

RECENT DEVELOPMENTS IN UTILITY LAW

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RECENT DEVELOPMENTS IN UTILITY LAW: ORDER OF PRESENTATION

- Amendments to PSC Regulations
- Recent PSC Decisions/Trends
- Recent Kentucky Court Decisions
- Recent Noteworthy AG Decisions
- Other Activities of Interest At PSC

AMENDMENTS TO PSC REGULATIONS

- Alternative Rate Filing Procedures
- Rules of Procedures
- General Rules
- Tariffs
- Purchase Water Adjustments
- RD-Funded Construction

**ALTERNATIVE RATE FILING
PROCEDURES
(807 KAR 5:076)**

Amendments to 807 KAR 5:076: Background

- Regulation Promulgated in 1982
- Purpose: Provide for a simplified and less expensive procedure for Small Utilities
- Utilities need only file:
 - Application Form
 - Annual Reports for Last 2 years
- Contrast with Procedures for Larger Utilities

Amendments to 807 KAR 5:076: Problems with Previous Version

- Eligibility Too Limited
 - Annual Revenues < \$300,000
 - No. of Customers < 501
- Lack of Procedures
- Lack of Clarification on Need for Attorney
- Required Filing of Info Already With PSC
- Application Form – Too Little Info Provided/Difficult To Complete

First Amendments To 807 KAR 5:076

- Eligibility Limits Raised
 - Annual revenue < \$5,000,000
 - Water/Sewer Functions Treated Separately
 - Expands eligible utilities from 107 to 254
- Less Paperwork
 - Copies of annual reports no longer to be filed
 - Only Five copies of Docs must be filed
 - Service of copy by e-mail on AG
 - Permits use of Electronic Filing Procedures

2011 Amendments to 807 KAR 5:076

- Procedural Changes
 - Contents of Notice Revised
 - Utility Must Post Notice on Its Website
 - Automatic Suspension of Proposed Rates
 - Automatic Discovery Right
 - Automatic Refunding/Recordkeeping Requirements
 - PSC Required to Notify Parties If Staff Report Will Be Prepared

2011 Amendments to 807 KAR 5:076

- Procedural Changes
 - Staff Report
 - Requirements for Response to Staff Report
 - Electronic Filing Rules Established

2011 Amendments to 807 KAR 5:076

- Role of Non-Attorneys
 - Clarifies need for Attorney
 - Authorized official may file application, responses to info requests, appear at conferences (Attorney is not required)
 - Attorney must represent Utility at hearing unless utility sole proprietorship
- [Simplified Form](#)

**APPLICATION FOR RATE ADJUSTMENT
BEFORE THE PUBLIC SERVICE COMMISSION**

**For Small Utilities Pursuant to 807 KAR 5:076
(Alternative Rate Filing)**

(Name of Utility)

(Business Mailing Address - Number and Street, or P.O. Box)

(Business Mailing Address - City, State, and Zip)

(Telephone Number)

BASIC INFORMATION

NAME, TITLE, ADDRESS, TELEPHONE NUMBER and E-MAIL ADDRESS of the person to whom correspondence or communications concerning this application should be directed:

(Name)

(Address - Number and Street or P.O. Box)

(Address - City, State, Zip)

(Telephone Number)

(Email Address)

(For each statement below, the Applicant should check either "YES" or "NO".)

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. a. In its most recent calendar year of operation, Applicant had \$5,000,000 or less in gross annual revenue. | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Applicant operates two or more divisions that provide different types of utility service. In the most recent calendar year of operation, Applicant had \$5,000,000 or less in gross annual revenue from the division for which a rate adjustment is sought. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Applicant has filed an annual report with the Public Service Commission for the past year and the two previous years. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Applicant's records are kept separate from other commonly-owned enterprises. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. a. Applicant is a corporation. A copy of its articles of incorporation and all amendments are attached to this application or were filed with the Public Service Commission in Case No. _____. | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Applicant is a limited liability company. A copy of its articles of organization and all amendments are attached to this application or were filed with the Public Service Commission in Case No. _____. | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Applicant is not a corporation or a limited liability company. | <input type="checkbox"/> | <input type="checkbox"/> |

