

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>APPLICATION OF NORTHERN KENTUCKY</b>	)	
<b>WATER DISTRICT AND STOLL KEENON</b>	)	
<b>OGDEN PLLC FOR ACCREDITATION AND</b>	)	<b>CASE NO. 2016-00146</b>
<b>APPROVAL OF A PROPOSED WATER</b>	)	
<b>DISTRICT MANAGEMENT TRAINING</b>	)	
<b>PROGRAM</b>	)	

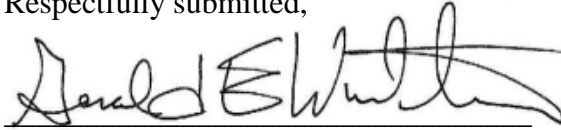
**NOTICE OF FILING**

Pursuant to the Commission’s Order of May 5, 2016, 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 2016” was performed on May 4, 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 and a biographical summary of presenters not previously identified (**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 and a list of documents contained on a flash drive provided to 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: May 6, 2015

Respectfully submitted,



Gerald E. Wuetcher  
Stoll Keenon Ogden PLLC  
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Lexington, Kentucky 40507-1801  
gerald.wuetcher@skofirm.com  
Telephone: (859) 231-3017  
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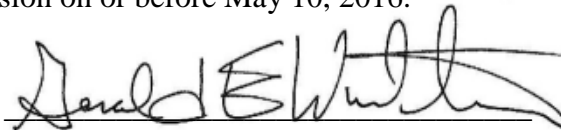
*Counsel for Northern Kentucky Water District*

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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' May 6, 2016 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 May 6, 2016; 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 May 10, 2016.



Gerald E. Wuetcher

# **EXHIBIT 1**



# **EXHIBIT 2**

## **DESCRIPTION OF CHANGES TO THE PROGRAM**

Because of audience interest in the subject matter, the presentation “The Flint Lead Crisis and Its Impact on Kentucky Water Utilities” extended an addition 20 minutes and ran from 12:30 to 2:20. As a result, the presentation “Water Utilities and Fire Departments” was shorten to 40 minutes. For the presentation “Legal Issues in the Operation and Management of Water Systems,” Mr. David Koenig, Esq., and Mr. Brian Durham, Esq. also served as members of the discussion panel. Biographical information on Messrs. Koenig and Durham is attached.

# BIOGRAPHICAL INFORMATION

**DAVID A. KOENIG**  
**Attorney at Law**  
**223 Main Street**  
**P.O. Box 6205**  
**Florence, KY 41022-6205**  
**(859) 525-6161**

## **EDUCATION:**

College:	College of William & Mary 1968-1970
	University of Kentucky B.A., 1972
	University of Kentucky College of Law J.D., 1975

## **LEGAL EXPERIENCE:**

1975 - Present	Attorney engaged in private practice.
1984 - 1986	Public Defender Boone District & Circuit Courts
1986 - 1988	Traffic Alcohol Prosecutor Boone County Attorney's Office
1990 - 1996	Domestic Relations Commissioner Boone Circuit Court
1992	Assistant Legal Counsel Northern Kentucky University
1997- 2007	Child Support Attorney Boone County Child Support Office

1997 - 1998                      Assistant Commonwealth Attorney  
Boone-Gallatin Commonwealth Attorney's Office

2007 - Present                    Assistant County Attorney  
Boone County Attorney's Office

and

Director,  
Boone County Child Support Office

**RELEVANT LEGAL EXPERIENCE:**

1992 – Present                    Counsel,  
Boone County Water District

1998 – Present                    Co-Counsel,  
Boone-Florence Water Commission

**MISCELLANEOUS:**

- Past President, Boone County Bar Association;
- Past Director, Northern Kentucky Bar Association;
- Past Board Member:
  - Family Service of Greater Cincinnati;
  - Tri-City YMCA;



# Brian C. Dunham

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## Member

bdunham@fbtlaw.com

7310 Turfway Road  
Suite 210  
Florence, Kentucky 41042-1374

T: 859.817.5924 | F: 859.238.5902 | M: 859.816.4070

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## Other Contact Info

### Alternate Office

Cincinnati  
301 East Fourth Street  
Great American Tower Suite 3300  
Cincinnati, Ohio 45202  
T: 513.651.6800  
F: 513.651.6981

### Assistant

Lisa Harnett  
lharnett@fbtlaw.com  
T 859.817.5906

## PRACTICE AREAS

Corporate/Business  
Entrepreneurial Business  
Finance and Real Estate  
Real Estate  
Shopping Center/Retail  
Development

## BAR MEMBERSHIPS

Kentucky  
Ohio

## EDUCATION

Northern Kentucky University  
Salmon P. Chase College of Law,  
J.D./M.B.A., *cum laude*, 1998  
Northern Kentucky University,  
B.A., *cum laude*, 1994

Brian provides practical counsel to business owners and management on a broad range of legal issues they face on a routine basis. This includes entity formation, acquisitions, and divestitures; financing; leasing; and, co-owner, employee, contractor, and vendor agreements and disputes. In addition, a significant portion of Brian's practice involves representing developers, investors, landlords, tenants, and lenders with real estate matters. Brian also has experience in the areas of public agency and utility law, as well as estate planning and administration.

## Representative Matters

- Lead counsel to sole shareholder and C.E.O. in seller-financed stock sale of home products manufacturer and retailer with over 200 employees and locations in 10 cities throughout the Midwest.
- Local counsel to Pennsylvania-based borrower with multiple Ohio plants in \$150+ million credit facility, acquisition of adjoining real property, and effecting merger under Ohio law.
- Outside general legal counsel to Northern Kentucky utility and public agency that serves approximately 300,000 customers in multiple counties.
- Served as lender's counsel to five local or regional banks in Ohio and Kentucky for dozens of commercial real estate loans.
- Developer's counsel for the development of a master planned development in Northern Kentucky containing professional and residential condominiums and retail facilities.
- Counsel to 50% owner of Ohio real estate investment business made up of six LLCs holding approximately 75 apartment units, parking lots and garages, and a downtown office building in his separation with the other 50% owner, which included advice on partnership tax issues.

