

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On February 27, 2019, Muhlenberg County Water District #3 (Muhlenberg District #3) filed this application for a deviation pursuant to 807 KAR 5:066, Section 18, requesting a deviation from the minimum water storage requirements of 807 KAR 5:066, Section 4(4).¹ No party requested intervention in this matter, and the Commission received no public comments regarding the application for a deviation. Muhlenberg District #3 responded to requests for information filed by Commission Staff and indicated, among other things, that Muhlenberg District #3 now has sufficient storage capacity to comply with 807 KAR 5:066, Section 4(4). Thus, having reviewed the record and being otherwise sufficiently advised, the Commission now denies Muhlenberg District #3's application in this matter as moot.

Muhlenberg District #3 is a water district organized pursuant to KRS Chapter 74 that owns and operates facilities that distribute water to approximately 2,119 customers in Muhlenberg County, Kentucky. The Commission has previously granted Muhlenberg District #3 a number of temporary deviations from the minimum storage capacity

¹ 807 KAR 5:066, Section 4(4) states that "[t]he minimum storage capacity for systems shall be equal to the average daily consumption."

requirements of 807 KAR 5:066, Section 4(4). Most recently, in Case No. 2018-00159,² the Commission granted Muhlenberg District #3 a deviation from the minimum storage requirements through February 28, 2019.

At the time, Muhlenberg District #3 made its application for a deviation in Case No. 2018-00159, it reported an average daily consumption of 720,000 gallons and total storage capacity of 500,000 gallons. Muhlenberg District #3 did have a letter from Central City in which Central City indicated it would reserve 700,000 gallons of its storage capacity for Muhlenberg District #3. However, the Commission, in granting the deviation in that case, required Muhlenberg District #3 to (1) obtain a written agreement from Central City committing 220,000 gallons of storage capacity to Muhlenberg District #3 by February 28, 2019 or (2) request an extension of the deviation granted in Case No. 2018-00159 by February 28, 2019, with a plan to add an additional 220,000 gallons in storage capacity.³ Muhlenberg District #3 filed its application for an extension of the deviation in this matter on February 27, 2019. It indicated that it had not been able to obtain a formal written agreement with Central City, and it did not have a plan to add 220,000 in storage capacity.⁴ Rather, Muhlenberg District #3 indicated that since it filed the application in Case No. 2018-00159 that its average daily consumption had decreased to 506,000 gallons because the city of Sacramento (Sacramento) stopped purchasing its wholesale water from Muhlenberg District #3.⁵ Due to the decrease in its average daily

² Case No. 2018-00159, *Electronic Application of Muhlenberg County Water District #3 requesting Deviation from Requirements of 807 KAR 5:066, Section 4(4)* (Ky. PSC. Sept. 12, 2018).

³ *Id.*

⁴ Application at 2–3.

⁵ *Id.* at 2–4.

consumption, Muhlenberg District #3 indicated that it did not believe the construction of additional storage capacity would be necessary, but it continued negotiations with Central City to obtain a formal agreement for additional storage capacity.⁶ Thus, in its application here, Muhlenberg District #3 initially requested an extension of the deviation granted in Case No. 2018-00159 to provide it additional time to obtain a written agreement from Central City for storage capacity to the extent that its average daily consumption exceeded its 500,000 gallons of storage capacity.⁷

However, during the pendency of this matter, a major industrial customer of Muhlenberg District #3, KenAmerican Resources, Inc. (KenAmerican) ceased operations.⁸ KenAmerican's average daily water consumption was approximately 73,000 gallons, so the loss of KenAmerican reduced Muhlenberg District #3's average daily water consumption to below its storage capacity.⁹ Muhlenberg District #3 indicated its average daily consumption in March 2019, April 2019, and May 2019 was 349,982 gallons, 417,117 gallons, and 370,006 gallons, respectively.¹⁰

Muhlenberg District #3 also noted that even before the loss of Sacramento and KenAmerican as customers that its average daily water consumption declined in 2015, 2016, and 2017.¹¹ Further, it indicated that it did not expect Sacramento or KenAmerica

⁶ *Id.* at 5–7.

⁷ *Id.* at 7–8.