	YES	NO
d. Applicant is a water district organized pursuant to KRS Chapter 74.	<input type="checkbox"/>	<input type="checkbox"/>
e. Applicant is a water association organized pursuant to KRS Chapter 273.	<input type="checkbox"/>	<input type="checkbox"/>
5. a. A paper copy of this application has been mailed to Office of Rate Intervention, Office of Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.	<input type="checkbox"/>	<input type="checkbox"/>
b. An electronic copy of this application has been electronically mailed to Office of Rate Intervention, Office of Attorney General at rateintervention@ag.ky.gov.	<input type="checkbox"/>	<input type="checkbox"/>
6. a. Applicant has 20 or fewer customers or is a sewer utility and has mailed written notice of the proposed rate adjustment to each of its customers no later than the date this application was filed with the Public Service Commission. A copy of this notice is attached to this application. (Attach a copy of customer notice.)	<input type="checkbox"/>	<input type="checkbox"/>
b. Applicant has more than 20 customers, is not a sewer utility, and has included written notice of the proposed rate adjustment with customer bills that were mailed by the date on which the application was filed. A copy of this notice is attached to this application. (Attach a copy of customer notice.)	<input type="checkbox"/>	<input type="checkbox"/>
c. Applicant has more than 20 customers, is not a sewer utility, and has made arrangements to publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication having been made by the date on which this Application was filed. A copy of this notice is attached to this application. (Attach a copy of customer notice.)	<input type="checkbox"/>	<input type="checkbox"/>
7. Applicant requires a rate adjustment for the reasons set forth in the attachment entitled "Reasons for Application." (Attach completed "Reasons for Application" form.)	<input type="checkbox"/>	<input type="checkbox"/>
8. Applicant proposes to charge the rates that are set forth in the attachment entitled "Current and Proposed Rates." (Attach completed "Current and Proposed Rates" form.)	<input type="checkbox"/>	<input type="checkbox"/>
9. Applicant proposes to use its most recent annual report as the test period to determine the reasonableness of its proposed rates. This annual report is for the 12 months ending December 31, _____.	<input type="checkbox"/>	<input type="checkbox"/>
10. Applicant has reason to believe that some of the revenue and expense items set forth in its most recent annual report have or will change and proposes to adjust the test period amount of these items to reflect these changes. A statement of the test period amount, expected changes, and reasons for each expected change is set forth in the attachment "Statement of Adjusted Operations." (Attach a completed copy of appropriate "Statement of Adjusted Operations" form and any invoices, letters, contracts, receipts or other documents that support the expected change in costs.)	<input type="checkbox"/>	<input type="checkbox"/>
11. Based upon test period operations, and considering any known and measurable adjustments, Applicant requires additional revenues of \$ _____ and total revenues from service rates of \$ _____. The manner in which these amounts were calculated is set forth in the attachment "Revenue Requirement Calculation". (Attach a completed "Revenue Requirement Calculation" form.)	<input type="checkbox"/>	<input type="checkbox"/>

- | | | YES | NO |
|--------|---|--------------------------|--------------------------|
| 12. | As of the date of the filing of this application , Applicant had _____ customers. | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. | A billing analysis of Applicant's current and proposed rates is attached to this application. (Attach a completed "Billing Analysis" form.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. | Applicant's depreciation schedule of utility plant in service is attached. (Attach a schedule that shows per account group: the asset's original cost, accumulated depreciation balance as of the end of the test period, the useful lives assigned to each asset and resulting depreciation expense.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. a. | Applicant has outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, or bonds. | <input type="checkbox"/> | <input type="checkbox"/> |
| | b. Applicant has attached to this application a copy of each outstanding evidence of indebtedness (e.g., mortgage agreement, promissory note, bond resolution). | <input type="checkbox"/> | <input type="checkbox"/> |
| | c. Applicant has attached an amortization schedule for each outstanding evidence of indebtedness. | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. a. | Applicant is not required to file state and federal tax returns. | <input type="checkbox"/> | <input type="checkbox"/> |
| | b. Applicant is required to file state and federal tax returns. | <input type="checkbox"/> | <input type="checkbox"/> |
| | c. Applicant's most recent state and federal tax returns are attached to this Application. (Attach a copy of returns.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. | Approximately _____ (Insert dollar amount or percentage of total utility plant) of Applicant's total utility plant was recovered through the sale of real estate lots or other contributions. | <input type="checkbox"/> | <input type="checkbox"/> |

I am authorized by the Applicant to sign and file this application on the Applicant's behalf, have read and completed this application, and to the best of my knowledge all the information contained in this application and its attachments is true and correct.

Signed _____
 Officer of the Company/Authorized Representative

Title _____

Date _____

COMMONWEALTH OF KENTUCKY

COUNTY OF _____

Before me appeared _____, who after being duly sworn, stated that he/she had read and completed this application, that he/she is authorized to sign and file this application on behalf of the Applicant, and that to the best of his/her knowledge all the information contained in this application and its attachments is true and correct.

