

Commonwealth of Kentucky
Before the Public Service Commission

In the Matter of:

NOTICE OF ADJUSTMENT OF THE RATES OF)
KENTUCKY-AMERICAN WATER COMPANY) Case No. 2007-00143
EFFECTIVE ON AND AFTER MAY 30, 2007)

ATTORNEY GENERAL'S MOTION TO DISQUALIFY COMMISSIONER
CAROLINE PITT CLARK

Comes now the Attorney General, by and through his Office of Rate Intervention ("Attorney General") and moves for the disqualification of Commissioner Caroline Pitt Clark ("Clark" or "Commissioner"). As grounds for his motion the attorney General states that that Clark's husband, Mr. Justin D. Clark ("Mr. Clark"), is employed by Stoll Ogden Keenon PLLC ("SKO"), counsel of record for Kentucky-American Water Company ("KAWC") in the instant case. Given this conflict, the Commissioner must disqualify herself.

Statement of Facts

On August 6, 2007, the Attorney General was advised that Commissioner Clark's husband, Mr. Clark, is employed as an attorney with SKO – counsel of record for KAWC as well as many utilities under the Commission's jurisdiction.¹ The law firm of SKO appears before the Commission on a frequent, if not almost daily, basis.

On August 7, the Attorney General hand-delivered a letter to the PSC for Clark asking that she advise the Attorney General as to whether she would preside over cases in which SKO was counsel of record given the fact that an actual or apparent conflict of interest exists.²

On August 8, 2007, SKO's Louisville office forwarded a letter to the undersigned stating that Mr. Clark was an associate in the firm. SKO maintained that it had screened Mr. Clark from any participation in matters pending or likely to be pending before the PSC.³ A subsequent second letter dated August 9, 2007, from SKO's Lexington office made the same representations about Mr. Clark.⁴

By letter dated August 10, PSC General Counsel informed the Attorney General that the Commission had received the August 7th letter but that Clark

¹ See attachment A which is SKO's homepage on its website. SKO lists E.ON US as one of its clients as well as touts its established regional reputation in representing signature industries such as telecommunication and utility companies.

² See attachment B.

³ See attachment C.

⁴ See attachment D.

had yet to be sworn-in and had not assumed her duties. However, the letter would be kept for her review upon her arrival.⁵

By letter dated August 13, the Attorney General acknowledged receipt of the letter from SKO's Louisville office and stated that until such time as he received a letter from Clark, he would take no position on whether SKO would be conflicted out of any Commission cases presided over by Clark.⁶

To the best of the Attorney General's knowledge and belief, Clark assumed her duties at the Commission on or about August 16th. Having received no response, on September 6, the Attorney General hand-delivered another letter to the Commission for Clark requesting a response to the August 7 letter as well as an inquiry as to whether Clark was participating in matters since her arrival wherein SKO was serving as counsel.⁷ By letter dated September 11, Commission's General Counsel advised the Attorney General that Clark would address the issues raised on or before September 18.⁸

In another case involving Kentucky-American related to the proposed construction of a treatment plant, associated facilities and a transmission line,⁹ the Commission entered an order addressing a request by the Louisville Water Company to amend the procedural schedule and to file rebuttal testimony. In

⁵ See attachment E.

⁶ See attachment F.

⁷ See attachment G.

⁸ See attachment H.

⁹ See *In the Matter of the Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main*, Case No. 2007-00134.

granting some but denying other relief, the Commission did so stating that otherwise its decision “could weaken public confidence in a final decision in this proceeding.”¹⁰ Moreover, the Commission held public meetings on the nights of September 10, 12, and 13 for the purpose of receiving public comment in the case. At the beginning of each meeting, Chairman Goss announced that the Commissioners were attending in a **quasi-judicial** capacity and thus could not answer any questions.¹¹

On September 13, the Attorney General appeared before the Commissioners, including Clark, involving a matter with a water district.¹² At the beginning of the hearing, the Attorney General noted on the record that Clark’s father represents a client opposed by the Attorney General in circuit court. In light of the fact that the litigation was not before the PSC, a conflict did not arise. However, the Attorney General put the Commission on notice that had there been a case in front of the Commission wherein Clark had a familial relationship with either counsel serving in the case or counsel’s firm, the Attorney General would move for the disqualification of the Commissioner.

