the duration or rights and obligations of the parties during an emergency.”<sup>17</sup> Having determined that Beech Grove’s storage through its own facilities in combination with the allocation of storage through the written agreement with Henderson satisfied 807 KAR 5:066, Section 4(4), the Commission did not have to address the issue of whether the storage allocated by West Daviess should be considered as part of the storage capacity of Beech Grove.

Although the allocation of 100,000 gallons of storage by West Daviess for Beech Grove was not necessary for Beech Grove to achieve compliance with 807 KAR 5:066, Section 4(4), we expressed our concern that the West Daviess allocation was not supported by a written agreement.<sup>18</sup> We ordered Beech Grove to file with the Commission a written agreement with West Daviess regarding the latter’s allocation of

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 5.

storage to Beech Grove.<sup>19</sup> We required the agreement to address, at minimum, the duration of the agreement and the rights and obligations of the parties concerning the allocation.<sup>20</sup> We further ordered that, in the event Beech Grove was unable to secure a written agreement with West Daviess within 90 days of the date of the Order, Beech Grove was to advise the Commission in writing of that fact.<sup>21</sup>

On February 3, 2015, Beech Grove filed a water storage agreement between West Daviess and Beech Grove.<sup>22</sup> The water storage agreement filed by Beech Grove in response to our December 5, 2014 Order in Case No. 2014-00306 addresses, among other things, the amount of capacity reserved by West Daviess, the duration of the agreement, and the rights and obligations of the parties under the agreement.

In a second line of cases, we have 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”) did not have any storage capacity and average daily consumption of 125,000 gallons.<sup>23</sup> Thus, Dexter-Almo was out of compliance with the Commission’s water storage requirements.

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<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Case No. 2014-00306, Beech Grove Water System Agreement with West Daviess County Water for Water Storage Deviation (filed Feb. 3, 2015) at Post Case Referenced Correspondence.

<sup>23</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.

Dexter-Almo purchased all of its water from the city of Murray ("Murray"), which had 2.925 million gallons of storage in its own system.<sup>24</sup> While Dexter-Almo and Murray had a three-year agreement regarding Murray's provision of water, the agreement did not mention an allocation of storage by Murray on behalf of Dexter-Almo.<sup>25</sup> Per the facts of that case, we determined that 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 Murray.<sup>26</sup>

Muhlenberg No. 3's current contract with Central City was entered into on June 20, 2011, and is for a term of approximately 50 years.<sup>27</sup> Per the agreement, Central City is required to "at all times, operate and maintain its water system in an efficient manner and shall take such action as may be reasonably necessary to perform its obligations under this Contract."<sup>28</sup> The Water Purchase Contract, however, includes a provision through which Central City "reserves the right to restrict flow to the purchaser [Muhlenberg No. 3] to a rate that will not be detrimental to the seller's [Central City's] water production or distribution system."<sup>29</sup> In another provision, the agreement states, in pertinent part:

In the event of an extended shortage of water, or if the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to the

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.* at 4 and 5.

<sup>27</sup> Response to Staff's First Request (filed Mar. 10, 2017) at Item 3, Water Purchase Contract at 1 to 3.

<sup>28</sup> *Id.* at Water Purchase Contract at 7.

<sup>29</sup> *Id.* at Water Purchase Contract at 3.

Purchaser shall be reduced or diminished in the same proportion as the supply to the Seller's other customers is reduced or diminished. The Purchaser also agrees to take such steps as may be necessary to curtail water usage within its system in response to a shortage of water.<sup>30</sup>

On the issue of whether Central City is willing to reserve capacity, Muhlenberg No. 3 stated that "Central City is unwilling to reserve the [700,000 gallons of] capacity in favor of Muhlenberg #3 for the remainder of the term of Central City's current contract with Muhlenberg #3."<sup>31</sup> Muhlenberg No. 3 added that it "anticipates receiving a letter that will reserve this capacity for at least three (3) years, and perhaps as long as five (5) years."<sup>32</sup> Finally, per Muhlenberg No. 3, the parties to the Water Purchase Contract do not anticipate "executing an amendment to the current water supply contract to include Central City's reservation of storage capacity to Muhlenberg #3."<sup>33</sup>

The Commission finds that the Water Purchase Contract does not mention an allocation of storage for the exclusive use by Muhlenberg No. 3. While there is evidence in the record indicating that Central City has a willingness to reserve 700,000 gallons of water storage on behalf of Muhlenberg No. 3, we find that there is no written agreement regarding a reservation of water storage currently in force. Further, Central City does not appear willing to reserve the capacity for the term of the Water Purchase Contract. For these reasons, the Commission cannot consider any storage in the Central City system to be part of the storage capacity of Muhlenberg No. 3. Consequently, Muhlenberg No.

