COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NORTHERN KENTUCKY)WATER DISTRICT AND STOLL KEENON)OGDEN PLLC FOR ACCREDITATION AND)CASE NAPPROVAL OF A PROPOSED WATER)DISTRICT MANAGEMENT TRAINING)PROGRAM)

) CASE NO. 2015-00147

NOTICE OF FILING

In compliance with the Commission's Order of May 18, 2015, Northern Kentucky Water District ("NKWD") and Stoll Keenon Ogden PLLC (collectively "Joint Applicants") give notice of the filing of the following documents:

1. A sworn statement attesting that the proposed course of instruction entitled "Northern Kentucky Water Training 2015" was performed on May 27, 2015 (Exhibit 1);

2. A description of any changes in the presenters or the proposed curriculum that occurred after the submission of the application for accreditation (**Exhibit 2**);

3. The name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended (**Exhibit 3**);

4. A copy of the written materials given to program attendees (**Exhibit 4**);

5. Approval of proposed program for continuing legal education accreditation by the Kentucky Bar Association (**Exhibit 5**);

6. Approval of proposed program for accreditation by the Department of Local Government for Elected County Officials Training Incentive Program (**Exhibit 6**).

Dated: June 18, 2015

Respectfully submitted,

Gerald E. Wuetcher Stoll Keenon Ogden PLLC 300 West Vine Street, Suite 2100 Lexington, Kentucky 40507-1801 gerald.wuetcher@skofirm.com Telephone: (859) 231-3017 Fax: (859) 259-3517

Counsel for Northern Kentucky Water District

Shannon "A.J." Singleton Stoll Keenon Ogden PLLC 300 West Vine Street, Suite 2100 Lexington, Kentucky 40507-1801 aj.singleton@skofirm.com Telephone: (859) 231-3692 Fax: (859) 253-1093

Deputy General Counsel Stoll Keenon Ogden PLLC

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Joint Applicants' June 18, 2015 electronic filing of this Notice of Filing is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on June 18, 2015; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this Application will be delivered to the Commission on or before June 22, 2015.

Gerald E. Wuetcher

EXHIBIT 1

COMMONWEALTH OF KENTUCKY)) SS COUNTY OF FAYETTE)

AFFIDAVIT

Gerald Wuetcher, being duly sworn, states that:

1. He is an attorney employed by Stoll Keenon Ogden PLLC.

2. He served as the organizer and program coordinator of the water training program entitled "Northern Kentucky Water Training 2015."

3. The "Northern Kentucky Water Training 2015" was held on May 27, 2015 at the offices of Northern Kentucky Water District, 2835 Crescent Springs Road, Erlanger, Kentucky.

4. The presentations listed in the proposed program agenda submitted to the Kentucky Public Service Commission were conducted for the length of the time specified and by the listed presenters. For the presentation "Legal Issues in the Operation and Management of Water Systems," Mr. Hance Price also served as a member of the discussion panel.

AFFIANT SAITH NOTHING FURTHER.

Gerald Wuetcher Stoll Keenon Ogden PLLC 300 West Vine Street Suite 2100 Lexington, Kentucky 40507

Subscribed and sworn to before me by Gerald Wuetcher, on this June 5, 2015. My Commission expires: <u>Hune 18, 2015</u>. <u>Aund Motary Public</u>

EXHIBIT 2

DESCRIPTION OF CHANGES TO THE PROGRAM

There were no significant changes to the "Northern Kentucky Water Training 2015." Mr. Brian Chitti, Kentucky Division of Water Drinking Water Compliance and Technical Assistance Section Supervisor, presented the program segment entitled "Kentucky Division of Water Law Update." For the presentation "Legal Issues in the Operation and Management of Water Systems," Mr. Hance Price also served as a member of the discussion panel.

EXHIBIT 3

| ATTENDANCE | | | |
|------------|------------|------------------------------------|-------|
| First Name | Last Name | Water District | Hours |
| Rick | Adams | Pendleton County Water District | 6 |
| Tim | Alexander | Boone County Water District | 6 |
| Mike | Bell | Hardin County Water District No. 2 | 6 |
| David | Boden | Pendleton County Water District | 6 |
| Charlie | Cain | Boone County Water District | 6 |
| John | Carsone | Oldham County Water District | 6 |
| Drew | Collins | Northern Kentucky Water District | 6 |
| Baxter | Courts | Bracken County Water District | 6 |
| Clyde | Cunningham | Northern Kentucky Water District | 6 |
| James | Daugherty | Boone County Water District | 6 |
| LR | Faulkner | Pendleton County Water District | 6 |
| Bill | Flaugher | East Pendleton Water | 6 |
| Richard | Knock | Boone County Water District | 6 |
| Ray | Larmee | West Shelby Water District | 6 |
| Fred | Macke | Northern Kentucky Water District | 6 |
| Мо | Miller | Hardin County Water District No. 2 | 6 |
| Brent | Moore | Pendleton County Water District | 6 |
| Patricia | Sommerkamp | Northern Kentucky Water District | 6 |
| David | Spaulding | Northern Kentucky Water District | 6 |
| Joe | Strange | Pendleton County | 6 |
| Timothy | Sweeney | Bracken County Water District | 6 |
| Doug | Wagner | Northern Kentucky Water District | 6 |
| Raymond | Williams | West Shelby Water District | 6 |

WATER DISTRICT COMMISSIONER

EXHIBIT 4



Stoll Keenon Ogden PLLC damon.talley@skofirm.com drtalley@windstream.net (270) 358-3187 Stoll Keenon Ogden PLLC gerald.wuetcher@skofirm.com https://twitter.com/gwuetcher (859) 231-3017

STOLL KEENON OGDEN

ORDER OF PRESENTATION – Part 1

- Garrard 911 Fee
- Related Party Transactions
- Versailles
- Municipal Rate Cases
- House Bill 5 Personal Information Security
- Recent Legislation of Interest

STOLL KEENON OGDEN

ORDER OF PRESENTATION – PART 2

- Contract Cases Trilogy
- Meter Testing Issues
- Special Purpose Governmental Entities (House Bill 1) Update
- Water Storage Tank Issues
- PSC Privacy & Notice Requirements
- PSC Ratemaking Trends









Funding 911 Call Centers

Historically...Telephone Land Line
 ≻ Cell Phones - \$0.70

• New Funding Source

- ➢ Electric Utilities
- ➤ Water Utilities





STOLLIKEENONIOGDEN

911 FEE

- Garrard County Ordinance
- Nature of Fee
- Potential Problems for Utility
- Legal Battle
- Statewide Impact
- KRWA's Role
- Your Role

STOLL KEENON OGDEN

911 FEE

- Garrard County Ordinance
 - Charge on Water Meters
 - ➤ Water Utilities Bill and Collect
 - Water Utilities Retain 2 Percent

GARRARD COUNTY ORDINANCE

• Water Meters

➤ Active

➤ Inactive

- ➤ Storage
- > Distributor's Warehouse

| STOLL KEENON OGDEN | |
|--------------------|--------------|
| GARRARD COUN | TY ORDINANCE |
| • Amount of Fee | |
| Originally: | \$2.50 |
| Intent: | \$0.25 |
| Enacted: | .25 Cents |
| • Per Month? | |
| | |

STOLLIKEENONIOGDEN

NATURE OF FEE

- Fee on Customer?
- Fee on Utility?
- Who Owns Meter?
- What is the Role of Utility?
 - Billing & Collection Agent
 - ≻Tax Payer

POTENTIAL PROBLEMS FOR UTILITY

- Add 911 Fee as Separate Line Item
- Absorb Cost Until Next Rate Case
- Customers Do Not Pay
- Termination of Water Service for Non-payment

STOLL KEENON OGDEN

LEGAL BATTLE

- Lawsuit Filed
- Circuit Court says OK
- Court of Appeals Reverses
- Decision Issued: 7-3-2014
- DR Pending Before SC

| STOLL KEENON OGDEN |
|--------------------|
|--------------------|

PARTIES ON APPEAL

- Appellants: City of Lancaster Garrard Co. Water Assoc.
- Appellee: Garrard County Fiscal Court
- Friends of the Court: Numerous

| OLL KEENON OGDEN | |
|------------------------------------|-------------------------|
| FRIENDS OF | THE COURT |
| Supporting Water Utilities | Supporting Fiscal Court |
| Duke Energy | |
| Kentucky Power | |
| • KU | |
| • LG&E | • KACo |
| • KRWA | |
| • KAEC | |
| | |

STOLLIKEENONIOGDEN

COURT OF APPEALS DECISION

- Held: Not a Valid User Fee
- Why?

> No Direct Relationship

Fee Charged \longleftrightarrow Benefit Received

STOLL KEENON OGDEN

COURT OF APPEALS DECISION

- Rationale:
 - Nexus (Connection)
 - > Examples:
 - Tolls on Ohio River Bridges
 - KRA Water Withdrawal Fees
 - Telephone Users & 911 Fee

COURT OF APPEALS DECISION

- State Wide Impact
 - KACo Financing Fiscal Court's Attorney
 - 118 Counties Watching
 - KLC Watching
 - KACo County Line Magazine

STOLL KEENON OGDEN

KRWA's ROLE

- Supporting Appellants
 - City of Lancaster
 - ➢ Garrard Co. Water Association
- File Amicus Brief
- Alert Member Utilities

STOLL KEENON OGDEN

YOUR ROLE

- Stay Informed
- Be Vigilant
- Alert KRWA
- Do NOT Ignore The Problem

TALLEY'S TAKE AWAY



STOLL KEENON OGDEN

REPORTING RELATED TRANSACTIONS

STOLLIKEENONIOGDEN

WHAT IS A RELATED TRANSACTION?

- Transaction > \$25
- Between Utility and . . .
 - Current/Former Employee
 - Director/Commissioner/Owner
 - Family Member
 - Business Enterprise of "Related Party"
- Employment of Family Member

ARF Form 3

STOLL KEENON OGDEN

WHAT IS A "FAMILY MEMBER"?

- Spouse
- Child
- Parent
- Parent-In-Law
- Son/Daughter-In-Law
- Grandparent
- Grandchild
- Member of Household

STOLL KEENON OGDEN

REQUIRED REPORTING

- Report Required For Rate Applications Under ARF Procedures
- Reported on ARF Form 3
- Each Commissioner/Director/CEO must complete Form 3 Under Oath
- Must List All Related Transactions > \$25 within previous 24 Months
- "Knowledge & Belief" Standard

REQUIRED REPORTING

- PSC Staff requesting completion of statements similar to ARF Form 3 in non-ARF rate cases as part of discovery process
 - -Case No. 2012-00072
 - -Case No. 2014-00342
- Requests seeks transactions for last 5 years

STOLLIKEENON OGDEN

WHY REPORTING REQUIREMENT?

- Law presumes Past Transactions Are Reasonable (B/P on Challenging Party)
- Exception: Transactions with Related Party (B/P on the Utility)
- Difficult for PSC Staff to Ascertain Related Transactions – Lacks Local Knowledge
- Effective Enforcement Mechanism (Perjury Statutes)

STOLL KEENON OGDEN

RECOMMENDED RESPONSE

- Duty to Inquire Prior to Rate Filing
 - -Concerns RE: Adverse Publicity
 - -Nepotism Sections of Local Ethics Code
 - Place Language Into Procurement
 Documents Requiring Disclosure
 - Cross-Check with Sec/State's Online Records

RECOMMENDED RESPONSE

- Document All Aspects of Transaction in Rate Application
- Do Not Conceal Transaction Focus on Controversial Expenditures
- Seek a Specific Finding From Staff
- View Disclosure in Rate Proceeding as A Benefit - Possible Inoculation from Critics

STOLL KEENON OGDEN

PSC CASE NO. 2011-00419:

VERSAILLES-NORTHEAST WOODFORD WATER DISTRICT WHOLESALE CONTRACT

DECISION ISSUED - 8/12/2014

STOLLIKEENONIOGDEN

FACTS OF THE CASE

| 1966: | Contract Executed | | |
|-------------------------------------|---------------------------------------|--|--|
| | Maximum: 5,000,000 gallons | | |
| 1994: | Contract Amended | | |
| | Maximum: 15,000,000 gallons | | |
| 2000-2005 | : City Expends \$13M to Upgrade Plant | | |
| 2011: | District & FPB Execute Contract | | |
| Min: 3,000,000 Gals – "Take-or-Pay" | | | |
| District Usa | age: 14,000,000 gallons per month | | |
| | 20% of City's Production | | |

FACTS OF THE CASE

Contract States:

Versailles **shall furnish water**... in such quantity as may be required by the District, not to exceed 15,000,000 gallons per month

| STOLLIKEENONIOGDEN | | |
|-------------------------------|------------|--|
| CASE HISTORY | | |
| • Filed: | 09/20/2011 | |
| Hearing | 05/03/2012 | |
| Briefs Filed | 07/06/2012 | |
| Submitted | 07/06/2012 | |
| PSC Decision | 08/12/2014 | |

STOLL KEENON OGDEN

ISSUES

- Requirements Contract?
- Can PSC Modify Contract?
- Other

PSC DECISION

- Not a Requirements Contract
- PSC Can Modify Contracts
- Request Not Reasonable
- Silent on Other Issues

STOLL KEENON OGDEN

RATIONALE

- Not a Requirements Contract
 - Southeast Woodford Contract
 - City's Intent
 - Minutes of City Council Meetings

STOLL KEENON OGDEN

RATIONALE

- Authority to Modify Contracts
 - State Police Power
 - > KRS 278.200
 - Simpson County Water Dist. (1994)
 - Southern Bell Tele. (1936)

RATIONALE

• Versailles Lost Because:

➢ Water Treatment Plant Expansion Not Solely for NE Woodford

South Woodford Contract

Versailles Can Raise Wholesale Rate

| STOLL KEENON OGD | en 🕥 | |
|------------------|-------------|-----------------|
| S | HIFTING SAN | IDS |
| YEAR | VERSAILLES | <u>FPB</u> |
| 2010 | \$2.26 | \$1.81 |
| 2011 | \$2.26 | \$1.91 |
| 2012 | \$2.26 | \$2.01 |
| 2013 | \$2.26 | \$2.01 |
| 2014 | \$2.26 | \$2.25 (\$2.91) |
| 2015 | \$2.26 | \$2.35 |
| 2016 | ? | \$2.45 |
| 2017 | ? | \$2.55 |



DO NOT SAY:

Seller shall supply all quantities required by Buyer

-OR-

Buyer shall buy all its water from Seller ("Requirements" Contract)

STOLL KEENON OGDEN

SAY:

Seller shall furnish such quantities as Buyer may require, but not to exceed _____ gallons per month

-OR-

STOLL KEENON OGDEN

SAY:

The Buyer shall purchase a minimum of _____ gallons per month from Seller

"TAKE OR PAY CONTRACT"

STOLL KEENON OGDEN

QUANTITY/MAXIMUM

- Good Monthly Amt (30,000,000)
- Better Daily Amount (1,000,000)
- Best Gals Per Minute (700 GPM)
- Perfect GPM At Each Delivery Pt

RECENT MUNICIPAL UTILITY RATE CASES

STOLLIKEENONIOGDEN

MUNICIPAL CASES SINCE 2014

- 35 Municipal Rate Filings
- 5 Cases Established
 - Augusta Case No. 2015-00039
 - Danville Case No. 2014-00392
 - Frankfort Case No. 2014-00254 Final
 - > LFUCG Case No. 2014-00214 Final
 - Salyersville Case No. 2015-00151

PSC REGULATION OF MUNICIPAL RATES

- Still No Administrative Regulation
- Procedures Based Upon Guidance Letter
- PSC Not Strictly Following Guidance Letter
- PSC Treating Munis As Public Utilities
- PSC Ignoring KRS 278.200 Requirement For Hearing

STOLL KEENON OGDEN

PSC REGULATION OF MUNICIPAL RATES

- Possible Effects on Regulation of Water Districts/Water Associations
 - Frankfort: Changes to Revenue Requirement Calculation Methodology
 - Danville: Plant Must Be In Service Before Rate Recovery?

STOLLIKEENON OGDEN

HOUSE BILL 5: PROTECTION OF PERSONAL INFORMATION

WHO IS SUBJECT TO HB 5?

- Executive Branch Agencies
- City & County Governments (Including urban-county, charter county, consolidated local & unified local governments)
- SPGEs, any boards, bureau, agency, committee of city or county government
- Public School Districts
- Every public institution of post-secondary education
- Non-Affiliated 3d parties w/access to agency info
- Water Districts are subject to requirements

STOLL KEENON OGDEN

WHAT IS PERSONAL INFORMATION?

