



Kentucky Rural Water Association

Helping water and wastewater utilities help themselves

November 20, 2018

RECEIVED

NOV 26 2018

PUBLIC SERVICE
COMMISSION

Ms. Gwen R. Pinson, Executive Director
Public Service Commission
P. O. Box 615
Frankfort, KY 40602-0615

Case No. 2018-00389

Dear Ms. Pinson:

Kentucky Rural Water Association (KRWA) is applying for approval of a proposed water district management training program pursuant to KRS 74.020 and 807 KAR 5:070. The proposed session, entitled "Continuing Education Training for Water District Commissioners – McCreary Co. Water District," will be conducted on December 27, 2018, at the McCreary Co. Water District office in Whitley City, Kentucky. A copy of the proposed agenda is attached at **Exhibit 1**.

As reflected in Exhibit 1, the proposed training program will include presentations on the success of Kentucky's water utilities (approved by the Commission for training held at the 2016 Management Conference in Bowling Green on February 17-18, 2016), duties and responsibilities of board members (approved by the Commission for training held at Oldham Co. Water District on February 13, 2018), recent developments in utility regulatory law, and an overview of the Public Service Commission's regulation of municipal utility rates for wholesale water service to public utilities (both of these topics were recently approved by the Commission for the 2018 Water Law Series session held October 30, 2018 in Bowling Green). These presentations will enhance the attendees' understanding of relevant issues involved in the management, operation, and maintenance of water treatment and distribution systems.

The proposed training consists of six hours of instruction and should be accredited and approved as water management training satisfying the requirements set forth in KRS 74.020(7) to establish a water district commissioner's eligibility for a maximum annual salary of \$6,000. **KRWA is not requesting that the proposed training program be accredited as a program of instruction for newly appointed commissioners.**

A biographical statement containing the name and relevant qualifications and credentials for the presenters is attached as **Exhibit 2**.

Ms. Gwen R. Pinson
Page 2
November 20, 2018

The written materials that each attendee will be provided are attached as **Exhibit 3** (PowerPoint presentations). Should the presenters revise or amend their presentations prior to the proposed session (or provide additional written materials to the attendees), KRWA will include a copy of the revised presentation with their sworn statement and report regarding the instruction.

KRWA does not intend to submit this proposed training to any other agency for accreditation.

Along with a list of the commissioners, their water district, and the number of hours they attend the session, KRWA will provide a sworn statement attesting the accredited instruction was performed, noting any changings in the presenters or proposed program curriculum which may occur after certification.

With this letter and the enclosed exhibits, Kentucky Rural Water Association requests that the Commission approve and accredit the proposed training program entitled "Continuing Education Training for Water District Commissioners – McCreary Co. Water District" for six hours of annual water district management training.

Respectfully submitted,



Janet Cole
Education Coordinator
j.cole@krwa.org

Enclosures
(Original and 10 packets)

EXHIBIT 1

**Continuing Education Training
for Water District Commissioners – McCreary Co. Water district**

Presented by

Kentucky Rural Water Association

December 27, 2018

**McCreary County Water District Office
Whitley City, Kentucky**

8:00 a.m. – 9:00 a.m.

Session 1: **What's So Great About Kentucky?**

Presenter: **Andy Lange, Kentucky Rural Water Association**

In many ways, Kentucky utilities lead the nation. This presentation will explore many factors that have gone into making this possible, from adequate financing allowing utilities to manage their capacity development to regulations stemming from the USEPA, KY Division of Water, and the Public Service Commission. These factors and other influences have allowed Kentucky's water utilities to operate more efficiently and serve greater areas than utilities in other states.

9:00 a.m. – 10:00 a.m.

Session 2: **Duties and Responsibilities of Board Members**

Presenter: **Gary Larimore, Kentucky Rural Water Association**

This presentation reviews the Board's oversight role, as well as other duties and responsibilities of Board members. In addition, conduct of Board meetings, open meetings, open records, and other relevant topics will be discussed.

10:00 a.m. – 10:15 a.m.

Break

10:15 a.m. – 12:15 p.m.

Session 3: **Recent Developments in Utility Regulation**

Presenter: **Damon Talley, Stoll Keenon Ogden**

This presentation reviews recent developments in public utility law and regulations. Laws recently enacted by the Kentucky General Assembly, as well as recent court decisions and Public Service Commission decisions that affect water utility operations will be discussed.

12:15 p.m. – 1:30 p.m.

Lunch

1:30 p.m. – 3:30 p.m.

Session 4: **Municipal Wholesale Rate Workshop**

Presenter: **Damon Talley, Stoll Keenon Ogden**

This presentation will provide an overview of the Public Service Commission's regulation of municipal utility rates for wholesale water service to public utilities. The presenter will discuss the history of such regulation, identify the basic rules that the Commission employs when reviewing municipal utility rates, address the procedures that a municipal utility must follow when adjusting its wholesale rates to a public utility, identify frequently recurring issues in municipal utility rate proceedings, and offer practical suggestions to obtain favorable outcomes. The presenter will also discuss strategies that a wholesale customer may use to defend against wholesale rate increases.

EXHIBIT 2



Kentucky Rural Water Association

Andrew C. Lange

Andy Lange is the Assistant Director for the Kentucky Rural Water Association (KRWA) and has been employed there since 1989. Prior to joining KRWA, Mr. Lange worked for the Barren River Area Development District for five (5) years, providing administrative and financial assistance to local governments in the ten-county BRADD region. Mr. Lange has earned a Bachelor of Science in Geography and a Master of Public Administration from Western Kentucky University in Bowling Green, Kentucky.

As Assistant Director, Mr. Lange is involved with all management and administrative activities of the Association. He was originally responsible for performing loan sub-servicing under the Asset Management Program contract with National Rural Water Association (NRWA) for eight (8) years, ending in 1997. He also currently oversees KRWA's partnership with Western Kentucky University (WKU). These programs are the WKU Small System Circuit Rider, the Utility Management Institute (UMI), and the Technology Demonstration Project. Mr. Lange received the "Field Representative of the Year" award at NRWA's 1996 Annual Conference.

Mr. Lange's other responsibilities at KRWA include: coordinating and monitoring internal membership activities, producing and editing KRWA printed publications, and assisting in the administration of KRWA finance programs. In addition, Mr. Lange has been involved in the production of over seventy-five operation and maintenance manuals for water systems, has produced the final report for the Kentucky River Authority Water Counts project, and has participated in, and written, Operation Review studies for three (3) water and wastewater utilities since 1995.

Andy is a native of Dallas, Texas and has lived in Bowling Green, Kentucky since 1962. He is married to Janice Sims Lange, a newly retired Catholic Elementary School Principal, and has two children and four grandchildren.



Kentucky Rural Water Association

Gary Larimore

Gary Larimore has been Executive Director of the Kentucky Rural Water Association since its formation in March, 1979. He received both Bachelor of Science and Master of Public Service Degrees from Western Kentucky University in Bowling Green, Kentucky.

Mr. Larimore is responsible for the administration and day-to-day operation of the Association's office and supervision of a nineteen-member staff. These duties include budgeting and financial management, personnel management, and acting as the primary representative with the membership, the board of directors, National Rural Water Association, various funding agencies, and other outside organizations. Additionally, Mr. Larimore serves as Secretary/Treasurer of the Kentucky Rural Water Finance Corporation, which was incorporated in 1995 for the purpose of assisting communities in obtaining competitive financing. Other primary duties include representing the Association's legislative and regulatory interests as a full-time lobbyist and working with water-related groups and organizations.

Mr. Larimore is the co-author of the *Kentucky Rural Wastewater Manual for Policymakers*, June 1993; *Kentucky Rural Water Assistance Manual*, January, 1990; *Water System Decision Makers – An Introduction to Water System Operation and Maintenance*, January 1988; and *Conserving Water and Energy – A Manual for Managers of Rural Water Utilities*, September, 1982. He has served on a variety of National Rural Water Association (NRWA) committees.

Gary is a native of Horse Cave, Kentucky. He lives in Warren County, Kentucky with his wife Rita Tupts Larimore, who teaches third grade at St. Joseph Catholic School in Bowling Green, Kentucky.



Damon R. Talley

Direct Phone: 270.358.3187
damon.talley@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. District Court, Eastern
District Of Kentucky

U.S. District Court, Western
District Of Kentucky

United States Supreme Court

EDUCATION

University of Kentucky College
of Law
1975, J.D.

University of Kentucky College
of Engineering
1972, B.S.M.E.

RECOGNITION

Sullivan Medallion, presented to
Outstanding Graduating Student,
University of Kentucky

Moot Court Board,
president, University of Kentucky
College of Law

Damon R. Talley

Damon serves as Of Counsel and is a member of the Utility & Energy practice. He practices out of the Louisville, Lexington and Hodgenville, Kentucky offices. Damon brings to SKO more than 35 years of experience working in private practice focusing on public utility work. He serves as General Counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

He is a frequent speaker at training sessions sponsored by the Kentucky Rural Water Association, Public Service Commission, Division of Water, Utility Management Institute, and other Utility Industry Groups.

Damon received his J.D. from the University of Kentucky College of Law in 1975, and earned his B.S.M.E. in 1972 from the University of Kentucky College of Engineering. He served as a board member of the Kentucky Infrastructure Authority for 15 years (2000-2015), and was a charter member, a long-time board member and Board Chairman for two terms of the KY FFA Foundation, Inc. He also serves as a board member for a variety of other non-profit organizations.

Outstanding Student, University
of Kentucky College of
Engineering

Omicron Delta Kappa,
president, University of Kentucky

Kentucky Association of Future
Farmers of America, president

Outstanding Citizen Award,
LaRue County Chamber of
Commerce, 1990

Outstanding Citizen Award,
Cave City Chamber of
Commerce, 1981

Outstanding Citizen Award,
Horse Cave Chambers of
Commerce, 1979

LOUISVILLE | LEXINGTON | INDIANAPOLIS | EVANSVILLE | FRANKFORT

WWW.SKOFIRM.COM

EXHIBIT 3

What's So Great About Kentucky...



...Water and Wastewater Utilities?