 Notary Public

My commission expires: _____

LIST OF ATTACHMENTS
(Indicate all documents submitted by checking box)

- Applicant's Articles of Incorporation, Articles of Organization, or Limited Partnership Agreement.
- All amendments to Applicant's Articles of Incorporation, Articles of Organization, or Limited Partnership Agreement.
- Customer Notice of Proposed Rate Adjustment
- "Reasons for Application" Form
- "Current and Proposed Rates" Form
- "Statement of Adjusted Operations" Form
- "Revenue Requirements Calculation" Form
- "Billing Analysis" Form
- Depreciation Schedule
- Outstanding Debt Instruments (i.e., Bond Resolutions, Mortgages, Promissory Notes, Amortization Schedules.)
- State Tax Return
- Federal Tax Return

REASONS FOR APPLICATION FORM

(In the space below list all reasons why the Applicant requires a rate adjustment. Describe any event or occurrence of significance that may affect the Applicant's present or future financial condition, including but not limited to excessive water line losses, regulatory changes, major repairs, planned construction, and increases in wholesale water costs.)



CURRENT AND PROPOSED RATES FORM
(List Applicant's Current and Proposed Rates)

A large, empty rectangular box with a light blue background, intended for listing current and proposed rates. The box is bounded by a thin black line and occupies the majority of the page below the header.

SCHEDULE OF ADJUSTED OPERATIONS FORM - WATER UTILITY

TYE 12/31/20

	Test Year	Adjustment	Ref.	Pro Forma
<u>Operating Revenues</u>				
Sales of Water				
Unmetered Water Sales				0.00
Metered Water Sales				0.00
Bulk Loading Stations				0.00
Fire Protection Revenue				0.00
Sales for Resale				0.00
Total Sales of Water	0.00	0.00		0.00
Other Water Revenues				
Forfeited Discounts				0.00
Miscellaneous Service Revenues				0.00
Rents from Water Property				0.00
Other Water Revenues				0.00
Total Other Water Revenues	0.00	0.00		0.00
Total Operating Revenues	0.00	0.00		0.00
<u>Operating Expenses</u>				
Operation and Maintenance Expenses				
Salaries and Wages - Employees				0.00
Salaries and Wages - Officers				0.00
Employee Pensions and Benefits				0.00
Purchased Water				0.00
Purchased Power				0.00
Fuel for Power Production				0.00
Chemicals				0.00
Materials and Supplies				0.00
Contractual Services				0.00
Water Testing				0.00
Rents				0.00
Transportation Expenses				0.00
Insurance				0.00
Regulatory Commission Expenses				0.00
Bad Debt Expense				0.00

Miscellaneous Expenses				0.00
Total Operation and Maintenance Expenses	0.00	0.00		0.00
Depreciation Expense				0.00
Amortization Expense				0.00
Taxes Other Than Income				0.00
Income Tax Expense				0.00
Total Operating Expenses	0.00	0.00		0.00
Utility Operating Income	0.00	0.00		0.00

Instructions

Test Year amounts should be taken from the most recent annual report on file with the Commission.

Any known and measurable adjustments to Test Year amounts should be listed in the Adjustment column.

All adjustments should be referenced by listing a letter in the Ref. column and an explanation should be provided for each adjustment separately on the attached References page.

The amount listed in the Pro Forma column should reflect the Test Year amounts following any proposed adjustments.

For information about individual accounts please refer to the Uniform System of Accounts for the appropriate utility type.

References



REVENUE REQUIREMENT CALCULATION FORM - DEBT COVERAGE METHOD

(This method is used commonly by non-profits that have long-term debts outstanding.)

Pro forma Operating Expenses	
Plus: Average Annual Debt Principal and Interest Payments*	
Debt Coverage Requirement**	
Total Revenue Requirement	0.00
Less: Other Operating Revenue	
Non-operating Revenue	
Interest Income	
Revenue Required from Rates	0.00
Less: Revenue from Sales at Present Rates	
Required Revenue Increase	\$0.00

Required Revenue Increase stated as a Percentage of Revenue at Present Rates

* This should be a 3 year average calculated using the debt principal and interest payments for the three years following the test year.

** This amount is calculated by multiplying the average annual debt principal and interest payments by the debt service requirement of the utility's lending agency.