An **individual's first and last name** combined with:

- Acct /credit card number that in combination with security code or PW would permit access to an account
- Social Security Number
- Driver's License Number
- Taxpayer Identification No (if it contains SSN)
- Passport No (or Other US Gov't ID Number)
- Individually identifiable health information

STOLL KEENON OGDEN

DUTY TO SAFEGUARD PERSONAL INFORMATION (PI)

- If it maintains or possesses PI, regardless of the form, an Agency must maintain and update procedures and practices to protect against security breaches
- SPGE's reasonable security & breach investigation procedures & practices must be IAW with policies that DLG establishes
- Commonwealth Office of Technology to provide assistance to any requesting agency

WHAT IS A SECURITY BREACH?

The unauthorized acquisition, distribution, disclosure, destruction, manipulation, or release of unencrypted or unredacted records or data that compromises, or the agency or nonaffiliated third party reasonably believes may compromise, the security, confidentiality, or integrity of personal information and result in the likelihood of harm to one or more individuals; OR

STOLL KEENON OGDEN

WHAT IS A SECURITY BREACH?

The unauthorized acquisition, distribution, disclosure, destruction, manipulation, or release of encrypted records or data containing personal information along with the confidential process or key to unencrypt the records or data that compromises, or the agency or nonaffiliated third party reasonably believes may compromise, the security, confidentiality, or integrity of personal information and result in the likelihood of harm to one or more individuals

STOLLIKEENON OGDEN

REQUIRED ACTION IN EVENT OF SECURITY BREACH

Agency Notifies:

– KSP Commissioner

- Auditor of Public Accounts
- Attorney General
- Commissioner, DLG
- Commonwealth Office of Technology to develop
 Notification Form
- Notification must be ASAP but w/i 72 hours of notice or determination of security breach

REQUIRED ACTION IN EVENT OF SECURITY BREACH

- W/I 72 hours of notice of breach, Agency begins a reasonable & prompt investigation IAW security & breach investigation procedures
- Scope of investigation: To determine whether breach has or is likely to result in misuse of personal information

STOLLIKEENON OGDEN

IF SECURITY BREACH LIKELY TO RESULT IN MISUSE OF PI

- W/I 48 hours of completion of investigation, Agency notifies:
 - KSP Commissioner
 - Auditory of Public Accounts
 - Attorney General
 - Commissioner, Dept of Local Government
 - Commissioner, Dept of Libraries/Archives

STOLL KEENON OGDEN

IF SECURITY BREACH LIKELY TO RESULT IN MISUSE OF PI

 With 35 days of notice to officials, Agency notifies all persons affected by breach

IF SECURITY BREACH LIKELY TO RESULT IN MISUSE OF PI

If more than 1,000 persons must be notified, the Agency must:

- At least 7 days prior to issuance of notification
- Notify **DLG** AND **Consumer Reporting Agencies** Regarding **Timing**, **Distribution**, and **Content** of the notice

STOLL-KEENON-OGDEN

NOTIFICATION

- Post Conspicuously on Agency's Website
- Notify regional or local media
- (If widespread) Notify major statewide media (including broadcast media)

STOLL KEENON OGDEN

NOTIFICATION

- Personal communication to individual may be:
 - -Writing
 - –E-mail
 - -Telephone
- Method of communication will be most likely to result in actual notification

CONTENTS OF NOTICE

- Clear and Conspicuous
- Description of the categories of info breached
- Agency Contact Info (address, phone #)
- A description of the agency's actions to protect info from further disclosure
- Toll-free #s, addresses and website addresses for:
 - Major credit reporting bureaus
 - Federal Trade Commission
 - Office of Kentucky Attorney General

STOLL KEENON OGDEN

NOTIFICATION

- Made only after consultation with law enforcement
- No Notification if law enforcement makes written request for a delay B/C notice may impede a criminal investigation
- Notices shall be sent after law enforcement notifies in writing of criminal investigation's completion
- May delay notice if necessary to restore the reasonable integrity of system and AG approves delay in writing

STOLL KEENON OGDEN

NO NOTIFICATION REQUIRED

- If determination that no misuse has occurred and is likely to occur – NO NOTIFICATION REQUIRED
- Must maintain records that reflect the basis for its decision for a specified retention period
- Notify following of determination:
 - KSP Commissioner
 - Auditor of Public Accounts
 - Attorney General
 - Commissioner, DLG

OTHER PROVISIONS

- Waiver of Rights Void and Unenforceable
- AG may bring an action to enforce
- Statute does not create a private right of action
- KDLA to establish procedures for the appropriate disposal or destruction of records that include personal information
- Agency must still comply with other state & federal laws regarding release of information.
- Act became effective January 1, 2015

STOLL KEENON OGDEN

DLG POLICY

- HB 5 Required DLG to Establish Policies and Procedures for Protection of Personal Information for Local Government Units
- Issued in December 2014
- Available at DLG Website
- Prescribes the responsibilities of Local Governmental Units

DLG

• Office of Attorney General Enforces the Policy

STOLL KEENON OGDEN

LOCAL GOVERNMENT UNIT'S RESPONSIBILITIES

- Make Its Employees Familiar W/Policy
- Designate Point of Contact
 Must Be Familiar with Policy
 - Ensures Employees Are Familiar With Policy
 - Serves As Contact Person With Other Agencies
 - Ensures Agency Compliance with Policy
 - Responsible for Responding to Security Breaches

LOCAL GOVERNMENT UNIT'S RESPONSIBILITIES

- Must Encrypt All Digital Media
- Limit Access to Personal Information Authorized Persons Only
- Use Software That Creates An Access Audit Trail
- Allow Placement of Pl on Portable Devices Only Where Necessary

STOLL KEENON OGDEN

LOCAL GOVERNMENT UNIT'S RESPONSIBILITIES

- Require Written Acknowledgement from Employees Using Mobile Devices With PI
- Institute Appropriate Physical Security Rules
- Establish/Follow Appropriate Destruction of Records Policies
- Use Prescribed Destruction of Records
 Procedures

STOLL KEENON OGDEN

WHAT SHOULD YOU DO?

- Develop/Implement a plan to protect PI
- Develop a plan for addressing Security Breaches
- Review/modify contracts to ensure that vendors implement and maintain procedures as stringent as required of water district
- Be alert for DLG issuances

WHAT SHOULD YOU DO?

- Conduct an audit to determine the type and amount of information collected & its need
- Develop data retention and disposal policies
- Delete consumer data no longer need
- Use privacy enhancing technologies Audit existing insurance policies for coverage
- Obtain specialty coverage for data breach or cyber security



STOLL KEENON OGDEN

RECENT LEGISLATION

- HB 235 (2014) "CPCN Bright-Line Test" renewed
- HB 276 (2014) SPGE office holders limited to one taxing SPGE
- HB 331 (2014) mayor/city council offices incompatible with other offices
- SB 91 (2014) Authorizes E-Service of PSC Orders
- SB 123 (2014) Repeals KRS 278.185
- HB 276 (2015) 30-year amortization for KIA wastewater loans)

TRILOGY OF

| THE CASES | | | |
|-----------------|--------------------------|------------------------|--------------------------|
| PSC Case No. | Seller | Purchaser | Decision Entered |
| 2013-00250 | Frankfort Water Plant Bd | South Anderson WD | 09/12/2014 10/09/2014 |
| 2013-00251 | Louisville Water Co. | Hardin County WD No. 1 | 09/12/2014 |
| 2013-00252 | Louisville Water Co. | Hardin County WD No. 2 | 09/12/2014 |

STOLL KEENON OGDEN

COMMON ELEMENT:

Minimum Purchase Provision (Take-or-Pay)

| STOLLIKEENON OGDEN | | | |
|--------------------|---|------------|---|
| CASE SUMMARY | | |] |
| Cases Init | iated: | 07/03/2013 | |
| Purpose: | Investigate Reasonableness of Water Supply Contracts | | |
| Briefs Sub | omitted: | 08/21/2013 | |
| Informal | Conference: | 07/17/2014 | |
| Decision: | | 09/12/2014 | |
| | | | |



LEGAL ISSUE

Does a contract containing a minimum purchase provision require prior approval of the contract by PSC under KRS 278.300?

STOLL KEENON OGDEN

"[C]ontract requires Hardin District [No. 2] to assume significant **financial obligations** that may affect the price and quality of the water service that Hardin District provides to its customers. Moreover, these obligations appear to render the proposed water purchase agreement an **evidence of long-term indebtedness** that would require prior Commission approval pursuant to KRS 278.300(1)."

Order of 07/03/2013, Case No. 2013-00252
KRS 278.300:

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



STOLLIKEENONIOGDEN

SECURITIES/EVIDENCES OF INDEBTEDNESS - EXAMPLES

- Bank Loan
- KIA Debt
- RD Financing
- Revenue Bonds

STOLLIKEENONIOGDEN

SECURITIES/EVIDENCES OF INDEBTEDNESS

- Utility Receives **Proceeds** Now
- Utility Pays in the Future



STOLL KEENON OGDEN

WATER SUPPLY AGREEMENT

- Seller Promises to Deliver Water in the **Future**
- Buyer Promises to Pay in the **Future**





PSC HOLDING

- Minimum Purchase Requirements Contract is NOT an Evidence of Indebtedness
 - ➢ Nothing "Issued"
 - > No Proceeds
- Seller to File Contract with PSC
- PSC May Review Contract
- SDC is Red Flag (\$6,000)
- CIAC is OK (\$250,000)

| STOLL KEENON OGDEN | | | | | | |
|------------------------|--|--------------------------|------------|--|--|--|
| TIME LINE | | | | | | |
| PSC <u>Case No.</u> | Utility | Contract <u>Filed</u> | Approved | | | |
| 2013-00250 | Frankfort Water Plant Bd | 10/25/2012 | 09/12/2014 | | | |
| 2013-00251 | Louisville Water Co Hardin County WD No. 1 | 06/13/2012 | 09/12/2014 | | | |
| 2013-00252 | Louisville Water Co. – Hardin County WD No. 2 | 04/29/2013 | 09/12/2014 | | | |



TALLEY'S TAKE AWAYS

STOLL KEENON OGDEN

TALLEY'S TAKE AWAYS

- Take-or-Pay Contracts Still Valid
- PSC Will Scrutinize Take-or-Pay Contracts
- Call \$\$ CIAC not SDC



TALLEY'S TAKE AWAYS - PART 2

- Advantages of Seeking PSC Prior Approval
 - Avoid Risk of Disallowance in Rate Case
 - Avoid Second Guessing at Later Date



STOLL KEENON OGDEN

METER TESTING REQUIREMENTS

- KRS 278.210
 - Establishes Statutory Standard for Meters
 - Meter may not be more than two percent to the disadvantage of the customer (2% fast)

METER TESTING REQUIREMENTS

KRS 278.210(4):

"If a utility demonstrates through sample testing that no statistically significant number of its meters over-register above the limits set out in subsection (3) of this section, the meter testing frequency shall be that which is determined by the utility to be cost effective."

STOLL KEENON OGDEN

METER TESTING REQUIREMENTS

- 807 KAR 5:066
 - Requires Meters to be tested prior to initial placement into service
 - Prohibits Meters from remaining in service more than 10 years without testing
 - Meters failing to meet standards may not be placed into service
 - Prescribes Testing Standards

STOLL KEENON OGDEN

METER TESTING REQUIREMENTS

- 807 KAR 5:006
 - Requires Meters to be tested before being installed for use by a customer
 - Permits use of another entity to test
 - Requires Testing By Certified Meter Testers
 - Modifies Statutory Standard to Include Meters running > 2% slow

REDUCING METER TESTING COSTS

- Extend the Period in Service Without Testing
- Use of Sample Testing Programs ILO Testing Entire Meter Inventory

STOLL KEENON OGDEN

Warren County Water Dist. v. PSC

- Sought a deviation from 10-yr test requirement based upon results sample-testing
- Testing Results:
 - Meters remained within standards until 16 years
 - Meters Ran Slow after 16 years
 - Lost revenue from inaccurate meters did not exceed cost of testing until 21 years in service

STOLL KEENON OGDEN

Warren County Water Dist. v. PSC

- Utility: Cost-effective for meters to remain in service without testing for 21 years – KRS 278.210(4)
- PSC authorized deviation to permit meters in service for 16 years without testing
- PSC found:
 - Customers not disadvantage by slower meters
 - Knowingly allowing slow meters to remain in service violates KRS 278.170
 - Denied Requested 21-year Deviation
- Utility Brings Action for Review REVERSED

Case No. 2009-00253

- Kentucky-American sample tested group of meters
- Meters tested within standard after 15 years of service
- Deviation from 807 KAR 5:066 granted
- PSC extended time in service to 15 years for all
- Estimated annual savings: \$90,000
- Estimated Annual Capital Expenditure Savings: \$545,000

STOLL KEENON OGDEN

SAMPLE TESTING

- Based upon Accepted Statistical Principles
- Representative sample is selected & tested annually
- Utilities Do NOT Test All Meters
- Electric and Natural Gas Utilities have received authorization upon request
- No Water Utility requested

STOLLIKEENON OGDEN

REQUIRED SAMPLE TESTING FOR ELECTROMAGNETIC FLOW METERS

- PSC has expressed doubts regarding accuracy of electromagnetic meters
- Required Utilities to develop sample testing program for such meters
- Case No. 2013-00042 PSC required testing of:
 - 100 meters annually for 1st Five Years
 - > 1,000 meters annually for next Five years

REQUIRED SAMPLE TESTING FOR ELECTROMAGNETIC FLOW METERS

- Case No. 2011-00233: Required Utility to adopt written plan for a sample testing program to test the proposed metering equipment after its deployment
- Utilities should consider the cost of programs when making purchasing decisions
- Require Vendors of meters to include cost of programs in any bid proposal

STOLL KEENON OGDEN

INADEQUATE MANUFACTURER TESTING

- Case No. 2013-00042
 - Manufacturer admitted that each meter was not tested
 - Noting 807 KAR 5:006, PSC required all meters to be tested before installation by certified testers
- Requirement now routinely appears in approval of meter replacement programs

STOLL KEENON OGDEN

INADEQUATE MANUFACTURER TESTING

- Utilities Should Inquire About Manufacturer's Testing Processes Before Major Purchase Of Metering Equipment
- Consider Cost of Performing Its Own Tests When Making Purchase Decisions
- Consider Negotiating With Meter Equipment Vendor To Bear Any Testing Costs

SPECIAL PURPOSE GOVERNMENTAL ENTITIES (SPGE) UPDATE

STOLL KEENON OGDEN

SPGE UPDATE

- House Bill 1 (2013) Created KRS Chapter 65A
- House Bill 192 (2014) Amended KRS Chapter 65A
- House Bill 348 (2015) Further Amendments*

Effective: 06/24/2015

STOLL KEENON OGDEN

EFFECT OF HOUSE BILL 192

- Corrects Technical Mistakes
- Clarifies Reporting Requirements
 - > To Whom Do You Report?
 - What Fee Increases Must Be Reported?
- Budget Amendments Permitted

NO REPORTING REQUIRED

- Tap Fees
- Late Payment Fees
- Purchased Water Adjustments
- Any Fee or Rate Requiring PSC Approval

STOLL KEENON OGDEN

BUDGETS

- KRS 65A.080(1) Requires
- Post On DLG Website
- Periodic Review of Budget
- Amend As Necessary
- Post Amended Budget on DLG Website

STOLL KEENON OGDEN

BUDGETS

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

KRS 65A.080(1)

HOUSE BILL 348 (2015)

- Clarifies that SPGE does NOT include
 - Chambers of Commerce
 - Public Housing Authority
- SFA 2 Removes Financial Disclosure Exemption

THIS AFFECTS YOU!