On September 18, the Attorney General appeared in the instant matter for the hearing on the merits of the case. At the beginning of the hearing, Clark announced that she would abstain from ruling in the case and seek an opinion

¹⁰ See order at page 7.

¹¹ Because the Commission has repeatedly stated that public comments are not given any evidentiary weight in the deliberations of the case, the Attorney General did not object to the participation of Commissioner Clark.

¹² The particular case was *In the Matter of Examination of the Operation and Reasonableness of the Offsetting Improvement Charge of Henry County Water District No. 2*, Case No. 2006-00191.

from the Executive Branch Ethics Commission (EBEC). The Attorney General nonetheless moved for disqualification and insisted that Commissioner not participate other than observing; i.e., she should not ask questions in the capacity as a Commissioner, nor should she deliberate or vote on the outcome.

On the afternoon of that same day, a letter was hand-delivered to the undersigned wherein Clark opined that neither an actual nor an apparent conflict exists but that she would voluntarily abstain from voting on, or deciding in, any matters before the Commission in which SKO serves as counsel until such time as she received an advisory decision from the EBEC.¹³

It remains unclear, however, whether she will refrain from all participation in the cases wherein SKO serves as counsel.

ARGUMENT

I. The Commissioners must preserve the integrity of their *quasi judicial* role by eliminating any conflict.

The utmost of steps must be taken by members of the bench and bar in preserving the integrity of our judicial or quasi-judicial system. Public confidence in the integrity and impartiality of the Commission is essential. Indeed, the Commission has stated that public confidence should not be weakened with any decision. "The PSC acts as a *quasi-judicial* agency utilizing its authority to conduct hearings, render findings of fact and conclusions of law, and utilizing its expertise in the area and to the merits of rates and service issues." *Simpson*

¹³ See attachment I.

County Water District v. City of Franklin, 872 S. W. 2d 460, 465 (Ky. 1994). As such, any conflicts, improprieties, or appearances thereof must be avoided.

Clark's husband is an associate with SKO – a law firm which represents many of the utilities under the jurisdiction of the Commission. While the Attorney General does not contest SKO's representations that Clark's husband has been screened off from any participation in matters pending or likely to be pending before the Commission, the point remains that SKO appears before the Commission on a frequent, if not almost daily, basis. In other words, part of SKO's revenue in turn pays the salary of Clark's husband and thus contributes to the Commissioner's family income.

SKO's letters reflecting its "screening" of Clark's husband's activities beg the question of whether there is any conflict. Even assuming he does not work on utility matters, the firm's financial integrity is intrinsically linked to the profitability of its various segments as a whole. SKO has made no assertions that a trickle down effect does not have any impact on her husband's salary. Indeed, if SKO had stated that it could forego representing utility companies with no financial impact on its survival, then and only then, could an argument be made that Clark's husband's salary would not be affected.

Under KRS 278.060(3), Clark thus receives value from a utility by way of her husband's law firm. Hence, an actual conflict exists which necessitates disqualification. Moreover and regardless of any value received, the public perception that Clark's husband's firm may benefit from her decisions in and of

itself requires disqualification because at least the appearance of impropriety exists.

Additional guidance exists for the situation at hand. Because the Commission serves in a *quasi judicial*¹⁴ role when it makes final decisions that are subject **only** to judicial review under KRS 278.410, the standards to be observed in rendering its decisions should be those observed by the judiciary – the Kentucky Code of Judicial Conduct. In fact, trial commissioners, who need not be attorneys, are required to abide by the judicial canons per SCR 5.070. While the Commissioners are not members of the judiciary and thus are not subject to the Judicial Retirement Commission, their function fulfills a similar nature of the judiciary. Therefore, the canons should serve as standards.