2012 Amendments to 807 KAR 5:076

- Statement of Related Transactions Must Be Filed with Application
 - Listing of All Related Transactions > \$25
 - All WD Commissioners/WA Directors/CEOs must file
 - Related Transactions: Transactions with
 - WD Commissioners/WA Directors
 - Employees/Former Employees/
 - Their Businesses/Family Members

**STATEMENT OF DISCLOSURE OF
RELATED PARTY TRANSACTIONS**

I swear or affirm to the best of my knowledge and belief the information set forth below represents all present transactions and those transactions occurring within the past twenty-four (24) months between _____ ("Utility") and related parties that exceed \$25.00 in value. For the purpose of this statement, "related party transactions" include, all transactions and payments in excess of \$25.00, except regular salary, wages and benefits, made directly to or on behalf of: 1) the Utility's current or former employees; 2) current or former members of the Utility's board of commissioners or board of directors; 3) persons who have a 10 percent or greater ownership interest in the Utility; 4) family members* of any current Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility or 5) a business enterprise in which any current or former Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility or a family member of such person has an ownership interest.

Name of Related Party (Individual or Business)	Type of Service Provided By Related Party	Amount of Compensation

Check this box if the Utility has no related party transactions.

Check box if additional transactions are listed on the supplemental page.

(Print Name)

(Signed)

(Position/Office)

* "Family Member" means any person who is the spouse, parent, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of any current Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility; or is a dependent for tax purposes of any Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility or his or her spouse; or who is a member of the household of any Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility.

COMMONWEALTH OF KENTUCKY

COUNTY OF _____

Subscribed and sworn to before me by _____
(Name)

this _____ day of _____, 20 _____.

NOTARY PUBLIC
State-at-Large

2012 Amendments to 807 KAR 5:076

- Why Statement of Related Transactions?
 - Law presumes Past Transactions Are Reasonable (B/P on Challenging Party)
 - Exception: Transactions with Related Party (B/P on the Utility)
 - Better Informs PSC Staff Reviewers
- Benefit to Utility
 - Focus on Controversial Expenditures
 - Possible Inoculation from Critics

2012 Amendments to 807 KAR 5:076

- Procedural Changes
 - Required Comments if Staff Recommends Higher Rate or Additional Charges
 - Waiver of Any Objections To Staff Findings if No Response
 - Expressly States PSC Is Not Bound By Staff Findings
 - Requires Publication of Notice of Acceptance of Higher Rates

2013 Amendments to 807 KAR 5:076 (Proposed)

- WD must certify if/when it has notified appropriate county fiscal court of rate adjustment
- WA no longer required to file copy of articles of incorporation
- Elimination of separate electronic filing rules – reference to 807 KAR 5:001
- Publication of notice on website (including social media)

2013 Amendments to 807 KAR 5:076 (Proposed)

- Clarifies rules regarding amended applications (resets clock; requires re-notice)
- Clarifies when publication of notice of acceptance of PSC Staff recommended rates is required

Amendments to 807 KAR 5:076: What They Mean To Your Utility

- Easier to Get Through the Door When Applying For Rate Adjustment
- Less Costly Rate Cases
 - Less Need for Attorney/Rate Consultant
- More Frequent Rate Cases
- Fewer Surprises – Everyone Knows the Rules

RULES OF PROCEDURE
807 KAR 5:001

2012 Amendments to 807 KAR 5:001

- Establishes Rules for Electronic Filing (but does not mandate)
- Privacy Protection for Filings
- Default Time Requirements for Motions/Responses/Replies
- Transcripts of Record – Video Only Unless otherwise ordered
- Eliminates Limited Intervention

2012 Amendments to 807 KAR 5:001

- Amends Confidential Protection Rules
 - Process for Formal Proceedings
 - Process for Materials Filed Outside Formal Proceeding
- Notice of Intent: Eliminates Requirement for Utilities < \$5M Annual Revenues
- Revises Notice Rules For Rate Adjustment
- Copies of Annual Rpt No Longer Required

2012 Amendments to 807 KAR 5:001

- Establishes Procedure for Declaratory Orders
- Revisions to Informal Complaint Procedure
 - Utility has 3-Business Day Response Requirement
 - PSC Staff may directed shorter response period if reasonable under the circumstances

2013 Amendments to 807 KAR 5:001 (Proposed)

- WD must certify if/when it has notified appropriate county fiscal court of rate adjustment
- Plans/Drawings/Specifications must be signed & stamped by Professional Engr
- Establishes Rules for Requests for Information in PSC Proceeding
- Defines web page to include social media

