

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF)
MUHLENBERG COUNTY WATER)
DISTRICT #3 REQUESTING) CASE NO. 2019-00051
DEVIATION FROM REQUIREMENTS)
OF 807 KAR 5:066, SECTION 4(4))**

APPLICATION FOR DEVIATION

Pursuant to 807 KAR 5:066, Section 18, Muhlenberg County Water District #3 (“Muhlenberg District #3”) hereby applies to the Kentucky Public Service Commission (the “Commission”) for an order granting a deviation from the requirements of 807 KAR 5:066, Section 4(4) regarding water storage. In support of its application, Muhlenberg District #3 states:

1. The full name and post office address of Muhlenberg District #3 is: Muhlenberg County Water District #3, P.O. Box 67, Bremen, Kentucky 42325.
2. Muhlenberg District #3’s electronic mail address is: muhlenbergwater@muhlenbergwater.com.
3. Muhlenberg District #3 is not a corporation, limited liability company, or limited partnership. It has no articles of incorporation or partnership agreements.
4. Muhlenberg District #3 is a water district organized pursuant to KRS Chapter 74.

5. Muhlenberg District #3's territory includes the northwest portion of Muhlenberg County, Kentucky. As of December 31, 2018, Muhlenberg District #3 provided retail water service to approximately 2,119 customers and is no longer providing wholesale water service to any wholesale customers.

6. Pursuant to 807 KAR 5:001, Section 4(8), copies of all orders, pleadings, and other communications related to this proceeding should be directed to:

Ben Tooley
Superintendent
P.O. Box 67
Bremen, KY 42325
(270) 525-6333
ben@muhlenbergwater.com

Damon R. Talley
Stoll Keenon Ogden PLLC
P.O. Box 150
Hodgenville, KY 42748-0150
(270) 358-3187
Fax: (270) 358-9560
damon.talley@skofirm.com

Mary Ellen Wimberly
Stoll Keenon Ogden PLLC
2100 West Vine Street, Ste 2100
Lexington, KY 40507-1801
(859) 231-3047
Fax: (859) 246-3647
maryellen.wimberly@skofirm.com

7. There have been two (2) significant developments since the Commission issued its September 12, 2018 Order in Case No. 2018-00159

extending Muhlenberg District #3's water storage deviation through February 28, 2019. First, the City of Sacramento stopped purchasing water from Muhlenberg District #3. Second, a new Mayor was elected in Central City in November 2018. Both of these developments support Muhlenberg District #3 being granted another water storage deviation by the Commission.

8. First, Muhlenberg District #3's average daily water consumption is approximately **20% less** than it was when it filed the last request for a water storage deviation. Since Muhlenberg District #3 filed an application for a deviation in 2018, Muhlenberg District #3 lost its wholesale customer, the City of Sacramento. Beginning around May 31, 2018, Sacramento commenced purchasing all of its water from the McLean County Regional Water Commission ("McLean Commission"), of which it is a member. Sacramento began purchasing its water from the McLean Commission because the water is significantly cheaper.

9. As a result of the loss of this wholesale customer, Muhlenberg District #3's average daily water consumption has decreased by nearly 20 percent. For the last six months of 2018, Muhlenberg District #3's average daily water consumption was 505,527 gallons, which rounds up to 506,000 gallons per day. Further, as shown in **Exhibit 1**, Muhlenberg District #3's total water usage has been trending downward for the past five years.

10. 807 KAR 5:066, Section 4(4) requires that Muhlenberg District #3's minimum storage capacity shall be equal to its average daily consumption. After the loss of Sacramento, Muhlenberg District #3's average daily water consumption, including all water sold, utility water usage, and unaccounted-for water is 506,000 gallons.

11. Muhlenberg District #3 has two storage tanks in its water system, which total 500,000 gallons of available storage capacity. Thus, Muhlenberg District #3 only requires 6,000 gallons of additional capacity to satisfy the storage requirements of 807 KAR 5:066, Section 4(4). This difference is de minimis. Furthermore, it is not economically feasible to build a storage tank for 6,000 gallons.

12. Muhlenberg District #3 purchases all of its water from the City of Central City. As provided in a letter from Central City attached as **Exhibit 2**, Central City has a storage capacity of 4.8 million gallons of water per day and only consumes an average of 770,000 gallons daily. In the letter, Central City explains that 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 for storage."