# Brian C. Dunham

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- Seller's counsel in \$18.1 million sale of two-building office/warehouse portfolio containing 218,550 square feet.
- Developer's counsel for redevelopment of a 15-story office building in downtown Cincinnati into 88 apartments and four stories of offices, which included financing through a HUD program, City of Cincinnati grants and loans, and federal and state tax credits.
- Counsel to local hospital in its lease of multiple build-to-suit medical office buildings in Kentucky and Ohio.

## Memberships & Affiliations

Kentucky Bar Association

*Business Law Section, Former Chair*

*Business Corporation Act Task Force, Committee Member responsible for drafting revisions to KRS 271B.6-270 of Act*

Northern Kentucky Bar Association

*Business and Tax Law Section, Former Chair and Treasurer*

Cincinnati Bar Association

*Real Estate Law Section, Member*

*Business Law Section, Member*

## Press Releases

April 29, 2014

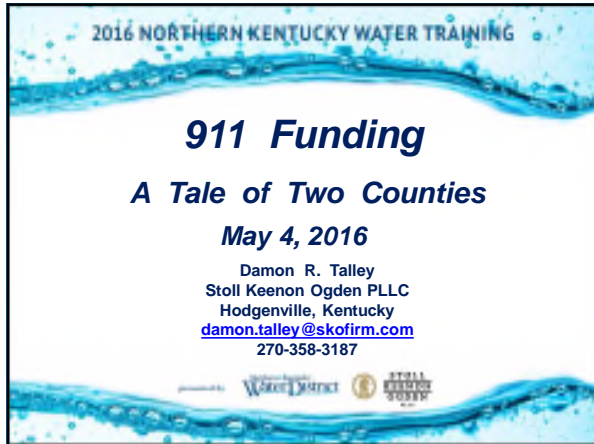
Frost Brown Todd Welcomes New Attorney in Florence

# **EXHIBIT 3**

**WATER DISTRICT COMMISSIONER  
ATTENDANCE**

<b>Last Name</b>	<b>First Name</b>	<b>Water District</b>	<b>Hours</b>
ADAMS	Rich	Pendleton County Water District	6
ALEXANDER	Tim	Boone County Water District	6
BODEN	David	Pendleton County Water District	6
CAIN	Charlie	Boone County Water District	6
COLLINS	Drew	Northern Kentucky Water District	6
CUNNINGHAM	Clyde	Northern Kentucky Water District	6
DAUGHERTY	James	Boone County Water District	6
FAULKNER	L.R.	Pendleton County Water District	6
FLAUGHER	Bill	East Pendleton County Water District	6
KNOCK	Richard	Boone County Water District	6
MACKE	Fred	Northern Kentucky Water District	6
MOORE	Brent	Pendleton County Water District	6
PRIBBLE	David	East Pendleton County Water District	6
SOMMERKAMP	Patricia	Northern Kentucky Water District	6
STRANGE	Joe	Pendleton County Water District	6
THOMPSON	Bill	East Pendleton County Water District	6
WAGNER	Doug	Northern Kentucky Water District	6

# **EXHIBIT 4**



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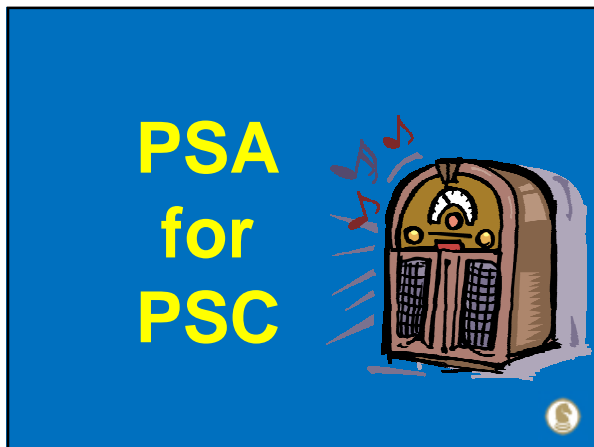
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## Reporting Requirements

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



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## Vacancy

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



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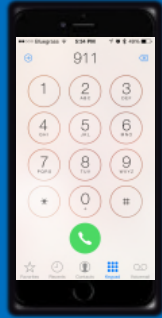
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## 911 FEE

EMERGENCY  
CALL 911



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## 911 Fee

- Historic Funding
- New Funding Sources
- Nature of Fee
- Potential Problems for Utility



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## 911 Fee (Cont.)

- Legal Battles
- Statewide Impact
- KRWA's Role
- Your Role



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## Funding 911 Call Center

- Historically
  - General Fund
  - Telephone Land Line
  - Cell Phones - \$0.70
  - Pre-paid Minutes - \$0.93 (2016)