In *Abell v. Oliver*, 117 S.W. 3d 661 (Ky. 2003), Kentucky’s highest court held that a trial judge must disqualify herself when her husband’s firm appeared as counsel before her on a case, even though her spouse did not participate in the same proceeding. The court held that SCR 4.300 required the disqualification, and that SCR 1.10(a) imputes disqualification of one associate of a firm to **all** members of the firm.¹⁵ The court further held that the *de minimis* rule under SCR 4.300 Canon 3E(1)(d) does not apply to provide any qualification to automatic disqualification.¹⁶ Specifically, the court rejected arguments that a judge must

¹⁴ See *Simpson County Water District*, *supra* at 465, “The PSC acts as a *quasi-judicial* agency utilizing its authority to conduct hearings, render findings of fact and conclusions of law, and utilizing its expertise in the area and to the merits of rates and service issues.”

¹⁵ *Id.* at 662 (emphasis added).

¹⁶ *Id.*

have more than a *de minimis* interest that could be substantially affected by the proceeding prior to disqualification based on two reasons. First, the court concluded that the *de minimis* rule is a separate rule, not a qualification on the prohibition against a spouse appearing before a judge. Second, the court found that the trial court denied full disclosure of her spouse's interest.¹⁷

Just as the trial judge in *Abell, supra* should have disqualified herself based on her husband's interest, so, too, must Clark disqualify herself in the instant matter based on her husband's interest. Moreover, Clark must do so in any and all matters in which SKO represents a utility before the Commission. The holding of *Abell, supra* and the application of SCR 4.300 are unfettered and absolute.

Were Clark a trial commissioner, under SCR 5.050, the same result would follow because "a trial commissioner shall disqualify himself in all matters in which he has an interest, relationship or bias that would disqualify a judge."

Regardless of whether an actual conflict exists, there is at least the appearance of impropriety. The preamble of Canon 2 states that "a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." This includes the requirement that a judge shall not allow family, social, political or other relationships to impair the judge's objectivity. SCR 2D. Because of the family relationship or marriage at hand, there is at least the appearance of impropriety in the public's eye if SKO is involved in the case over which Clark presides. Accordingly, Clark must disqualify herself.

¹⁷ Id.

Moreover, based on common law, a conflict of interest exists because there is a clash between the public interest and the private pecuniary interest of Clark. Importantly, it is not material that Clark's interest is only indirect or small.

Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24, 25 (1936).¹⁸

As a result, given the Commissioners role in serving in a *quasi-judicial* function, certain standards must apply to protect the integrity of the bench and bar. When the Commission makes final decisions that ultimately affect every Kentuckian and which can only be appealed to the Franklin Circuit Court, accountability is an absolute necessity. Clark's marital relationship with an associate of SKO creates an actual if not apparent conflict of interest or impropriety requiring her disqualification. Any refusal on her part to recuse herself will render any decision by the PSC either void or voidable in the event she in any way participates in same.

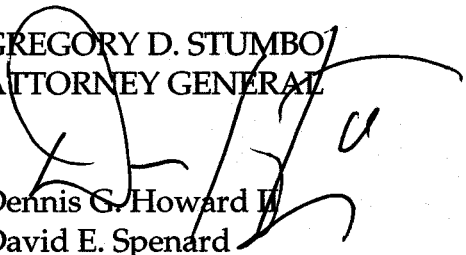
CONCLUSION

Wherefore, the Attorney General respectfully moves Commissioner Clark to disqualify herself from this case because an actual, if not appearance of, conflict or impropriety exists.

¹⁸ "It is a salutary doctrine that he who is entrusted with the business of others cannot be allowed to make such business an object of profit to himself. This is based upon principles of reason, of morality, and of public policy. These are principles of the common law and of equity which have been supplemented and made more emphatic by the foregoing and other statutory enactments . . . it is not material that the self-interest is only indirect or very small." *Id.* (Citations omitted).

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL



Dennis G. Howard II
David E. Spenard
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204
T 502 696-5453
F 502-573-8315

Notice of Electronic Filing, Filing, and Certificate of Service

Counsel certifies that, pursuant to Paragraphs 2, 4, and 6 of the Commission's 2 May 2007 Order of procedure, the submission of a true and accurate copy of this document in electronic format by uploading the document to the Commission's Web Application Portal on this 25th day of September 2007. Counsel, pursuant to Paragraph 2 of the Commission's May 2nd Order, provides notice of the filing of the original and one photocopy the Attorney General's Motion by hand-delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601 on 26 September 2007.