13. For the past nine (9) years, Muhlenberg District #3 has had no major outages other than main line breaks. The last major outage was the 2009 ice storm,

which affected the power of Muhlenberg District #3 and the Central City Water Plant for approximately two (2) weeks. During this outage, Muhlenberg District #3 experienced locations with low pressure but never completely lost water service. Since the ice storm, Muhlenberg District #3 and Central City have purchased stand-by generators for the pump stations and Central City's water treatment plant.

14. Muhlenberg District #3 received a deviation from the water storage requirements of 807 KAR 5:066, Section 4(4) through February 28, 2019 in Case No. 2018-00159. The Commission's Order required that Muhlenberg District #3 file an application for a deviation on or before February 28, 2019 if Muhlenberg District #3 did not secure a written agreement with Central City.

15. Muhlenberg District #3 filed a letter in the post-case file in Case No. 2016-00421 on August 29, 2017 explaining its efforts to obtain a written agreement with Central City. The letter explained that Muhlenberg District #3 had been unable to obtain a written agreement with Central City as Muhlenberg District #3 was currently protesting Central City's rate increase in Case No. 2017-00199 and had been unable to discuss the terms of such an agreement with Central City. This letter is attached as **Exhibit 3**.

16. Central City withdrew its request for a rate increase on August 30, 2017. As Muhlenberg District #3 stated in Case No. 2018-00159, since

Muhlenberg District #3's protest of Central City's request for a rate increase, the relationship between Central City and Muhlenberg District #3 became strained.

17. The Commission's Order of September 12, 2018 in Case No. 2018-00159 directed Muhlenberg District #3 to file additional information with its application for a deviation if Muhlenberg District #3 was unable to obtain a written agreement with Central City regarding the allocation of storage. The Commission directed Muhlenberg District #3 to file the following items: (a) plans and cost estimates for adding a 220,000-gallon tank to Muhlenberg District #3's storage facilities; and (b) support for Muhlenberg District #3's efforts to negotiate a written storage agreement with Central City.

18. When Muhlenberg District #3 received the Commission's Order of September 12, 2018, Sacramento had already stopped buying water from Muhlenberg District #3. Thus, Muhlenberg District #3 knew that it would not need to build a 220,000-gallon storage tank to comply with 807 KAR 5:066, Section 4(4) and thought it might not need to build any additional storage to comply with the regulation. Accordingly, Muhlenberg District #3 did not engage the services of an engineer to design, prepare plans and specifications, or prepare cost estimates for a 220,000-gallon water storage tank because it did not know whether an additional storage tank would be necessary.

19. The second significant development is the election of a new Mayor in Central City. After the Commission's Order, Muhlenberg District #3 attempted to open a dialogue with Sacramento's Mayor to discuss a written agreement, but was not successful reaching meaningful discussions with the Mayor. Central City elected a new Mayor in November 2018.

20. The new Mayor is much more receptive to the written agreement. Muhlenberg District #3 has reached out to the new Mayor and discussed the written agreement via phone and email correspondence. The Mayor has agreed to take this matter before the City Council in the near future. Muhlenberg District #3 is cautiously optimistic that it will be able to obtain a written storage agreement. Muhlenberg District #3 respectfully requests the Commission allow it nine (9) months to pursue discussions with Central City's new Mayor to obtain a written storage agreement.¹

21. Ordering paragraph 2 of the Commission's September 21, 2018 Order in Case No. 2018-00159 directed Muhlenberg District #3 to update the Commission if certain adverse events were to occur. Neither of these adverse events has occurred. There have been no changes to Central City's water system which would cause it "to have insufficient storage for Muhlenberg District #3."

¹ Although Muhlenberg District #3 currently needs Central City to reserve only approximately 6,000 gallons of storage capacity to enable Muhlenberg District #3 to comply with 807 KAR 5:066, Section 4(4), it has requested Central City to continue to reserve 700,000 gallons in the proposed written storage agreement. This will enable Muhlenberg District #3's customers to have adequate storage in the event one or both of its water storage tanks needs to be taken out of service for preventative maintenance or repairs.

The amount of available storage capacity that Central City has “set aside” or reserved for Muhlenberg District #3 is still 700,000 gallons. In addition, Central City has not revoked the November 22, 2016 letter “agreement” with Muhlenberg District #3.

