

Abandonment of jurisdictional utilities in Kentucky:

The PSC Process

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*Interim Committee on
Local Government*
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Kentucky Public Service Commission

Due to the quasi judicial nature of the PSC and the requirement to respect due process, we are unable to discuss any pending cases with you.

The views of the commission staff do not necessarily reflect the views of the commissioners.

Abandonment **DOES NOT** equate to closure of a utility. It establishes an orderly process to address those situations in which an owner is no longer able or willing to operate a utility in a way that provides adequate service.

KRS 278.020 and
KRS 278.021
establish an orderly
process for the
abandonment of a
jurisdictional utility

Abandonment can
take two forms:

Voluntary

Functional (involuntary)

Voluntary abandonment:

The owner/operator of the utility seeks to relinquish control and asks the PSC to declare the utility abandoned

Functional abandonment:

The PSC determines the existence of an imminent threat to health or safety of the customers or to the continued availability of utility service and initiates an abandonment case

In both types of abandonment, the statute directs the PSC to declare a utility abandoned if certain conditions occur with respect to the operations or financial viability of the utility.

In both types of abandonment, the underlying reason tends to be the same:
financial non-viability

Examples of issues leading to abandonment:

- Inability to get financing for capital improvements
- Inadequate cash flow for operations at current rates
- Unsustainability of rates necessary for adequate financing or operations
- Failure to pay wholesale suppliers
- Loss of wholesale supply unrelated to financial issues

The PSC Process in Abandonment Proceedings

Steps

1. Sewer utilities – required to give prior notice to a number of entities, including local governments
2. Investigation
3. Hearing
4. Possible receivership
(in Franklin Circuit Court)
4. Ultimate disposition
 - a. Return to owner
 - b. Liquidation
 - c. Closure

The PSC views abandonment as a last resort. Every abandonment case considers what options are available to provide continued service under the current operator.

The PSC's goal is to provide for continued operation of the utility.

This usually means finding a new owner/operator.

If continued operation of the utility is not possible, the PSC will seek to arrange an orderly closure that gives customers enough time to make alternative arrangements for the service provided. This may be done under the supervision of a receiver.

The Cedarbrook Case

#2014-00091

Timeline

- Plant began operations in 1976 with capacity to serve 60 homes
- Two attempts to sell – 1997 (withdrawn) and 2008 (denied by PSC)
- Abandonment request filed in March 2014
- Abandonment granted in March 2015
- Harrison County Sanitation District appointed receiver on May 1, 2015
- Permanent transfer to Harrison County SD granted on June 29, 2016

Cedarbrook case illustrates
the critical importance of
local government
involvement and planning
in abandonment cases

QUESTIONS