7 Contributing Factors

for

Kentucky's Water & Wastewater Utilities

to rank

Among the Best in America!

7 Contributing Factors

1

Climate/Geography

- Kentucky averages nearly 50 inches of rain each year
- Kentucky has the second most stream miles in U.S.
(Alaska - 1st)
- Kentucky relies more on surface water than groundwater
The only state in the U.S.

2

Federal Laws

- The Safe Drinking Water Act (1974)
- The Clean Water Act (1972)
- State Primacy (SDWA -1977, CWA - 1983)

3

State Laws & Regs

- DOW has been "out front" of most federal regulations
- KRS Chapter 74 established a framework for success!
- PSC jurisdiction has contributed to mostly-solvent utilities

4

Federal Funding

- USDA Rural Development in Kentucky is GREAT!!!
- Our U. S. Congressional delegation is very supportive
- Kentucky typically receives more from Washington than we pay in taxes

7 Contributing Factors

5

State Funding/Planning

- Kentucky's 20/20 Plan has led to \$850 million in funding
- SB 409 led to Planning and Project Profiles
- Kentucky Infrastructure Authority reorganized

7 Contributing Factors

6

KRWA

- Interim Loans - \$809 Million for 435 projects
- Flexible Term Loans - \$430 Million
- Trained - 78,000
- Assisted - 76,000
- 418 Utility Management Professionals

7 Contributing Factors

- Climate/Geography
- Federal Laws
- State Laws & Regs
- Federal Funding
- State Funding/Planning
- KRWA
- Natural Consolidation

7

Natural Consolidation

- Surface water treatment is more technically challenging
- Water districts and associations have expanded dramatically
- We're smarter than we look!



Public Water Systems

A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.

CWS - Community Water System (serves year-round)

Examples: Municipalities, Water Districts, Water Associations, Privately-owned

TNCWS - Transient Non-Community Water System

Examples: Resorts, Restaurants, Motels, Campgrounds, State Parks

NTNCWS - Non-Transient Non-Community Water System

Examples: Schools, RV Parks, Industries, Senior Citizen Centers

Natural Consolidation

Kentucky

YEAR	TNCWS	NTNCWS	CWS	PWS	CHANGE
1974	1066	254	868	2188	
1979	805	252	755	1812	-17 %
1989	400	215	639	1254	-31 %
1999	199	85	497	781	-38 %
2009	49	26	409	484	-38 %
2018	25	14	361	400	-17 %

Pike County Public Water Systems - 2018

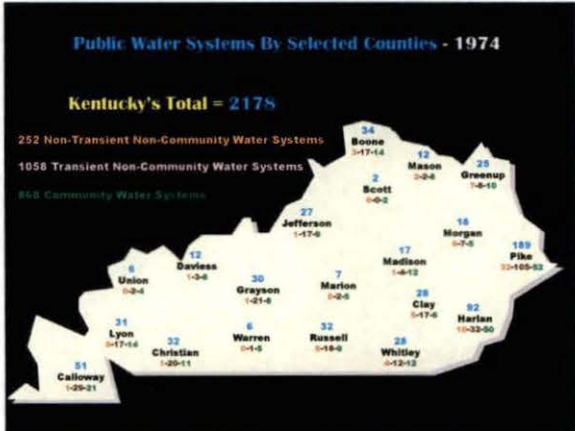
Non-Transient NCWS
Transient NCWS
Community Water Systems

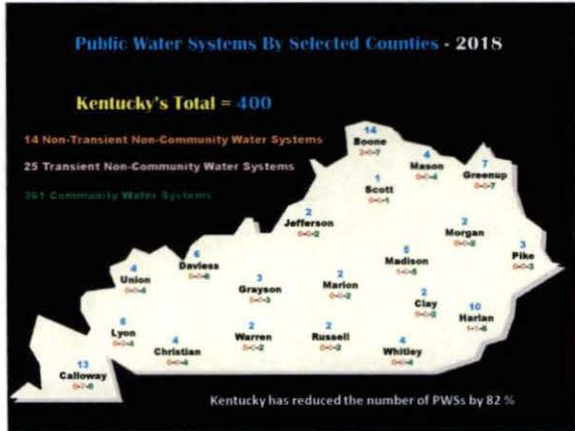
CLOSED

- 49 Restaurants/Motels
- 39 Mobile Home Parks
- 35 Coal Mines
- 28 Schools
- 5 State/Federal Properties
- 4 Churches

Created by:
 Environmental Health & Safety Department
 Mountain View School

3 Active Public Water Systems





Public Water Systems in Kentucky - 2018

400 Public Water Systems in Kentucky

14 Non-Transient Non-Community Water Systems

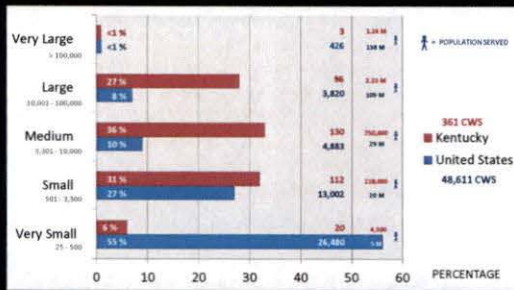
25 Transient Non-Community Water Systems

361 Community Water Systems



78 counties have three or fewer community water systems.

Community Water Systems - 2017



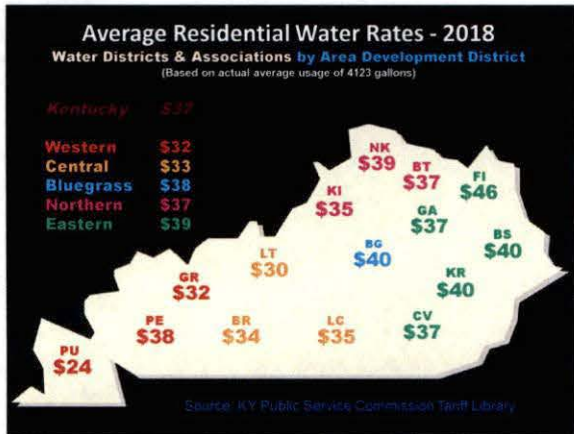
Percentage Served in Kentucky

- Average Population Served: 95.4%
- 103 out of 120 Counties: > 90% Serviceable
- Only 5 Counties: < 75% Serviceable

Least Served Counties

Carlisle	37.6%	1,921 out of 5,104 people
Hickman	38.6%	1,891 out of 4,902 people
Ballard	46.8%	3,859 out of 8,249 people
Graves	67.8%	25,174 out of 37,121 people
Calloway	69.1%	25,694 out of 37,191 people

All five counties are in the Purchase Region where groundwater is abundant.



Water Rate Comparisons - 2018

4,000 gallons

	Average	Median	Outside
All Cities (200)	\$29	\$28	\$36
Small Cities (97) <small>(under 1,320)</small>	\$32	\$32	\$39
Medium Cities (54) <small>(1,321 - 4,000)</small>	\$27	\$27	\$35
Large Cities (49) <small>(over 4,000)</small>	\$23	\$22	\$31
Water Districts/Associations (133)	\$37	\$37	-
All Utilities (333)	\$31	\$31	-

Sources: PSC, KIA, KRWA, Cannon & Cannon

Sewer Rate Comparisons - 2018

4,000 gallons

	Average	Median	Outside
All Cities (201)	\$31	\$30	\$39
Small Cities (133) <small>(under 1,320)</small>	\$33	\$32	\$40
Medium Cities (35) <small>(1,321 - 4,000)</small>	\$29	\$28	\$41
Large Cities (34) <small>(over 4,000)</small>	\$26	\$25	\$37
Water Districts (24)	\$36	\$36	-
Sanitation Districts (21)	\$42	\$41	-
All Utilities (246)	\$32	\$31	-

Source: KIA, KRWA

Duties & Responsibilities of Board Members

Gary Larimore
Kentucky Rural Water Association

December 27, 2018



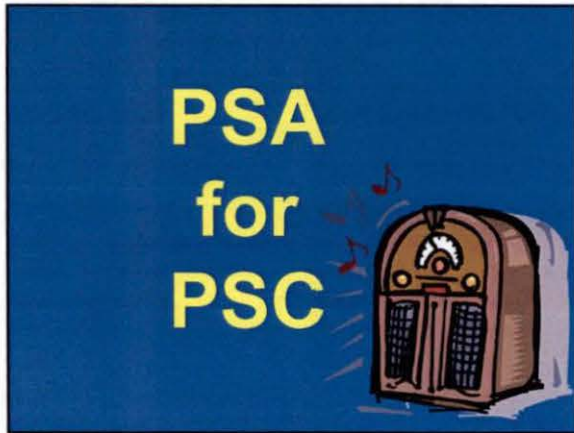


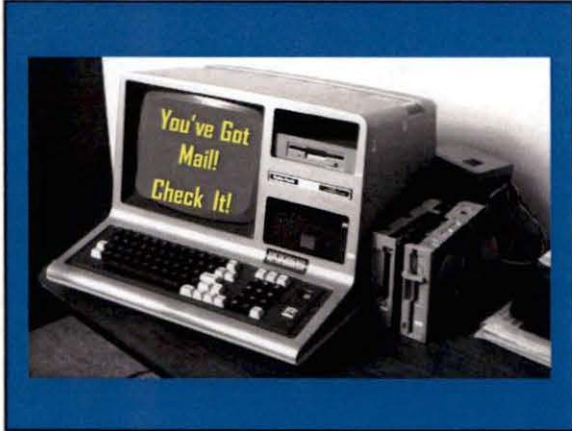


PART I
BOARD MEETINGS

PART II
ROLE OF WATER
DISTRICT COMMISSIONERS







Reporting Requirements

- Must Notify PSC . . .
 - After Vacancy
 - After Appointment
- When? Within 30 Days

Vacancy

- Inform CJE 60 Days Before Term Ends (KRS 65.008)
- CJE / Fiscal Court – 90 Days
- Then, PSC Takes Over
 - CJE Loses Right To Appoint

PART I

Board Meetings



Board Meetings

- Preparing for
- Conducting
- Documenting
(Minutes)

Regular Meetings

- Adopt a regular meeting schedule
 - Set time, date and location
- Inform the Media (radio, print, television)
- Inform the Public (bills, website, newsletter)

Preparing for Meetings

“Give me six hours to chop down a tree and I will spend the first four sharpening the axe.”