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# New Funding Sources



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## Funding 911 Call Center

- New Funding Sources
  - Electric Utilities
  - Water Utilities
  - Parcel Fee



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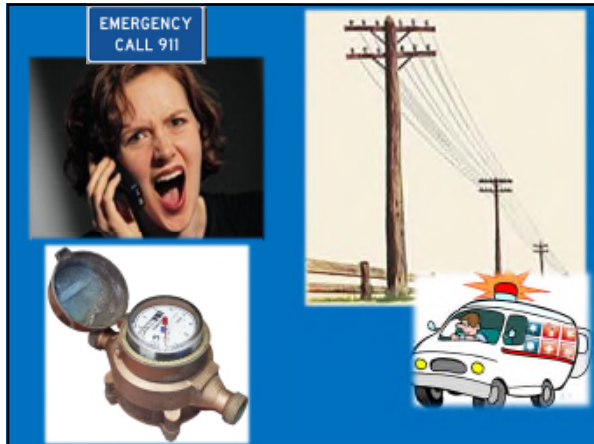
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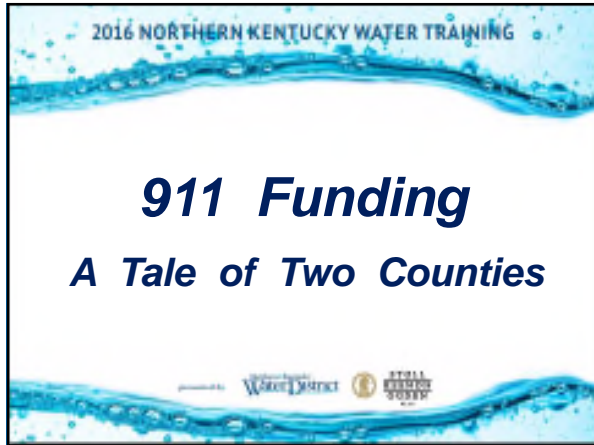
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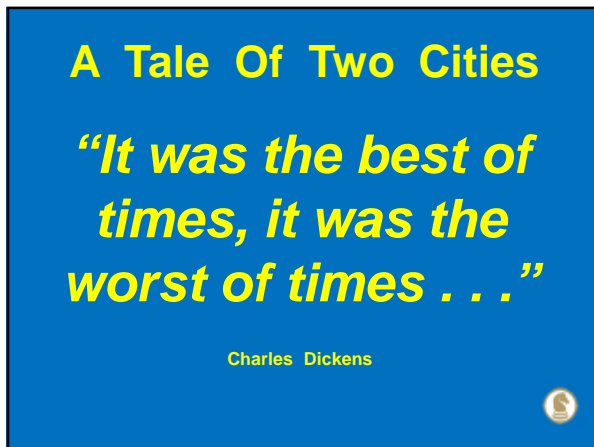
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# A Tale Of Two Counties

- Campbell
- Garrard



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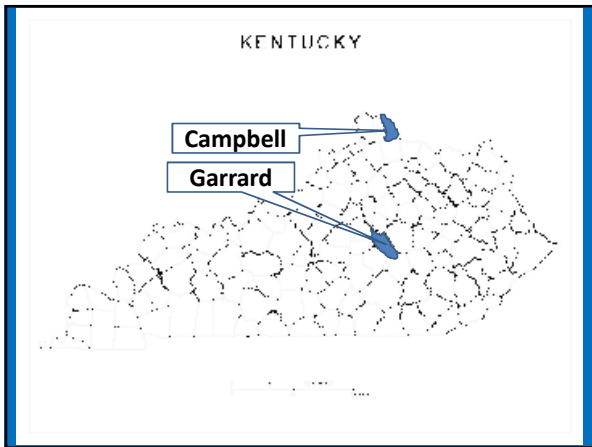
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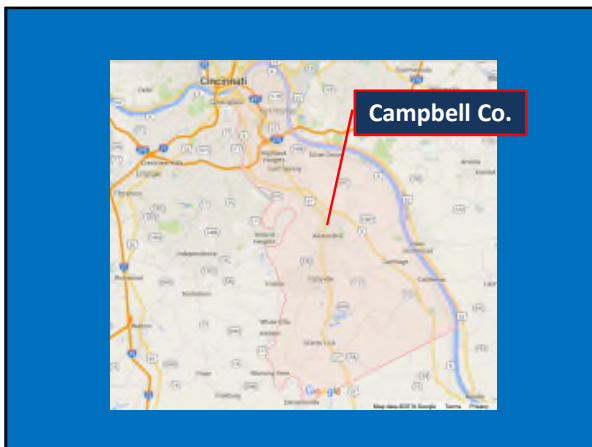
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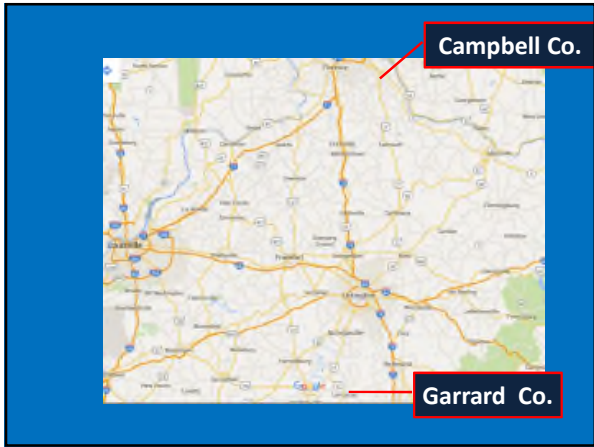
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**Northern KY – 2012**

- Fee on Electric Meters
- Why Electric?
  - All Homes Have Electricity
  - Only 2 Providers
- Fierce Fight
- Failed



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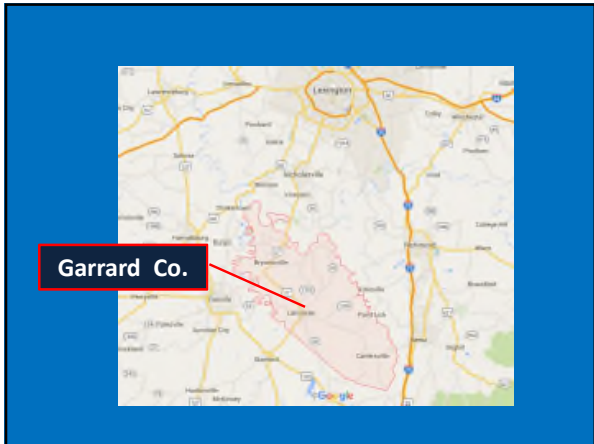
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### New Funding Sources

- Garrard County Ordinance (2012)
  - Charge on Water Meters
  - Water Utilities Bill & Collect
  - Water Utilities Keep 2%



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### Garrard County Ordinance

- Water Meters
  - Active
  - Inactive
  - Storage
  - Distributor's Warehouse



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### Nature of Fee

- Fee on Customer or
- Fee on Utility
- Who Owns Meter?
- Role of Utility
  - Billing & Collection Agent
  - Tax Payer



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### Potential Problems for Utility

- PR Nightmare
- Add 911 Fee as Separate Line Item?
- Absorb Cost Until Next Rate Case?