2013 Amendments to 807 KAR 5:001 (Proposed)

- WA no longer required to provide copy of articles of incorporation with application
- WD/WA may use Annual Rpt for Financial Exhibits but must certified no material change
- Franchise Agreements must be electronically filed
- Intervention: Person takes procedural schedule as it exists at date of intervention

GENERAL RULES

807 KAR 5:006

2012 Amendments to 807 KAR 5:006

- Mandatory E-Mail Address (Checked Weekly)
- Designation of Primary POC
- Mandatory Electronic Filing of Annual Rpts
- Audit Rpts Must Be Filed w/PSC
- Easements
 - Cannot Require Applicant To Obtain
 - Must Directly Relate to Service Provided

2012 Amendments to 807 KAR 5:006

- Deposits
 - Cannot Require of Renter Solely B/c Renter
 - Rules on Calculation of Interest on Deposits held by WD/WA
 - Tariff Must State Criteria for Mandating Deposit
- Discontinuance of H₂O Service for Sewer Clarified

2012 Amendments to 807 KAR 5:006

- Water Utilities required to annually inspect meters and meter settings
- Partial payment plan rules revised
 - Utility and Customer must sign agreement
 - Voice recordings permissible ILO signed agreement
 - Utility records must identify representative negotiating plan

TARIFFS

807 KAR 5:011

2012 Amendments to 807 KAR 5:011

- **Mandatory Electronic Filing of Tariffs**
- **Paper Filings no longer accepted**
- **Requires Postings To Utility Web Site**
- **Authorizes Combined Methods of Notice**
- **Eliminates Requirement to Provide Paper Copy upon Request**
- **Eliminates Restriction on No. of Non-Recurring Charges Between Rate Cases**

**PURCHASED WATER
ADJUSTMENTS
807 KAR 5:068**

2013 Amendments to 807 KAR 5:068 (Proposed)

- WD must certify if/when it has notified appropriate county fiscal court of rate adjustment
- Time Limits on Submission of PWA
 - No earlier than 30 days before date of supplier's proposed adjustment
 - No later than 20 days after utility adjusts its rates to reflect change in purchase H₂O Costs
- WD must place notice of PWA on its website

2013 Amendments to 807 KAR 5:068 (Proposed)

- WD must provide copy of resolution enacting new rates

OTHER PROPOSED **REGULATION REVISIONS**

- New Sewage Treatment Adjustment
- Federally Funded Construction

RECENT LEGISLATION

HOUSE BILL 1 (2013)

- Creation of New Entity: Special Purpose Governmental Entity
- Creation of SPGE Portal - Single Filing Point – Information Source
- Documents will be filed with DLG, not County Governments
- Penalties for Failure to File Required Reports/Documents

HOUSE BILL 1 (2013)

- Uniform Procedures for Dissolution
- County Ethics Codes Made Applicable to SPGEs
- Rate/Fee Increase: Required
Notice/Testimony to County Fiscal Courts

HOUSE BILL 201 (2010)

- Enacted 2010 General Session
- Requires all WD Commissioners appointed for first time after 7/14/2010 to attend 12 hours of “New Commissioner Training” within 1st year
- Automatic Forfeiture of Office if Failure to Attend (**Case No. 2012-00449**)
- Requires WD to Reimburse Commissioner for Cost of Attending Training

HOUSE BILL 201

- WD required to notify PSC within 30 days of WD Commissioner appointment or vacancy
- PSC authority to remove WD Commissioners clarified
- PSC authority to fill vacancy expanded to include vacancies due to death, resignation, and removal

HOUSE BILL 201

- PSC issued guidance on reporting requirements
- PSC to track vacancies and appointments

House Bill 330 (2011) **(Abandoned Utilities)**

- Clarifies KRS 278.021 Re: Abandoned Utilities
- Provides procedure for emergency appt. of receiver
- Utilities required to provide immediate notice to PSC if supplier has issued service termination notice
- Utilities must notify PSC if terminating service to jurisdictional utility 30 days in advance

Senate Bill 150 (2012)

- Modifies KRS 74.407 to define WD's right to terminate water service for failure to pay sewer bills
- Gives WD same powers that municipal utilities have UP KRS 96.931 et seq
- WD may discontinue water service if a customer fails to pay for sewer service
- WD may direct water supplier to discontinue water service to customer for failure to pay WD for sewer service

House Bill 399 (2012)

- Amends Section 1 of KRS 278.460
- 6% interest on security deposits eliminated
- PSC to established rate based upon average of Sep/Oct/Nov 1-yr constant treasury rate
- PSC announces the rate to be used every Dec
- Applies to WD/WA, but provisions of Section 2 still applicable
- PSC Staff Op 2013-001 Clarifies