Abraham Lincoln

Preparing for Meetings

- Develop an Agenda
 - Chairman
 - Manager
- Prepare an Information Packet for Board Members
 - Delivered in advance (between two days and one week)

Board Packet

- Contents
 - Meeting Agenda
 - Minutes of prior meeting
 - Operational, Managerial & Financial Reports
 - Other information

Conduct of Meetings

- Follow the Agenda
- Use Parliamentary Procedure
- Voting by Chairman or President
- Abstaining from Voting
- Public Comments
- Closed (Executive) Session

ABSTAINING FROM VOTING

WHY Abstain?

- Avoid conflict of interest
- Avoid being removed from office for violating KRS 74.020(3)
(Participating in official action which results in direct financial benefit to Commissioner)
- Avoid appearance of impropriety

HOW to Abstain

1. Alert Chairman or Presiding Officer in advance
2. Announce intent to abstain and a brief reason as soon as Chairman announces the agenda item
[Disclose Conflict]
3. Leave the room before discussion starts

Cont.

HOW to Abstain ...

4. Stay out of the room until **AFTER** vote has been taken and announced
5. Follow-up with Secretary to ensure that Minutes disclose your conflict and document your abstention

Duties of a Board

1. Specific
2. General

Example of Specific Duties

- Adopt Budget
- Periodically Review Budget
- Amend Budget as Necessary

Budgets

- Required by KRS 65A.080(1)
- Post on DLG Website
- Periodic Review of Budget
- Amend as Necessary
- Post Amended Budget on DLG Website

Budgets

“No moneys shall be expended from any source except as provided in the originally adopted or subsequently amended budget.”

KRS 65A.080(1)

Budget

- Review Actual \$ to Budget \$
- Amend Budget if Needed
- When?
 - October Meeting
 - December Meeting
- Upload to DLG Website

General Duties of a Board

1. Oversight
2. Oversight
3. Oversight

Oversight

- Method
 - Stay Informed
 - Adopt Policies
 - Require Reports

Reports

- Different Types
- Tailored to Fit
- Board Action Required?

Types of Reports

- Financial
- Operational
- Managerial
- Other

Financial Reports

- Check Register
- Monthly Income & Expense
 - Debt Service Transfer
 - Depreciation Transfer
- Comparisons & Trends
 - Prior Year
 - Budget
- Balance Sheet

Operational Reports

- Water Production (Purchases)
- Line Loss
- New Customers
- Turn-Offs
- Others

Managerial Reports

- Safety
- Human Resources
- Special Projects
- Policy Implementation
- Others (e.g. Overtime Hours)

Reports Tailored to Fit

- Line Loss
 - Actual Cost in \$
- Specific Needs
- Understandable
- You Are The Boss

Board Action Required?

- Usually Not
 - Manager Presented
 - Board Received
- Sometimes Yes
 - Audit
 - Committee Report

Special Meetings

- Who calls a special meeting?
- Notice of meeting
 - Board Members, Media, General Public
- Agenda – action limited to agenda items
- How much advance notice is required?

MINUTES



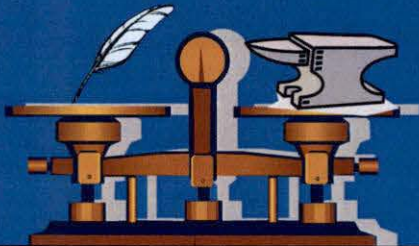
What Are MINUTES?

- Official Record
- Much, Much More . . .

Excerpt From Minutes

“Motion was made by Commissioner X and seconded by Commissioner Y to hire Commissioner Z to perform water line inspections on the Knob Hill Project at an hourly rate of \$20.”

AN OUNCE
OF
PREVENTION = A POUND
OF CURE



Board Minutes

- A Board “speaks only through its minutes.”
- War Stories:
 - Ownership of water line and service of disputed territory
 - Careless Conversations

Preparation of Minutes

- Who prepares minutes?
 - Board Secretary or Staff
- Who edits minutes?
 - Staff or legal counsel
- Are meetings recorded on audio and/or video?
- Signing of Minutes
- Approval of Minutes

ADJOURNMENT

There being no further business to come before the meeting, motion was made by Commissioner Steven Douglas and seconded by Commissioner Henry Clay to adjourn the meeting. Motion carried unanimously.

Respectfully submitted,

BY: _____
Henry Clay, Secretary
ABRAHAM LINCOLN WATER
DISTRICT

DATE APPROVED: _____

BY: _____
Jefferson Davis, Chairman

Approval Of Minutes

I hereby certify that the foregoing Minutes were duly approved by the Board of Commissioners of the Abraham Lincoln Water District at a meeting held on the date shown below:

ABRAHAM LINCOLN WATER DISTRICT

BY: _____
JEFFERSON DAVIS, CHAIRMAN

DATE APPROVED: _____

Board Minutes

A complete set of APPROVED Minutes SHALL be maintained at the utility office for inspection by the general public, regulators, customers, and the media.

Board Minutes

When are the Minutes considered in "final form" and available for public inspection?

Minutes

What MUST Be Included?

- Board Member Attendance
- Official Actions

Minutes

What **SHOULD** Be Included?

- Board Member Attendance
- Acknowledge Guests (Visitors)
- Official Actions
- Acknowledge Receipt of Reports
 - PSC Inspection Report

Cont.

Minutes

What **SHOULD** Be Included?

- Summarize **Some** Discussions

- Toot Your Own Horn

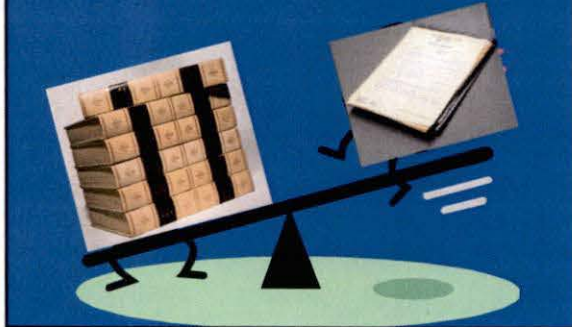


Minutes

Tooting Your Own Horn

- Give Yourself Credit
 - "Best Tasting Water"
 - Wooden Bucket Award
 - AWOP Award
 - Governor's Safety Award

How much information **SHOULD** be included in the MINUTES?



Minutes

How **MUCH** is too **MUCH**?

- No definitive answer
- Art not a science

Cont.

Minutes ...

How **MUCH** is too **MUCH**?

- Guidelines . . .
 - Minutes are **NOT** a transcript
 - Minutes are **NOT** the Congressional Record
 - Include rationale for action taken if it might avoid lawsuit

**“Conversations are
NOT official actions
of the Board.”**

Virginia W. Gregg
PSC Staff Attorney

**WHY Include Summary of
Conversations in Minutes?**

- Document Board’s Due Diligence
(e.g. Use of safety equipment; Training of Staff re confined space entry)
- Document Board’s Oversight Role
(e.g. Implementation of ID Theft Prevention Program)
- Avoid or Win Litigation

Tips . . .

Prepare Minutes for a Reader . . .

1. Who did not attend the meeting.
2. Who will not read the Minutes until at least one year later.
3. Who will access Minutes via www.

PART II

**ROLE OF WATER
DISTRICT
COMMISSIONERS**

To Govern...

not

...Manage.

General Duties of a Board

1. Oversight
2. Oversight
3. Oversight

Specific Duties of a Board

- Hire, evaluate and compensate a Manager
- Adopt Policies
- Adopt and Amend Budgets
- Adopt Long-range Plans
- Adopt Rates, Rules & Regulations (Tariffs)

Individual Board Members...

... act in the best interest of the utility.

Specific Duties of Board Members

- Stay informed
- Attend meetings regularly
- Perform tasks assigned by Board
- Support decisions of the Board
- Keep Board matters confidential
- Avoid Conflict of Interest

Identity Theft



Identity Theft Prevention Program

1. Develop Written Program
 - Detect
 - Prevent
 - Mitigate
2. Approved by Board
3. Oversight by Board or Senior Management

What Should You Do?

Board Members:

- Direct Management to prepare written summary of existing safeguards
- Evaluate existing safeguards
- Work with Management to improve safeguards
- Adopt policy
- Oversee implementation of policy

What Should You Do?

Management:

- Prepare written summary of existing safeguards
- Evaluate existing safeguards
- Work with Board to improve safeguards
- Recommend policy for adoption by Board
- Implement policy
- Train Staff

Board Officers

Offices of a Water District

KRS 74.020(5)

- Chairman
- Vice Chairman
- Secretary
- Treasurer
- Others

Duties of Officers

Chairman

- Preside over meetings
- Prepare meeting agendas
- Call special meetings
- Execute documents approved by Board
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in Bylaws or Ordinance

Duties of Officers

Vice Chairman

- No statutory duties (Water District or Utility Commission)
- Preside over meetings in absence of Chairman or President
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in Bylaws or Ordinance

Duties of Officers

Secretary

- Cause the Minutes of all meetings to be prepared
- Act as custodian of official records
- Authenticate official records
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in Bylaws or Ordinance

Duties of Officers

Treasurer

- Cause all funds to be disbursed according to law and procedures adopted by Board (KRS 74.050)
- Perform other duties assigned by Board
- Perform other duties specified in Bylaws or Ordinance

Action By Individual Board Members Outside of Meetings

- Officers
- Other Board Members

Legal Standard of Care

The "PIG" Rule

If it seems "piggish" to you, it probably is!
...so keep your snout in your own trough!



Legal Standard of Care

Water Dist. & Utility Commission

No statutory standard of care but the case law standard requires...

- Good faith
- Reasonable care and diligence
- Acting within the scope of authority

The statutory standard of care for water association directors is instructive for water districts and utility commissions.