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### Potential Problems for Utility

- Customers Don't Pay
- Termination of Water Service for Non-payment
- Class Action Lawsuit
- Possibility of Refund



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### Legal Battle

- Lawsuit Filed
- Circuit Court says OK
- C/A Reverses . . . July 2014
- Supreme Court Remands Case . . . Feb. 2016 (Discuss Later)



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### Garrard County Case

City of Lancaster, et al

v.

Garrard County, Kentucky

Court of Appeals

Case No. 2013-CA-000716-MR

Opinion Rendered: 7-03-14

Opinion Vacated: 2-18-16



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### Court of Appeals Held:

- Not a Valid User Fee
  - Why?
    - No Direct Relationship
- Fee Charged ↔ Benefit Received



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## Rationale

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



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## New Funding Sources

- Occupied Residential & Commercial Properties
  - Campbell County (8-17-13)
    - Parcel Fee (Per Unit)
    - \$45.00 per Year
  - Kenton County
    - Per Parcel, Not Per Unit
    - \$60.00 per Year



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## Parcel Fee

- Campbell County Case
- Ky. SC Rules ... 10-29-15  
(Became Final: 2-18-16)
  - Parcel Fee OK
  - Not a "User" Fee
  - Not a "Tax"
  - "Service" Fee



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## Parcel Fee Analysis

- Shocked Legal Scholars & Attorneys
- Some Reasonable Relationship:
  - No Direct Nexus Required
  - Actual 911 Usage Not Necessary
  - Occupied Properties OK



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### Campbell County Case

Greater Cincinnati / Northern Ky.  
Apartment Assoc., Inc., et al

v.

Campbell County Fiscal Court, et al

Supreme Court of Kentucky  
Case No. 2014-SC-000383-TG

Opinion Rendered: 10-29-15

Became Final: 02-18-16



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## Dissenting Opinion



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### Dissenting Opinion

“Majority has opted, for better or worse, to chisel off the corners of the square peg so that what is in reality a flat-rate tax on real estate can be jammed into the round hole provided by statute for service fees.”

. . . Justice Venters



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### Current Status

- Campbell County – Parcel Fee OK
- Garrard Co. – Water Meter Fee Invalid
  - 2-18-16 SC Vacated & Remanded
  - Reconsider in Light of Campbell Co. SC Case
  - Awaiting Final Ruling



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# Statewide Impact



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911 Funding Sources			
County	Electric	Water	Parcel Fee
Boone			
Campbell			<input checked="" type="checkbox"/> \$45
Carroll			
Garrard	✓	<input checked="" type="checkbox"/> ✓	✓

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911 Funding Sources			
County	Electric	Water	Parcel Fee
Fleming	✓	✓	
Franklin			
Hardin			
Kenton			<input checked="" type="checkbox"/> \$60

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911 Funding Sources			
County	Electric	Water	Parcel Fee
Lincoln		<input checked="" type="checkbox"/> \$2.50	
Montgomery	✓	✓	✓
Nelson	✓	✓	
Nicholas		<input checked="" type="checkbox"/> \$2.00	




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911 Funding Sources			
County	Electric	Water	Parcel Fee
Ohio	✓	✓	
Pendleton			
Powell	✓		
Shelby			




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911 Funding Sources			
County	Electric	Water	Parcel Fee
Whitley		<input checked="" type="checkbox"/> \$3.00	




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### KRWA's Role

- Supporting Water Utilities
- File Amicus Briefs
- Clearing House
- Alert Member Utilities



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### Your Role

- Prepare for PR Battle
- Stay Informed
- Be Vigilant
- Alert KRWA
- Don't Ignore the Problem



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# Talley's Take Aways



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## If Stuck With A Fee

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



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## Utility Law App

<http://bit.ly/1AsC9NB>



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## DOW Organization and Personnel Issues

- 5/6 managers have less than 2 years
- Many new staff; over 42 new employees in 2015
- Institutional knowledge challenges; especially in drinking water!
- Reorganization proposed; re-establishes a Drinking Water Branch
- Moving to new building in June-July

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## Secretary Snavely's View

- Ensure that we are implementing the statutes, regulations and programs so that we are protecting human health and the environment
- Work in a business friendly manner
- Work collaboratively with those that we regulate and stakeholders

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## Budget Cuts and Impacts

- Division of Water has a \$28M+ annual budget
- 40% Federal Funds
- 30% Restricted Funds (fees, indirect cost share)
- 30% General Funds – appropriated by legislature
- 4.5% General Fund cut in SFY2016
  - Between vacancy credits and carry forward DOW will be ok
- 9% General Fund cuts in SFY2017-18: likely 5-9 positions lost in DOW

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## Major Kentucky Water Challenges

- 1.Regulations and Water Quality - compliance with water, wastewater and stormwater regulations to improve water quality
  - Drinking Water – Disinfection By Products, Agal Toxins, Emerging Contaminants, Lead
- 2.Aging Infrastructure – renewing water infrastructure and upgrades to comply with regulations
  - Proactive Capital Investments
- 3.Water Rates and Affordability
- 4.Workforce – workforce availability, talent development and succession planning

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## Drinking Water System Info

- 445 Public Water Systems
- Serve more than 95% of Kentuckians
- Small systems state: more than half of PWSs serve <3300
- 138\* Surface Water Systems
  - 177 surface water intakes
- 113\* Groundwater Systems
  - 236 groundwater sources: 16 mines/springs; 220 wells
- 194 Systems (consecutive) that do not produce water, but only purchase water from other PWSs
- 415 systems are interconnected (93%)
  - N.B. Many systems that produce water also purchase water from other systems.