Pursuant to 807 KAR 5:001, Section 3(7) and Paragraphs 2 and 6(d) of the Commission's May 2nd Order and Paragraph 4 of the Commission's 11 May 2007 Order granting intervention, the document was served by mailing a true and correct photocopy of the same, first class postage prepaid, to the following:

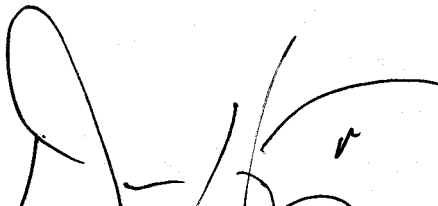
Leslye M. Bowman
David Jeffrey Barberie
Lexington-Fayette Urban County Government, Department Of Law
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Lexington, Kentucky 40507
(counsel for LFUCG);

David F Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street
2110 CBLD Building
Cincinnati, OH 45202
(counsel for KIUC);

Lindsey W. Ingram, Jr.
Lindsey W. Ingram, III
Stoll Keenon Ogden PLLC
300 West Vine Street Suite 2100
Lexington, KY 40507-1801
(counsel for Kentucky-American Water); and

Joe F. Childers
Getty & Childers, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
(counsel for Community Action Council for Lexington-Fayette, Bourbon,
Harrison and Nicholas Counties, Inc.).

Per Paragraph 6 of the Commission's May 2nd Order, Counsel certifies that the electronic version of this document is a true and accurate copy of the document filed in paper medium, the electronic version of the filing has been transmitted to the Commission, and the parties have been notified of the filing of the electronic transmission to the Commission. Service was on this 25th day of September 2007.



Assistant Attorney General

ATTACHMENT A

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September 24, 2007

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Stoll Keenon Ogden provides the wide ranging resources of a large Midwestern law firm, yet takes pride as the law firm of choice for clients who define the economy and culture of this region -- Brown-Forman Corporation, Keeneland, Lexmark, Jewish Hospital & St. Mary's HealthCare, and E.ON U.S. With 140 lawyers in four Kentucky cities, we built our reputation representing all types of businesses in Kentucky, the Midwest and beyond. Our work includes representation before all state and federal courts and numerous administrative agencies. In addition to serving as legal counsel for businesses, our lawyers have held leadership positions at every level of state and local government. Whether your business is in Frankfort or Frankfort, we understand the needs of clients who do business here. Your success is our mission.

A HISTORY OF STATEWIDE PREMINENCE

The firms of Stoll, Keenon & Park and Ogden, Newell & Welch merged in January 2006. Beginning in the 1890s, both firms established regional reputations representing Kentucky's signature industries in wine and spirits, the thoroughbred industry, and energy. We have maintained our leadership as legal counsel to clients in these industries, and today these clients operate on a global basis. We also represent major national and international clients in healthcare, technology, manufacturing, telecommunications, utilities, and financial services. These clients include Fortune 500 companies headquartered in Kentucky, as well as national and global companies that do business in Kentucky and the Midwest. With our merger, we have a statewide presence with offices in Louisville, Lexington, Frankfort and Henderson. Our lawyers are honored in Best Lawyers in America, Chambers USA and hold numerous other awards and honors. We are part of Meritas Networking Group, which connects our firm with resources across the world. We are rooted in our histories, and are committed as Stoll Keenon Ogden to continued excellence in the future.

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ATTACHMENT B



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

GREGORY D. STUMBO
ATTORNEY GENERAL

August 7, 2007

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601-8204

BY HAND DELIVERY

Caroline Pitt Clark, Commissioner
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Presiding Over Cases in which Stoll, Keenon and Ogden,
PLLC Serves as Counsel

Dear Commissioner Clark:

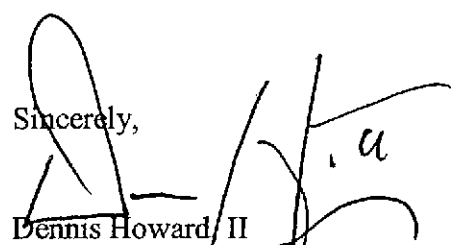
As the Director of Attorney General Greg Stumbo's Office of Rate Intervention, I welcome you as a new commissioner to the PSC. The Attorney General is the primary consumer advocate to appear before the PSC, pursuant to KRS 367.150.