Legal Standard of Care

Water Associations (KRS 273.215)

A Director shall discharge his duties:

- In good faith
- On an "informed basis"
- In the best interests of the Association

"Informed Basis" KRS 273.215(2)

A director shall be considered to discharge his duties on an informed basis if he makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the corporation or into a particular action to be taken or decision to be made.

Legal Standard of Care

Reliance on Information KRS 273.215(3)

A director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- Officers or employees of the corporation whom the director honestly believes to be reliable and competent;

Cont.

Legal Standard of Care

Reliance on Information KRS 273.215(3)

- Legal counsel, public accountants or other experts as to matters the director honestly believes to be within that expert's area of expertise; or
- A committee of the board of directors of which he is not a member if the director honestly believes the committee merits confidence.

Legal Standard of Care

Exceptions may be made in instances where a director possesses special knowledge that indicates alternative action is prudent and necessary.

Parting Thought

Every utility's Board should develop and adopt a "Board Governance & Policy Manual."



STOLL KEENON OGDEN 

Hot Legal Topics

December 27, 2018


Damon R. Talley, General Counsel
Kentucky Rural Water Association, Inc.
Stoll Keenon Ogden PLLC
damon.talley@skofirm.com
270-358-3187



DISCUSSION TOPICS


1. Notice to PSC
2. Franchises & Contracts
3. Borrowing Money
4. 911 Litigation Update

Continued . . .

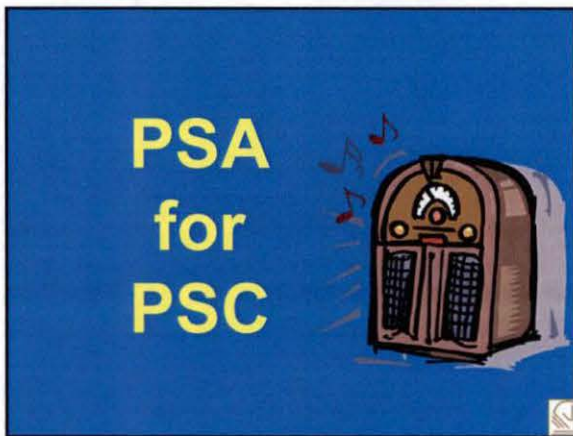


DISCUSSION TOPICS

5. Call Before You Dig
6. 2018 General Assembly
7. Recent PSC Orders
8. Excessive Water Loss







Reporting Requirements

- Must Notify PSC if . . .
 - Vacancy Exists
 - Appointment Made
- When? Within 30 Days

Vacancy

- Inform CJE 60 Days Before Term Ends (KRS 65.008)
- CJE / Fiscal Court – 90 Days
- Then, PSC Takes Over
 - CJE Loses Right To Appoint





E-Mail Address Regs.

- All PSC Orders Served by E-mail
- Duty to Keep Correct E-mail Address on file with PSC
 - Default Regulatory E-mail Address
- Duty to List E-mail Address in Application & All Other Papers
 - Utility Official
 - Its Attorney



E-Mail Address

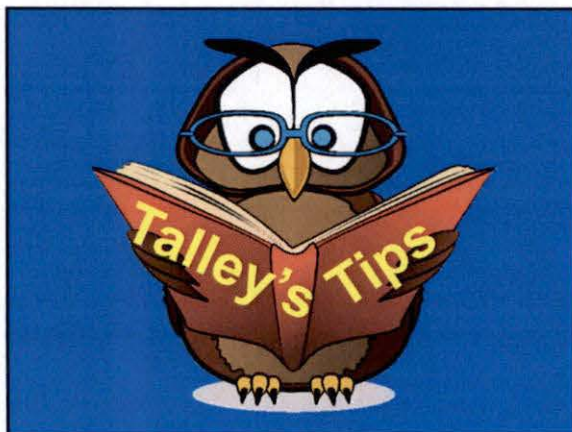
- Who is Covered?
 - Water Districts
 - Water Associations
 - Investor Owned Utilities
 - **Municipal Utilities**



Why Municipals?

- Contract Filing
- Tariff Change (Wholesale Rate)
- Protest Supplier's Rate Increase
- Acquiring Assets of Another Utility
- Avoid Delays





Default Regulatory E-mail Address

- Send E-mail to PSC
 - psc.reports@ky.gov
- Send Letter to PSC
 - Gwen R. Pinson,
Executive Director



Franchises and Contracts



Franchise

- Definition
 - Private
 - Rights granted by company to individual or business to sell a product
 - Examples





Franchise

- Definition
 - Government
 - Privilege granted by government to utility to provide specific utility service
 - Permission to erect facilities over & under streets, alleys, & sidewalks
 - Fee: 3%
 - Examples



Livingston County Case

Ledbetter WD

vs.

Crittenden-Livingston WD

Circuit Court

Case No. 2015-CI-00079

Opinion Rendered: 1-25-17

Status: **REVERSED**



Court of Appeals

Crittenden-Livingston WD

vs.

Ledbetter WD

Case No. 2017-CA-000578

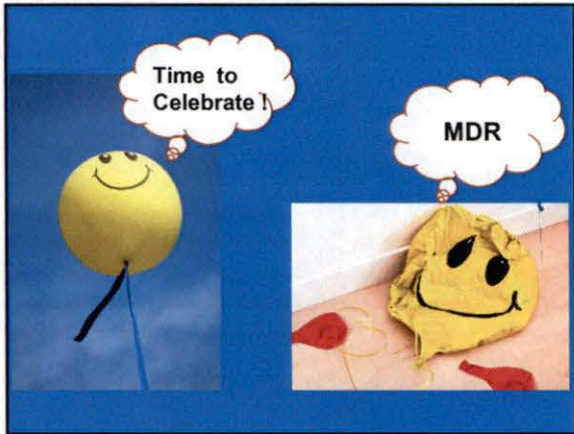
Oral Argument: 4-24-18

Decided: 8-17-18

Holding: No Franchise







Ky. Supreme Court
Ledbetter W.D.
vs.
Crittenden-Livingston WD
Case No. 2018-SC-000494-D
Motion DR: 09-12-18
Response: 10-12-18
Action on Motion: ? ? ? ?

Franchise Case - Holding
40-year
Water Supply Contract
Between 2 Water Districts
Valid or Invalid

- Why? Contract = Franchise
- Over 20 Years
- Basis: Kentucky Constitution Section 164



Ky. Constitution Section 164
No county, city, town, taxing district or other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding **twenty years**. Before granting such franchise or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefor publicly, and award the same to the highest and best bidder; but it shall have the right to reject any or all bids.

Why?

- 340 Water Utilities
- 169 WTPs
- 50% Buy Water
- Need Water Supply Contract
- Long Term

...

How Long Is Long Term?

- Lender
 - RD: 40 years
 - KIA: 20 or 30 years
 - Bonds: Length of Bonds

Significance

- If Franchise . . . 20 Year Limit
 - Can't Borrow \$ from RD
 - Other Sources – Only if < 20 years
 - KIA
 - Bonds
 - KRWFC

Court of Appeals @ Page 4

A **franchise** is generally defined as a **right or privilege granted by** a sovereign power, government or a governmental entity **to a party to do some act which such party could not do without a grant from the government.** A franchise is a grant of a right to use public property or at least the property over which the granting authority has control.

C/A Rationale

- Distinction:

For - Profit Utility

versus

Non - Profit Utility

- Water District

- Public Entity



C/A Legal Analysis

- One Public Entity Acquiring Service From Another Public Entity

- Purchase of Water Service

- Contract Not Franchise



C/A Legal Analysis

- Franchise Grants Governmental Rights

- WD Already Has Rights

- Contract Grants

- Service

- Commodity (Water)



C/A Legal Analysis

- Contract – Provided Water
- Contract – Allowed WD to Better Serve Customers

C/A Holding

- Contract Not Franchise
- Section 164 N/A
 - Longer Than 20 Years
 - No Advertising

What's Next?

- Decision Not Final
- Motion for Discretionary Review Filed: 09 -12-18
- Response Filed: 10 -12-18
- Ky. Supreme Court ? ? ?

KRWA's Role

- Filed Amicus Brief in C/A
 - "Friend" of Court
- Protect Validity of Contracts
- Protect Ability to Obtain \$



Borrowing



KRS 278.300(1)

No utility shall issue any securities or evidences of indebtedness . . . until it has been authorized to do so by order of the Commission.



Practical Effect

- Must Obtain PSC Approval Before Incurring Long-term Debt (Over 2 Years)
- Exception:
 - 2 Years or Less
 - Renewals
 - (3 X 2 = 6 Years)
 - (6 X 1 = 6 Years)





Violation

**Show
Cause
Cases**





Show Cause Case # 3

Case No. 2017 - 469

Opened: 01- 11 - 2018

Hearing: 02 - 27- 2018

Issue: KRS 278.300

Decision: 09 - 17 - 2018



Show Cause Case # 1

Case No. 2016 - 338
Opened: 10 - 11 - 2016
Closed: 02 - 23 - 2017
Issue: KRS 278.300
Hearing: 12 - 13 - 2016



Show Cause Case # 1

- Ruling:
 - \$500 Fine (Suspended)
 - Rejected Advice of Counsel Argument
 - Lawyer on Hook



Show Cause Case # 1

- Process Is Noteworthy:
 - Begged to Settle
 - PSC Said No
- Formal Hearing




Show Cause Case # 2

PSC Case No. 2017-176
2017-467

Order: 8-18-2017
Utility: Water District
Type: ARF Case
Holding: Hold Hearing
Why? Violated 278.300

Show Cause Case # 2

Staff Report: 8-9-2017
Recommended: 24%  Rates
\$360,000 Annual
\$30,000 per Month
3 Loans - Local Bank
Hearing: 11-1-17
Decision: 12-20-17

Hearing on 11-1-17

- Purposes:
 - Line Loss - 33%
 - Violation of 278.300
 - Purpose of Loans
 - Fringe Benefits

Hearing on 11-1-17

- Who Must Attend?
 - Each Commissioner
 - Office Manager
 - Distribution System Manager

Show Cause Case # 2

Case No. 2017 - 467
Opened: 01- 11 - 2018
Hearing: 02 - 27- 2018
Resigned: 02 - 27- 2018
Dismissed: 05 - 04- 2018

Show Cause Case # 2

- No Fines
- Lost Revenue
 - Over \$60,000
- Commissioners Resigned

Show Cause Case # 3

Case No. 2017 - 469
Opened: 01- 11 - 2018
Hearing: 02 - 27- 2018
Issue: KRS 278.300
Decision: 09 - 17 - 2018

Timeline

05 - 03 - 2016	Obtained Loan
08 - 03 - 2017	ARF Application Filed
11 - 30 - 2017	Staff Report Issued
01 - 11 - 2018	Show Cause Order
02 - 27 - 2018	Formal Hearing
09 - 17 - 2018	Order

Show Cause Case # 3

This is the **third** case in the last year and a half involving a show cause order against a water district utility and/or its commissioners for violating KRS 278.300 by obtaining a loan, the term of which is in excess of two years, without prior approval of the Commission. To date the Commission has **assessed, but not sought, to collect** civil penalties against individual water district commissioners for essentially two reasons.