\*5 Systems that have both groundwater and surface water sources

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## Drinking Water Infrastructure Info

- 213 drinking water treatment plants (average age is 36 years)
- 1842 storage tanks (average age is 26 years)
- 58,783 miles of water lines (average age is 38 years)
- 11,607 miles older than 50 years (16%)
- Estimated drinking water infrastructure improvement needs through 2025 is \$1.9 billion
- Average monthly drinking water bill is \$\_\_\_\_\_
  - Avg fee for 4,000 gallons (Non-Municipal) = \$32.24
  - Avg fee for 4,000 gallons (Municipal Inside) = \$26.70
  - Avg fee for 4,000 gallons (Municipal Outside) = \$33.41

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## Resilience & Sustainability

- Goal: resilient and sustainable communities requires sustainable and resilient systems (e.g. water utilities and infrastructure)

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## Sustainability

- The ability to continue to operate indefinitely in a functional, fiscally sound manner and sustain compliance.
  - Infrastructure & Asset Management
  - Personnel & Management
  - Operations
  - Compliance
- Triple bottom line
  - Social
  - Economic
  - Environmental
- Difficult to disentangle the interdependent variables

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## Sustainability

- Societal, Environmental and Economic sustainable uses are interrelated
  - Infrastructure
  - System Redundancy
  - Community Resilience



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## Resilience

- Capacity of systems to survive, adapt and grow in the face of stresses, upsets and disasters
- Systems must transform when required
- Humans, organizations, systems and societies are not inherently resilient
  - Plan
  - Learn
  - Adapt
  - Improve

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## Resilience and sustainability of Kentucky's water systems

- Many systems are experiencing little or no growth, and numerous systems are experiencing declining growth.
- The costs for small systems to sustain infrastructure and operate in compliance with federal rules is in some cases an unsustainable economic burden.
- Medium and large systems are also challenged by low growth and the "conservation conundrum."
- Many utilities historically assumed 20 years of linear growth in customer base to fund major infrastructure projects.

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## Resilience and sustainability of Kentucky's water systems

- Now: little/no growth in customer base and declining per capita consumption.
- Spreading more infrastructure costs over fewer gallons of water sold. Therefore, many utilities are in a cash-flow bind, and thus are forced to borrow more and increase rates.
- Water is a high fixed-cost business, and public expectations as well as regulations require utilities to stay ahead of the capacity curve (generally 15-20% excess for growth, emergency and peak demand).
- As demands decline, many utilities have reserve capacities that exceed 25%, however the customer rate base must fund the operation and maintenance, capital, depreciation, and debt service of this overbuilt infrastructure.

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## Resilience and sustainability of Kentucky's water systems

- Utilities have essentially been backed off the optimal point on the efficiency curve
- The marginal cost to produce or treat the next gallon of water is very low, but the cost to continue to de-marginalize will be very high for the consumer because utilities are de-leveraging their built infrastructure.
- Anticipate 6-10% annual utility rate increases over the next decade until this phenomena corrects itself (~20 years?)
- With inflation annual rate increases of 12-20% could be anticipated.

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## Resilience and sustainability of Kentucky's water systems

- Some communities are actually experiencing price elasticity in water and wastewater, as customers are changing their behavior due to high water and sewer bills.
- Commercial customers are recycling more of their water, using on-site treatment and more efficient processing of water and wastewater.
- Residential customers are also changing their consumption behavior and replacing dishwashers, washers, toilets and fixtures with lower use and higher efficiency devices.
- The reward for using less water is higher water rates, and the burden is disproportionately higher on low-income families, as they can least afford new low-flow plumbing renovations, high-efficiency washing machines, or the ability to fix leaking pipes.

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## Capacity Development

- Working with public water utilities to ensure that they have or are developing:
  - Financial Capacity
  - Managerial Capacity
  - Technical Capacity
- Goal: Resilient & Sustainable water systems

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## Lead in Drinking Water

- What's the status for Kentucky's Public Water Systems?

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## Health Impacts of Lead

- Lead is a significant public health challenge
- Domestic sources of lead include paint chips, lead tainted dust from paint, hobbies such as bullet and fishing sinker making, drinking water from corrosion of lead from lead seals, lead service lines, solders and lead in fixtures
- Kentucky Department of Public Health has never identified a lead poisoning issue in Kentucky from drinking water

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## Health Impacts of Lead

- Lead can affect almost every organ and system in your body. Children six years old and younger are most susceptible to the effects of lead.
- Even low levels of lead in the blood of children can result in:
  - Behavior and Learning Problems
  - Lower IQ and Hyperactivity
  - Slowed Growth
  - Hearing Problems
  - Anemia

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## Health Impacts of Lead

- **Pregnant Women**
- Lead can accumulate in our bodies over time, where it is stored in bones along with calcium. During pregnancy, lead is released from bones as maternal calcium and is used to help form the bones of the fetus. This is particularly true if a woman does not have enough dietary calcium. Lead can also cross the placental barrier exposing the fetus the lead. This can result in serious effects to the mother and her developing fetus, including:
  - Reduced growth of the fetus
  - Premature birth

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## Health Impacts of Lead

- **Other Adults**
- Lead is also harmful to other adults. Adults exposed to lead can suffer from:
  - Cardiovascular effects, increased blood pressure and incidence of hypertension
  - Decreased kidney function
  - Reproductive problems (in both men and women)

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## Lead in Drinking Water

- Lead in Drinking Water has been a big issue in the news because of Flint MI; Sebring OH, Jackson MS
  - Lead in drinking water not been a significant issue in Kentucky
- Lead occurs in drinking water from corrosion of lead from lead seals, lead service lines, solders and lead in fixtures
- Public Water Systems conduct control corrosion measures to ensure that the produced water is not corrosive to Pb and Cu in the distribution system

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## 1991 Lead and Copper Rule

- Lead and copper enter drinking water primarily through plumbing materials. Exposure to lead and copper may cause health problems ranging from stomach distress to brain damage.
- In 1991, EPA published a regulation to control lead and copper in drinking water. This regulation is known as the Lead and Copper Rule (LCR). Since 1991 the LCR has undergone various revisions.