• HB 348/SFA 2 - Removes Exemption

STOLL KEENON OGDEN

TALLEY'S TAKE AWAYS

TALLEY'S TAKE AWAYS

- Obtain/Review County Ethics Code
- Provide A Copy to
 - ➤ All Board Members
 - ➤ All Employees
- Review Financial Disclosure Forms
- Complete & File Forms with County Ethics Board (If Required)





WATER STORAGE TANK COLLAPSE

| Event: | 177K Gallon Standpipe Collapsed | |
|------------------------------------|---------------------------------|--|
| Date: | August 9, 2014 | |
| Time: | 5:20 PM | |
| Location: | Waddy, Kentucky | |
| Utility: | US 60 Water District | |
| Deaths: | None | |
| Injuries: | None | |
| Damage: | More Than \$25,000 | |
| PSC Contacted: 7:23 PM (No Answer) | | |

STOLL KEENON OGDEN

REPORTING REQUIREMENTS

807 KAR 5:006, § 27 requires notice of utilityrelated incident to PSC by telephone or e-mail if:

- Death
- Shock or burn requiring medical treatment at a hospital
- Inpatient overnight hospitalization;
- Actual/potential property damage of \$25,000;
- Loss of service for 4 hours to 10% or 500 utility's customers

STOLL KEENON OGDEN

PSC RESPONSE TO INCIDENT

- PSC Staff Conducts Investigation
- Concludes that Utility called PSC's Consumer Hotline, but left no message
- Utility made no other effort to follow PSC's 2012 Notification Guidelines
- PSC Alleges in Show Cause Order that Utility violated 807 KAR 5:006, §27

PSC RESPONSE TO INCIDENT

- PSC issued notice to all water utilities of new incident notification procedures
- New Telephone Number & E-mail address to contact
- PSC requires all water utilities to provide utility emergency contact information

STOLL KEENON OGDEN

LESSONS LEARNED

- Ensure Key Staff Are Aware of Contact Information & Reporting Requirement
- Obtain contact info of key PSC personnel in advance of any incident
- Report incident to PSC within 2 hours of incident
- Also report to key PSC personnel if contact info is known

STOLLIKEENON OGDEN

LESSONS LEARNED

• Review Insurance Policies and Ascertain Extent of Insurance Coverage

WATER STORAGE TANK SITING

- Cases No. 2012-00470/No. 2014-00084
- Water District seeks to construct 1MG Storage Tank in Residential Area – within 100 feet of existing homes
- Homeowner Association attempts to negotiate different location
- Negotiations fail
- Water District seeks Certificate for Tank

STOLL KEENON OGDEN

WATER STORAGE TANK SITING

- Homeowner Association opposes
- After lengthy proceeding (14 Months), PSC denies – failure to demonstrate need for size of tank
- Water District redesigns tank (750K Gals) for same site
- Home Owners' Association opposes
- Length of 2d proceeding: 13 Months

STOLL KEENON OGDEN

POSSIBLE LESSONS LEARNED

- Consider litigation costs & lost time before refusing negotiations
- Customer Relations/Public Relations How important is utility's public image?
- Role of Viewshed/Aesthetic Concerns
- Consider Viability of Alternative Sites
- Hydraulic Analysis should be calibrated

EFFECTIVE STORAGE DECISION

- Case No. 2014-00101 (May 30, 2014)
- PSC announces use of "effective storage standard"
- In assessment of need for proposed storage tank – nominal storage volume of standpipes not used. "Effective" storage volume of three storage standpipes considered instead



STOLLIKEENONIOGDEN

PSC PRIVACY RULES

- Revisions to PSC Rules of Procedure Effective 10/31/2014
- Filer responsible for identifying and removing personal information
- Filer must redact personal information from filing
- Failure to redact personal information will result in rejection of filing

WHAT IS PERSONAL INFORMATION?

- Combination of Name and:
 - Social Security Number
 - Taxpayer ID
 - Birth Month & Date
 - Driver's License No. or Other Agency ID No.
 - Financial Account Numbers
 - Address, E-mail Address, or Telephone Number of non-party
- Name is First & Last Name or Business Name

STOLL KEENON OGDEN

STOLL KEENON OGDEN

RECOMMENDED ACTIONS

- Carefully Review All Documents Before Submission
- When in Doubt, Redact

PSC ELECTRONIC NOTICE

Senate Bill 91 (2014)

- Authorizes PSC to serve its Orders upon parties by electronic mail
- PSC no longer required to obtain waiver of service by mail
- Party may request service by mail but must demonstrate "good cause"
- PSC Began Electronic Delivery 7/16/2014 -All Orders/Case Docs Sent by E-mail

STOLL KEENON OGDEN

PSC REGULATION REVISION

- PSC Rules of Procedure Revised (10/31/2014)
- Revision Mandates Service of All Orders By E-Mail
- Intervening Party Must Request Service By Mail At Time of Intervention – Show Good Cz
- Link to Posted Documents will be E-mailed to the E-mail address listed on filed papers

STOLL KEENON OGDEN

RECOMMENDED ACTIONS

- List E-mail Address Correctly On All Papers
- Place the utility's E-mail address in initial paper (e.g., Application)
- Confirm with PSC that utility's correct E-mail address is on file
- Check the utility's E-mail box often
- Set Spam Filters to avoid blocking of PSC messages
- Set Forwarding Rules on Mail Application

STOLLIKEENONIOGDEN

NOTICE OF RATE ADJUSTMENTS FOR SEWER UTILITIES

STOLLIKEENON OGDEN

SENATE BILL 123 (2014)

- Affects Sewer Utilities Only
- Eliminates requirement that a sewer utility provide notice of any rate adjustment to its customers by mail
- PSC has revised its regulations to eliminate any requirement for notice by mail for sewer utilities



PSC TRENDS: RATE INDEXING

- What is Rate Indexing?
 - Adjusting Rates Per Published Index
 - CPI W (Used by SSA)
 - CPI U
 - Producer Price Index (formerly Wholesale Price Index)

STOLL KEENON OGDEN

PSC TRENDS: RATE INDEXING

- Not Favored By PSC
 - Case No. 2015-00019
 - Suspicion of CPI's Use Lead to Rate Investigation
 - PSC Staff Actively Discouraging Use
 - Case No. 2013-00148
 - PSC Rejects Use of CPI to Forecast Certain Costs – Not An Accurate Reflection of Costs

STOLL KEENON OGDEN

PSC TRENDS: DEPRECIATION

- Depreciation Permits Recovery of the Cost of Capital Asset
- Annual Depreciation Expense = Asset Cost ÷ Useful Life (years)
- Common Practice
 > Useful Life based upon life of loan/bonds
 > No depreciation study performed

PSC TRENDS: DEPRECIATION

- Effect of Erroneous Useful Life
 - Generational Inequities (Earlier Generation pays for Asset that a Later Generation Uses)
 Potentially Higher Rates
- Many Utilities Refusing to Claim Portion of Depreciation Expense in Rates
- "Money Left on Table" That Utility Never Recovers

STOLL KEENON OGDEN

PSC TRENDS: DEPRECIATION

- Since 2012 Staff Focusing on Useful Lives
- Routinely Recommending Changes When Utility's Useful Life Outside Range in NARUC Depreciation Practices for Small Utilities
- PSC adopting recommendation & requiring Utilities to change useful lives for accounting purposes
- Consult with CPA/Engineer Before Responding to Staff Report

STOLL KEENON OGDEN

PSC TRENDS: REVENUE REQUIREMENTS

Current PSC Methodology: Revenue Requirement =

O&M Expenses + Depreciation + Debt Service Coverage

Debt Service Coverage = 1.20 x (3-YR Average Interest + Principal Payments)

PSC TRENDS: REVENUE REQUIREMENTS

- PSC Financial Analysis Staff questioning this methodology
 - No historical basis for methodology
 - Produces excessive revenue requirement
 - Bond coverages do not consider depreciation
 - Many WDs rejecting PSC Methodology's & requesting lower revenues

STOLL KEENON OGDEN

PSC TRENDS: REVENUE REQUIREMENTS

PSC Financial Analysis Alternative:

"Cash Needs" Methodology

- No additional working capital (1.0x, NOT 1.2x)
- DSC = 3-YR Average of Interest + Principal Payments
- Lower Revenue Requirement Results





















UCMR 3—KY Results

- Primary "contaminants" being detected at very low Minimum Reporting Limits (MRL)
 - Chlorate (42)
 - Strontium (53)
 - Molybdenum (23)
 - Vanadium (35)
 - Hexavalent chromium (46)
- Not seeing others of concern
 - 1,4 dioxane
 - PFOA/PFOS





DW Regulatory Development

- SDWA-wise, quiet on the Federal front
- For KY DOW in 2014
 - Revised Total Coliform Rule (and primacy application) in 401 KAR 8:200
 - Lead and Copper (Reduction of Lead in Drinking Water amendment to the SDWA) in 401 KAR 8:300
 - Bottled Water in 401 KAR 8:700
- Pending/Maybe
 - Submetering
 - Sustainability

Kentucky

Federal Actions Worth Watching

- Lead and Copper Rule/Long Term Revisions
 NDWAC meeting; proposed rule in 2016
- Storage Tank "Rule" (inspections/maintenance)
- Congressional bills related to the West Virginia/Elk River spill
- Cyber-security
- Harmful Algal Blooms/Gulf Hypoxia





Drinking Water Program Challenges

Resources

- Both staffing and funding
- Organizational challenges (refer back to the organizational chart)
- Operator staffing
- IT/SDWIS-Prime

Program Redundancy

- At the compliance officer, inspector and CD staff level
- SDWIS Prime database administration
- Program Coordinator
- Within water systems (operators/management)

Drinking Water Program Challenges

Stage 2 DBP Rule Compliance

- Stage 2 violation status
- KY completed 2015, 1st quarter compliance with 46 violations
 Compliance staff is working with DENF to prepare for
- increased number of referrals as a result of an increase in violations
- TA staff modifying its approach to broaden outreach for providing assistance to systems out of compliance
- Biggest challenge: What are the consecutive systems' options??



Kentucky

Drinking Water Program Challenges

LT2 SWTR Crypto Monitoring (2nd Round)

- Schedule 1 systems begin no later than April 1, 2015 and
 - Schedule 2 systems no later than October 1, 2015 - 1 certified Crypto lab in KY and 2 KY-certified labs out-of-state—Must be certified by KY
 - Systems will be reporting Crypto and E.coli data directly to DOW
- For Schedule 4 systems, KY will use the EPA-allowed level of 100 cfu/100 ml for the E.coli trigger

SDWIS-Prime Transition (Spring 2016)

- "Bare bones" application; more delays
- Less to no state tools/reports
- May delay compliance evaluations
- Centralized IT



Drinking Water Program Challenges

Revised Total Coliform Rule development

- Primacy and regulatory development (adopting federal rule language as written)
 - Number of samples collected by small systems is reduced
 - KY staff and PWSs will need to become familiar with potential reduced monitoring options
 - Assessments
 - Seasonal startup
- Special primacy requirements for reduced monitoring, sample invalidation, assessments, seasonal systems
- EPA finalizing guidance, fact sheets, CCR/PN material







Drinking Water Program Challenges

Source Water Protection

- Congressional bills on both source water protection and HABs (latter has been signed)
- KY developing an HAB program via a stakeholder workgroup
- DOW focusing on monitoring and drinking water sources
- Re-educating systems on assessments
- KY "5-mile policy" revisions??

Managerial/Financial Capacity

- In a technical division; staff development
- Sustainability
 - Climate change

Kentucky



Energy Savings Performance Contracting

Northern KY Water District Seminar Erlanger, KY May 27, 2015





Energy Savings Performance Contracting (ESPC) is a mechanism to

- Update inefficient structural and mechanical issues
- Reduce energy consumption
- Reduce maintenance and operational costs



ESPC

- A Federal and State recognized opportunity for local governments to address
- Deferred maintenance
- Failing or Dilapidated Equipment
- Address increasing energy costs



ESPC

- Mechanism to pay for guaranteed energy efficient upgrades
- Turn key project
- No addition to Debt Capacity
- Authorized by KRS 45A
- Employed by Federal and State Government entities
- Increasing number of local agencies

| and the second se | | | |
|---|--------------------------------------|--|--|
| Local Government Energy Retrofit Program | | | |
| Assists City and Coun | ty Government Agencies | | |
| Feasibility of ESPC | Partnership with | | |

- Feasibility of ESPC
- Preparation of RFP/RFQ
- Selection of Contractor
- Negotiation of Contract and
- Progress Tracking (future funding dependent)

• Dept. for Local Government • U. K. CAER

• KY Energy and Environment

• U.S. DOE

Cabinet

Energy Savings Performance Contracting

"The use of guaranteed savings from the maintenance and operations budget (utilities) as capital to make needed upgrades and modernizations to your building environmental systems, financed over a specified period of time."

-United States Department of Energy





Reservations by local leaders to this procurement method.



Sticker Shock

- Retrofits are Expensive Paid through Energy
- Savings
- Reluctance to Incur Debt
 - ESPCs considered revenueDifferent process from low
 - cost bids

Approximately \$750,000,000 Performance Contracts through KY Finance and Admin Cabinet.

- Dept. of Corrections
- State Universities

Local Governments

- State Parks
- K-12 School

LGERP helps educate:

- Fiscal Courts
- City Commissions
- Governing Boards
- Encourage getting buy in from all interested parties
- Provide regular updates on project progress
- Provide credibility to the Performance Contracting process.





Questions

WATER DISTRICT COMMISSIONER ETHICS PRACTICAL PROBLEMS

- 1. Commissioners Able, Baker, and Charlie of Daniel Boone Water District are holding a joint session with the members of the board of directors of Davey Crockett Water Association to discuss the possibility of joint water construction projects. As they discuss the project, the participants ask their lawyer, Lawyer Dewey of the law firm of Dewey, Cheatem and Howe, if they have the same ethical obligations and if different obligations might affect any joint projects.
- 2. Daniel Boone County has enacted a local ethics code to apply to all county elected and appointed officials, not to county employees. The Code specifically prohibits certain types of conduct that Commissioners Able, Baker, and Charlie of the Daniel Boone Water District would like to engage in. They visit Lawyer Dewey for an opinion regarding the applicability of the local ethics code to them.
- 3. Daniel Boone Water District is considered by the Public Service Commission to be a small utility since it has annual revenues of less than \$5,000,000. Daniel Boone District last year had annual revenues of approximately \$3.2 million. The PSC has an alternative procedure that small utilities may use to file for a rate adjustment in lieu of the procedures that larger utilities use. This procedure uses a printed form that "small utilities" can fill-in or check an applicable box. It also uses the small utility's last filed annual report as the test year for the rate adjustment. PSC regulations expressly state that non-attorneys may complete and sign the form, may answer any requests for information that are made in the alternative procedure proceeding, and can appear on behalf of the small utility at any conferences for the small utility. An attorney must appear at any hearing.

PSC Staff advises small utilities that it will "walk utilities through the process" and will assist in preparing the required notice that must be use to advertise the proposed rates. "You do not need an attorney for these cases," PSC staff states. "Why waste your money?" At a training session for water utilities, an assistant attorney general from Attorney General Dudley Doright's office urges water utilities to use this process, but has warned that if a utility using the alternative process retains an attorney to prepare the application, General Doright will intervene because of perceived waste of the ratepayer's money. "You will need to explain why you spent money for an attorney when there was no apparent need for hiring one," warns Assistant Attorney General Leroy Gibbs.

Commissioners Able, Baker and Charlie agree that Daniel Boone Water District should apply for a rate adjustment. It has been 8 years since the water district's last rate adjustment and numerous expenses have significantly increased. The Commissioners do not want to spend money needlessly and would like to avoid the cost of retaining an attorney. They believe that the water district's staff is
competent to complete the application and that they can rely upon PSC Staff if the need arises.

- 4. It is December and Christmas time is upon the Daniel Boone Water District. At the December meeting of the Board of Commissioners, General Manager Bernie Madoff recommends that all employees be given a Christmas bonus of \$100. Daniel Boone District has no salary/wage compensation policy. The few employment contracts that Daniel Boone District has are silent on the issue of bonuses. The Board approves the recommendation. Manager Madoff then notes that Commissioners Able, Baker, and Charlie have also worked long hours during the past year. Praising their efforts, Madoff recommends a Christmas bonus of \$100 for each commissioner also. Commissioner Able moves to approve the recommendation and Commissioner Baker seconds it. All of the Commissioners vote in favor.
- 5. Daniel Boone Water District is about to embark upon another expansion of its water distribution system to serve some unserved areas of Daniel Boone County. The water district has spent several years planning the extension project and obtaining the necessary financing. Throughout this process, Commissioners Able, Baker, and Charlie have relied extensively upon Bob Builder of Early and Under Engineering for information and guidance. They have not involved Lawyer Dewey in the process. While Lawyer Dewey is paid a retainer, he seldom attends the water district's board meetings. Dewey assumes that the Commissioners will contact him when they have a guestion. Moreover, he has been reluctant about attending meetings because the water district commissioners have questioned the value and expense of his presence at regular board meetings. As the construction is about to start and as loan agreements with Daddy Warbucks Bank are about to be executed, they ask Bob Builder if there are any regulatory approvals that remain to be obtained. Bob Builder responds that all have been obtained. He notes that the Division of Water has approved the construction plans and specs, all necessary building and construction permits were obtained. While Bob Builder has an extensive history of water utility construction projects, he has mostly worked with municipal utilities that are not subject to PSC regulation. He is not aware that PSC approval is required for the construction project and the loan. Based upon Bob's assurances, the Commissioners execute the loan documents and sign the contract for construction. The next day construction on the project begins.