(Continued)

Show Cause Case # 3

First, the Commission's goal has been to obtain **compliance** with the requirements of the statute and not to exact a penalty and, **second**, the Commission was determined to **send a message** to these utilities and their local commissioners that they were out of compliance and **future violations** could result in **individual penalties** as well as a **separate penalty against the utility**.

(Continued)

Show Cause Case # 3

The Commission also intended to place **all other water districts on notice** that obtaining loans in violation of KRS 278.300 could subject both the utility and its commissioners to civil penalties, and **to provide fair notice that strict enforcement could be expected in future cases**.

Show Cause Case # 3

Water districts and their commissioners are hereby put on **final notice** that unauthorized debt incurred after the date of this order may well result in **substantial** civil penalties being **assessed and collected against both** in future show cause cases.

Pages 7 and 8 of Order

Show Cause Case # 3

- District Fined \$2,500
 - Pay \$500
 - \$2,000 Suspended
 - Good Behavior
 - One Year
- Commissioner Matthews Dissented

Show Cause Case # 3

- Commissioners Fined \$2,000
 - Pay Zero
 - Entire \$2,000 Suspended
 - Good Behavior
 - One Year
- 12 Hours Training


Show Cause Case # 3

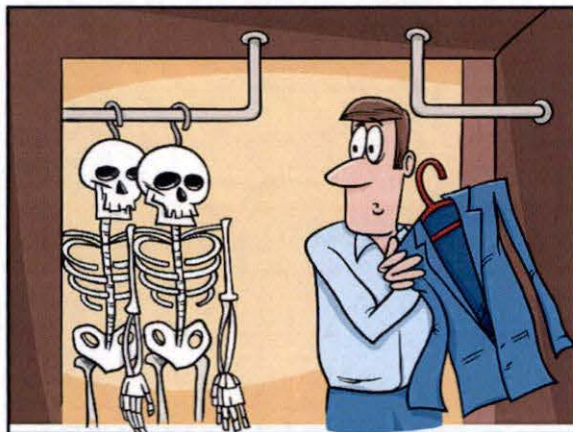
- Develop Written Policy
 - Borrow \$
 - Hire Lawyer
- Adopt Policy
- File Policy with PSC



PSC Commissioners:

- Take Their Jobs Seriously
- Hands On
- Love Hearings
- Promote Transparency
- Oversight Means Oversight





Campbell County Case
 Greater Cincinnati / Northern Ky. Apartment Assoc., Inc., et al
 vs.
 Campbell Co. Fiscal Court, et al
 Supreme Court of Kentucky
 479 S.W.3d 603 (Ky. 2015)
 Opinion Rendered: 10-29-15
 Became Final: 02-18-16

Garrard County Case
 City of Lancaster, et al
 vs.
 Garrard County, Kentucky
 Court of Appeals
 Case No. 2013-CA-000716-MR
 Opinion Rendered: 7-03-14
 Opinion Vacated: 2-18-16
 New Opinion: 8-11-17

**911
 Litigation
 Update**

Current Status

- Campbell Co. – Parcel Fee OK
- Fee On Water Service – OK
- Unresolved Legal Issues

Unresolved Legal Issues

- Does County Have Legal Authority to:
 - Compel City to Collect Fee?
 - Compel WD to Collect Fee?
 - Compel WA to Collect Fee?
 - Compel IOU to Collect Fee?



Recent Developments

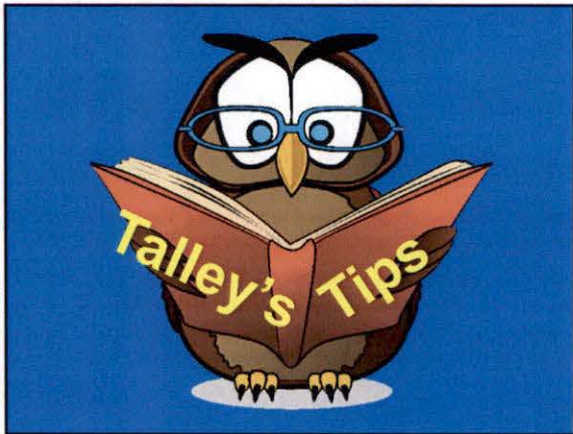
- New Ordinances
 - Garrard County
 - Lincoln County
- Fee On Water Service
- Water Utilities to Collect

New Garrard County Case

Garrard Co. Water Association
vs.
Garrard County, Kentucky
Garrard Circuit Court
Case No. 2017 - CI - 00281
Date Filed: 12-11-17
Status: Discovery
Opinion Rendered: ??-??-??

Lincoln County Case

City of Stanford, et al
vs.
Lincoln County, Kentucky
Lincoln Circuit Court
Case No. 2018 - CI - 00062
Date Filed: 03-02-18
Briefs Filed: 10-12-18
Opinion Rendered: ??-??-??

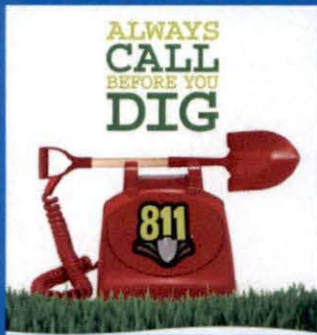


- If Stuck With A Fee**
- Collection Agreement with County
 - Tax Collector Not Tax Payer
 - Hold Harmless Clause
 - Refunds
 - Legal Fees
 - Show As Line Item on Bill
(If PSC Permits)





**CALL
BEFORE
YOU DIG**



**Changes to Law
KRS 367.4901 to 367.4917**

- Membership Still Voluntary
- Mandatory Fines . . . If Damage
 - Natural Gas Pipeline
 - Hazardous Liquid Pipeline
- PSC Is the **Enforcer**

Why Did Law Change?

- Conform with Federal Law
- Too Many Gas Line Accidents
- Effective: 07-14-2018



Who Is Affected?

- Excavators
 - All Utilities
 - Contractors
- THIS MEANS YOU!



Requirements

- Call 811
- Hand Dig or Use "Nonintrusive Means"
- Stop Work If Cause Damage
 - Notify Gas Company
 - Notify PSC



What Happens Next?

- Report Due to PSC Within 30 days
- Use Online Report Form
- PSC Staff Investigates
- PSC Demand Letter
or
- Hearing Before PSC



Fines

- Mandatory
 - First Offense: \$1,250
 - Second Offense: \$2,000
 - Third Offense \$4,000
- Exception for Emergency
 - Defined Term: 367.4903(7)





KENTUCKY PUBLIC
SERVICE COMMISSION

Resources:

PSC website: psc.ky.gov

New call-before-you-dig webpage
launched in June

- Statutes
- FAQs
- News releases

Kentucky 811 website: Kentucky811.org

87



For more information:

Mike Nantz
Division of Inspections
502-782-2602
502-545-2141
Michael.Nantz@ky.gov

Andrew Melnykovich
Director of Communications
502-782-2564
Andrew.Melnykovich@ky.gov

88

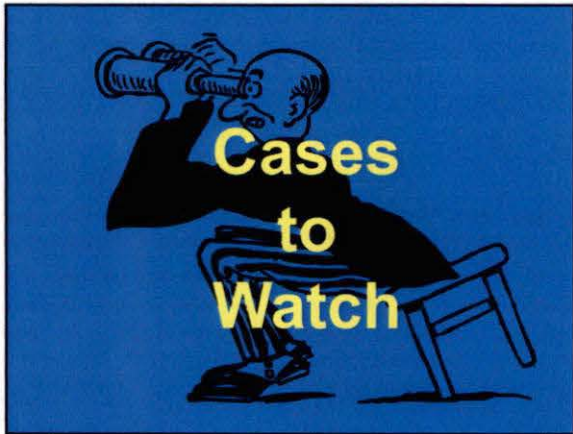
2018 General Assembly



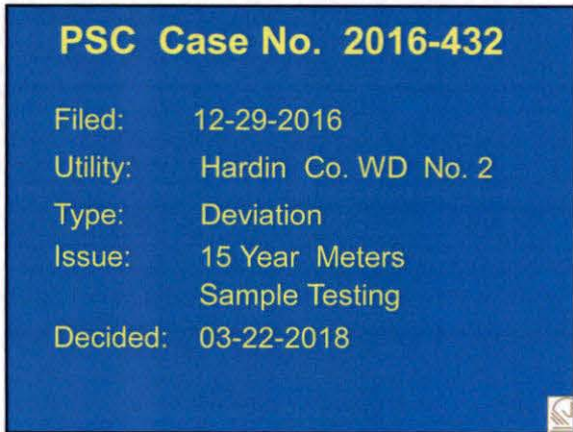
Notable Bills

- SB 117 – Ky. 811 - Defeated
- SB 151 – Sewage (Pension)
- HB 513 – Private WWTPs
- HB 362 – Pension Cap
- HB 366 – CPCN Exemption
KRS 278.020(2)









PSC Case No. 2017-127

Filed: 3-10-2017
Utility: North Mercer WD
Type: Deviation
Issue: Office Open
4 Days a Week
Decided: 3-16-2018



PSC Case No. 2017- 458

Filed: 12-22-2017
Utility: Southeast Daviess WD
Type: CPCN
Issue: Smart Meters
Decided: 02-27-2018



PSC Case No. 2017- 246

Filed: 6-30-2017
Utility: McCreary Co. WD
Type: Deviation
Issue: Daily Inspection of
Grinder Pumps
Decided: 2-01-2018



PSC Case No. 2016 - 394

Filed: 11-18-2016
Utility: Ky. American
Type: Deviation
Issue: Annual Inspection of
Meters & Valves
Decided: 12-12-2017

PSC Case No. 2016-427

Filed: 12-08-2016
Utility: Northern KY WD
Type: Deviation
Issue: Annual Inspection of
Meters & Valves
Decided: 02-01-2018

**Excessive
Water
Loss**



Unaccounted-for Water Loss

- 807 KAR 5:066, Section 6(3)

“... for rate making purposes a utility’s unaccounted-for water loss shall not exceed fifteen (15) percent of total water produced and purchased, excluding water used by a utility in its own operations.”