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## Lead and Copper Rule

- The treatment technique for the LCR requires systems to monitor drinking water at customer taps. If lead concentrations exceed an action level of 15 in more than 10% of customer taps sampled, the system must undertake a number of additional actions to control corrosion.
- If the action level for lead is exceeded, the system must also inform the public about steps they should take to protect their health and the water system may have to replace lead service lines under their control

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## Lead Compliance Data

- Following the Flint disaster, DOW began to look at the compliance data for the Lead & Copper Rule (LCR)
- Over the past nine years:
- 409 Kentucky PWSs were subject to the federal LCR
- 10,380 water samples collected at households and businesses were analyzed for lead
- More than 77% of these samples had no detection of lead
- Approximately 1% of these samples exceeded the action level of 15 parts per billion established by EPA in the LCR

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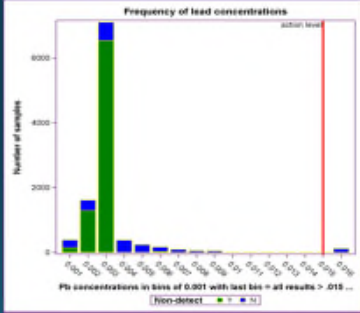
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## Lead Compliance Data




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## Lead Compliance Data

- LCR requires PWSs sample a number of households in their distribution system, based on population.
- Sampling focuses monitoring on those households most vulnerable to lead and copper contamination, such as single-family homes (< circa 1983) that contain copper pipes with lead solder, contain lead pipes or are served by a lead service line: Tier 1
  - Tier 1 does not include schools or daycares

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## Lead Compliance Data

- The action level is exceeded when >10% of the PWS's samples >15 ppb threshold
- Exceedance of an action level determines whether systems need to undertake additional monitoring and treatment technique requirements
- Initial sampling conducted over two consecutive six-month periods. If no action levels have been exceeded, sampling is reduced to annual sampling for two consecutive years, and then every three years if no issues are identified

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## Lead Compliance Data

- 8 PWSs over the past 10 years have exceeded LCR action levels
- Division of Water has required those 8 PWSs to:
  - Notify the public via newspaper and other media
  - Conduct sampling of their source water
  - Conduct additional and broader water quality monitoring at the treatment plant and in the distribution system, including restarting lead monitoring, and
  - Formulate a plan and take action to reduce lead levels.
- 3 PWSs exceeded the action level for lead at a frequency requiring action; all these PWSs have returned to compliance with LCR

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## Lead Working Group

- Following the Flint disaster, we began to discuss the issue of lead in drinking water with a number of folks in the industry, including Mr. Lovan and Mr. Heitzman, and with EPA leadership
- We had specific concerns regarding DOW's review of new source waters and treatment, but also regarding corrosion control compatibility with system-to-system interconnections and the impact of chemical treatment changes on corrosion control and whether our knowledge review were adequate
- All of us, DOW and the industry do not want a situation to develop in Kentucky similar to Flint or elsewhere
- Kentucky has a good track record regarding the LCR

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## Lead Working Group

- Other concerns
  - What are the protocols being used by PWSs
  - What various public water systems were doing in response to identified Pb issues
  - Communication about lead and public health risk
  - Are the PWS's and DOW's review and communication protocols adequate to address an identified issue in a timely
- Determined early in the year to convene a stakeholder workgroup to look at these and other related issues, consistent with the DOW's collaborative approach with the drinking water industry

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## Questions?

• Contact:

Peter Goodmann, Director  
Kentucky Division of Water  
200 Fair Oaks  
Frankfort, KY

502-564-2150  
Peter.Goodmann@ky.gov



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# 2016 Flint Water Crisis

**Presentation**  
**Northern Kentucky**  
**Water Training**  
**Seminar**  
May 4, 2016

Greg C. Heitzman  
BlueWater Kentucky



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## Flint, Michigan

- Population of 100,000 (down from 200,000 in 1970)
- 55% Black, 35% White, 10% Other
- 14.6% unemployment (2014)
- Median Household Income of \$24K; Michigan is \$48K
- 42% living below poverty level (2nd highest in nation)
- Median Home Value of \$29,000
- 10% with college degree



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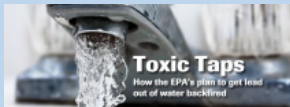
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## Flint Water Crisis



- Failure of water utility
- Failure of local government
- Failure of state government
- Failure of environmental regulator
- Major breach of public's trust in tap water



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### Flint Water Crisis

- City in receivership, under Emergency Management of State of Michigan
- Detroit supplied water to Flint since 1967
- Decided in 2013 to switch water supply from Detroit to the Karegnondi Water Authority (KWA) in order to avoid Detroit rate increases.
- Requires a pipeline to KWA to be complete in 2016
- In the interim, Flint reactivated their 1967 water treatment plant until pipeline is completed Lake Huron reactivate a 1972 water treatment plant to save money
- Discontinued Detroit Water Supply in April 2014
- This plan was approved by the State's Emergency Manager




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### Flint Water Crisis

- In April 2014, water is treated by the Flint Water Plant with source from the Flint River
- Flint River is high in chlorides (corrosive)
- Flint did not treat for corrosion; Detroit used Ortho-phosphates for corrosion control
- Discolored tap water in Flint shows up, water was declared safe to drink by Michigan Regulators
- Flint cited for not meeting Disinfection By Products Rule (high THMs) in 2014




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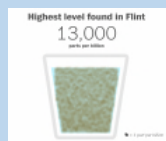
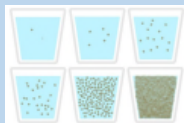
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### Flint Water Crisis