One year later Harry Callahan and Popeye Doyle, PSC auditors, visit Daniel Boone County Water District to review the water district's records as part of a rate case proceeding. They discover the loan agreement and the construction project and report their discovery to the PSC, which immediately initiates a proceeding against Daniel Boone Water District for issuing debt without PSC authorization and constructing facilities without a certificate of public convenience and necessity. In the same proceeding, the PSC orders each commissioner to show cause why he should not be penalized for aiding and abetting the water district's violation. Commissioner Able, Baker, and Charlie request that Lawyer Dewey represent them and the water district in the proceeding.

- 6. The Daniel Boone Water District is a proud member of the Daniel Boone Chamber of Commerce. The chamber has played a significant role in economic development for Daniel Boone County. Its efforts have attracted several new commercial and industrial firms to Daniel Boone County. These firms are large water users. Their addition to the water district's system has ensured the water district's financial viability and is a key factor in allowing the water district to expand to unserved parts of the water district's territory. The Chamber is conducting a fund-raising campaign to fund its economic development efforts. The chairman of the Chamber's fundraising drive appears at the water district's board meeting to request a contribution. Able, who is the Chamber's executive director, moves that the water district provide financial support in the form of contribution of \$5,000.
- 7. The following item recently appeared in the Mingo City *News-Times:*

American flags were flying and the big tents were up to welcome the customers of Daniel Boone Water District's Customer Appreciation Day last Friday on the front lawn of the utility's office in Mingo City. The patriotic red, white and blue décor bring on the warm summer days as the water district honors its customers. Hundreds of water customers joined in to help Daniel Boone Water District celebrate its 75 years of service.

After an early morning thunder shower, the weather was perfect for a fun-filled day for all attendees. The grill was hot with the all-time favorite Nathan's hot dogs and the fixings being served. And to top off the nice lunch, customers also enjoyed everyone's favorite deliciously refreshing Erhler's Dairy Ice Cream.

Terry Meiners was on site with WHAS Radio for a live radio remote as customers spinned the birthday wheel and the children received coloring books and crayons. Many vendors were on hand including Davey Crockett University Cooperative Extension Agency, and the Boone State National Guard who provided children with toy helicopters. The Mingo City Fire Department had the big red fire truck on-site for children to climb up in and have their pictures made. Others joining in and providing valuable information for customers as well as giveaways were Dr. Kildare Hospital, International Brotherhood of Electrical Workers Local 3695, and the Alfred G. Packer Deli and Food Emporium. Customers attending received a limited edition Daniel Boone Water 75th anniversary limited edition tee shirt.

The water district commissioners and employees proudly unveiled their new water treatment plant.

Daniel Boone's Chairman of the Board welcomed everyone and Commissioner I.M. Able gave a brief summary of the water district's history. Guest Speaker Maynard T. Krebs with Boone State Rural Water was the guest speaker showing his association's support and singing the water district's praises. He noted that the water district had just won BSRA's Leaking Pipe Award for Outstanding Water System Management.

After the presentation, Daniel Boone District announced door prize winners, who include: Hazel Nut, Robyn Banks, Doug Graves, and Ted E. Baer. The winner of the \$100 water bill credit was Penny Wise. Daniel Boone District also recognized Stu Pitt, the recipient of the water district's annual \$2,500 college scholarship, which is awarded to the graduating Mingo City High School senior with the highest grade point average.

Daniel Boone District Commissioners I.M. Able, Chris P. Bacon, and Jack Pot and the water district's management extend a big thank you to all who attended the celebration and invite customers unable to attend the event to stop by the office to pick up a free limited edition tee shirt, while supplies last. Customer Appreciation Day is the one day a year that Daniel Boone District sets aside for its customers to show how much the water and its employees genuinely appreciate serving them.

- 8. Commissioner Baker is president of Simon Legree Bank, a local bank. Daniel Boone Water District has a checking account with Simon Legree Bank. The Bank has also purchased refinancing bonds that Daniel Boone Water District issued. When the water district negotiated the sale of the bonds with the bank, Baker did not take part in the negotiations.
- **9.** Daniel Boone Water District is examining its insurance coverage and determines that a new and more comprehensive policy is required. It negotiates with Bobby Baker, Commissioner Baker's son and the only insurance agent in Daniel Boone County. At the conclusion of the negotiations (in which Commissioner Baker did not take part), a contract is presented to the Board of Commissioners for action.

- **10.** Commissioner Able is a real estate agent with a client who has a parcel of property near a water district structure. At several board meetings and in private conversations with other board members, Able proposes to his fellow commissioners that the water district purchase this parcel. The board agrees and executes a contract for the purchase. Able's agency contract with the seller provides for a five percent commission on the purchase price. He expressly declines the commission, but arranges for the seller to donate an amount equal to the declined commission to a local charitable organization of which he is the chairman. Able did not vote on the resolution to purchase the parcel nor did he disclose his relationship to the board.
- 11. Daniel Boone County Judge Executive Boss Hogg recently appointed Commissioner Charlie to the Daniel Boone Water District's Board of Commissioners. The water district's territory covers all of Daniel Boone County with the exception of Mingo City. Its territory encompasses about 88 percent of Daniel Boone County. Approximately 90 percent of Daniel Boone County's population is within the water district's territory. The water district, however, currently only serves about 30 percent of the County's population. Charlie and several members of his extended family live in an area that does not currently receive water service. Charlie proposes that the water district engage in an extensive expansion campaign to build water mains and provide service to the unserved areas of Daniel Boone County. Among the first areas to which he proposes to extend service is the area where he and several family members live. He develops and presents to the Board of Commissioners a comprehensive proposal, which includes the issuance of revenue bonds, to construct the extension that includes his home.

<u>New Security Requirements for Personal Information Held</u> <u>by Municipal Utilities and Water Districts</u>

On March 31, 2014, the General Assembly enacted House Bill 5. Governor Beshear signed the bill into law on April 10, 2014. House Bill 5 generally requires state and local government agencies to implement and maintain procedures to protect against security breaches; to disclose security breaches to designated state officers; to investigate potential security breaches, and to notify designated state officers and affected members of public when breach is likely to result in misuse of personal information.

<u>Applicability.</u> House Bill 5 applies to all Executive Branch Agencies, cities and their boards and agencies, counties and their boards and agencies; special purpose governmental entities (includes water districts) that maintain or otherwise possess personal information.

Statutory Reference. The principal provisions of HB 5 are codified at KRS 61.931-.934.

<u>What is Personal Information?</u> "Personal information" means an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one or more of the following:

- An account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;
- A Social Security number;
- A taxpayer identification number;
- A driver's license number, state identification card number, or other individual identification number issued by any agency;
- A passport number or other identification number issued by the United States government; or
- Individually identifiable health information

The form in which the personal information is maintained is irrelevant – it may be in physical or electronic medium.

Development of Procedures and Practices to Protect Against Security Breach. If a municipal utility or water district possesses personal information, it must develop, maintain, and update procedures and practices, including taking protective action to protect against security breaches. Its security investigation and breach procedures must be consistent with Department of Local Government's (DLG) policies and <u>must be in place no later than January 1, 2015.</u> A copy of the DLG's policies can be viewed and downloaded at DLG's website at https://kydlgweb.ky.gov/Documents/Legal/InformationSecurityPoliciesProcedures.pdf.

<u>What is a Security Breach?</u> A "security breach" is the unauthorized acquisition, distribution, disclosure, destruction, manipulation, or release of <u>unencrypted</u> or <u>unredacted</u> records or data that compromises or that the agency or nonaffiliated third party reasonably believes may compromise the security, confidentiality, or integrity of personal information and result in the likelihood of harm to one or more individuals.

<u>Can a Security Breach involving encrypted records occur?</u> Yes. A security breach occurs if, unauthorized acquisition or release of the confidential process or key to unencrypt the records or data occurs. <u>Unauthorized release or acquisition of encrypted data does not constitute a security breach unless the key is also released or acquired.</u>

Procedures in event of Security Breach. Within 72 hours of notice or determination of a security breach, a municipal utility or water district must notify the Kentucky State Police, Auditor of Public Accounts, the Attorney General and the DLG Commissioner and begin an investigation in accordance with its security and breach investigation procedures. <u>Within 48 hours of the investigation's completion</u>, the municipal utility or water district must notify Kentucky State Police, Auditor of Public Accounts, Attorney General, Commissioner of Department of Libraries and Archives, and the DLG Commissioner.

Notification of Persons Affected by the Security Breach. Within 35 days after notifying the required officials of the results of the investigation, the municipal utility or water district must notify all persons affected by breach if it determines that misuse of the personal information has occurred or is likely to occur. If more than 1,000 persons must be notified, the municipal utility or water district must at least 7 days prior to the issuance of notification notify DLG and consumer reporting agencies regarding timing, distribution, and content of notice. Notification will only be made after consultation with law enforcement and will be delayed if the municipal utility or water district receives a written request from law enforcement stating that notification will impede investigation. Notification may also be delayed if the delay is necessary to restore the reasonable integrity of system and the Attorney General approves of delay in writing.

<u>Method of Notification</u>. A municipal utility or water district must notify persons affected by a security breach by: (1) Posting a notice conspicuously on its website; (2) Notifying regional or local media; or (3) Providing notification by mail, e-mail, or telephone. The method used must be the most likely to result in actual notification.

Form of Notice. The notice must be clear and conspicuous; contain a description of the categories of information breached; provide the municipal utility or water district's contact information including address and telephone; contain a description of the municipal utility or water district's actions to protect information from further disclosure; and contain the toll-free telephone numbers, addresses and website addresses for the major credit reporting bureaus, Federal Trade Commission, and the Office of Kentucky Attorney General.

<u>**Circumstances When No Notification Required.</u>** If the municipal utility or water district determines after an investigation that no misuse has occurred or is likely to occur from the breach, then <u>no notification to the public is required</u>. The municipal utility or water district, however, must maintain records that reflect the basis for its decision and must notify the Kentucky State Police, the Auditor of Public Accounts, the Attorney General and the DLG Commissioner of the results of its investigation.</u>

<u>Non-Affiliated Third Parties (NTPs).</u> An NTP is any person that has a contract or agreement with an agency and receives personal information from the agency as a result of that contract. Examples of possible NTPs include health insurance carriers, attorneys, accountants, and information technology contractors.

Duties of NTPs. Any NTP that obtains personal information from a municipal utility or water district or collects personal information on behalf of a municipal utility or water district must:

- Implement, maintain, and update appropriate security and breach investigation procedures that are at least as stringent as the investigation procedures and practices that the municipal utility or water district must follow.
- Notify the municipal utility or water district within 72 hours of determination of a security breach of the personal information within the NTP's possession and provide <u>all information</u> that it has at the time of notification regarding the breach.

<u>Contracts with NTPs.</u> Any agreement between a municipal utility or water district and an NTP under which the municipal utility or water district discloses personal information to the NTP and which is executed or amended after January 1, 2015, must require the NTP to implement, maintain, and update appropriate security and breach investigation procedures and must specify how the costs of the notification and investigation requirements are to be apportioned when a security breach is suffered by the NTP.

Enforcement. The Attorney General is authorized to enforce the provisions of House Bill 5.

Private Right of Action. House Bill 5 does not create a private right of action to enforce the provisions of the Bill or seek damages or penalties for failure to comply with the Bill's provisions. However, a municipal utility or water district customer who claims harm due to the municipal utility or water district's security failures is not necessarily barred from suing the utility for negligence after a breach. Kentucky Courts have not yet addressed whether governmental immunity would protect a municipal utility or water district from such legal actions.

Prepared By:

Gerald E. Wuetcher Stoll Keenon Ogden PLLC 859-231-3000 (office) 859-231-3017 (direct) 859-550-3894 (cell) 300 West Vine St. Suite 2100 Lexington, KY 40507-1801 gerald.wuetcher@skofirm.com https://twitter.com/gwuetcher

Date: November 20, 2014 Revised: March 23, 2015



Protection of Personal Information

Security and Incident Investigation Procedures and Practices for Local Governmental Units

Effective January 1, 2015



Darren T. Sammons, Staff Attorney Commonwealth of Kentucky Fall 2014



Introduction

Definitions:

"Computer security incident" or *"incident"* means a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices.¹

"COT" means the Commonwealth Office of Technology.²

"*Digital media*" means physical, electronic media, used to store information, including, but not limited to: diskettes, magnetic tapes, desktop computers, laptops, hard drives, random access memory, read only memory, compact discs, network equipment, other forms of optical and magnetic media, and any other electronic media on which information may be stored. This definition includes forms of media existing at the time these regulations are promulgated and also any such forms or formats as may be invented.

"DLG" means the Department for Local Government.³

"Local Governmental Unit," or *"LGU"* means every group, governmental entity and governmental subdivision identified by KRS 61.931(1)(b) and (c) that are not organizational units of the executive branch of state government of the Commonwealth of Kentucky.⁴

"*Non-digital media*" means a hard copy or physical representation of information, including, but not limited to, paper copies, printer ribbons, drums, microfilm, platens, and other forms of preserved or preservable information.

"*Portable computing device*" means electronic devices on which personal information is stored, or may be stored, designed, used or intended to be used in multiple physical locations or capable of being used while traveling, such as laptops, tablet computers, personal digital assistants (PDAs), digital cameras, portable telephones, and similar devices.

For purposes of this policy, all terms not otherwise defined are used consistent with the definitions set forth in KRS 61.932.

Policy Statement: The purpose of this policy is to provide guidance to Local Governmental Units ("LGUs") to minimize the risk of disclosing personal information and setting practical guidelines for effectively responding to security incidents. LGUs are encouraged to tailor this policy to meet their own specific security and operational requirements. Having a policy is important because it promotes consistent response procedures to make sure appropriate actions are taken. This policy sets forth the procedures and practices pursuant to KRS 61.932 for LGUs to follow in order to:

- 1) Identify vulnerabilities;
- 2) Eliminate or mitigate those vulnerabilities;
- 3) Recognize when an incident has occurred;
- 4) Notify appropriate personnel in the event of an incident;
- 5) Respond to information security threats; and
- 6) Recognize events that require special handling due to their potential impact or special reporting due to legal or other concerns.

In addition, this policy requires LGUs to enact appropriate measures to protect information stored on media, both digital and non-digital, during the entire term of its use, until its destruction.

Policy Maintenance: The Department for Local Government ("DLG") will be responsible for maintaining this policy. LGUs may adopt this policy or may elect to adopt more restrictive policies as appropriate.

Applicability: In the absence of more restrictive policies, this policy shall be followed by all LGUs with access to personal information and also by any and all persons or entities with access to such information in the possession or control of LGUs. Such persons or entities include, but are not limited to, employees, contractors, consultants, temporary employees, volunteers and other workers with access to personal information whether printed, electronic or other format.

Responsibility for Compliance: Each LGU is responsible for ensuring that employees and others with permissive access to, or who may access, personal information are familiar with the policy and all such persons or entities shall be aware of what constitutes an incident. Each LGU shall ensure that employees are aware that compliance with this policy is mandatory. LGUs have the responsibility to enforce this policy.

Policy

Non-digital media containing personal information shall be physically controlled and securely stored in a manner meant to ensure that the media cannot be accessed by unauthorized individuals. This may require storing media in locked containers such as cabinets, drawers, rooms, or similar locations if unauthorized individuals have unescorted access to areas where personal information is stored. If personal information is stored in an electronic format, it shall be protected from access by unauthorized individuals. Such information must be protected by software that prevents unauthorized access. If personal information is transmitted via e-mail or other electronic means, it must be sent using appropriate encryption mechanisms.

Point of Contact

Every LGU shall designate a Point of Contact ("POC"). The POC shall serve the following functions:

- 1) Maintain the LGU's adopted Information Security Policy and be familiar with its requirements;
- 2) Ensure the LGU's employees and others with access to personal information are aware of and understand the Information Security Policy;
- 3) Serve as contact for inquiries from other agencies regarding its Information Security Policy and any incidents;
- 4) Be responsible for ensuring compliance with the Information Security Policy; and
- 5) Be responsible for responding to any incidents.

<u>Software</u>

Security software used to protect personal information must provide user identification, authentication, data access controls, integrity, and audit controls.

Security software should be adequately tested to confirm functionality and to ensure that it is minimally disruptive to all associated operating systems, communications, applications, and other associated software systems. Contractual provisions must also ensure that the supplier's software, by design or configuration, will not introduce any security exposures.