Terms

- Unaccounted-for Water Loss
 - 15% Maximum
 - Allowance for Flushing, Etc.
- NRW – Non Revenue Water
 - No Allowance for Flushing



PSC Case No. 2016 - 068

Decided: 8-17-16

Utility: Water District

Type: ARF

Issue: Excessive Line Loss

PSC Held:

- Water Loss 39%
 - 15% Maximum Allowed
 - Disallowed 24% Excess
- Disallowed \$135,000 Expenses
Excess Water Loss
(Cost to Purchase & Pump)

PSC Ordered:

"The Commission is concerned with **excessive water loss** and related costs and directs ____ District to **develop and formally adopt a written plan to reduce excessive water loss**. The plan should identify all sources of water loss and each corrective action ____ District will take to minimize water loss from each source."

Other Recent Water Loss Cases

PSC Case No. 2017 - 064

Decided: 3-09-2017

Utility: Water District

Type: CPCN Granted

Holding: Reprimand & Warning
Loss = 17%

PSC Ordered:

"Failure by _____ District to make **significant** progress towards **reducing** unaccounted-for water loss may cause the Commission to pursue **additional action** with the utility."

Actions by PSC

- Inspection Report
- ARF Case
- CPCN Case
- .023 Case
- PWA Case
- Financing Case
- Deviation Case
- Sewer CPCN Case



Actions by PSC

- Emphasis at Training
- Reduce Rates
- Reprimand & Warning
- PWA Cases
 - Dollars & Cents

Continued . . .




Actions by PSC

- Copy of Inspection Report
 - CJE & Fiscal Court
 - Utility Commissioners
 - Local Newspaper?
- PSC Website?






STOLL KEENON OGDEN 


MUNICIPAL UTILITY RATE WORKSHOP®

Damon Talley
Stoll Keenon Ogden PLLC
damon.talley@skofirm.com
Hodgenville, Kentucky
(270) 358-3187
December 27, 2018

STOLL KEENON OGDEN 

ORDER OF PRESENTATION

- Historical Background
- PSC Procedure: An Overview
- Lebanon Water Works:
A Case Study
- Appendix: Ratemaking 101

STOLL KEENON OGDEN 

HISTORICAL BACKGROUND

CURRENT DEFINITION OF "UTILITY"

"Utility" means any person **except . . . a city**, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . [t]he diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation

KRS 278.010(3)

Simpson County Water Dist. v. City of Franklin (1994)

- 1963 Contract (\$0.21/1,000 gals rate – changes OK if applied to both wholesale & retail)
- 1986 Contract Revision sets rate at \$0.84 per 1,000 gals. for 5 years
- 1990: Franklin raises rate to \$1.35 per 1,000 gallons

Simpson County Water Dist. v. City of Franklin (1994)

- 1991: Franklin raises rate to \$1.67/1,000 gallons
- Simpson County refuses to pay increases
- Franklin brings action to collect unpaid amounts & to declare contract void
- Simpson District: Courts lack jurisdiction - **PSC must approve rate increase**

Simpson County Water Dist. v. City of Franklin (1994)

KRS 278.040(2):

The jurisdiction of the commission shall extend to all utilities in this state. *The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.*

Simpson County Water Dist. v. City of Franklin (1994)

KRS 278.200:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by *any contract, franchise or agreement between the utility and any city*, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, *regulating any such rate or service standard*, shall be subject to the jurisdiction and supervision of the commission, but *no such rate or service standard shall be changed*, nor any contract, franchise or agreement affecting it abrogated or changed, *until a hearing has been had before the commission* in the manner prescribed in this chapter.

Simpson County Water Dist. v. City of Franklin (1994)

HOLDING:

- KRS 278.040: PSC may restrict City's contract rights in area of utility rates & service
- Cities are generally exempted from PSC regulation because they are not "utilities"
- KRS 278.200 specifically addresses contracts between a city & a utility
- KRS 278.200 requires hearing before PSC before such contracts can be changed

PROCEDURE FOR MUNICIPAL WHOLESALE RATE ADJUSTMENT

NOTICE OF RATE ADJUSTMENT

- Municipal Utility Must Give Notice of Rate Change to
 - PSC
 - Wholesale Customer
- Notice must be made at **least 30 days prior** to the proposed increase
- Notice must conform with 807 KAR 5:011*

NOTICE TO PSC

- File Tariff Sheet
 - Name of Wholesale Customer (if not a uniform rate)
 - Proposed Rate
 - Effective Date (**30 Days From Date of Filing**)
 - Name & Signature of Authorized Official
 - Proof of Notice to Wholesale Customer
 - Tariff Sheets Are Available from PSC Website
- Electronically Submitted



NOTICE TO WHOLESALE CUSTOMERS

- 807 KAR 5:011, §8(4) governs
- Proposed Effective Date
- Date Filed with PSC
- Dollar & Percentage Amount of Proposed Change



NOTICE TO WHOLESALE CUSTOMERS

- Effect on Average Bill
- Location of Filing for Examination
- Right to Intervene
- Right to Comment on the Proposed Rate



CONTRACT NOTICE REQUIREMENTS

- Contract Notice Requirements still apply
- Required notice in excess of 30 days should be given prior to filing with PSC unless the Contract provides otherwise
- **Strategic Considerations:** Running out the clock vs. lost review time

NOTICE TO WHOLESALE CUSTOMERS

- PSC has previously required **strict compliance** with notice regulation
- Acceptable Methods of Notice: Mail - Personal Delivery - Newspaper
- Mailed/Delivered/Published **NLT Date of Filing**
- Notice to the Public is **NOT** required

ADDITIONAL DOCUMENTS

- Cost-of-Service Study **OR** Rate Study
- Financial Reports
- Historical Narrative
- Explanation for Increase
- Ordinance Establishing New Rates*
- Wholesale Customer's Statement of No Objection/Waiver of Hearing

PSC'S RESPONSE

- Posts proposed contract/rate to PSC Website
- Reviews for compliance with filing requirements
- If filing requirements are met, PSC must act before proposed effective date

PSC'S RESPONSE

- KRS 278.190: Before a rate becomes effective, PSC may suspend operation of that rate for 5 months beyond its proposed effective date to further review
- Waits for comments/objections
- May request additional information

WHOLESALE CUSTOMER'S OPTIONS

- No Response Required
- Notice of No Objection
- Request PSC Review/Investigation
- Identify Specific Areas of Concern or Objections

STANDARD FOR PSC INVESTIGATION

- Does a **customer** object to the proposed increase?
 - Does the propose rate/rule conflict with existing PSC regulations/rulings?
 - Rate Indexing (Case No. 2000-00067)
 - Service Practice that conflicts with PSC Regulations (Case No. 2001-230)
- YES** – Suspend **NO** – No Action (Rate Takes Effect)

PSC INVESTIGATION: PROCEDURAL RULES

Following the [Supreme] Court's decision in *Simpson County*, the Commission has allowed city-owned utilities to file rate adjustments by a tariff filing, and if a hearing is requested and the Commission suspends the proposed rate, the requirements, and procedures set forth in KRS Chapter 278, and the Commission's regulations *apply equally to filings by a city-owned utility or a jurisdictional utility.*

Case No. 2017-00417, Order of 7/12/2018

PSC INVESTIGATION: PROCEDURAL RULES

- Formal Proceeding Established
- Proposed Rate Suspended For 5 Months
- Scope Of Review: Reasonableness Of Rate
- Burden of Proof on Municipal Utility

PSC INVESTIGATION: PROCEDURAL RULES

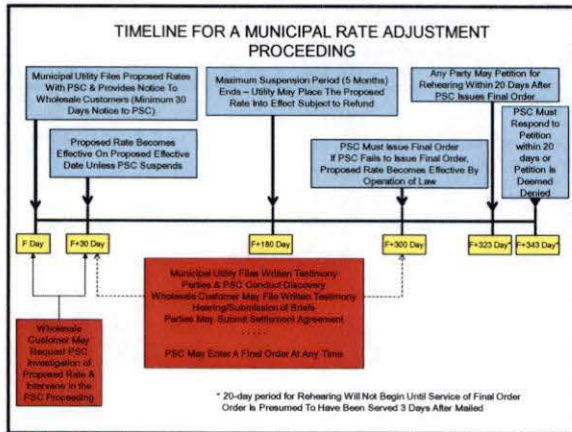
- Proposed Rate May Be Assessed After 5 Months subject to refund
- Final Decision Due Within 10 Months Of Filing (*Case No. 2006-00403*)
- Extensive requests for information possible*
- Written Testimony required*

PSC INVESTIGATION: PROCEDURAL RULES

- No cost-of-service study required (But Recommended)
- Intervening Parties not required to present testimony or participate in proceedings

PSC INVESTIGATION: PROCEDURAL RULES

- Hearing
 - No opening/closing statements
 - Cross-examination only
 - PSC Staff participates
- Decision issued within 240-280 days
- Agreement terminates Investigation




APPEAL PROCESS

- Request Rehearing NLT 23 days after Order's Issuance
- PSC Must Rule Within 20 Days of Request
- Action for Review in Franklin Circuit Ct NLT 23 days of Rehearing Order