House Bill 265 (2012)

- Budget Bill Provision
- Establishes Bright Line Test for Water Main Extensions
- No Certificate of Public Convenience & Necessity Required If:
 - \$500, 000 or less, **OR**
 - No Rate Adjustment Required/No Long-Term Debt
- Applies only to Class A and B WD/WA
- Expires June 30, 2014

House Bill 496 (2012)

- Amends Open Records Act
- Clarifies the AG's interpretation of "public agency" set forth in UMG Opinion
- To be a public agency:
 - Entity in a fiscal year must derive 25% or more of its funds that are expended in KY from state or local authorities
 - Funds derived from state or local authority in compensation for goods or services that are provide through a contract procured by competitive bidding are NOT INCLUDED in determination of status.

OTHER LEGISLATION

- Senate Bill 45 - (Preference to Kentucky Resident Bidders) (Codified KRS 45A.494; Implemented with 200 KAR 5:400)
- House Bill 454 (Statutory Liens for Unpaid Utility Bills) (2010 General Session)
 - Water Districts/Municipal Utilities/Sanitation Districts Eligible
 - Retail Business Ratepayers Only
 - Bills Greater than \$10K
 - Statutory Lien Created by filing with County Clerk
 - Can enforce lien by equitable proceedings

RECENT KENTUCKY COURT DECISIONS

South *Woodford Water Dist. v. Byrd*, 2009-CA-000854

- Facts: Customer requested WD discontinue H₂O service to his home. WD failed to do so. Pipes burst. Customer sues WD for damages to property.
- Held:
 - Water district is a state agency engaged in a governmental function.
 - WD entitled to governmental immunity from a claim of damages resulting from an employee's negligence.
 - Customer may still bring claim to the Bd of Claims

**RECENT
ATTORNEY GENERAL
DECISIONS**

RECENT AG OPINIONS

- OAG 08-ORD-139, *North Shelby Water Co.*
 - Where 25% of project funds from state or local authority, project is subject to Open Records Act even if entity building the project in a non-governmental entity.
- OAG 2011-ORD-143, *Utility Management Group*
 - Private entity's records are subject to Open Record Act if 25% or more of its sources of revenues are derived from public authority funds (Reversed Pike Circuit Court; Likely Appeal to Court of Appeals)

RECENT AG OPINIONS

- OAG 2012-ORD-007, *Veolia Water North America - South*
 - Entity's representation that less than 2% of its total revenues derived from municipal or public projects in Kentucky sufficient to support finding that entity is not a public agency within meaning of Open Records Act

PSC DECISIONS/TRENDS

PSC DECISIONS: WATER DISTRICT COMMISSIONERS

- Appointment Cases
 - Tendency to appoint current commissioners
 - Case No. 2007-00493: PSC will defer to elected appointing & approving officials if candidates meet minimal qualifications
 - More Intense Examination of Candidates
 - Possible Conflicts of Interest
 - Family Members
 - Business Dealings with WD
 - Board Attendance
 - WD Commissioner Training Attendance

PSC DECISIONS: WATER DISTRICT COMMISSIONERS

- Appointment Cases
 - Greater Use of Background Checks
 - Need to document/maintain accurate record of commissioner terms & appointments
- Removal Cases
 - 2009-00209: Water District Commissioners found not to reside in WD territory - **REMOVED**
 - 2009-00449: Water District Commissioner failed to attend new commissioner training within one year of appointment – **REMOVED**

PSC DECISIONS: **WATER DISTRICT COMMISSIONERS**

- PSC to more actively review attendance at new commissioner training & right to higher compensation levels

PSC DECISIONS: WATER METER EQUIPMENT

- *Big Sandy Water District*, Case No. 2007-00014 (Apr. 3, 2007) (Held: Large scale replacement of existing metering systems with AMR equipment constitutes extension of service and requires CPCN.)
- *Graves County Water Dist*, Case No. 2011-00233 (Nov. 3, 2011) (Use of Electromagnetic metering equipment will required greater testing than traditional metering equipment)
- *Intercounty Energy Cooperative*, Case No. 2009-00143 (Dec. 23, 2009) (Installation of AMR equipment requires cost-benefit analysis)
- *Muhlenburg County Water District*, Case No. 2013-00043 (Compliance with Bidding Statutes)

PSC DECISIONS: WATER METER EQUIPMENT

- *Warren County Water District, Case No. 2011-00220* (Mar. 5, 2013) Arguing that not cost-effective to test meters until 21 years in service, WDs sought deviation. Held: WDs should be permitted to keep meters in service without testing for 15 years based upon reliability studies. Keeping meters in service that are outside of reliability standards violates KRS 278.160 and KRS 278.170.