It is my understanding that your husband is an attorney employed by Stoll, Keenon and Ogden, PLLC (SKO) in the firm's Louisville office. If this is the case, I must point out that SKO represents many utility companies before the PSC, including Louisville Gas and Electric Company, Kentucky Utilities Company, Kentucky-American Water Company, Delta Natural Gas, BellSouth, AT&T, Time Warner, and others.

Given your husband's employment with SKO, please advise this office whether you will recuse yourself from any matters in which SKO serves as counsel. Should you intend to preside over those cases, this office may have no choice but to file a motion to disqualify you based on an actual or apparent conflict of interest.

Thank you for your attention to this matter.

Sincerely,


Dennis Howard II
Acting Director

Cc: PSC Chairman Mark David Goss
PSC Vice Chairman John W. Clay
Executive Director Beth O'Donnell
EPPC Secretary Teresa J. Hill

AN EQUAL OPPORTUNITY EMPLOYER M/F/D



ATTACHMENT C



STOLL · KEENON · OGDEN
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August 8, 2007

Dennis G. Howard
Assistant Attorney General
Office of the Kentucky Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

AUG 9 2007

Re: Kentucky Public Service Commission Matters

Dear Dennis:

You may have learned that Caroline Pitt Clark, an attorney with Landrum & Shouse, LLP, has been appointed to serve as a commissioner to the Kentucky Public Service Commission ("PSC").

I am writing to advise that Justin Clark is an associate attorney in the Louisville office of Stoll Keenon Ogden PLLC, and is married to Caroline Pitt Clark. I am sending you this letter on behalf of Stoll Keenon Ogden PLLC ("SKO") to address the issue of the marital relationship with Justin Clark.

Upon learning that Ms. Clark was under consideration, Jack Ballantine, as General Counsel for SKO, wrote Ms. Clark and advised that our firm would immediately screen Mr. Clark from any participation in matters pending or likely to be pending before the PSC. As a practical matter, Mr. Clark has never appeared before the PSC for any of the firm's clients or practiced in this area of the law. Mr. Clark belongs to a firm practice group that focuses on commercial litigation.

As you are aware, this firm and its predecessors for many years have represented parties involved in proceedings before the PSC, and this firm is currently involved, and will continue to be involved, in such matters before the PSC. So long as Ms. Clark serves as a commissioner at the PSC, the following screen will be in effect at our firm:

1. Mr. Clark will not participate, nor seek to participate, in any matters in which one or more of our firm clients is involved in proceedings before the PSC, or in any matters which are likely to become matters for consideration by the PSC ("PSC Matters");

Dennis G. Howard
August 8, 2007
Page 2

2. Mr. Clark will not communicate to any other SKO lawyers or staff members about any PSC Matters. At the present time, Justin is not involved in any matters which are before the Commission or likely to come before the Commission;

3. SKO lawyers and staff members will not communicate to Mr. Clark about the firm's clients with respect to PSC Matters, nor will they share with him any documents or information related to such matters, except to the limited extent necessary for Justin and the firm to implement and then maintain these screening procedures;

4. Mr. Clark will be screened from any access to SKO's physical and electronic information relating to PSC Matters;

5. Mr. Clark will not receive a direct and specific apportionment of fees or other financial benefit generated from PSC Matters. Mr. Clark is an employee of the firm and is not an owner; this restriction and relationship of course does not prohibit him from receiving a salary or other payment established under the firm's benefit and bonus policies.

Mr. Clark, every SKO lawyer, and all staff members have been informed of the terms of this screen by an e-mail from Mr. Ballantine with instructions to read the terms to ensure compliance with these screening procedures.

Should you have any questions or concerns about these screening procedures, or wish to discuss this matter further, please contact me at your earliest convenience.

Yours very truly,

STOLL KEENON OGDEN PLLC


Kendrick R. Riggs

KRR

ATTACHMENT D



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AUG 10 2007

August 9, 2007

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Stephen Reeder
Robert Ware
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Frankfort, Kentucky 40601

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Public Service Commission
P. O. Box 615
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Frankfort, Kentucky 40602-0615

Re: Kentucky Public Service Commission Matters

Gentlemen:

You may be aware that Caroline Pitt Clark, an attorney with Landrum & Shouse LLP, was recently appointed to serve as a commissioner to the Kentucky Public Service Commission ("PSC" or "Commission").