APPEAL PROCESS

- Party May Bring Action For Review NLT 33 days of Initial Order Without Requesting Rehearing
- Appealing Party Must Demonstrate that Order is Unlawful or Unreasonable

**LEBANON WATER WORKS:
A CASE STUDY**

STOLL KEENON OGDEN 

BACKGROUND

STOLL KEENON OGDEN 



Lebanon

STOLL KEENON OGDEN 

PSC CASE NO. 2017-00417

- Seller: Lebanon
- Buyer: Marion County Water Dist
- Filed: 09-13-2017
- Hearing: 06-20-2018
- Decided: 07-12-2018

FINAL OUTCOME

- Requested: 34% ↑
- Approved: 16% ↑
- Rate Case Expense Surcharge
 - \$72,000
 - \$2,000 per Month
 - 36 Months

BACKGROUND

- Lebanon Annual Revenues: \$2,640,000
- Marion County WD Purchases >50%
- No Wholesale Rate
- Marion County WD Pays Retail Rate
- Flat Rate: \$2.50 per CCF
- No Cost of Service Study

BACKGROUND

- Contractual Limitations (1988)
 - Several Amendments
 - Uniform Rate
 - 60-day Advance Notice
 - PSC Approved Contract
- Ordinance
- No Negotiation Room

BACKGROUND

- Customers
 - Lebanon: 2,650
 - MCWD: 5,800
- Last Rate Increase: 2013
- Revenue Increase: \$798,000

REASONS FOR RATE ADJUSTMENT

- Campbellsville Water Line
 - Water Purchases \$490,000
 - Debt Service \$128,000
 - Depreciation \$ 63,000
- Other New Debt Service
- Deferred Maintenance
- Fully Funded Depreciation
- Increased Operating Expenses

TIMELINE

Spring 2017	Rate Review
07-07-2017	Lebanon & MCWD Rate Discussions
07-10-2017	First Reading of Ordinance
July 2017	Numerous Public Meetings
08-07-2017	2d Reading Postponed (at MCWD's Request)
08-15-2017	Lebanon & MCWD Meet

TIMELINE

09-11-2017	Rate Ordinance Enacted
09-12-2017	Lebanon Notifies MCWD
09-20-2017	Rate Ordinance Published
09-27-2017	Retail Rates Implemented
11-15-2017	Proposed Effective Date (Wholesale Rate)
06-20-2018	Hearing
07-12-2018	Final Decision Issued

RATE CASE PREPARATION AND MANAGEMENT

COMMUNICATIONS

PRE-FILING DISCUSSIONS

- Explain reasons for rate adjustment
- Provide supporting data/documents
- Negotiate before filing the rate with PSC
- Supplier should consider any objections & critiques of supporting data
- Customer should voice all reasonable objections and concerns

CONTRACT REVIEW

- Limitations on frequency of rate adjustment
- Contract formula?
- Notice Requirements
- Is wholesale rate tied to retail rate adjustment?
- Other Concerns

RATE CASE PREPARATION

- Assemble documents/materials necessary for response to 1st PSC Info Request
- Obtain a working knowledge of PSC process
- Research potential issues
- Begin tracking rate case expenses
- Retain attorney & rate expert & include them in preparation & negotiations

IF AGREEMENT IS REACHED

- Wholesale customer's agreement should be in writing
- Ask for/prepare Wholesale Customer's letter stating no objection to proposed rate
- Include Acknowledgement of Notice & Waiver of right to a hearing
- File Letter/Acknowledgement with tariff sheet

COST OF SERVICE STUDY

WHAT IS A COST OF SERVICE STUDY?

- Used to determine the cost of providing service to customer groups based upon each group's water use characteristics and service requirements
- Used to determine a supplier's cost of providing service to a wholesale customer

BENEFITS OF A COST OF SERVICE STUDY

- Produces critical information about Muni's cost to serve all customer groups
- Identifies the specific cost to serve a wholesale customer
- Allows assessment of the applicant's case for rate adjustment prior to proceeding
- Facilitates rate negotiations

PSC VIEW OF COST OF SERVICE STUDY

"The Commission is of the opinion that a cost-of-service study is a **valuable tool** to developing fair, just and reasonable rates. It provides a thorough analysis of a utility's expenses and revenues and serves as a starting point for ratemaking."

Case No. 2009-00373, Order of 7/2/2010 at 7.

TIME TO PREPARE COST-OF-SERVICE STUDY

"[T]he better practice in municipal rate adjustment proceedings is for the applicant to undertake and complete its cost-of-service study **prior to filing notice of its proposed wholesale adjustment**. Regardless of whether the municipal utility chooses to strictly adhere to the study's results, the study provides critical information regarding costs for the wholesale supplier and customer that, if widely known, is likely to result in agreement on prospective rate adjustments."

Case No. 2009-00373, Order of 7/2/2010 at 9.

TIME TO PREPARE COST-OF-SERVICE STUDY

"We place . . . all municipal utilities on notice that, in future proceedings where a municipal utility has failed to conduct such studies **prior** to the filing of its proposed rate adjustment, the additional litigation costs incurred by all parties will be a factor that will be considered in assessing the reasonableness of the costs related to an "after-filing cost-of-service study."


Case No. 2009-00373, Order of 7/2/2010 at 9.

MUNICIPAL TAKEAWAYS


- Consider performing COSS as part of rate case preparations
- If study recently performed (< 5 years), across the board rate adjustment may be appropriate
- Provide wholesale customer with copy of COSS and access to COSS preparer

CUSTOMER TAKEAWAYS


- Request a copy of the COSS from Supplier
- Request opportunity to question COSS preparer
- Closely review the COSS's assumptions to determine if realistic
- If assumptions are unrealistic, propose alternative assumptions
- Consider retaining own expert to review COSS

STOLL KEENON OGDEN 

RATE CASE ISSUES

STOLL KEENON OGDEN 

TEST PERIOD

STOLL KEENON OGDEN 

TEST PERIOD

- A consecutive 12-month period
- Generally the 12 month-period reflected in the utility's most recent annual report or audit.

TEST PERIOD

- Lebanon proposed a test period based on FY 2016 actual but adjusted for FY 2018 budget
- Significant changes in operations occurred in FY 2017 and were planned for FY 2018
- Significant Post-FY 2016 construction
- Audit Reports/Accounting Records for FY 2016 & FY 2017 filed in record Per PSC Staff Request

TEST PERIOD

- (At close of hearing) Lebanon argues FY 2017 most representative of present operations
- PSC denies "request" for use of FY 2017 test period
- PSC: Proceeding was "conducted to determine the results, as adjusted, of" FY 2016 test period
- No discussion re: which period most representative

TEST PERIOD

- PSC: Pro forma adjustments based on **budgetary projections** are neither known nor measurable and should be **disallowed**
- Actual FY2016 used – most adjustments based upon FY 2018 budget rejected
- PSC based salary/wage expense on **current wages & salaries**

TEST PERIOD

- Employee retirement expense based on **current CERS contribution rate** (Not FY 2016)
- Depreciation based upon **existing facilities** (including post-test year construction)

TEST PERIOD: MUNICIPAL TAKEAWAYS

- Use the most current year as test period
- Do not base adjustments upon budget projections
- Inflation factors unlikely to be accepted
- Time Rate Filing with completion of audit
- If major construction projects in progress, consider completion date

TEST PERIOD: MUNICIPAL TAKEAWAYS

- Implement wage/salary changes NLT rate filing date
- Review operations for all known and measurable changes

TEST PERIOD: CUSTOMER TAKEAWAYS

- Identify use of budgeted amounts or assumptions
- Can “Matching Principle” be applied to proposed adjustment?
- Identify the use of inflation factors

DEPRECIATION

DEPRECIATION EXPENSE

- Lebanon’s proposed depreciation expense based on internally developed schedule of useful lives
- MCWD: Depreciation should be calculated using NARUC mid-point instead
- Use of NARUC mid-point reduced depreciation expense by \$168,648

DEPRECIATION EXPENSE

- No evidence offered in support of Lebanon's schedule of useful lives
- Lebanon conceded issue for current proceeding, but reserved right to challenge future proceedings

PSC POSITION ON DEPRECIATION

- Utility bears burden of proof to demonstrate appropriateness of its useful lives
- In absence of evidence to the contrary, mid-point on NARUC Guide will be used
- PSC is skeptical of expert testimony questioning the use of NARUC Guide
- Consistent use of NARUC Guide mid-point since 2016 in all cases – jurisdictional & municipal utilities
- No successful challenge in last two years

DEPRECIATION: MUNICIPAL TAKEAWAY

- Compare your useful lives to NARUC Guide mid-point when calculating proposed rate
- If significant difference, determine if any support to justify continued use of current useful lives
- Retain engineer to assist in analysis & to prepare evidentiary support for present useful lives
- Perform cost-benefit analysis of accepting NARUC mid-point vs. cost of litigating issue
- Consider adjustments to useful lives when developing proposed rate

DEPRECIATION: MUNICIPAL TAKEAWAY

- **Tactical Consideration:** Request rates based upon current useful life revision, but consider conceding issue in negotiations or PSC proceeding
- Make no permanent concession but reserve right to challenge in future proceedings

DEPRECIATION: CUSTOMER TAKEAWAY

- Request & examine Muni's depreciation schedule
- Compare Muni's useful lives to NARUC Guide mid-points – note variances
- Highlight significant variances at **each stage** of proceeding
- Depreciation on debt-financed assets is inappropriate; requires customer to pay 2X

FRINGE BENEFITS

FRINGE BENEFITS

- Lebanon in FY 2017 achieved 22.3% (\$54,144) reduction in employee health insurance costs
- PSC ordered disallowance of \$130,767 (\$76,623 more than savings)
- Reason for disallowance: Employees not required to pay a portion of the costs of single health insurance coverage

PSC POLICY

- PSC reviewing employers' contribution for health insurance cost
- If employer's contribution (%) exceeds BLS estimate of national average, recovery for excess **DENIED**
- PSC **encouraging** utility policies requiring employees to pay portion of health & dental insurance costs