The level of protection afforded by security software should be commensurate with the sensitivity of the data. For example, if data resides in a database that is deemed highly confidential, stringent access controls to the database should be employed. The level of protection along with the methods to implement that protection should be addressed before any personal information is stored on a device.

Systems, networks and application software used to process personal information must adhere to the highest level of protection reasonably practical. LGUs shall use Intrusion Detection and Prevention software approved by COT. A list of approved software is available on the COT website.⁵ As an alternative, LGUs may use software not approved by COT, provided that such software provides comparable, or superior, protection.

Encryption

Information stored on digital media shall be encrypted in accordance with contemporary standards.

Access Control

Only authorized individuals are permitted access to media containing personal information. In addition to controlling physical access, user authentication should provide audit access information. Any access must comply with applicable regulatory requirements.

Portable Computing Devices

This policy prohibits the unnecessary placement (download or input) of personal information on portable computing devices. However, users who in the course of LGU business must place personal information on portable computing devices must be made aware of the risks involved and impact to the affected person/entities in the event of actual or suspected loss or disclosure of personal information. If personal information is placed on a portable computing device, reasonable efforts must be taken, including physical controls and encryption, to protect the information from unauthorized access. Additionally, each person using the portable computing device must sign a form approved by the LGU indicating acceptance of the information. In the event the portable computing device is lost or stolen, the LGU should be able to accurately recreate the personal information and must be able to provide notification to all affected person/entities.

When it is determined that personal information must be placed on a portable computing device, every effort should be taken to minimize the amount of information required. If possible, information should be abbreviated to limit exposure (e.g., last 4 digits of the social security number).

Physical Security Procedures

Given the broad variety of sizes and types of LGUs, each will have different security challenges and resources available to address those challenges. This policy does not specifically address physical security needs and threats, such as natural disasters, electrical outages, fire, or other physical threats to personnel or information resources. LGUs are responsible for establishing and maintaining their own physical security procedures.

The Information Security Policy adopted by an LGU shall include provisions calculated to ensure that its information resources are protected by physical security measures that address physical tampering, damage, theft, or unauthorized physical access. Where applicable, the Information Security Policy should address the circumstances under which identification badges must be worn and establish parameters for access to restricted areas containing information technology resources or other sources of personal information.

When feasible, information technology equipment should be marked with some form of identification that clearly indicates it is the property of the LGU. During transport, media shall be protected and controlled outside of secured areas and activities associated with transport of such media restricted to authorized personnel. Tracking methods shall be developed and deployed to ensure media reaches its intended destination.

Protection of Personal Information

LGUs shall secure and, when applicable, appropriately dispose of non-digital media. Non-digital media containing personal information must be properly stored and secured from view by unauthorized persons.

Secure measures must be employed by the LGU and all permissive users to safeguard personal information contained on all LGU technology resources.

LGUs shall ensure that all authorized personnel are familiar with and comply with the Information Security Policy. LGUs shall ensure that only authorized personnel may hold and have access to personal information.

Types of Incidents

Threats to the security of personal information arise in many different ways. LGUs are encouraged to be aware of the different types of threats and to enact reasonable measures to protect against each. Attacks on personal information may arise from:⁶

- External/Removable Media—an attack executed from removable media (e.g. flash drive, CD) or a peripheral device.
- Attrition—An attack that employs brute force methods to compromise, degrade, or destroy systems, networks, or services.
- Web—An attack executed from a website or web-based application.
- Email—An attack executed via an email message or attachment.
- Improper usage—Any incident resulting from violation of an organization's acceptable usage policies by an authorized user, excluding the above categories.
- Loss or Theft of Equipment—The loss or theft of a computing device or media used by the organization, such as a laptop or smartphone.
- Other—an attack that does not fit into any of the other categories.

Destruction of Records Containing Personal Information

A media retention schedule shall be defined for all media in accordance with regulatory requirements. LGUs are encouraged to adopt a retention schedule consistent with the Kentucky Department of Libraries and Archives General Records Retention Schedule for State Agencies.⁷

Every LGU shall have a document/information retention policy. When records containing personal or confidential information are ready for destruction, LGUs shall destroy the information completely to ensure that the information cannot be recognized or reconstructed. In addition, any personal or confidential data contained on the computer media must be obliterated and/or made indecipherable before disposing of the tape, diskette, CD-ROM, zip disk, or other type of medium.

Each LGU must provide appropriate methods and equipment to routinely destroy personal or confidential information. The methods set forth below are listed in priority order with the most highly recommended safeguard listed first. One of the following safeguards must be implemented:

- Hire a document disposal contractor to dispose of the material. The contractor should be certified by a recognized trade association and should use disk sanitizing software and/or equipment approved by the United States Department of Defense. The LGU should review and evaluate the disposal company's information security policies and procedures. The LGU should review an independent audit of a disposal company's operations and/or its compliance with nationally recognized standards.
- Secure and utilize shredding equipment that performs cross-cut or confetti patterns.
- Secure and utilize disk sanitizing or erasing software or equipment approved by the United States Department of Defense.
- Modify the information to make it unreadable, unusable or indecipherable through any means

Reporting of Incidents Involving Personal Information

Each LGU must disclose a security breach in which personal information is disclosed to, or obtained by, an unauthorized person. Notification of the incident must be made in the most prompt and expedient manner after the incident has been discovered. Within thirty-five days, a letter notifying affected individuals of actual or suspected loss or disclosure of personal information must be sent by the LGU describing the types of information lost and recommended actions to be taken to mitigate the potential misuse of their information.

When a LGU identifies that a security breach has occurred in which personal information has been disclosed to, or obtained by, an unauthorized person, within three business days it shall notify Kentucky State Police, the Auditor of Public Accounts, the Attorney General and the Commissioner of the Department for Local Government⁸ and complete form COT-F012. The LGU shall document the following:

- 1) Preliminary Reporting and description of the incident;
- 2) Response, including evidence gathered;
- 3) Final Assessment and corrective action taken; and
- 4) Final Reporting

Incident Response procedures can be a reaction to security activities such as:

- 1) Unauthorized access to Personnel, Data, or Resources;
- 2) Denial of Service Attacks;
- 3) Actual or Anticipated Widespread Malware Infections;
- 4) Data Breaches;
- 5) Loss/Theft of Equipment;
- 6) Significant Disruption of Services
- 7) Significant Level of Unauthorized Scanning Activity to or from Hosts on the Network

Investigation: LGUs shall make reasonable efforts to investigate any security breaches in which personal information is disclosed to, or obtained by, an unauthorized person and shall take appropriate corrective action.

Disclosure Communications: LGUs must comply with all federal and state laws and policies for information disclosure to media or the public. In some circumstances, communication about an incident is necessary, such as contacting law enforcement. LGUs should use discretion in disclosing information about an incident. Such information includes network information, type of incident, specific infection type (if applicable), number of assets affected, specific detail about applications affected, applications used to employ corrective action/investigate, etc. LGUs may proactively share relevant incident indicator information with peers to improve detection and analysis of incidents. Within the parameters of the law, minimal disclosure regarding incidents is preferred to prevent unauthorized persons from acquiring sensitive information regarding the incident, security protocols and similar matters, in an effort to avoid additional disruption and financial loss.⁹

References

¹ "Computer Security Incident Handling Guide," National Institute of Standards and Technology, U.S. Department of Commerce, p. 6; http://csrc.nist.gov/publications/nistpubs/800-61rev2/SP800-61rev2.pdf

http://kdla.ky.gov/records/recretentionschedules/Documents/State%20Records%20Schedules/ky stateagency.pdf

⁸ KRS 61.933(1)(a)1.

⁹ "Computer Security Incident Handling Guide," National Institute of Standards and Technology, U.S. Department of Commerce, p. 9.

² KRS 42.724

³ KRS 12.023(3); 147A.002, et seq.

⁴ http://www.lrc.ky.gov/Statutes/statute.aspx?id=43575

⁵ https://gotsource.ky.gov/docushare/dsweb/Get/Document-301110/

⁶ "Computer Security Incident Handling Guide," National Institute of Standards and Technology, U.S. Department of Commerce, p. 2.

Steven L. Beshear Governor

Leonard K. Peters Secretary Energy and Environment Cabinet



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

March 16, 2015

TO ALL JURISDICTIONAL WATER AND WASTEWATER UTILITIES

807 KAR 5:006, Section 27 requires each utility, other than a natural gas utility, to notify the Commission, <u>within two (2) hours of discovery by the utility</u>, of any utility related accident which results in:

- (a) <u>Death; or shock or burn requiring medical treatment at a hospital or similar medical facility</u>, or <u>any accident requiring in-patient overnight hospitalization</u>;
- (b) Actual or potential property damage of \$25,000 or more; or
- (c) Loss of service for four (4) or more hours to ten (10) percent or five hundred (500) or more of the utility's customers, whichever is less.

Notification pursuant to 807 KAR 5:006, Section 27 is to be provided:

Telephonically to 502-782-7904

or

via Electronic Mail to PSC.Water.Notice@ky.gov

In addition to the initial notice, a summary written report is required to be submitted and received by the Commission within seven (7) calendar days of the date of the reportable event.

A copy of the subject regulation is attached for your convenience.

You are requested to <u>acknowledge receipt and provide the emergency contact information on</u> <u>the following form within 30 days of receiving this information.</u> Please ensure that the Commission's contact information is disseminated to appropriate personnel within your organization.

Attachments

David L. Armstrong Chairman

James W. Gardner Vice Chairman

Daniel E. Logsdon Jr. Commissioner

| PLEASE COMPLETE AND RETURN WITHIN 30 DAYS OF RECEIPT TO: | | | | | | | | |
|--|----------------------------------|-----------------------|-------------|--------------------|------------|---------|--|--|
| | Kyle Willard, Director | | | | | | | |
| | Division of Engineering | | | | | | | |
| | Public Service Commission | | | | | | | |
| | P. O. Box 615 | | | | | | | |
| | Frankfort, KY 40602 | | | | | | | |
| | (502) 564-3940 | | | | | | | |
| | Via Fax (502) 564-1582 or | | | | | | | |
| | PSC.Water.Notice@ky.gov | | | | | | | |
| I ackr | nowledge receipt of the incident | notification requirem | ents for w | ater/wastewater | utilities: | | | |
| X | | | | | | | | |
| | | | | | Date | | | |
| Authorized Signature (email address if submitted electronically) | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| Typed | d/Printed Name | | | | Title | | | |
| | | | | | | | | |
| Name | e of Utility | | | | | | | |
| - tanic | | | | | | | | |
| | | | | | | | | |
| Telep | hone Number of Utility | Fax Number of Utility | / | Electronic Mail Ac | dress of U | Itility | | |
| | | | | | | | | |
| | | | | | | | | |
| Stroo | t Address/PO Box of Utility | | | | | | | |
| Stice | | 1 | | | | | | |
| | | | | | | | | |
| City | | | C+-+- | | | 710 . 4 | | |
| City | | 1 | State | | | ZIP + 4 | | |
| | | | | | | | | |
| 24 ho | our Emergency Phone # of Utility | Wabsita of Utility | | | | | | |
| | gency Contact Information | | | | | | | |
| | | | | | | | | |
| 1 | | | | | | | | |
| | Name | | | | Title | | | |
| | | | | | | | | |
| Office # | | Mobile # | | | FAX # | | | |
| Office | - 17 | | | | | | | |
| | | | | | | | | |
| Emer | gency #(if different from above) | Electronic Mail Addre | ess | | | | | |
| | | | | | | | | |
| 2 | | | | | | | | |
| | Name | T | | | Title | | | |
| | | | | | | | | |
| Office | - # | Mahila # | | | | | | |
| Office | 2 # | Mobile # | | | FAX # | | | |
| | | | | | | | | |
| Emer | gency #(if different from above) | Electronic Mail Addre | 255 | | | | | |
| Linei | | | | | | | | |
| 3 | | | | | | | | |
| _ | Name | | | | Title | | | |
| | | | | | | | | |
| | | | | | | | | |
| Office | e # | Mobile # | | | FAX # | | | |
| | | | | | | | | |
| | | | | | | | | |
| Emer | gency #(if different from above) | | | | | | | |
| 1 | | Attach additional | ah a ata if | | | | | |

| \ttach | additional | sheets | ifı | neede | эс |
|--------|------------|--------|-----|-------|----|
| | | | | | |

807 KAR 5:006. General rules.

RELATES TO: KRS 65.810, 74, 96.934, 220.510, 278, 49 C.F.R. Part 192, 49 U.S.C. 60105 STATUTORY AUTHORITY: KRS 278.230, 278.280(2), 49 C.F.R. 192

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.230(3) requires every utility to file with the commission reports, schedules, and other information that the commission requires. KRS 278.280(2) requires the commission to promulgate an administrative regulation for the performance of a service or the furnishing of a commodity by a utility. This administrative regulation establishes requirements that apply to electric, gas, water, sewage, and telephone utilities.

. . .

. . .

Section 27. Reporting of Accidents, Property Damage, or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of a utility related accident that results in:

(a) Death or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of \$25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, shall, upon application in writing, allow a reasonable extension of time for submission of this report.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED REVISION OF RULES REGARDING THE PROVISION OF WHOLESALE WATER SERVICE BY THE CITY OF VERSAILLES TO NORTHEAST WOODFORD WATER DISTRICT

CASE NO. 2011-00419

ORDER

The city of Versailles, Kentucky, ("Versailles") has proposed to revise its water purchase contract with Northeast Woodford County Water District ("Northeast Woodford District") to require Northeast Woodford District to purchase its total water requirements from Versailles to the extent that Versailles has capacity to meet those requirements. Based on an extensive evidentiary record, including testimony and briefs, the Commission finds that Versailles' proposed revision is not reasonable under the circumstances presented here and we deny the proposed revision.

PROCEDURE

On September 20, 2011, Versailles filed a tariff sheet setting forth its proposed revision to the conditions under which it provides water service to Northeast Woodford District. It proposed to place this revision into effect on November 1, 2011. On October 27, 2011, after receiving Northeast Woodford District's request to investigate the reasonableness of the proposed revision, the Commission established this proceeding, suspended the operation of the proposed revision, and directed Versailles to take no action to implement the proposed revision until obtaining Commission approval.

After both parties were provided the opportunity to conduct discovery, the Commission conducted an evidentiary hearing on the proposed revision on May 2, 2012.¹ Following the hearing, each party filed a written brief. The matter was submitted for decision on July 6, 2012.

STATEMENT OF THE CASE

Versailles, a city of the fourth class,² owns and operates facilities that treat and distribute water to approximately 6,097 retail customers³ and provides wholesale water service to Northeast Woodford District and South Woodford Water District ("South Woodford District"). Its water treatment plant has a maximum production capacity of 10 million gallons per day ("MGD").⁴ For the calendar year ended December 31, 2010, Versailles had total water sales of 876,693,700 gallons, or average sales of 2.401 MGD of water.⁵ Retail sales accounted for 529,744,100 gallons, or 60.43 percent of total

² KRS 81.010(4).

¹ At the evidentiary hearing, Bart Miller, Versailles' Director of Public Works, testified on behalf of Versailles. Warner A. Broughman, III, a professional engineer, and John S. Davis, chairman of Northeast Woodford District's Board of Commissioners, testified on behalf of Northeast Woodford District. The written testimony of Allison White, Versailles' City Clerk, and Fred Faust, Northeast Woodford District's bookkeeper, were admitted without objection.

³ Kentucky Infrastructure Authority, *Kentucky Water Management Plan* (Feb. 2014) 106, available at <u>http://kia.ky.gov/NR/rdonlyres/820DCFC5-F18D-4967-90F1-8B2D60731C89/0/2014_DW_Management Plan_State_Web.pdf</u>.

⁴ Versailles Response to Commission Staff's Request for Information, Item 6 (filed Jan. 19, 2012).

⁵ Testimony of Allison White, Exhibit 6 (filed Nov. 15, 2011). Adjustments were made in the information presented in this exhibit to reflect timing differences and to allow for comparisons with the usage date that Versailles presented in its Response to Commission Staff's Request for Information, Item 14. Because Versailles uses a July 1 to June 30 fiscal year for its operations and did not file any information beyond its 2011 fiscal year, calendar year 2010 is the most recent year for which information is available in the record to draw comparisons between Versailles' water operations and those of Northeast Woodford District and South Woodford District.

annual sales.⁶ Water was sold wholesale to Northeast Woodford District, which purchased approximately 172,004,700 gallons, or 19.6 percent of Versailles' total water sales,⁷ and to South Woodford District, which purchased 174,944,900 gallons, or 19.96 percent of Versailles' total water sales.⁸

Northeast Woodford District, a water district organized pursuant to KRS Chapter 74, owns and operates water distribution facilities that serve approximately 982 customers who are located in Fayette and Woodford counties.⁹ Northeast Woodford District has no water treatment facilities, but has since its inception purchased its total water requirements from Versailles. For the year ended December 31, 2010, Northeast Woodford District purchased an average of 471,246 gallons per day from Versailles. Its average monthly purchase for this period was 14.334 million gallons.