- High blood lead levels discovered in 2015, after research study by Hurley Medical Center in Flint
- Source determined to be Flint Tap Water
- Estimated 6,000 to 12,000 children affected
- Lead levels in tap water exceeded 13,000 ppb, 800 times EPA action level of 15 ppb
- Flint returned to Detroit Water in October 2015
- March 2016, samples in Flint still exceed 100 ppb (15 ppb is action level)




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### Louisville's Lead Program

- In 1985 a policy was adopted to replace any lead service line whenever discovered (leak, main replacement, excavation), or when customer requested replacement
- Approximately 7,500 lead service lines remain, goal to eliminate by 2025, estimated cost at \$18 to \$20 million
- Less than 10% lead service lines on public side have lead on private side of meter
- LWC has an on-line database for customers to ID lead pipes at [www.louisvillewater.com](http://www.louisvillewater.com)




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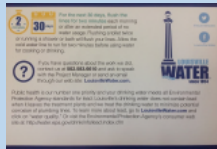
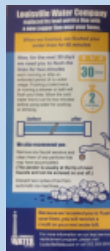
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### Louisville's Lead Program

- An active public and consumer education program was developed by LWC, including web site information, fliers, postcards, letters.
- Following the Lead Containment Control Act of 1988, Louisville Water began a partnership with public and private schools for:
  - ✓ Lead sampling
  - ✓ Water coolers/fountains that contained lead line tanks or fittings
- Partnership with schools continues today
  - ✓ Lead
  - ✓ Cross connection
  - ✓ Boil water




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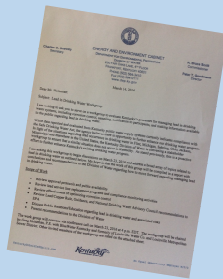
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### Kentucky Lead Workgroup

- Kentucky established a Lead Workgroup in March, 2016
- Diverse representation:
  - ✓ Small, medium and large utilities
  - ✓ Regulators
  - ✓ Academic
  - ✓ Engineering
  - ✓ Public Health
  - ✓ KY-TN AWWA, KY Rural Water, KMUA




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### Kentucky Lead Workgroup

- First meeting held April 20, 2016
- Workgroup meets monthly
- Sub-teams established in the following areas:
  - ✓ Public health impacts of lead
  - ✓ Kentucky compliance record with Lead and Copper Rule
  - ✓ Treatment/corrosion control
  - ✓ Distribution infrastructure
  - ✓ Financing lead replacement
  - ✓ Future lead regulations and legislation
  - ✓ Communications/Education

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### Kentucky Lead Workgroup

- Expect work to be completed by December, 2016
- Deliverables:
  - ✓ Power point presentations on each topic area
  - ✓ Briefing report by each sub-team/topic area
- Workgroup report will provide the following:
  - ✓ a summary of Kentucky's compliance with EPA's Lead and Copper Rule
  - ✓ Best practices for treatment of lead in drinking water
  - ✓ Best practices for removal of lead pipes, fixtures, etc.
  - ✓ Preparation for future regulatory changes (lower action levels)
  - ✓ Best practices for sharing lead information and educating consumers
  - ✓ Financing practices to fund replacement programs

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### Best Practices Emerging

- On-line lead database
- Free water sampling for lead
- Lead education materials
- Proactive lead replacement programs
- Lead replacement subsidy or finance program for homeowner's portion of lead piping
- Optimized water treatment for corrosion
- School partnerships for lead testing and lead plumbing replacement




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### Regulatory Possibilities:

- Reduction in Action level below 15 ppb
- Possibly a MCL for lead
- Change in sampling (cycles, size, frequency, locations)
- Strict water sampling protocol for lead
- Mandatory replacement programs (xx% per year)
- Mandatory lead education materials provided to for consumers
- Private lead line replacement requirements for homeowners
- Specific lead action steps for schools, daycares and public facilities



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### Questions ???

Contact Information:

Greg Heitzman, PE  
[gheitzman@bluewaterky.com](mailto:gheitzman@bluewaterky.com)  
[www.bluewaterky.com](http://www.bluewaterky.com)



Sources for Presentation:

- Wikipedia
- Louisville Water Company
- Kentucky Lead Workgroup
- Courier Journal and on-line media reports

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## BASICS OF KENTUCKY WATER SYSTEM FINANCINGS

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Louisville, Kentucky 40202  
Phone: (502) 568-5460  
Email: mark.franklin@skofirm.com

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## Sources Of Funds For Project Financings

**Debt:**

- \* Public Bond Markets
- \* United States Department of Agriculture, Rural Development ("USDA")
- \* Kentucky Infrastructure Authority ("KIA")
- \* Kentucky Rural Water Finance Corporation ("KRWFC")

**Grants:**

- \* Various federal and state sources

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## Lenders – Who Are They?

<b>Public Bond Markets</b>	Underwriters and institutional and retail investors
<b>USDA, RD</b>	Uncle Sam
<b>KIA</b>	State-wide agency established by the Kentucky Legislature
<b>KRWFC</b>	Kentucky nonprofit corporation established by the Kentucky Rural Water Association and its members

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## How Do They Work?