BLS: Estimate of National Average

Coverage	Average	Private Industry	State & Local Government
Family	68/32	67/33	71/29
Single	80/20	79/21	86/14

MUNICIPAL UTILITY TAKEAWAYS

- Use Good Procurement Practices
 - Request Bids/Seek cost estimates from various providers annually
 - Document costs/efforts to reduce costs
- Determine the amount of likely disallowance prior to filing and if cost-effective to contest likely disallowance
- If not cost-effective, still document the record

MUNICIPAL UTILITY TAKEAWAYS

- Compare **Total Compensation Cost** vs. Other Regulated Utilities/Municipal Utilities
- Offer comparisons of benefits/costs by other regional/state utilities (Use KRWA/KLC Surveys)
- Provide evidence on local labor markets
- Emphasize unique aspects of your workforce

MUNICIPAL UTILITY TAKEAWAYS

- Consider differences between the quality of your insurance coverage & National Average Policy (e.g. deductibles, benefits)
- Propose use of BLS State/Local Government Category or Private Firm Utility or KY State Contribution Rate
- Argue for use of different study to determine National Average (e.g., Kaiser Family Foundation)

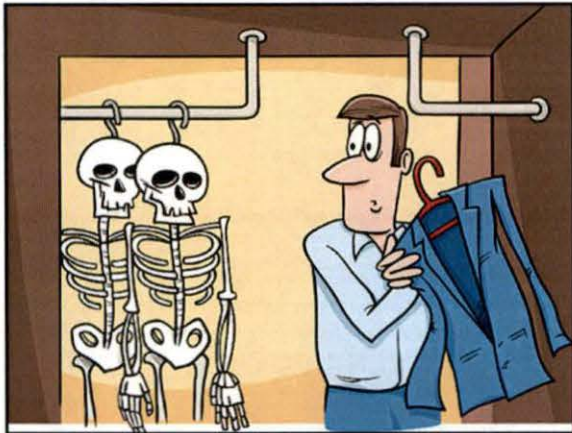
CUSTOMER TAKEAWAYS

- Conduct discovery on employee's required contribution for the cost of health, vision, and dental insurance
- Argue for application of the PSC's rules on fringe benefits

PSC AUTHORITY TO MANDATE EMPLOYEE CONTRIBUTION

- Employer Contribution is a **matter of managerial (Board) discretion**
- PSC jurisdiction limited to ratemaking
- PSC **CANNOT** restrict what employer pays for employee health insurance
- PSC **CANNOT** mandate employees contribute to health insurance cost

FREE WATER



FREE WATER SERVICE

- Lebanon provided 3,700,000 cf of water to City for sludge disposal service
- Not disclosed in initial testimony
- Revealed in responses to discovery
- Total Cost: \$92,500
- Estimated Cost of Sludge Disposal: \$64,980

FREE WATER SERVICE

- MCWD: Revenue Requirement should be reduced to reflect water transfer
- Lebanon: Water revenues should be increased by \$92,500; Treatment costs increased by \$64,980
- PSC: Water revenues increased by \$92,500

**FREE WATER SERVICE:
MUNICIPAL TAKEWAYS**

- Muni will not be allowed to recover cost related to free services in wholesale rate
- Identify all free services
- City government should pay at minimum actual cost of service
- In-kind transactions should be avoided

**FREE WATER SERVICE:
MUNICIPAL TAKEWAYS**

- Execute separate agreements for the provision of in-kind services
- Water service to City should be metered or measured

**FREE WATER SERVICE:
CUSTOMER TAKEWAYS**

- Request information on all services provided to various city departments
- Ensure a cost is assigned to such service & revenue requirement calculation reflects imputed income from such service
- Other services may be provided (e.g., billing and collection services for sewer/garbage/911 operations)

RATE CASE EXPENSE

PAST PRECEDENT

- US Supreme Court (1939): “the utility should be allowed its fair and proper expenses for presenting its side to the commission
- *City of Owenton* (1998): City entitled to recovery regardless of when requested
- *City of Danville* (2015): City must provide notice of proposed recovery in its notice to PSC

RATE CASE EXPENSE PROPOSAL

- Separate charge to recover reasonable rate case expense
- PSC determines “reasonable level”
- Recovery over 36 Months
- Equal Installments
- Notice contains example (\$72, 000)
- Actual Expense: \$162,696

PSC RESPONSE

- Level of rate case expense “excessive”
- Limits Recovery to \$72,000
- Compares Lebanon’s expense to MCWD’s Expense to determine reasonableness
- Magnitude of Rate Case Expense to Requested Revenue Increase

PSC RESPONSE

- Lebanon had “duty to reasonably manage & control its expenditures” based upon original estimate
- Lebanon failed to give notice of actual amount
- Re-notice when estimated level exceeded

MUNICIPAL TAKEAWAYS

- Surcharge is most effective means of rate recovery
- Must be identified in initial notice
- If estimate of costs used, base estimate on robust litigation from PSC & customer
- Estimate will likely serve as cap
- Consider “actual costs” ILO estimate

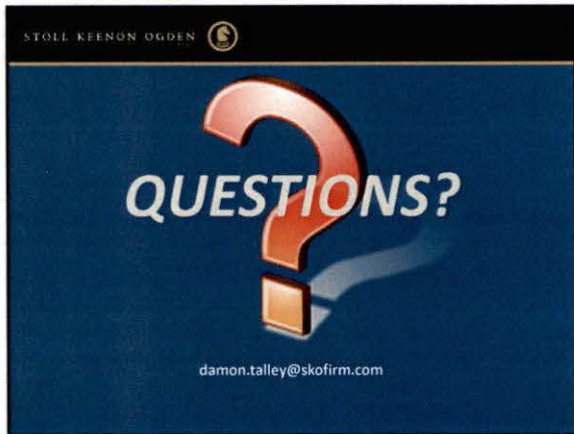
MUNICIPAL TAKEAWAYS

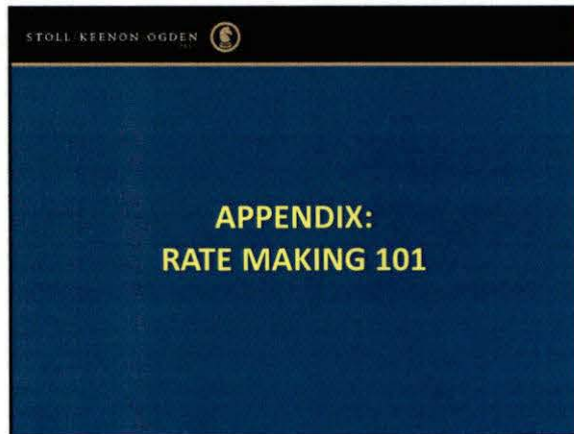
- Avoid re-notice for increased expense level – resets statutory clock
- Require Attorney to provide detailed invoices
- Be prepared to address comparisons with customer’s expense level

CUSTOMER TAKEAWAYS

- Request and review Muni invoices
- Argue for longer recovery period
- Remember: Assessed rate case expense can be recovered through PWA

CONCLUSION







WHAT IS A REVENUE REQUIREMENT?

- The reasonable level of revenue required for a utility to properly operate and maintain its system and meet its financial obligations.
- A revenue requirement provides a basis for determining the amount of revenue to be collected from rates.

REVENUE TO BE COLLECTED FROM RATES

TOTAL REVENUE REQUIREMENT
- Miscellaneous Operating Revenues
- Unrestricted Interest Income
= **Operating Revenue from Rates**

DETERMINING REVENUE REQUIREMENTS: DEBT SERVICE METHOD

Adjusted Operating Expenses
+ Average Annual Debt Service Requirement
+ Debt Service Coverage
= **Total Revenue Requirement**

AVERAGE ANNUAL DEBT SERVICE REQUIREMENT

- Principal + Interest payable on long-term debt
- PSC generally uses a 5-year average

DEBT SERVICE COVERAGE

Debt service coverage (DSC) is calculated based on the DSC required to issue bonds. This requirement is generally stated in the bond indenture.

- RD Debt 120% or 1.2x
- KIA Debt 110% or 1.1x
- Private Debt Varies

TEST YEAR

- A consecutive 12-month period
- Generally the 12 month-period reflected in the utility's most recent annual report or audit.

REVIEW OF TEST YEAR

- Reconciliation of books to test year
- Review accountant's adjusting journal entries
- Review for proper accrual accounting
- Review of test year expenses

ADJUSTMENTS TO TEST YEAR

- Test year operations are adjusted to reflect 12 months representative of the utility's on-going, normal operations
- Adjustments must be **BOTH** known and measurable
- Adjustments must be **adequately documented**

PRO FORMA ADJUSTMENTS

- **Known** or **anticipated** increases or decreases in revenues and expenses
 - Increase in wage rates
 - Changes in Insurance – Taxes - CERS Contributions
- Supporting documentation required

NORMALIZING ADJUSTMENTS

- Adjustments to reflect a full 12 months of operations for items that changed during the test period
- Example: Electric Rate Increased During Test Period
- Supporting documentation required

OPERATION & MAINTENANCE EXPENSES

- Salaries & Wages
- Employee Benefits
- Purchased Power
- Purchased Water
- Rent
- Chemicals

OPERATION & MAINTENANCE EXPENSES

- Materials & Supplies
- Repairs & Maintenance
- General Overhead
- Includes Allocated Portion of **Common or Shared Costs** Between Utility Divisions

DEPRECIATION EXPENSE

- Included in Revenue Requirement Determination for Non-Profit Water Districts & Water Associations
- Depreciation Expense for Non-contributed Property
- PSC Uses NARUC Guide

ALLOCATION OF COMMON COSTS

- Combined Water/Sewer/Public Works Operations share costs
- Necessary to prevent subsidies
- Methodology to allocate expenses needed
- PSC will impose methodology if none

OTHER ADJUSTMENTS

- Non-recurring expenses may be amortized over the life of expense
 - Tank painting
 - Rate case expense
- Capitalization of improperly classified expenses

ESTABLISHING RATES

- Cost of Service Study Used
- Across the Board Increase
- Balancing of Ratepayer Interests
- Rates must produce revenue requirement from rates