(Utility has brought an action for review in Franklin Circuit Court.)

PSC DECISIONS: TAKE-OR-PAY CONTRACTS

- *American Electric Power*, Case No. 2009-00545 (June 28, 2010) (Held: Purchase Power Agreement with minimum take provisions is an evidence of indebtedness & requires PSC approval; least cost standard in KRS 278.020 will be used to determine whether agreement is in the public interest).
- *City of Versailles*, Case No. 2011-00419 (filed 2011). PSC posed question: Is a water purchase contract between a water district and a city which obligates to take a minimum volume of water an evidence of indebtedness that requires PSC approval UP KRS 278.300?

PSC DECISIONS: TAKE-OR-PAY CONTRACTS

- PSC Staff Opinion 2012-024: Take-or-Pay Contract between Louisville Water Co. & WD an evidence of indebtedness that requires PSC approval
- *South Anderson Water District* (Ky. PSC initiated July 3, 2013)
- Case No. 2013-00251, *Hardin County Water District No.1* (Ky. PSC initiated July 3, 2013)
- Case No. 2013-00252, *Hardin County Water District No.2* (Ky. PSC initiated July 3, 2013)
- Implications for Water Sector: PSC review of purchase contracts prior to entry – large role in the selection of a supplier

PSC DECISIONS: INTEREST ON DEPOSITS

- HB 399 – Amended KRS 278.460
- Utilities now will pay interest on deposits at rate equal to the average of the one year constant maturity treasury rate from September, October, and November
- PSC to post the interest rate to be charge for next year in December
- PSC Staff Opinion 2013-001: Revisions apply to Water District & Assns.
- Three Options – WDs pay the lower of:
 - 6 percent
 - Interest paid on WD/WA bank accounts
 - PSC calculated rate

PSC DECISIONS: RD FINANCING

- KRS 278.023 in effect since 1988
- Assumption for Statute: Duplicative Review
- Case No. 2009-00436, *Oldham County Water District*
 - RD advises that no economic analysis of alternatives performed
 - Undercuts assumption
- Municipal utility objections – Want to use PSC to force WDs/WAs to consider purchases from munis as option
- Efforts to circumvent PSC process RE: nonrecurring charges, wholesale rates
- PSC: Termination of RD approved rates requires evidence of RD approval (Case No. 2008-00045)
- RD Administered Contracts for ARC fall within KRS 278.023

PSC DECISIONS:

RD FINANCING

- PSC: Termination of RD approved rates requires evidence of RD approval (Case No. 2008-00045)
- RD Administered Contracts for ARC fall within KRS 278.023
- Does KRS 278.023 apply to sewer construction projects? (Proposed amendments to 807 KAR 5:069)

PSC DECISIONS: PURCHASE WATER ADJUSTMENTS

- WD/WA failing to properly time PWA applications – must apply for adjustment prior to supplier making a subsequent increase
- After-the-fact approval
 - WDs/WA may increase rates without PSC approval
 - Must apply for PSC approval within 20 days of increasing rates
 - Evidence of increase in rates required (Resolution/Meeting Minutes)

PSC DECISIONS: RATE ISSUES

- *Breathitt County Water Dist.*, Case No. 2010-00035 (Feb 5, 2010) (Emergency service can be provided to other systems without a filed rate under certain circumstances)
- *Kentucky-American Water Co.*, Case No. 2012-00155 (Nov. 1, 2012) (Late Fees) (Survey of Late Fees charged by all PSC-regulated utilities)
- *South 641 Water District*, Case No. 2007-00194 (June 28, 2007) (KRS 514.040 limits the amount that a utility may assess for passing a bad check).
- *Cannonsburg Water District*, Case No. 2008-00220 (Mar. 10, 2009) (Free Water)

PSC DECISIONS: RATE ISSUES

- *Hopkinsville Water Environment Authority*, Case No. 2009-00373 (July 2, 2010) (Attorney Fees, Rate Case Expenses, Cost of Service Studies)
- *Louisville Gas & Electric Co.*, Case No. 2009-00353 (Oct. 21, 2009). Application for rate surcharge is considered general rate adjustment application.