The relationship between Versailles and Northeast Woodford District began nearly half a century ago. On May 17, 1966, Versailles and Northeast Woodford District executed their first water purchase agreement ("Water Purchase Contract").¹⁰ Under

⁶ The Commission determined retail sales by subtracting the total volume of wholesale water sales (172,004,700 gallons +174,944,900 gallons) from total sales. Thus, Versailles produced 900 million gallons of water for the period. Non-revenue water is not reflected in these calculations. The most recent information regarding Versailles's water operations indicates that non-revenue water accounts for approximately 21 percent of its total water production. *See Kentucky Water Management Plan* at 106.

⁷ Versailles' Response to Commission Staff's Request for Information, Item 14 (filed Jan. 19, 2012). See also Annual Report of Northeast Woodford County Water District to the Public Service Commission of Kentucky for the Calendar Year Ending December 31, 2010 at 30.

⁸ Versailles' Response to Commission Staff's Request for Information, Item 14 (filed Jan. 19, 2012). In its annual report to the Commission, South Woodford District reports a larger amount of purchases than Versailles reports. *See also Annual Report of South Woodford Water District to the Public Service Commission of Kentucky for the Calendar Year Ending December 31, 2010* at 30.

⁹ Annual Report of Northeast Woodford County Water District to the Public Service Commission of Kentucky for the Calendar Year Ending December 31, 2012 at 5, 27.

¹⁰ Testimony of Allison White, Exhibit 1.

the terms of the Water Purchase Contract, which was to last for a term of 40 years,¹¹ Versailles agreed to furnish Northeast Woodford District water "in such quantity as may be required by the District not to exceed Five Million (5,000,000 gallons) per month."¹² The Water Purchase Contract neither specified a minimum volume of water that Northeast Woodford District must purchase from Versailles nor required Northeast Woodford District to purchase water exclusively from Versailles.

In 1979, Versailles and Northeast Woodford District agreed to modify several provisions of their original Water Purchase Contract. They executed a contract addendum in which Versailles, among other things, agreed

to furnish the District, at the point of delivery hereinafter specified, during the term of this contract addendum, or any renewal or extension thereof, potable treated water meeting applicable purity standards of the State Board of Health in such quantity as may be required by the District to service existing water needs (not more than Five million (5,000,000) gallons per month) and the needs of approved proposed development as of this date. The District shall be entitled to receive reasonable growth in the quantity available to it based on the increase in total quantity pumped by the City. Total quantity limitations may be renegotiated¹³

In the early 1990s, Northeast Woodford District requested revisions in the Water Purchase Contract to increase the volume of water that Versailles would be required to provide. Northeast Woodford District's monthly purchases had regularly been exceeding five million gallons. During some months it purchased as much as ten million gallons of water. United States Department of Agriculture Rural Development had

¹¹ Water Purchase Contract at 5.

¹² *Id.* at 2.

¹³ Water Purchase Contract Addendum (Apr. 3, 1979) at 2.

conditioned funding for a proposed waterworks improvement project upon Northeast Woodford District's obtaining a new water purchase agreement that committed Versailles to providing a larger monthly volume.¹⁴

While Versailles' officials were sympathetic to Northeast Woodford District's plight, they were concerned about the effect of increased water district purchases on Versailles' ability to meet its own demand. During several council meetings, members of the Versailles City Council expressed concern about the need to expand its water treatment plant and build additional infrastructure to support both needs of the city's residents and of Northeast Woodford District's customers.¹⁵

On August 3, 1994, Versailles and Northeast Woodford District amended their original water purchase agreement to provide that "the quantity of water furnished to the District shall not exceed 15 million gallons per month, if available."¹⁶ The amendment made no references to a minimum purchase requirement, nor did it place any limitations on Northeast Woodford District's supply options. The 1994 amendment further extended the term of the contract for an additional 30 years from its original termination date of 2006 to 2036.¹⁷ In the year following the contract amendment, Northeast Woodford District purchased a monthly average of 9,698,417 gallons of water from Versailles.¹⁸

¹⁸ Testimony of Bart Miller at 2 (filed Nov. 15, 2011).

¹⁴ Versailles' Response to Commission Staff's Request for Information, Item 1(a) (filed Jan. 19, 2012).

¹⁵ *Id.*, Item 1(a)-(c).

¹⁶ Amendment to Water Purchase Contract, ¶ 1 (found at Testimony of Allison White, Exhibit 2).

¹⁷ *Id.* at 1.

In the late 1990s, Versailles began experiencing problems meeting its customer demand. Versailles' water treatment plant was constructed in 1966 and had an original capacity of 1 MGD.¹⁹ Versailles doubled the plant's capacity in 1980 and again in 1992.²⁰ After the 1992 expansion, the plant had a capacity of 4 MGD. In July 1999, the Kentucky Division of Water ("DOW") notified Versailles that if its current rate of growth continued, Versailles would have to add additional capacity or obtain an additional source of water.²¹ In August 2001, a DOW official notified Versailles that, based upon the plant's average daily production, Versailles' water treatment plant had for the calendar year ending June 30, 2001, operated at or above 85 percent of its design capacity and that in several months it had operated in excess of 90 percent of its design capacity. The official raised the possibility of a ban on new connections to Versailles' water distribution system.²²

After exploring several options to resolve its water capacity needs, the Versailles City Council on July 1, 2003, authorized an expansion of its water treatment plant's capacity from 4 MGD to 10 MGD and an upgrade of the water supply main necessary to transport water from the water treatment plant to Versailles' water distribution system.²³

²² Letter from Vicki L. Ray, Manager, Drinking Water Branch, Division of Water, to Jason Walton, Superintendent, Versailles Water System (Aug. 28, 2001).

²³ Versailles' Response to Commission Staff's Request for Information, Item 7 (filed Jan. 19, 2012).

¹⁹ Versailles' Response to Commission Staff's Request for Information, Item 4 (filed Jan. 19, 2012).

²⁰ *Id.*, Item 5.

²¹ Letter from Vicki L. Ray, Manager, Drinking Water Branch, Division of Water, to Jerry Holt, Versailles Water System (July 6, 1999).

Total cost of these improvements was approximately \$13,424,117.²⁴ To finance the cost of these improvements, Versailles issued notes and three series of bonds.²⁵ Of the \$28,502,325 of debt that Versailles issued, approximately \$12,965,555 was related to these improvements.²⁶ The bonds in each bond series mature over a 20-year period.²⁷ Construction on the water treatment plant and water distribution system improvements was completed in 2006.

While Versailles was addressing its water capacity issues, Northeast Woodford District sought a supplementary source of water. It views a supplemental source as a way to enhance its system integrity, provide an increase in water pressure, and provide an alternate supply of water in the event of an emergency or a failure of its primary supplier's system.²⁸ In 2005, it proposed to the Bluegrass Area Water Management Council the construction of an interconnection between its water distribution system and

²⁴ *Id.*, Item 5. The total cost of the water treatment plant expansion was \$11,108,764.66. The cost of the distribution system improvements was \$2,315,352.25.

| Debt Instrument | Total Issuance Amount | Proceeds Used for Water Facilities | Final Payment Date |
|--|-----------------------------|--|--------------------------|
| 2000 Bond Anticipation Notes | \$1,567,325 | \$ 414,569 | 06/15/2005 |
| Water & Sewer Revenue Bonds, 2001 Series | \$9,800,000 | \$8,836,207 | 12/01/2021 |
| Water & Sewer Revenue Bonds, 2004 Series | \$8,635,000 | \$2,999,960 | 12/01/2024 |
| Water & Sewer Revenue Bonds, 2005 Series | \$8,500,000 | \$ 714,819 | 12/01/2025 |

²⁵ The individual debt instruments that Versailles issued are shown below:

²⁶ Grants funded approximately \$395,562 of the total cost. Testimony of Allison White at 2.

²⁷ Versailles' Response to Commission Staff's Request for Information, Item 11 (filed Jan. 19, 2012).

²⁸ Testimony of Warner A. Broughman, III at 1-2 (filed Mar. 7, 2012).

that of the Frankfort Plant Board.²⁹ Northeast Woodford District also filed with the Kentucky Infrastructure Authority ("KIA") a proposed project profile that set forth the reasons for the proposed interconnection. In addition to enhancing system integrity and establishing an emergency supply, Northeast Woodford District stated that the connection would assist in keeping its primary supplier's price "in line."³⁰ The Bluegrass Area Water Management Council approved the proposed connection for funding in 2005. The Kentucky General Assembly appropriated \$300,000 for the connection in 2006.³¹

On April 19, 2011, Northeast Woodford District and Frankfort Plant Board executed an agreement in which they agreed to connect their respective water distribution systems. Under the terms of the agreement, Northeast Woodford District agreed to purchase three million gallons of water monthly during the term of the agreement.³² The Agreement has a term of 42 years.³³

To implement the agreement, Northeast Woodford District constructed 7,200 linear feet of 8-inch water pipeline and a booster station to connect its distribution

²⁹ Testimony of John S. Davis at 4 - 5 (filed Mar. 7, 2012). Northeast Woodford District made its original proposal in 2002. The Bluegrass Area Water Management Council approved the project and funding for the project was obtained. Northeast Woodford District initiated discussions with the Frankfort Plant Board regarding an interconnection on May 8, 2001. Northeast Woodford District's Response to Commission Staff's Request for Information, Item 7 (filed Mar. 30, 2012). The route of the proposed connection, however, was subsequently revised and new funding was required.

³⁰ PSC Staff Hearing Exhibit 1 at 1. WX21239013 is the project identifier that the Water Resource Information System has assigned the project.

³¹ 2006 Ky. Acts Ch. 252.

³² Testimony of Fred Faust, Exhibit B at 2 (filed Mar. 2, 2012).

³³ *Id.* at 3.

system to Frankfort Plant Board's distribution system. Northeast Woodford District's total cost for the proposed facilities is expected to be in excess of \$493,152.³⁴

Upon completion of the proposed connection, Northeast Woodford District intends to purchase three million gallons of water monthly from Frankfort Plant Board and to reduce its monthly purchases from Versailles by a similar amount.³⁵ The water purchased from Frankfort Plant Board will not be confined to one area within the water district. Northeast Woodford District intends to occasionally shut down its pump station at its connection with Versailles and instead pump water only from the Frankfort Plant Board East connection to meet the minimum three million gallons per month purchase requirement.³⁶

Northeast Woodford District disavows any intention to maximize its purchases from Frankfort Plant Board. It asserts that its construction of a connection to, and water supply agreement with, Frankfort Plant Board are intended only to supplement its water supply from Versailles. Its goal is to enhance its system integrity and provide an alternate source of water in the event of an emergency or failure of Versailles' system. Northeast Woodford District further asserts that Versailles will continue to be its primary supplier as long as Versailles' rates for wholesale water service are "not unduly disproportionate" to the Frankfort Plant Board's rates.³⁷

³⁴ Northeast Woodford District's Response to Commission Staff's Request for Information, Item 3 (filed Mar. 30, 2012).

³⁵ Frankfort Plant Board currently charges a wholesale rate of \$2.01 per 1,000 gallons of water, plus an additional \$0.20 per 1,000 gallons for the Kentucky River Authority water withdrawal fee, for a total of \$2.21 per 1,000 gallons of water, which is \$0.12 per 1,000 gallons less than Versailles' current wholesale rate.

³⁶ *Id.*, Item 14.

³⁷ *Id.*, Item 22.

Notwithstanding these assertions, Northeast Woodford District's decision will result in a monthly revenue loss of \$6,990, or \$83,880 annually, to Versailles.³⁸ Believing that this revenue loss will: 1) impair its ability to meet its obligations on the debt that it incurred to increase its water treatment plant's capacity and to improve its transmission system; and 2) require significant increases in the rates that Versailles assesses to its remaining customers,³⁹ Versailles seeks to revise its existing contract with Northeast Woodford District to require the water district to purchase its water requirements from Versailles until those requirements exceed 15 million gallons monthly. Simply put, if the proposed revision becomes effective, Northeast Woodford District's demand for that month reached 15 million gallons. For the portion of its monthly demand that exceeds 15 million gallons, Northeast Woodford District's water from any supplier it so chooses.

ANALYSIS

This case involves a proposed revision to the conditions under which a municipal water utility provides water service to a public water utility. Kentucky courts have generally held that "all operations of a municipally owned utility whether within or without the territorial boundaries of the city" are exempt from Commission jurisdiction.⁴⁰ The

³⁸ Versailles' current rate is \$2.33 per 1,000 gallons. Using this rate and assuming a reduction of 3,000,000 gallons of sales monthly, the revenue lost is equal to 3,000,000 gallons of water multiplied by \$2.33 per 1,000 gallons. This amount represents only the loss of revenue. It does not consider any reductions in chemical costs or pumping costs as a result of the lesser amount of water to treat or pump.

³⁹ Letter from William K. Moore, counsel for Versailles, to Kentucky Public Service Commission (Sept. 19, 2011) at 3.

⁴⁰ *McClellan v. Louisville Water Co.*, 351 S.W.2d 197, 199 (Ky.1961). *See also City of Mount Vernon v. Banks*, 380 S.W.2d 268, 270 (Ky.1964) ("In the operation of a water plant a municipal corporation is not under the jurisdiction of the Public Service Commission.").

exception to this exemption occurs when a municipal utility contracts to provide utility service to a Commission-regulated utility. KRS 278.200 provides:

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.

Any interpretation or revision by a municipal utility to the rate or service standard for sales to a Commission-regulated utility triggers the Commission's jurisdiction and requires an opportunity for a hearing by the Commission before the proposed revision can become effective.⁴¹

Thus, KRS 278.200 confers jurisdiction on the Commission to address Versailles' proposed revision. Versailles has not contested the Commission's jurisdiction over the proposed revision. While not disputing the Commission's authority to consider Versailles' proposal, Northeast Woodford District contends that the Commission lacks the authority to impose a new or revised condition of service upon a Commission-regulated utility unless that utility consents to the condition. Northeast Woodford District argues that its existing contract establishes certain contractual obligations between itself and Versailles, and the Commission cannot interpret KRS 278.200 to impair these

-11-

⁴¹ Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460, 463 (1994) ("[W]here contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation.")

obligations. It argues that such an interpretation would violate Section 19 of the Kentucky Constitution, which provides that no law impairing the obligation of contracts shall be enacted.

The Commission finds no merit in these arguments. Kentucky courts have previously held that KRS 278.200 authorizes the Commission to modify contracts involving utility rates and services as a valid use of the state's police power to regulate utility rates and service.⁴² The Commission may revise any rate or service standard in a contract between a municipal utility and public utility despite objections by either party if the Commission finds that the proposed revision is reasonable under the circumstances.⁴³

Thus, having determined that the Commission has jurisdiction over the contract revision proposed by Versailles, the crucial question is whether Versailles' proposed revision is reasonable. Neither the existing contract's history nor language supports the proposed provision. The record indicates that Versailles had the opportunity at the time of the 1994 Amendment to the Water Purchase Contract to insist that Northeast Woodford District agree to a minimum requirements provision, but chose not to do so. The 1994 Amendment contains no specific language indicating that Northeast Woodford District had to take any quantity of water. The minutes of the Versailles' City Council

⁴² See, e.g., Southern Bell Telephone and Telegraph Co. v. City of Louisville, 96 S.W.2d 695, 699 (Ky. 1936) ("The power conferred upon municipalities to enter into contracts fixing rates in the first instance for public utility service does not deprive the state of its right to exercise its police power of regulating rates. The authority to regulate rates of public utilities is primarily a legislative function of the state, and the right is essentially a police power."). See also Case No. 8572, Rate Adjustment of Kenton County Water District (Ky. PSC Mar. 22, 1983) ("KRS 278.200 expressly granted the Commission the power to abrogate contracts.").

⁴³ KRS 278.200 expressly provides that the Commission may originate, establish or change any rate or service standard established by a contract between a public utility and a city. KRS 278.030 and KRS 278.040 impose a duty upon the Commission to ensure that such rates and service are fair, just, and reasonable. *See Kentucky Public Service Commission v. Commonwealth ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010).

Meetings indicate that Versailles' leaders had strong concerns about maintaining an adequate supply for their retail customers. The 1994 Amendment requires Versailles to provide 15 million gallons of water monthly only if it is available.

