

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 an application (“Application”) submitted by Muhlenberg County Water District #3 (“Muhlenberg #3) for a deviation from 807 KAR 5:066, Section 4(4), the Commission’s minimum water storage capacity requirement. The Application was not signed by an attorney of record and did not contain the information required by 807 KAR 5:001, Section 4(3)(a); further, the Application was not, as required by 807 KAR 5:001, Section 4(4), submitted by an attorney licensed to practice law in Kentucky or an attorney who has complied with Kentucky Supreme Court Rule 3.030(2). Due to these two deficiencies in the submission of the Application, Muhlenberg #3’s Application was found to be deficient and rejected for filing by letter dated December 7, 2016.¹

On December 14, 2016, Muhlenberg #3 submitted a revised Application signed by Dennis N. Winters, an attorney licensed to practice law in Kentucky. The December 14, 2016 submission cured the deficiencies, and the Application was filed as of that

¹ Letter to Ben Tooley, Superintendent, Muhlenberg #3, from Talina Mathews, Executive Director, Public Service Commission (Dec. 7, 2016).

date.² On January 13, 2017, Commission Staff's First Request for Information to Muhlenberg County Water District #3 ("Staff's First Request") was filed into the record. The information requested was due within 14 days of the date of the request.³

By a letter received on February 3, 2017, Mr. Winters provided notice to the Commission that he would no longer be representing Muhlenberg #3 in Case No. 2016-00421 due to a conflict of interest.⁴ Mr. Winters stated that another attorney was now representing Muhlenberg #3.⁵

On February 9, 2017, Damon R. Talley, Mary Ellen Wimberly, and Gerald E. Wuetcher filed their entry of appearance on behalf of Muhlenberg #3. On the same date, Muhlenberg #3, through its new counsel, filed a motion for use of electronic filing procedures ("Motion for Electronic Filing"). In support of the request to use the electronic filing procedures per 807 KAR 5:001, Section 8, Muhlenberg #3 stated that the use of such procedures will reduce Muhlenberg #3's cost associated with this case and would not be prejudicial to any potential party, the public, or the Commission.⁶ Muhlenberg #3 also stated that the use of electronic filing procedures would reduce the cost of the proceedings to all potential parties and allow for greater transparency and

² Letter to Parties of Record from Talina Mathews, Executive Director, Public Service Commission (Jan. 13, 2017).

³ Staff's First Request (Jan. 13, 2017) at 1.

⁴ Letter from Dennis N. Winters (filed Feb. 3, 2017).

⁵ *Id.*

⁶ Motion for Electronic Procedures (filed Feb. 3, 2017) at 1 and 2.

public awareness by enabling the documents filed in the case to be immediately posted to the Commission's website.⁷

On February 23, 2017, Muhlenberg #3 filed a motion for extension of time ("Motion for Extension") requesting an extension of time through and until March 10, 2017, in which to file responses to Staff's First Request. In support of its Motion for Extension, Muhlenberg #3 stated that it had previously been represented by different counsel and that an item from Staff's First Request required Muhlenberg #3 to obtain information from a third party.⁸ Muhlenberg #3 stated that the request for an extension was not for the purpose of unduly delaying the Commission's examination and, if granted, would not result in any prejudice.⁹ On March 10, 2017, Muhlenberg #3 filed its responses to Staff's First Request.¹⁰

807 KAR 5:001, Section 8(1), permits an applicant to use electronic filing procedures upon a timely election. Per 807 KAR 5:001, Section 8(2), an applicant is required to file with the Commission a written notice of its election to use electronic filing procedures at least seven days prior to the submission of the application. In the instant case, Muhlenberg #3 did not file a timely written notice of its election to use electronic filing procedures. Nonetheless, Muhlenberg #3 submitted its Application prior to retaining its current counsel, and its current counsel filed the Motion for Electronic Procedures on the same date counsel entered their appearance.

⁷ *Id.* at 2.

⁸ Motion for Extension (filed Feb. 23, 2017) at 1.

⁹ *Id.*

¹⁰ Muhlenberg #3's Response to Staff's First Request (filed Mar. 10, 2017).

The Commission finds that the instant case is in the early stage of the proceedings and no party has sought intervention into the case. We further find that Muhlenberg #3's prior counsel was required to withdraw due to a conflict of interest and that its new counsel promptly requested the use of electronic procedures by filing a Motion for Electronic Procedures simultaneously with their entry of appearance. We find that Muhlenberg #3's Motion for Electronic Procedures should be granted.

The Commission finds that Muhlenberg #3 was required to obtain new counsel following the issuance of Staff's First Request. In view of the information requested by Staff's First Request and the circumstances associated with Muhlenberg #3's representation, we find that Muhlenberg #3's request for an extension of time through March 10, 2017, in which to file its responses to Staff's First Request is reasonable and should be granted.

The Commission, having considered the motions and finding good cause, HEREBY ORDERS that:

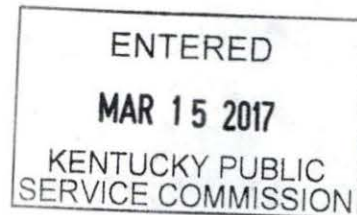
1. Muhlenberg #3's Motion for Electronic Procedures for this case is granted.
2. The style of this case shall be amended to use the word "Electronic" as set forth above, and all future correspondence or filings in connection with this case shall reference the above style and case number.
3. All documents submitted in this proceeding shall comply with the Commission's rules of procedure as set forth in 807 KAR 5:001, and any deviation from these rules shall be submitted in writing to the Commission for consideration.
4. Any party filing a paper shall upload an electronic version using the Commission's E-Filing System and shall file an original and one copy in paper medium.

5. Any request for confidential treatment of material submitted shall conform to the requirements of 807 KAR 5:001, Section 13.

6. Materials submitted to the Commission that do not comply with the rules of procedure or that do not have an approved deviation are subject to rejection pursuant to 807 KAR 5:001, Section 3.

7. Muhlenberg #3's Motion for Extension is granted and Muhlenberg #3's responses to Staff's First Request are accepted for filing as of March 10, 2017.

By the Commission



ATTEST:


Executive Director

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