⁸ Muhlenberg District #3's Responses to Commission Staff's First Request for Information (Response to Staff's First Request), Item 5.

⁹ *Id.* (“[KenAmerican’s] average daily water consumption was approximately 73,000 gallons. Muhlenberg District #3’s average daily water consumption averaged 379,035 gallons for the months of March, April, and May, 2019”).

¹⁰ *See id.* at Item 5, Item 7.

¹¹ Application at Exhibit 1; Response to Staff's First Request, Item 7, Exhibit 1.

to return as customers in the foreseeable future,¹² and the evidence presented by Muhlenberg District #3 appears to support its expectation.¹³

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Muhlenberg District #3's minimum storage capacity exceeds the systems average daily consumption, so it is currently in compliance with 807 KAR 5:066, Section 4(4). Since Muhlenberg District #3 is currently in compliance with the water storage requirements of 807 KAR 5:066, Section 4(4), it does not require a deviation from those requirements. Thus, Muhlenberg District #3's application for a deviation from the water storage requirements is moot.¹⁴

Further, as noted above, the Commission conditioned the deviation it granted from the water storage requirements in Case No. 2018-00159 on Muhlenberg District #3 developing a plan to add additional water storage in its own system or obtaining a formal

¹² See Response to Staff's First Request, Item 3 ("Muhlenberg District #3 does not anticipate Sacramento purchasing any water from it in the foreseeable future."); Response to Staff's First Request, Item 5 ("[KenAmerican] recently 'shut down' its mining operations. Muhlenberg District #3 does not anticipate that this coal mine will re-open in the foreseeable future.")

¹³ Muhlenberg District #3 indicated that Sacramento joined the McLean County Regional Water Commission and executed a long-term water purchase agreement with that commission. Muhlenberg District #3 indicated that Sacramento was obtaining water from that commission at a cheaper rate than the rate at which Sacramento obtained water from Muhlenberg District #3. Response to Staff's First Request, Item 3. Further, Muhlenberg District #3 indicated that it is currently involved in litigation with Sacramento to enforce the contract it contends it has with Sacramento or to obtain damages, but the litigation, which was commenced in January 2019, is still in the early discovery phase. Response to Staff's First Request, Item 1.

With respect to KenAmerican, Muhlenberg District #3 indicated that it operated a coal mine in the region with multiple meters and that it "recently 'shut down' its mining operations." Response to Staff's First Request, Item 7. Media reports also indicate that operations at KenAmerican in Muhlenberg county ceased due to the closure of the Paradise Coal Plant by the Tennessee Valley Authority. *WFIE/WBKO, Nearly 70 jobs lost as Muhlenberg County coal mines close* (February 28, 2019) <https://www.wbko.com/content/news/Nearly-70-jobs-lost-as-TVA-closes-Muhlenberg-County-coal-mines-506420871.html> (accessed July 16, 2019).

¹⁴ See *Commonwealth v. Terrell*, 464 S.W.3d 495, 498-9 (Ky. 2015) quoting *Veith v. City of Louisville*, 355 S.W.2d 295, 298 (Ky. 1962) ("A case becomes moot as a result of a change in circumstances 'which vitiates the underlying vitality of the action.' In such an action, a judgment 'when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy.'").

agreement from Central City to allocate a portion of its storage to Muhlenberg District #3. Since Muhlenberg District #3 no longer requires a deviation from the water storage requirements, Muhlenberg District #3 would not need to satisfy those conditions at this time in order to comply with the water storage requirements in 807 KAR 5:066, Section 4(4). However, if Muhlenberg District #3's average daily consumption were to increase to a level that would jeopardize its ability to comply with the minimum storage capacity requirement, it should be prepared to satisfy the conditions imposed in Case No. 2018-00159 if it intends to seek a deviation in the future.

IT IS THEREFORE ORDERED that:

1. Muhlenberg District #3's application for a deviation from the water storage requirements of 807 KAR 5:066, Section 4(4), is denied as moot.
2. This case is hereby closed and will be removed from the Commission's docket.

By the Commission

ENTERED
JUL 25 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

For 
Executive Director

Case No. 2019-00051

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