The absence of a minimum requirements provision in the 1994 Amendment is especially striking in view of such a provision in Versailles' water purchase contract with South Woodford District. In the current version of that contract, which was executed in 1966 and then amended in 1979 and 1984, the purchaser, South Woodford District, agreed to

exclusively purchase 7.5 million gallons of water during the entire term of this Contract, renewals, or extensions thereof. Should the District purchase water or acquire water from a source other than the City, it shall be required to take the minimum of 7.5 million gallons per month.⁴⁴

Clearly, if Versailles and Northeast Woodford District had agreed upon a minimum level of monthly purchases by Northeast Woodford District, similar language would have been included in the 1994 Amendment. The fact that Versailles entered different purchase arrangements with its two wholesale customers indicates an intent to treat these wholesale customers differently and to not impose any minimum purchase requirement upon Northeast Woodford District.

Moreover, the record does not contain clear and convincing evidence that Versailles' facilities were expanded solely to meet the demands of Northeast Woodford District. The studies that Versailles commissioned indicated that significant growth in

⁴⁴ Water Purchase Contract at 3 (emphasis added), *available at* <u>https://psc.ky.gov/tariffs/Water/</u> <u>Municipals/Versailles/Contracts%20and%20Info/South%20Woodford%20County%20Water%20District/19</u> <u>84_Amendment%20to%20Water%20Purchase%20Contract.pdf</u>.

Versailles retail customers was likely.⁴⁵ To the extent that Versailles' expansion of its water treatment plant appears to be intended to meet this additional retail demand, we are unable to find that the expansion was made solely to meet the demands of Northeast Woodford District. Thus, we are not persuaded that it would be reasonable to require Northeast Woodford District to pay for a minimum level of Versailles' expansion costs, and we decline to impose a minimum purchase obligation on this water district.⁴⁶

CONCLUSION

Having carefully reviewed the record in this matter and based upon the analysis set forth above, the Commission finds that Versailles' proposed contract revision with Northeast Woodford District is unreasonable should be denied.

IT IS THEREFORE ORDERED that Versailles' proposed contract revision with Northeast Woodford District is denied.

⁴⁵ Versailles' Response to Commission Staff's Request for Information, Item 9(b) (filed Jan. 19, 2012).

⁴⁶ Other means are available to Versailles to ensure that Northeast Woodford District pays the appropriate costs of wholesale water service provided to it. If Versailles believes that the rates it charges to Northeast Woodford District are insufficient, Versailles may file to adjust its wholesale rate to more accurately account for its costs to provide wholesale water service. A detailed cost-of-service study, which should support such application, can accurately demonstrate the true costs that Versailles is incurring to serve Northeast Woodford District. To the extent that Versailles incurs reasonable fixed costs through the construction of water treatment and distribution facilities attributable to meeting its obligations under its water purchase agreement with Northeast Woodford District, Versailles should be permitted the full recovery of those costs.

By the Commission ENTERED AUG 12 2014 KENTUCKY PUBLIC SERVICE COMMISSION

ATTAS Executive Director

Case No. 2011-00419

John S Davis Chairman Northeast Woodford County Water District 225A South Main Street Versailles, KY 40383

Joesph M Hoffman Joseph M. Hoffman and Associates 100 United Drive Suite 4B Versailles, KENTUCKY 40383

William K Moore 126 South Main Street Versailles, KENTUCKY 40383

FREQUENTLY ASKED QUESTIONS REGARDING THE KENTUCKY PUBLIC SERVICE COMMISSION'S REGULATION OF MUNICIPAL UTILITIES

Does the Public Service Commission regulate all municipal utilities?

No. Municipal utilities are generally exempt from Kentucky Public Service Commission ("KPSC") regulation. The KPSC regulates only the rates and service aspects of a municipal utility's provision of wholesale utility service to a public utility. A municipal utility that provides retail utility service only is not subject to KPSC regulation.

What is a "public utility"?

KRS 278.010(3) defines "utility." Generally, water districts, water associations, and private corporations that provide water service or sewer collection or treatment service to the public for compensation are public utilities. Joint water source commissions, sanitation districts, and joint sewer agencies are not. Cities, except when providing telecommunication services, are expressly exempted from the definition of "utility."

If a municipal utility provides water or sewer service to a public utility, what part of the municipal utility's operations is subject to Public Service Commission regulation?

The KPSC regulates only the municipal utility's provision of utility service to the public utility.

Does the Public Service Commission regulate a municipal utility's provision of water or sewer service to other municipal utilities?

No. Municipal utilities are not public utilities. Therefore, a municipal utility's provision of water or sewer service to another municipal utility is not subject to KPSC regulation. <u>*City of Mount Sterling, Kentucky*</u>, Case No. 95-193 (Ky. PSC May 31, 1995).

Does the Public Service Commission regulate a municipal utility's provision of retail water or sewer service to persons who are located outside a city's boundaries?

No. Prior to 1961, Kentucky's highest court ruled on several occasions that the KPSC had jurisdiction over a municipal utility's service to persons outside the city's boundaries. In <u>McClellan v. Louisville Water Co.</u>, 351 S.W.2d 197 (Ky. 1961), however, the Court overruled these decisions. Since then, Kentucky courts have consistently held that such service is exempt from KPSC regulation.

When did the Public Service Commission begin regulating a municipal utility's provision of utility service to public utilities?

On January 31, 1994 the Kentucky Supreme Court held in <u>Simpson County Water</u> <u>District v. City of Franklin</u>, 872 S.W.2d 460 (Ky. 1994), that when a city contracts to provide water service to a water district or other public utility, it waives its exemption from KPSC
regulation and its provision of water service to such entity is subject to Commission regulation. To implement this decision, the KPSC then ordered all municipal utilities that provide wholesale utility service to a public utility to file with the KPSC a schedule of their wholesale rates and a copy of their wholesale contracts. <u>Submission of Contracts and Rates of Municipal Utilities</u>, Administrative Case No. 351 (Ky. PSC Aug. 10, 1994).

Must a municipal utility that provides utility service to a public utility obtain a certificate of public convenience and necessity before constructing utility facilities?

No. <u>KRS 278.020(1)</u> requires a public utility to obtain a certificate of public convenience and necessity from the KPSC before constructing utility facilities. It is not applicable to a municipal utility. <u>*City of Flemingsburg v. Pub. Serv. Com'n*</u>, 411 S.W.2d 920 (Ky. 1966); <u>*City of Georgetown v. Public Service Commission*, 516 S.W.2d 842 (Ky. 1974).</u>

Does the Public Service Commission have the authority to resolve service territory disputes between public utilities and municipal utilities?

No. In <u>City of Georgetown v. Public Service Commission</u>, 516 S.W.2d 842 (Ky. 1974), Kentucky's highest court held that the KPSC has no authority to resolve boundary disputes between a city and a public utility. KPSC, however, has the authority to prevent a public utility from constructing facilities to serve areas in which a municipal utility serves if the construction of such facilities would be a wasteful duplication of facilities. <u>City of Hawesville v. East Daviess</u> County Water Association, Case No. 2004-00027 (Ky. PSC. Mar. 25, 2004).

What documents should a municipal utility have on file with the Public Service Commission if it provides wholesale water or sewer service to a public utility?

A municipal utility should file a copy of its most recent wholesale water contract with the public utility and a tariff sheet that reflects its current rates for that service.

What action should a municipal utility take if it does not currently have these documents on file with the Public Service Commission?

It should file the documents immediately with the KPSC with a written explanation for its failure to make the filing earlier. Failure to timely file these documents may be deemed a violation of the KPSC's Order of August 10, 1994 in Administrative Case No. 351 and may subject the municipal utility and its officers to administrative penalty. <u>*City of North Middletown, Kentucky*</u>, Case No. 2006-00072 (Ky. PSC Jan. 12, 2007).

KRS 278.160(1) requires a utility to file with the KPSC schedules showing all rates and conditions of service. The KPSC has found that a municipal utility violates KRS 278.160(1) when it fails to file a revised contract or a rate schedule reflecting the rates established by a contract. The KPSC has assessed administrative penalties for such failures. *See, e.g., City of Danville, Kentucky*, Case No. 2008-00176 (Ky. PSC Aug. 17, 2010).

The KPSC has held that municipal utility wholesale rates that were in effect prior to April 21, 1994 do not require Commission approval and are presumed to be proper and valid. *City of Franklin v. Simpson County Water Dist.*, Case No. 92-084 (Ky. PSC Jan. 18, 1996).

Revisions or amendments to municipal rates for wholesale water or sewer service to a public utility that occurred after April 21, 1994 and that were not filed with the KPSC, however, may be considered unlawful or invalid and may be subject to refund. <u>KRS 278.200</u> prohibits any change in such rate "until a hearing has been had before the commission." The KPSC has asserted that failure to file revised rates with the KPSC prevents a municipal utility from lawfully charging the rate and requires refunds. <u>*City of Danville, Kentucky*</u>, Case No. 2008-00176 (Ky. PSC Aug. 17, 2010).

Who is responsible for filing a copy of the written contract for water or sewer service with the Public Service Commission?

The responsibility for filing with the KPSC a contract to provide utility service to a public utility lies with the municipal utility. <u>*Kentucky-American Water Company*</u>, Case No. 2001-230 (Ky. PSC Oct. 19, 2001).

Does a municipal utility's provision of water or sewer service to a public utility fall within the Public Service Commission's jurisdiction if the service is not provided under a written contract or agreement with the public utility?

No. The KPSC has jurisdiction only if a written agreement between the municipal utility and public utility for the provision of utility service exists. *See <u>City of Greenup v. Pub. Serv.</u> <u>Com'n</u>, 182 S.W.3d 535 (Ky.App. 2005). If no written agreement exists, the KPSC has no jurisdiction over the municipal utility's provision of service to the public utility and the municipal utility may change its rate for wholesale water or sewer service to the public utility without any hearing before the KPSC. <u>South Shores Water Works v. City of Greenup, Kentucky</u>, Case No. 2009-00247 (Ky. PSC Oct. 5, 2010).*

If a written agreement exists and allows the municipal utility to revise the rate, a municipal utility will generally revise the rate through the adoption of an ordinance. Because the ordinance changes a rate or service standard, <u>KRS 278.200</u> requires the municipal utility to obtain KPSC approval.

Besides filing its wholesale contract with the Public Service Commission, are there any other actions that a municipal utility should take?

A municipal utility should ensure that the KPSC has the municipal utility's current mailing and e-mail addresses and the name and title of the city official who is responsible for dealing with the KPSC. It should promptly notify the KPSC of any changes in that information. This information can be mailed to: Executive Director, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, or e-mailed to psc.tariffs@ky.gov.

What actions must a municipal utility take if it renegotiates a contract to provide wholesale water or sewer service to a public utility?

A municipal utility may renegotiate its wholesale water or sewer service contracts at any time. However, the KPSC requires that, if a new contract or an amendment to an existing contract is executed, the municipal utility file with the KPSC a copy of that new contract or amendment. The KPSC has taken the position that the new contract or amendment will not become legally effective until filed with and accepted by the KPSC. See <u>City of North</u> <u>Middletown, Kentucky</u>, Case No. 2006-00072 (Ky. PSC Jan. 12, 2007).

What actions must be taken by a municipal utility that unilaterally revises a rate or service provision in a contract for wholesale water or sewer service to a public utility?

The KPSC requires a municipal utility that unilaterally revises any rate or service provision in a contract for wholesale water or sewer service to a public utility to notify the public utility and the KPSC of the proposed revision. KRS 278.180 and 807 KAR 5:011, Section 6, provide that notice to the KPSC is given by filing with the KPSC a tariff sheet containing the revised rate or service provision. The municipal utility must also mail or personally deliver a written notice of the proposed revision to the public utility. The Kentucky Court of Appeals has found that a municipal utility's failure to comply with KRS 278.180 and 807 KAR 5:011 will render its proposed revision void. *City of Russellville, Kentucky v. Public Service Commission*, No. 2003-CA-002132 (Ky. Ct. App. Feb. 18, 2005).

Are there any exceptions to this requirement?

No. In cases where a wholesale contract establishes a formula instead of a specific price for service and requires a periodic recalculation of the formula, however, the KPSC has held that a municipal utility is not required to file a new tariff sheet reflecting the results of the recalculation. The KPSC has reasoned that the contract formula is the rate and remains unchanged. Notwithstanding this holding, the KPSC has encouraged municipal utilities to file a revised tariff sheet that reflects the results of the recalculation as soon as possible. <u>Bath County</u> <u>Water District</u>, Case No. 2007-00299 (Ky. PSC Sep. 26, 2007).

When must a municipal utility provide notice to the Public Service Commission of a revision to a rate or service provision in a contract for wholesale water or sewer service to a public utility?

The KPSC interprets <u>KRS 278.180</u> as requiring a municipal utility to notify the KPSC at least 30 days prior to the scheduled effective date of the revised rate or service provision. <u>*City of Hodgenville, Kentucky*</u>, Case No. 96-326 (Ky. PSC July 12, 1996).

When should a municipal utility provide written notice of a proposed rate change to a public utility wholesale customer?

The municipal utility should mail or personally deliver the written notice to the public utility at least 30 days before the proposed effective date of the proposed rate change and no later than the day on which the tariff sheet containing the proposed rate revision is filed with the KPSC.

What are the consequences of failing to provide adequate notice to the Public Service Commission or the public utility of the proposed revision?

The KPSC has held that the proposed revision may not be placed into effect if the municipal utility fails to provide adequate notice. <u>*City of Hodgenville, Kentucky*</u>, Case No. 96-326 (Ky. PSC July 12, 1996). The Kentucky Court of Appeals has found that a municipal

utility's failure to comply with <u>KRS 278.180</u> will render its proposed revision void. <u>*City of Russellville, Kentucky v. Public Service Commission*</u>, No. 2003-CA-002132 (Ky. Ct. App. Feb. 18, 2005).

What should the municipal utility's notice to the public utility contain?

807 KAR 5:011, Section 8(4), establishes the contents of a notice of a proposed rate revision. Generally, the municipal utility's notice must contain: (1) The proposed effective date and the date the proposed rates are to be filed with the KPSC; (2) The public utility's present and proposed rates and the effect upon the public utility's average bill if the proposed rates become effective; (3) The amount of the proposed change in both dollar amounts and percentage change; (4) A statement that the municipal utility's filing with the KPSC may be examined at the municipal utility's office located at (utility address), the KPSC's offices at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the KPSC's Web site at http://psc.ky.gov; (5) A statement that comments regarding the tariff filing may be submitted to the KPSC through the KPSC's Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; (6) A statement that the rates contained in the notice are the proposed rates, but that the KPSC may order rates to be charged that differ from the proposed rates; (7) A statement that a timely written request for intervention may be submitted to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request and the status and interest of the party; and (8) A statement that if the KPSC does not receive a written request for intervention within 30 days of the initial publication or mailing of the notice, the KPSC may take final action on the proposed rate.

Must a municipal utility publish notice of the proposed rate change in newspapers of general circulation to provide notice to the public utility's customers?

No. The municipal utility is required to provide notice to the public utility only.

What documents in addition to a tariff sheet should a municipal utility provide the Public Service Commission when it provides notice of a proposed change in its wholesale rate?

A municipal utility must provide a tariff sheet that sets forth the proposed wholesale rate, a copy of the notice of the proposed rate change that was provided to the wholesale customer(s), and a written statement verifying the notice was mailed or personally delivered. The municipal utility's chief executive officer or a utility officer authorized to sign on his behalf should sign the tariff sheet and statement regarding notice.

Although not required, the following documents may assist the KPSC in its review of the proposed rate revision: a copy of the municipal ordinance or resolution of the municipal utility's governing body that approved the proposed rate change; any studies or reports that were performed to develop the proposed rate, and any other information that describes need for the rate change and supports the level of the proposed rate change. Any written communication from the public utility to the municipal utility that indicates the public utility does not object to the proposed rate change or waives its right to hearing on the proposed rate should also be submitted. Providing additional information on the reason for the proposed rate change may

reduce the likelihood that the KPSC will initiate a formal proceeding to investigate the proposed rate.

What is a tariff sheet?

A tariff sheet is the form on which the KPSC requires all rates and conditions of service to be listed. The tariff sheet form can be viewed and downloaded at <u>http://psc.ky.gov/agencies/psc/forms/tariff.pdf</u>. Instructions for completing the form are found at <u>807 KAR 5:011</u>.

Does the Public Service Commission assess a municipal utility a fee to file a rate schedule or application for rate adjustment?

No. The KPSC does not assess any fee to apply for a rate adjustment or to file a new rate schedule or contract.