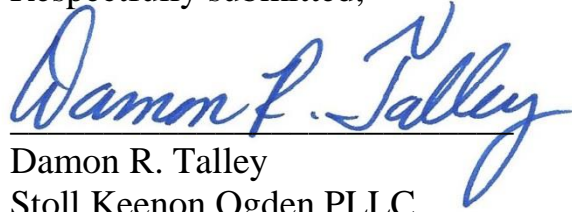
22. 807 KAR 5:066, Section 18 authorizes the Commission to permit deviations from 807 KAR 5:066 when good cause is shown. Good cause for a deviation exists in the present case. After the loss of the wholesale customer, Muhlenberg District barely needs a deviation to be in compliance with 807 KAR 5:066, Section 4(4). Given the de minimis amount of the storage deficit, the fact that Muhlenberg District #3’s customers have not gone without water due to insufficient storage, and promising discussions with Central City’s new Mayor, Muhlenberg District #3 has shown good cause to justify a deviation from the regulation.

WHEREFORE, Muhlenberg District #3 respectfully requests that the Commission enter an order granting a deviation from the water storage requirements of 807 KAR 5:066, Section 4(4) for nine (9) months.

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Dated: February 27, 2019

Respectfully submitted,



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*Counsel for Muhlenberg County Water
District #3*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Muhlenberg County Water District #3's February 27, 2019 electronic filing of this Application is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on February 27, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this Application will be delivered to the Commission within two business days.


Damon R. Talley

EXHIBIT 1

EXHIBIT 1

Muhlenberg District #3's Historical Water Usage

Year	Retail	Wholesale	Total	Average Daily Usage
2014	179,188,000	65,667,000	244,855,000	670,836
2015	182,795,000	53,451,000	236,246,000	647,249
2016	169,454,000	55,304,000	224,758,000	615,775
2017	166,468,000	52,702,000	219,170,000	600,466
2018	177,178,000	24,254,000	201,432,000	551,868

EXHIBIT 2

Municipal Water and Sewer System

208 North 1st Street • P.O. Box 430 • Central City, KY 42330 • Phone (270) 754-3066 • Fax (270) 754-9711

November 22, 2016

Muhlenberg Co. Water District #3
PO Box 67
Bremen, KY 42325

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.

Respectfully,



David Rhoades
City Administrator

DR:rg

EXHIBIT 3



MARY ELLEN WIMBERLY
DIRECT DIAL: (859) 231-3047
DIRECT FAX: (859) 246-3647
MaryEllen.Wimberly@skofirm.com

300 WEST VINE STREET
SUITE 2100
LEXINGTON, KY 40507-1801
MAIN: (859) 231-3000
FAX: (859) 253-1093

August 29, 2017

VIA ELECTRONIC FILING

Mr. John S. Lyons
Acting Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Ky 40602-0615

Re: Case No. 2016-00421
Post-Case Filing

Dear Mr. Lyons:

On May 31, 2017, the Kentucky Public Service Commission ("Commission") issued an order in the above-referenced proceeding granting Muhlenberg County Water District No. 3's ("Muhlenberg No. 3") request to deviate from the water storage requirements of 807 KAR 5:066, Section 4(4) through May 31, 2018. The order directed Muhlenberg No. 3 to "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." The order further provides that if Muhlenberg No. 3 is unable to secure such an agreement with Central City within 90 days of the date of the Order, Muhlenberg No. 3 should 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 the Order.

At this time, Muhlenberg No. 3 has been unable to obtain an agreement with Central City. Muhlenberg No. 3 is currently protesting Central City's rate increase in Case No. 2017-00199 and has been unable to discuss the terms of such an agreement with Central City. Once the rate case concludes, Muhlenberg No. 3 will seek to obtain an agreement with Central City. Muhlenberg No. 3 will update the Commission once it has obtained an agreement with Central City.

Mr. John S. Lyons
August 29, 2017
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In accordance with 807 KAR 5:001, Section 8, this is to certify that this electronically filed letter is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on August 29, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original of this letter, in paper medium, will be mailed to the Commission on August 29, 2017.

Sincerely,

Stoll Keenon Ogden PLLC

A handwritten signature in blue ink that reads "Mary Ellen Wimberly". The signature is written in a cursive style with a large, looping "y" at the end.

Mary Ellen Wimberly

MEW