I am writing to advise that Justin Clark is an associate attorney in the Louisville office of Stoll Keenon Ogden PLLC, and is married to Caroline Pitt Clark. I am sending you this letter on behalf of Stoll Keenon Ogden PLLC ("SKO") to address the issue of the marital relationship with Justin Clark.

When we learned that Ms. Clark's name was under consideration a few weeks ago, Jack Ballantine, as General Counsel for SKO, wrote Ms. Clark and advised that our firm would immediately screen Mr. Clark from any participation in matters pending or likely to be pending before the PSC. As long as he has been associated with SKO, Mr. Clark has never appeared before the PSC for any of the firm's clients or practiced in this area of the law. Mr. Clark belongs to a firm practice group that focuses on commercial litigation.

As you are aware, this firm and its predecessors for many years have represented parties involved in proceedings before the PSC and this firm is currently involved, and will continue to be involved, in such matters before the PSC. So long as Ms. Clark serves as a commissioner at the PSC, the following screen will be in effect at our firm:

1. Mr. Clark will not participate, nor seek to participate, in any matters in which one or more of our firm's clients is involved in proceedings before the PSC, or in any matters which are likely to become matters for consideration by the PSC ("PSC Matters");

2. Mr. Clark will not communicate to any other SKO lawyers or staff members about any PSC Matters. At the present time, he is not involved in any matters which are before the Commission or likely to come before the Commission;

3. SKO lawyers and staff members will not communicate to Mr. Clark about the firm's clients with respect to PSC Matters, nor will they share with him any documents or information related to such matters, except to the limited extent necessary for him and the firm to implement and then maintain these screening procedures;

4. Mr. Clark will be screened from any access to SKO's physical and electronic information relating to PSC Matters;

5. Mr. Clark will not receive a direct and specific apportionment of fees or other financial benefit generated from PSC Matters. Mr. Clark is an employee of the firm and is not an owner; this restriction and relationship of course does not prohibit him from receiving a salary or other payment established under the firm's benefit and bonus policies.

Mr. Clark, all SKO lawyers and staff members have been informed of the terms of this screen by an e-mail from Mr. Ballantine with instructions to read the terms to ensure compliance with these screening procedures.

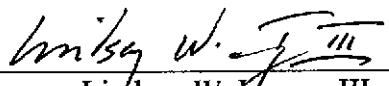
August 9, 2007

Page 3

Should you have any questions or concerns about these screening procedures, or wish to discuss this matter further, please contact me at your earliest convenience.

Very truly yours,

STOLL KEENON OGDEN PLLC

By  _____
Lindsey W. Ingram III

ATTACHMENT E



Ernie Fletcher
Governor

Teresa J. Hill, Secretary
Environmental and Public
Protection Cabinet

Timothy J. LeDonne
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
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psc.ky.gov

Mark David Goss
Chairman

John W. Clay
Commissioner

August 10, 2007

Mr. Dennis Howard
Office of the Attorney General
1024 Capital Center Drive
Frankfort, KY 40601

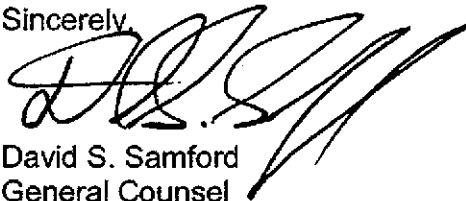
AUG 12 2007

RE: Appointment of Caroline Pitt Clark

Dear Dennis:

I wanted to let you know that I was given a copy of your recent letter to Commissioner Designee Caroline Pitt Clark. As of today, Ms. Clark has not been sworn-in and has not assumed her duties as a Commissioner. It is my understanding that she will formally be sworn-in sometime next week. Until such time, she will not be participating in the consideration of any cases. Your letter to Ms. Clark will be kept for her to review upon her arrival.