How does a municipal utility file a contract or a tariff sheet containing rate revisions with the Public Service commission?

The KPSC no longer accepts paper filings. A tariff sheet or contract must be filed electronically through the KPSC's Electronic Tariff Filing System ("TFS"). The log-in for the TFS is found at <u>https://psc.ky.gov/Security/account/login.aspx</u>. A person must have an account to use the TFS. Directions for registering for an account with the TFS are found at <u>http://psc.ky.gov/agencies/psc/tariffs/E-file_Register.pdf</u>. Instructions for using the TFS are found at <u>http://psc.ky.gov/agencies/psc/tariffs/E-file_Filing.pdf</u>. Questions regarding TFS registration or use should be directed to KPSC Tariffs Branch at (502) 782-2626 or (502) 782-2627.

What actions may the Public Service Commission take once a municipal utility provides notice of a proposed rate adjustment?

The KPSC may request additional information regarding the proposed rate change, suspend the proposed rate and initiate a formal proceeding to investigate the proposed rate, or allow the proposed rate to become effective.

Does the Public Service Commission generally suspend or investigate if the public utility does not object to a municipal utility's proposed rate revision?

Historically, the KPSC has allowed a municipal utility's proposed rate revision to become effective if the public utility customer does not object or otherwise request an investigation of the proposed rate. On rare occasions, the KPSC has suspended a rate and investigated a municipal utility rate change despite the lack of any objection or request for investigation when the KPSC found that proposed rate or service condition was counter to KPSC precedent. For example, the KPSC suspended a contract between a city and a water district that contained a provision for automatic annual rate adjustments based upon the Consumer Price Index and later struck that provision from the contract. *City of Lawrenceburg, Kentucky*, Case No. 2006-00067 (Ky. PSC Nov. 21, 2006).

May a customer of the public utility object to a municipal utility's proposed wholesale rate change? What is the significance of such objection?

Yes, customers of a public utility may file objections to the municipal utility's proposed wholesale rate. Since a change in the wholesale rate may affect the rate that the public utility charges to its customers, customers have an interest in the proposed rate change. In theory, the KPSC would have to consider any objection or request for investigation from the public utility's customers in the same manner as an objection from the public utility.

How much time does the Public Service Commission have to determine whether the proposed rate should be suspended for further investigation?

Assuming that a municipal utility provides the shortest notice permitted by law, the review period is generally 30 days. The KPSC interprets <u>KRS 278.180</u> as requiring municipal utilities to provide the KPSC with at least 30 days' notice of the proposed rate change and <u>KRS 278.190(1)</u> as permitting the KPSC to suspend a proposed rate revision at any time before the stated effective date of that proposed rate revision.

How does the Public Service Commission inform a municipal utility of the action taken on a proposed change in a wholesale rate?

If the KPSC accepts the proposed rate and permits it to take effect, it will send the municipal utility by e-mail a letter of notification and a copy of the proposed rate schedule stamped "EFFECTIVE". If the KPSC initiates a formal investigation, it will serve by e-mail a copy of the KPSC Order establishing a formal proceeding to investigate the proposed rate and ordering the suspension of the proposed rate.

A municipal utility may monitor the progress of any action on the proposed rate through the TFS Website at <u>http://psc.ky.gov/trf/trfmain.aspx</u>. Any correspondence or documents submitted to the KPSC regarding the proposed rate is posted to this website shortly after it is received. If the KPSC initiates a formal investigation of the proposed rate, the KPSC will post all documents filed in the record of that investigation to its website at <u>http://psc.ky.gov/Home/Library?type=Cases</u>.

How much time does the Public Service Commission have to review and act upon a municipal utility's proposed rate adjustment once it suspends the proposed rate?

The KPSC interprets <u>KRS 278.190(2)</u> as permitting it to suspend a municipal utility's proposed rate for a period of up to five months. At the end of the five months, if the KPSC has not issued a final decision on the proposed rate, the municipal utility may place the rate into effect **subject to refund**. If the municipal utility places a rate into effect subject to refund and the KPSC eventually determines that the proposed rate is unreasonable and orders a different rate to be assessed for wholesale service, the municipal utility must refund to the wholesale customer the difference between amounts billed and collected under the proposed rate and those that are owed under the approved rate.

The KPSC has interpreted <u>KRS 278.190(3)</u> as requiring the issuance of a final decision within 10 months of the date on which the municipal utility filed its proposed rate schedule. If a

final decision is not issued within that time period, the KPSC has held that the proposed rate becomes effective by operation of law. *City of Falmouth, Kentucky*, Case No. 2006-00403 (Ky. PSC June 27, 2007).

This time limitation, however, has not been applied to proceedings involving proposed revisions to a municipal utility's conditions for service. In <u>City of Versailles, Kentucky</u>, Case No. 2011-00419 (Ky. PSC Aug. 12, 2014), 35 months elapsed between the filing of a municipal utility's proposed rule to restrict a wholesale customer's water purchases to the municipal utility and the KPSC's issuance of a final decision. When 10 months had elapsed from the proposed rule's filing, the KPSC did not deem the proposed rule as effective. It ultimately denied the proposed rule.

What happens if the Public Service Commission suspends a proposed rate and establishes a formal investigation?

Historically, when the KPSC establishes a formal proceeding to investigate a municipal utility's proposed wholesale rate, it establishes a procedural schedule for the proceeding. In a typical proceeding, it will require a municipal utility to file written testimony within 60 days of the initiation of the proceeding and to provide basic documents and information about the municipal utility's operations and finances. Based upon the municipal utility's response to the KPSC's Order, KPSC Staff will typically submit additional questions and requests for information to the municipal utility. Intervening parties have the right to request information from the municipal utility. (In typical cases, the only intervenor to the proceeding is the municipal utility's wholesale customer.). An intervenor also has the right to file written testimony to support its position on the proposed wholesale rate. If an intervenor submits written testimony, the municipal utility and KPSC Staff may request information from that party. Unless the parties waive a hearing or the KPSC determines that a hearing is unnecessary, the KPSC will conduct a hearing on the proposed rate at its offices in Frankfort, Kentucky. As the parties have already filed written testimony, the hearing is generally limited to the cross-examination of witnesses. After the hearing, all parties may submit written briefs. The matter is then submitted for decision.

May a municipal utility and a public utility agree on a rate revision while the Public Service Commission is conducting a formal proceeding on the proposed rate?

Yes. The KPSC has taken the position that if the municipal utility and its wholesale customer(s) reach an agreement and the agreed wholesale rate is neither unreasonable nor unconscionable on its face, the Commission will not conduct additional proceedings but will accept the agreed rate. <u>*City of Mount Sterling, Kentucky*</u>, Case No. 95-193 (Ky. PSC Sept. 1, 1995).

Who has the burden of proof in a Public Service Commission proceeding?

The municipal utility bears the burden to demonstrate that its proposed rate is reasonable. *See <u>City of Warsaw, Kentucky</u>*, Case No. 98-283 (Ky. PSC Sep. 22, 1998).

How does the Public Service Commission determine that a proposed wholesale rate is reasonable?

The KPSC first examines the municipal utility's costs to provide utility service for a historical test period (generally a calendar or fiscal year). It removes any unreasonable or unlawful expenses. It will make normalizing adjustments to reflect a full 12 months of operations for revenue and expense items that changed during the test period. The KPSC will also adjust revenues and expenses to reflect known and measurable changes that have occurred since the end of the historical test period. It will also examine and allocate any expenses that are jointly incurred to provide services other than the utility service. For example, expenses for telephone service, office equipment, or office personnel that support several city departments, including the city's water utility, will be allocated between those departments. Similarly, if a municipal utility provides service at no cost to other city departments, adjustments will be made to remove the expenses associated with that service. Using this adjusted level of expenses and considering the municipal utility's outstanding debt and debt service obligations, the KPSC establishes a total revenue requirement for the municipal utility.

After determining the municipal utility's total revenue requirement, the KPSC then examines the costs that the municipal utility incurs to provide water or sewer service to each customer group and allocates the revenue requirement based upon those costs. Based upon these cost allocations and revenue requirements, rates are then established for each public utility to generate its assigned revenue requirements.

Does the Public Service Commission examine the reasonableness of a municipal utility's retail rates?

No. The KPSC's assignment of costs and revenue requirements is used only to determine a reasonable wholesale rate for the public utility. The KPSC does not review the reasonableness of a municipal utility's retail rates.

If a municipal utility disagrees with the Public Service Commission's decision, can it request reconsideration of the decision?

Yes. <u>KRS 278.400</u> permits a municipal utility to apply for rehearing of any Order entered in a KPSC proceeding to which it is a party. An application for rehearing must be made within 20 days from date of service of the Order upon the municipal utility.

May a municipal utility seek judicial review of a Public Service Commission Order?

Yes. <u>KRS 278.410</u> permits a party to a KPSC proceeding to bring an action for review of a KPSC Order in Franklin Circuit Court. The party must bring the action within 30 days after service of the Order, or within 20 days after the KPSC has denied an application for rehearing, or 20 days after service of the final order on rehearing.

If the Public Service Commission conducts a formal investigation of the proposed rate, may the municipal utility recover its expenses to participate in the proceeding?

Yes. A municipal utility's reasonable rate case expenses are recoverable. These expenses generally include attorney's fees, expert witness fees, and expenses associated with cost-of-service studies. Recovery of these expenses, however, is not automatic. The municipal utility must specifically request recovery of these expenses. Moreover, the KPSC reviews the expenses and has in some instances denied recovery of expenses that it deemed "excessive" or "unreasonable." *See, e.g., <u>Hopkinsville Water Environment Authority</u>, Case No. 2009-00373 (Ky. PSC July 2, 2010). The KPSC has previously allocated a portion of the costs associated with a rate study to non-wholesale customers when it determined that such study could be used to establish non-regulated rates. <i>See, e.g.* Case No. 2008-00250, *Frankfort Electric and Water Plant Board* (Ky. PSC. April 6, 2009).

In cases in which a municipal utility has requested recovery of rate case expenses and the KPSC has found such expenses to be reasonable, it has permitted the municipal utility to assess a surcharge on its public utility customers for a defined period to recover reasonable rate case expenses. The surcharge is in addition to the wholesale water rate.

Is a municipal utility permitted to use the Consumer Price Index (CPI) or other pricing index to automatically adjust its wholesale rate to reflect the effects of inflation?

Not currently. No public or municipal utility has yet demonstrated to the KPSC that the CPI or other index accurately measures and reflects changes in the cost of providing utility service. *See <u>City of Lawrenceburg, Kentucky</u>*, Case No. 2006-00067 (Ky. PSC Nov. 21, 2006); <u>Atmos Energy Corporation</u>, Case No. 2013-00148 (Ky. PSC Apr. 22, 2014). The KPSC has stricken provisions in municipal utility wholesale contracts that provided for automatic adjustments based upon the CPI because of the proponent's failure to demonstrate the index's reasonableness.

If a municipal utility desires to impose a system development charge on a public utility wholesale customer, does it follow the same procedures described above?

No. <u>807 KAR 5:090</u> sets forth a different procedure that must be followed. Municipal utilities and public utilities must file an application with the KPSC. They cannot merely file a rate schedule setting forth the proposed system development charge.

Does the Public Service Commission's jurisdiction also extend to service related issues between a municipal utility and a public utility?

Yes. <u>Service</u> includes any practice or requirement in any way relating to the municipal utility's service, including the purity, pressure, and quantity of water. Service-related issues that the KPSC may have jurisdiction over include the frequency of meter testing, meter testing standards, the level of disinfectants in purchased water, water odor and water taste. *See, e.g., Kentucky-American Water Company*, Case No. 2001-230 (Ky. PSC Oct. 19, 2001).

If a municipal utility desires to change a term of the wholesale contract related to rates or service and the public utility refuses to agree, may the municipal utility amend the contract

terms by filing a rate schedule with the Public Service Commission that contains those terms?

Yes. In *Board of Education v. William Dohrman, Inc.*, 620 S.W.2d 328 (Ky. 1981), the Kentucky Court of Appeals held that, no matter what a contract provided, the KPSC had the right and duty to regulate the rates and services of utilities and could amend terms in a contract for utility service that related to rates or service. *See also <u>City of Versailles, Kentucky</u>*, Case No. 2011-00419 (Ky. PSC Aug. 12, 2014); *Kenton County Water District No. 1*, Case No. 8572 (Ky. PSC Mar. 22, 1983). A municipal utility may impose a condition of service or a rate that differs from the wholesale contract's terms by filing a tariff sheet with the KPSC that implements the new rate or condition of service. As the proponent of the amended rate or condition of service, however, the municipal utility has the burden of demonstrating that the amendment is fair, just and reasonable.

What are examples of conditions of service that could be amended?

Some examples include maximum or minimum supply or purchase requirements, reporting requirements, required participation in planning activities, penalties when maximum supply requirements are exceeded, and advanced notice requirements for proposed rate changes.

Is a municipal utility required to pay an assessment to the Public Service Commission?

A municipal utility is not required to pay an assessment **unless** it provides telecommunications service. <u>KRS 278.150</u> requires only public utilities to pay an annual assessment to the KPSC, based upon its annual revenues, to pay for the KPSC's operations. Except when it provides telecommunications services, a municipal utility is excluded from the definition of "utility."

Prepared By:

Gerald E. Wuetcher Counsel to the Firm Stoll Keenon Ogden PLLC 859-231-3000 (office) 859-231-3017 (direct) 859-550-3894 (cell) 300 West Vine St. Suite 2100 Lexington, KY 40507-1801 gerald.wuetcher@skofirm.com https://twitter.com/gwuetcher

Date: September 5, 2014

ADDITIONAL MATERIALS PROVIDED

In addition to the written materials contained in this Exhibit, Attendees were also provided with a flash drive containing reference materials, copies of PSC Orders, and other published documents. The total size of file is in excess of 100 MB. Accordingly, the electronic materials have not been filed with the electronic version of the "Notice of Filing," but a copy of the electronic materials have been placed on a CD-ROM and included with the paper medium version of this Notice.

EXHIBIT 5

Kentucky Bar Association

Continuing Legal Education Commission 514 West Main Street Frankfort, KY 40601-1812 Phone: 502-564-3795 Fax: 502-564-3225 http://www.kybar.org

Gerald Edward Wuetcher 110 Old Hickory Ln Versailles KY 40383-1131 ID:

Re: **CLE Activity Accreditation**

Date: May 12, 2015

The application for CLE accreditation for the activity listed below has been approved by the KBA CLE Commission. Kentucky attorneys attending or participating in the activity who have NOT claimed CLE credit must file the appropriate reporting certificate as listed below.

| Sponsor: | Stoll Keenon | Ogden - Lexington | |
|--------------|----------------------------------|-------------------|------|
| Activity: | Northern Kentucky Water Training | | |
| Location: | Erlanger KY | | |
| Date: | 05/27/2015 | | |
| Activity No. | 156849 | Sponsor No. | 1858 |
| TOTAL CREDI | TS: 8.00 | ETHICS CREDITS: | 1.00 |

Ethics credits are INCLUDED in the TOTAL number of credits.

Please file a Form #3 for attendance at a live CLE program or completion of a technological program.

Should you require additional information, please contact Clifford Timberlake, Accreditation Coordinator at (502) 564-3795 ext. 228.

EXHIBIT 6

Wuetcher, Gerald

| From: | Sharp, Scott (DLG) <scott.sharp@ky.gov></scott.sharp@ky.gov> |
|----------|--|
| Sent: | Tuesday, June 02, 2015 9:05 AM |
| То: | Wuetcher, Gerald |
| Subject: | RE: Confirmation of Receipt of Request |

The course was approved and entered into the system on 5/20/15. All that is needed now is the proof of attendance for the officials that attended.

Scott

-----Original Message-----From: Wuetcher, Gerald [mailto:Gerald.Wuetcher@skofirm.com] Sent: Friday, May 29, 2015 6:08 PM To: Sharp, Scott (DLG) Subject: Confirmation of Receipt of Request

Mr. Sharp:

I am writing to request DLG's confirmation that Stoll Keenon Ogden PLLC's application for accreditation of the Northern Kentucky Water Training Program 2015 for the County Officials Training Program was received. I submitted this application approximately 10 days ago and am writing to ensure that the application was received. The training was conducted on May 27 and one county government official attended.

Thank you for your attention to this request. If you have any questions, please contact me.

Sincerely,

Gerald E. Wuetcher Counsel to the Firm Stoll Keenon Ogden PLLC 300 W. Vine Street, Ste 2100 Lexington, Kentucky 40507-1801 859.231.3017 (Office) 859.550.3894 (Cell) gerald.wuetcher@skofirm.com