

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
RURAL WATER ASSOCIATION FOR)	CASE NO.
ACCREDITATION APPROVAL OF)	2021-00379
COMMISSIONER TRAINING AND CONTINUING)	
EDUCATION CREDIT)	

ORDER

On September 24, 2021, Kentucky Rural Water Association (KRWA) and Stoll Keenon Ogden, PLLC (collectively, Joint Applicants) filed an application for approval and accreditation of a training program scheduled to take place on October 27, 2021. The program is entitled Sixth Annual Water Law Series (Training Program). The training is intended to be in-person at the Holiday Inn University Plaza/Sloan Convention Center in Bowling Green, Kentucky, with the possibility of virtual participation. Having reviewed Joint Applicants' request and being otherwise sufficiently advised, the Commission approves the program to satisfy the six hours of training described by KRS 74.020(6) and (7), subject to the conditions discussed herein. Joint Applicants did not request that the Training Program be approved and accredited to satisfy any portion of the 12 hours of initial training for newly appointed commissioners required by KRS 74.020(8).

DESCRIPTION OF THE TRAINING PROGRAM

The Training Program will be conducted in-person, with a virtual option, at the Holiday Inn University Plaza/Sloan Convention Center in Bowling Green, Kentucky, on October 27, 2021. The Training Program will consist of the following sessions:

1. Recent Developments in Utility Regulation (1 hour): This presentation reviews recent developments in public utility law and regulation. Topics include unaccounted water loss, revisions to the Open Meetings Act and Open Records Act, borrowing money, keeping Minutes, and laws enacted by the 2021 General Assembly. The presenter will also examine and discuss recent court and Public Service Commission (PSC) decisions.

2. Challenges Facing Water Utilities (1 hour): This presentation will provide a summary of the major challenges facing Kentucky Drinking water systems, including: regulations, infrastructure, water loss, affordability, and funding. Twelve recommendations will be presented to make proactive changes in management of Kentucky water systems and take advantage of unprecedented infrastructure funding from the 2021 American Rescue Plan Act.

3. Hot Water Topics (1 hour): This presentation covers the current environmental law issues relevant to water and wastewater utilities. The presentation will address PFAS regulation and litigation, infrastructure funding for utilities, the status of the Trump Administration's Navigable Waters Protection Rule, developments in Clean Water Act point source liability for discharges via groundwater, and federal and state environmental enforcement discretionary policies related to COVID-19.

4. Utility Financial Health Checkup (1 hour): This presentation analyzes various financial statements contained in a utility's Audit Report and discusses how certain items and adjustments included in those financial statements may distort the reader's perception of the utility's financial health. The presenter will also explain the

different types of audit opinions, compare the Audit Report, and discuss recent PSC orders regarding financial health.

5. Municipal Wholesale Rates: (1 hour). The Presenters will provide an overview of the PSC's regulation of municipal utility rates for providing wholesale water and wastewater service to public utilities. Common mistakes made by both municipal utilities and public utilities will be discussed. The presenters will stress the importance of communicating with wholesale customers and highlight recent PSC decisions. Strategies that a wholesale customer may use to oppose or minimize wholesale rate increases will also be discussed.

6. Ask the Lawyers (1 hour): A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water utilities. Discussion is expected to address KRS Chapter 74 and its effects on the management and operation of water districts, as well as other highly relevant statutory provisions, such as the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. PSC regulatory requirements will also be discussed.

The presenters at the program will be attorneys from Stoll Keenan Ogden; the former CEO of Louisville Water and MSD, Greg Heitzman; Environmental Law Practice Group Co-Chair, Sarah Jarboe; and former Secretary of the Environmental and Public Protection Cabinet and Environmental Law Practice Group Co-Chair, LaJuana Wilcher. KRWA provided detailed PowerPoint Slides for each session, except the panel discussion, that relate to the slated topics, and indicated that copies of the slides would be provided to participants of the training.

DISCUSSION

KRS Chapter 74 authorizes the creation of water districts for the purpose of operating drinking water facilities and wastewater treatment and collection facilities. Water districts organized under KRS Chapter 74 must be administered by a board of commissioners that shall control and manage the affairs of the district.¹ KRS 74.020(8) requires each newly appointed water district commissioner to complete 12 instructional hours of training regarding the laws governing the management and operation of water districts, and other subjects as determined appropriate by the Commission within 12 months of the commissioners' initial appointment.² KRS 74.020(6) and (7) encourage water district commissioners to complete six instructional hours of "water district management training approved by the Public Service Commission" in each calendar year by allowing the commissioners to receive a raise if they complete that training each year.