Sincerely,



David S. Samford
General Counsel

ATTACHMENT F



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

GREGORY D. STUMBO
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601-8204

August 13, 2007

Honorable Kendrick R. Riggs
Stoll Keenon Ogden, PLLC
2000 West Jefferson Street
Louisville, Kentucky 40202

Re: Response to Your Letter Dated August 8, 2007 Concerning
Kentucky Public Service Commission Matters

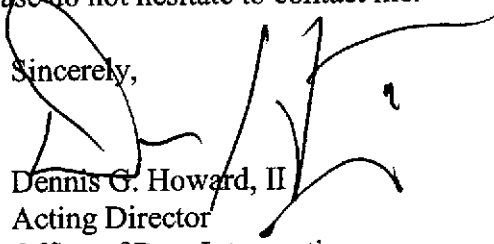
Dear Kendrick:

I am in receipt of your letter dated August 8, 2007, wherein you advise me that Stoll Keenon Ogden PLLC has purportedly addressed "the issue of the marital relationship" between PSC Commissioner Caroline Pitt Clark and Justin Clark, an associate with your firm. At this point in time, and until I receive a response from Commissioner Clark, the Attorney General's Office takes no position on whether Stoll is conflicted out of matters before the PSC.

However, I must emphasize that Commissioner Clark will have an actual or apparent conflict if she presides over matters in which SKO serves as counsel. Accordingly, my office may have no choice but to move for her disqualification. In the event I make such a motion and it is denied, I will then be forced to exhaust any and all other remedies under law, including but not limited to an appeal in every case over which she presides.

To conclude, as the Commonwealth of Kentucky's primary consumer advocate under KRS 367.150, I have no choice but to take the aforementioned actions. Should you have any questions or concerns about this letter, please do not hesitate to contact me.

Sincerely,



Dennis G. Howard, II
Acting Director
Office of Rate Intervention



ATTACHMENT G



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

September 6, 2007

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601-8204

GREGORY D. STUMBO
ATTORNEY GENERAL

BY HAND DELIVERY

Caroline Pitt Clark, Commissioner
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Re: Presiding Over Cases in which Stoll, Keenon and Ogden, PLLC Serves as Counsel

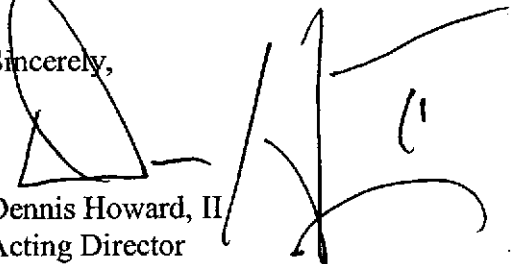
Dear Commissioner Clark:

On August 7, 2007, OAG hand delivered a letter addressed to you at the Commission's office concerning your involvement in matters before the Commission wherein Stoll, Keenon and Ogden, PLLC (SKO) appears as counsel. To date no response has been received, except a letter dated August 10 from General Counsel David Samford indicating that OAG's letter would be delivered to you. In lieu of repeating the inquiries therein, please see the attached copy and respond at your earliest convenience.

In your response, please advise as to whether you have participated in matters wherein Stoll, Keenon and Ogden, PLLC (SKO) has served as counsel. In the event you have done so, please state whether you believe an actual or apparent conflict exists.

Thank you for your earliest attention to this matter.

Sincerely,


Dennis Howard, II
Acting Director
Office of Rate Intervention

Cc: PSC Chairman Mark David Goss
PSC Vice Chairman John W. Clay
Executive Director Beth O'Donnell
EPPC Secretary Teresa J. Hill





COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

GREGORY D. STUMBO
ATTORNEY GENERAL

August 7, 2007

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601-8204

BY HAND DELIVERY

Caroline Pitt Clark, Commissioner
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Presiding Over Cases in which Stoll, Keenon and Ogden,
PLLC Serves as Counsel

Dear Commissioner Clark:

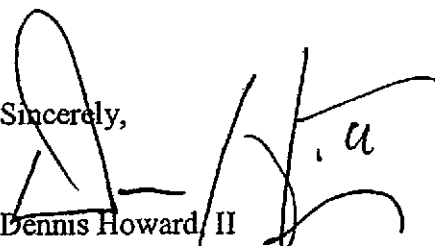
As the Director of Attorney General Greg Stumbo's Office of Rate Intervention, I welcome you as a new commissioner to the PSC. The Attorney General is the primary consumer advocate to appear before the PSC, pursuant to KRS 367.150.