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<sup>30</sup> *Id.* at Water Purchase Contract at 7.

<sup>31</sup> *Id.* at Item 4(b).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at Item 4.c.



3 cannot rely upon water storage in Central City's system for meeting the water storage requirements of 807 KAR 5:066, Section 4(4).

Muhlenberg No. 3 requires additional water storage capacity of approximately 233,000 gallons in order to comply with 807 KAR 5:066, Section 4(4). Central City 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 Muhlenberg No. 3 with access to at least 233,000 gallons of storage capacity. Based on these findings, it is reasonable to grant Muhlenberg No. 3 a deviation from 807 KAR 5:066, Section 4(4), through May 31, 2018, a period of approximately one year. Muhlenberg No. 3 should advise the Commission in writing if any changes occur in either system that could cause Central City to have insufficient storage for Muhlenberg No. 3.

While the Commission will grant a deviation, we are concerned that Muhlenberg No. 3 does not have a written agreement supporting an allocation of storage by Central City on behalf of Muhlenberg No. 3. Thus, Muhlenberg No. 3's arrangement with Central City is similar in nature to Beech Grove's initial arrangement with West Daviess discussed in Case No. 2014-00306. Therefore, Muhlenberg No. 3 should work with Central City to obtain a written agreement regarding the allocation of storage and then file the 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. Further, Muhlenberg No. 3 should provide the Commission with written updates on its efforts to obtain a written agreement with Central City. In the event that Muhlenberg No.

3 is unable to secure a written agreement with Central City by February 28, 2018, Muhlenberg No. 3 will need to file another application for a deviation from 807 KAR 5:066, Section 4(4), on March 1, 2018.

IT IS THEREFORE ORDERED that:

1. Muhlenberg No. 3's request to deviate from the water storage requirements of 807 KAR 5:066, Section 4(4), is granted and approved through May 31, 2018.

2. Muhlenberg No. 3 shall inform the Commission in writing if changes occur in either system that would cause Central City to have insufficient storage for Muhlenberg No. 3.

3. Muhlenberg No. 3 shall file with the Commission no later than 90 days from the date of this Order a written agreement with Central City that addresses, at a minimum, the amount of the allocation, duration of the agreement, including any renewal periods, and rights and obligations of the parties concerning the allocation including during an emergency.

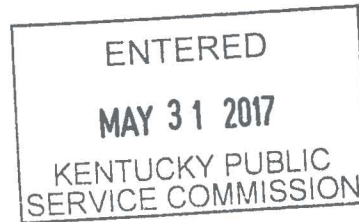
4. In the event that Muhlenberg No. 3 is unable to secure a written agreement with Central City within 90 days of the date of this Order, Muhlenberg No. 3 is to advise the Commission in writing of that fact and provide an update on its efforts to obtain a written agreement no later than 120 days from the date of this Order. Muhlenberg No. 3 shall thereafter continue to file written updates on its efforts to obtain a written agreement every 60 days until the earlier of the filing of a written agreement or March 1, 2018.

5. In the event that Muhlenberg No. 3 has not secured a written agreement with Central City by February 28, 2018, Muhlenberg No. 3 shall file an application for a deviation from 807 KAR 5:066, Section 4(4), on March 1, 2018.

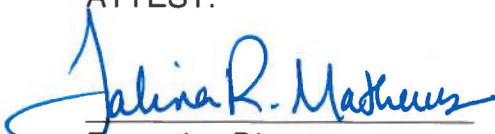
6. Any documents filed in the future pursuant to ordering paragraphs 2, 3, and 4 shall reference this case number and shall be retained in the post-case reference file.

7. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon Muhlenberg No. 3's showing of good cause for such extension.

By the Commission



ATTEST:

  
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