PSC DECISIONS: CUSTOMER RELATIONS

- *Kentucky Utilities Co.*, Case No. 2009-00346 (Feb. 5, 2010). Held: Customer has responsibility to review his bill and to timely notify PSC of questionable charges. Utility has no obligation to investigate ownership status of property when a customer request account transfer.
- *Kentucky Utilities Co.*, Case No. 2011-00047 (May 5, 2011). Held: PSC cannot require utility to pay interest on incorrect charges.
- *Kentucky-American Water Co.* Case No.2010-00036 (Dec. 14, 2010) (Held: No basis exists for terminating water service for failure to pay storm drainage or garbage collection fees. Deviation from PSC Rules required.)

PSC DECISIONS:

DONATIONS/PAYMENTS TO FISCAL COURT

- *Southern Water and Sewer District, Case No. 2012-00309*
 - Q: May a water district recover annual debt service payments made on behalf of county fiscal court when county fiscal court is unable or unwilling to continue on debt service payments for grant to water district?
 - A: NO. Water District is under no legal obligation to make such payments. Payment constitutes a donation & violates prohibition against expending funds for only for statutory purposes.
 - Making such payments is grounds for removal of water district commissioners who authorized such payments.

PSC TRENDS: DEPRECIATION

- Depreciation Permits Recovery of the Cost of Capital Asset
- Annual Depreciation Expense = $\text{Cost} \div \text{Useful Life (years)}$
- Useful Life Based upon life of loan/bonds
- Effect of Erroneous Useful Life
 - Earlier Generation Pays for Asset/Later Generation Pays Nothing
 - Potentially Higher Rates

PSC TRENDS: DEPRECIATION

- Utility Defers Portion of Depreciation Expense
- Money Left on Table That Utility Never Recovers
- Staff Reviewing Useful Lives
- Recommending Changes for Ratemaking and Accounting When Utility's Useful Life Outside Industry Standard Range
- NARUC Depreciation Practices for Small Utilities Used as Guide

PSC TRENDS: DEPRECIATION

- Issue Frequently Arising in Rate Cases/Be Alert
- Consult with WD/WA's CPA to ensure agreement with Staff Recommendation

PSC TRENDS: REVENUE REQUIREMENTS

- PSC Historical Methodology For Determining Revenue Requirements:
 - O&M Expenses + Depreciation + DSC
 - $DSC = 1.20 \times (3\text{-YR Average Interest} + \text{Principal Payments})$
- PSC Financial Analysis Staff questioning use of this methodology
 - No historical basis for methodology
 - Formula produces revenue requirement in excess of bond coverage requirements

PSC TRENDS: REVENUE REQUIREMENTS

- Notes that bond coverage requirements are based upon 1.2x Net Revenues & calculation of net revenues does not consider depreciation
- Notes that many WDs rejecting results of PSC Methodology & requesting lower revenues
- PSC Financial Analysis Alternative – “Cash Needs” Methodology
 - O&M Expenses + Depreciation + DSC
 - DSC = 3-YR Average of Interest + Principal Payments

PSC TRENDS: **REVENUE REQUIRMENTS**

- Discussion appears in PSC Staff Reports
- How would PSC implement a change?
 - Case-by-Case Basis
 - Industry-Wide Review

OTHER ACTIVITIES AT PSC

OTHER ACTIVITIES

- Personnel Changes
- Water Territorial Database
- Release of Municipal Rate Adjustment Regulation
- Electronic Initiatives
- Water District Training
- PSC LAW App
- Meter Laboratory Testing Resumes

CASES TO WATCH

- *City of Lancaster v. Garrard County*, No. 2013-CA-000716 (Ky. Ct. App.) May a county government assess a tax on water meters to fund 911 service?
- *Forest Creek LLC v. Jessamine-South Elkhorn Water Dist.*, Case No. 2011-00297 (Does Developer have right to change mind?)
- *City of Versailles*, Case No.2011-00419 (May City unilaterally amend wholesale contract to require minimum purchases?)

CASES TO WATCH

- *Cooksey v. Warren County Water District*, Case No. 2013-00109 (May the PSC require a water district to seek an expansion of its boundaries to provide sewer service to a customer whose property is partially located within its territory when the water district has previously executed an agreement with a neighboring municipal utility for the municipal utility to serve the area in question?)

CASES TO WATCH

- *Jessamine-South Elkhorn Water District, Case No. 2012-00470* (When determining whether a certificate of public convenience and necessity should be issued for proposed facilities, what weight, if any, should the Commission afford to the effect on the proposed facility on the values of adjoining properties and on the general aesthetics of the area?)

QUESTIONS?