It is my understanding that your husband is an attorney employed by Stoll, Keenon and Ogden, PLLC (SKO) in the firm's Louisville office. If this is the case, I must point out that SKO represents many utility companies before the PSC, including Louisville Gas and Electric Company, Kentucky Utilities Company, Kentucky-American Water Company, Delta Natural Gas, BellSouth, AT&T, Time Warner, and others.

Given your husband's employment with SKO, please advise this office whether you will recuse yourself from any matters in which SKO serves as counsel. Should you intend to preside over those cases, this office may have no choice but to file a motion to disqualify you based on an actual or apparent conflict of interest.

Thank you for your attention to this matter.

Sincerely,


Dennis Howard II
Acting Director

Cc: PSC Chairman Mark David Goss
PSC Vice Chairman John W. Clay
Executive Director Beth O'Donnell
EPPC Secretary Teresa J. Hill



ATTACHMENT H



Ernie Fletcher
Governor

Teresa J. Hill, Secretary
Environmental and Public
Protection Cabinet

Timothy J. LeDonne
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Mark David Goss
Chairman

John W. Clay
Vice Chairman

Caroline Pitt Clark
Commissioner

SEP 12 2007

September 11, 2007

Mr. Dennis Howard, II
Acting Director, Office of Rate Intervention
Office of the Attorney General
1024 Capital Center Drive
Frankfort, KY 40602

Dear Dennis:

Reference is made to your letter of September 6, 2007 addressed to Commissioner Caroline Clark and copied to Chairman Mark David Goss, Vice-Chairman John W. Clay, Executive Director Beth O'Donnell and EPPC Secretary Teresa Hill. Please be advised that I was given a copy of said letter yesterday afternoon. I understand that Commissioner Clark will address the issues you have raised in your letter in writing on or before Tuesday, September 18th.

Sincerely,

David S. Samford
General Counsel

Cc: Teresa Hill, Secretary, Environmental and Public Protection Cabinet
Mark David Goss, Chairman, Kentucky Public Service Commission
John Clay, Vice-Chairman, Kentucky Public Service Commission
Caroline Clark, Commissioner, Kentucky Public Service Commission
Beth O'Donnell, Executive Director, Kentucky Public Service Commission

ATTACHMENT I



Ernie Fletcher
Governor

Teresa J. Hill, Secretary
Environmental and Public
Protection Cabinet

Timothy J. LeDonne
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Mark David Goss
Chairman

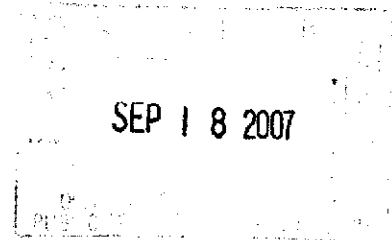
John W. Clay
Vice Chairman

Caroline Pitt Clark
Commissioner

September 18, 2007

*** VIA HAND DELIVERY ***

Dennis Howard, II
Acting Director
Commonwealth of Kentucky
Office of the Attorney General
1024 Capital Center Dr., Ste. 200
Frankfort, KY 40601-8204



RE: Presiding over cases in which Stoll, Keenon & Ogden, PLLC
serves as counsel

Dear Dennis:

Please find this correspondence in response to yours of August 7, 2007 and September 6, 2007. In response to the questions you raised, I do not believe that either an actual or apparent conflict exists between my service as a Commissioner and my husband's employment as an associate attorney at Stoll Keenon Ogden (SKO). Out of an abundance of caution, however, I am requesting an advisory opinion from the Executive Branch Ethics Commission (EBEC). Until such time as I receive the EBEC's opinion, and pending its outcome, I have voluntarily chosen to abstain from voting on, or deciding, any matters before the PSC in which SKO is representing one of the parties in the proceeding.

Truly yours,

Caroline Pitt Clark
Commissioner
Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Caroline.Clark@ky.gov

CPC/smcn

Correspondence
Dennis Howard, II
September 18, 2007

Page 2

cc: *Via Hand Delivery*
Mark David Goss, PSC Chairman
John W. Clay, PSC Vice Chairman
Beth O'Donnell, PSC Executive Director
Teresa J. Hill, EPPC Secretary