Joint Applicants indicate that they are seeking to have the Training Program approved to satisfy six hours of annual training necessary for water district commissioners to satisfy KRS 74.020(6) and (7) but are not seeking to have it approved to satisfy the initial training requirements of KRS 74.020(8). The Commission has discretion in approving "water district management training" offered by third parties to satisfy the six hours of subsequent training described in KRS 74.020(6) and (7), if it determines that the programs are "high quality" and will "enhance a water district commissioner's

¹ See KRS 74.020(1).

² KRS 74.020(8)(b) (discussing the training requirements for new water district commissioners).

understanding of his or her responsibilities and duties.”³ However, third parties applying for approval of a proposed water district commissioner training program must file their applications, including a detailed description of the program, a description of the qualifications of any presenters, and a copy of the written materials to be distributed at the program among other things, 30 days prior to the first date on which the program is to be offered.⁴

Joint Applicants provided the information required by 807 KAR 5:070 and the Commission’s Order in Case No. 2018-00085 in a timely manner. The Training Program also covers topics that will be relevant and useful to water district commissioners. Moreover, the presenters appear to have knowledge of the topics they intend to discuss, and based on a review of the materials provided, the Training Program appears to be well developed and of a high quality. While the Commission believes in-person training is more effective and that water commissioner training should be held in-person, the Commission finds that conducting water commissioner training virtually when necessary is acceptable at this time due to the ongoing COVID-19 emergency. However, sufficient mechanisms must be in place to allow commissioners to question and interact with presenters and to confirm commissioner’s attendance. KRWA shall also request that water district commissioners who attend virtually complete an affidavit affirming their attendance within 45 days of completion of the training. Commissioners who attend

³ See KRS 74.020(7)(c) (stating that the Commission “shall encourage and promote the offering of high-quality water district management training programs that enhance a water district commissioner’s understanding of his or her responsibilities and duties”).

⁴ Case No. 2018-00085, *Review of Training Required and Authorized by KRS 74.020 for the Commissioners of Water Districts* (Ky. PSC Mar. 15, 2018), Order at 4–5.

remotely will only receive credit for hours of the Training Program that they attest to have participated in.

The Commission finds that the Training Program will provide water district commissioners relevant and useful knowledge that will enhance the quality, management, operation, or maintenance of the water systems they operate and, therefore, will conditionally approve the Training Program to satisfy the training requirements set forth in KRS 74.020(6) and (7) or a portion thereof.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' Training Program scheduled to take place on October 27, 2021, is hereby conditionally approved and accredited for up to six hours of annual water district management training for water district commissioners seeking to satisfy training requirements set forth in KRS 74.020(6) and (7).

2. Joint Applicants' Training Program may not be used by water district commissioners seeking to satisfy any portion of the initial training requirement for water district commissioners required by KRS 74.020(8).

3. Joint Applicants shall retain a record of all water district commissioners attending the Training Program.

4. No later than 45 days after each scheduled offering of the Training Program, Joint Applicants shall file with the Commission:

a. A sworn statement attesting that the accredited instruction was performed, including a statement that the materials regarding each session were distributed as required by the Commission herein;

b. A description of any changes in the presenters or proposed curriculum that occurred after the application;

c. The name of each attending water district commissioner, his or her water district, the number of hours that he or she attended, and whether he or she attended virtually or in person;

d. Copies of any affidavits received from water district commissioners' attending the presentation virtually attesting to their attendance; and

e. A copy of any written material given to water district commissioners attending the sessions that was not previously provided to the Commission.

5. Upon receipt of the materials identified in ordering paragraph 4 and provided there are no material changes to the program, the Commission shall issue a final Order approving and accrediting the Training Program.

6. Joint Applicants shall permit a representative of the Commission to attend the Training Program at the Commission's discretion, without charge, to assess compliance with this Order or the quality of instruction or for any other purpose deemed necessary by the Commission.

By the Commission



ATTEST:

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