<b>District Issues Bonds</b> <ul style="list-style-type: none"><li>* Public Bond Markets</li><li>* USDA, RD Financings</li></ul>	<b>District Signs an Assistance Agreement</b> <ul style="list-style-type: none"><li>* KIA Financings</li><li>* KRWFC Financings</li></ul>
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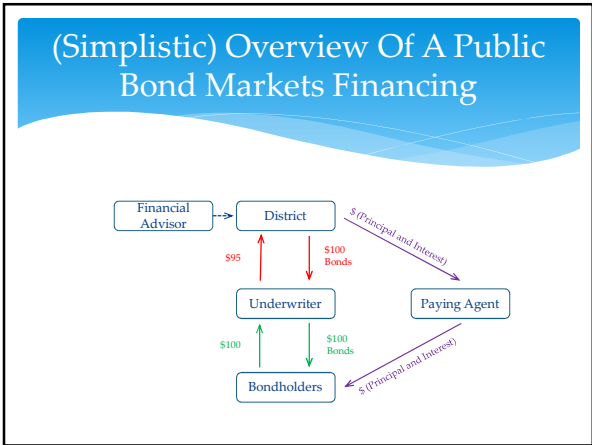
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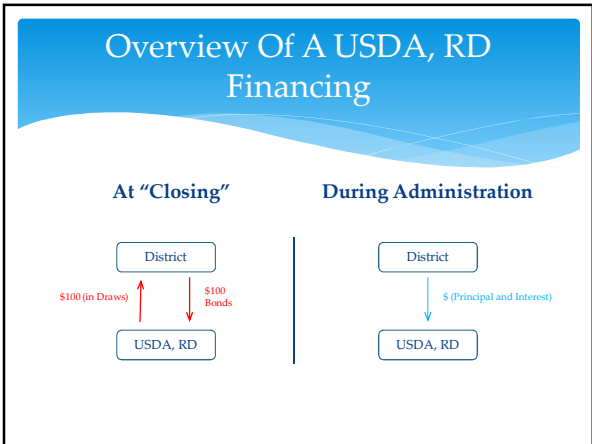
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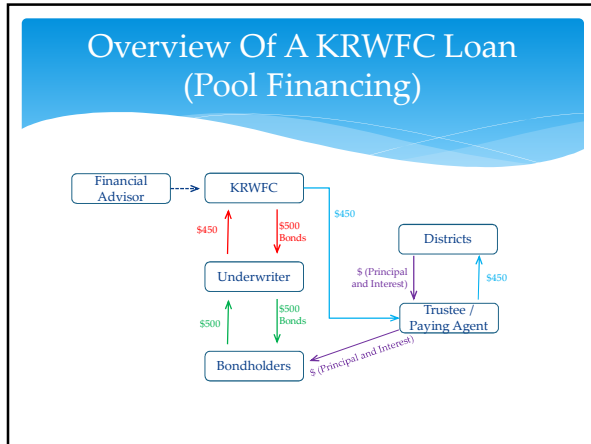
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### Comparison Of The Four Options

	Public Markets	USDA, RD	KIA	KRWFC
Form	Multiple bonds (usually)	One bond	Assistance (loan) agreement	Assistance (loan) agreement
Permissible Use of Funds	New projects and refinancings	Only new projects benefiting rural areas	Only new projects	New projects and refinancings
Maximum Term	Up to 40 years, but 20 to 30 is more realistic	Up to 40 years	Up to 20 years, but up to 30 available	Up to 35 years
Variable Or Fixed Interest Rate?	Either	Fixed	Fixed	Fixed
How Many Interest Rates	Different rates for different annual maturities	One rate applies the entire life of the loan	One rate applies the entire life of the loan	One rate applies the entire life of the loan

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### Comparison Of The Four Options (Continued)

	Public Markets	USDA, RD	KIA	KRWFC
How Much Can You Borrow?	No legal limit; practical limit applies (credit worthiness, etc.)	Availability depends on amounts allocated to KY and project scoring	\$4 Million or \$5 Million, depending on the "fund" your loan originates from	No legal limit; practical limit applies (credit worthiness, etc.)
Credit Rating Required?	Yes	No	No	No
Reserve Funds Required?	Generally requires a debt service reserve fund and a repair and replacement fund	Generally uses existing replacement funds and will increase required deposits	Generally requires deposits to a replacement fund for the assets financed	No debt service reserve fund or replacement required for individual loans
Fees Charged?	Paying agent fee(s)	None	Fee = 0.20% or 0.30% of unpaid balance	\$250 or \$450 payable annually to trustee

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### Comparison Of The Four Options (Continued)

	Public Markets	USDA, RD	KIA	KRWFC
<b>Financial Reporting Requirements</b>	Annual disclosure of operating and financial data to EMMA, a national web-based disclosure portal (SEC exposure)	Must provide USDA, RD audited financials within 150 days or 10 months of fiscal year end (dependent upon type of report provided)	Must provide KIA audited financial statements within 90 days of fiscal year end and other information upon request	Must provide KRWFC audited financial statements within 180 days of fiscal year end and other information upon request
<b>Closing Costs</b>	High (underwriter, financial advisor, and rating fees)	Low	Low	Low

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### Operational Requirements Common To All Four Options:

Your financing documents require the District to:

- \* Maintain adequate insurance
- \* Charge adequate rates and fees to pay its operating expenses and debt payments
- \* Provide financial disclosure so your "lender" can monitor your financial performance
- \* Comply with requirements for the issuance of new debt

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### Requirements For The Issuance of New Debt

Requirements regarding the issuance of new debt:

- \* Bond resolutions and assistance agreements generally require water districts to demonstrate that the revenues of the water system will be sufficient to pay principal and interest on new and existing debts plus generate an additional "cushion" before new debt can be incurred
- \* Someone (a district official, CPA, or engineer) must certify that the "cushion" or coverage test is met
- \* Typical "cushion" is net revenues (revenues after payment of all expenses except principal and interest) for a given period must be at least 120% or 130% of principal and interest payments for the same period

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## Relative Rights Of Bondholders And Lenders

- \* Debts can exist on a “parity” basis or may be superior or subordinated to other debts
- \* Your lenders’ respective rights depend on the requirements of existing bond and loan documents each time a new debt is incurred
- \* Public bond markets usually demand “first place” status, whether by themselves or on a parity with other debt
- \* This must be managed and examined each time you borrow money to avoid breaking existing covenants and planning for future needs

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## Why Tax-Exempt Debt?

Tax-exempt interest rates are lower than taxable interest rates because bondholders and lenders do not have to pay tax on the interest they receive, thus they can offer lower interest rates and still receive the same rate of return.

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## Comparison Of Three Types of Interest Rates

	Taxable	Tax-Exempt	Bank Qualified (Tax-Exempt)
Interest Rate Needed To Generate Desired Return	5.00%	4.13%	3.43%
Interest Income	\$100.00	\$82.50	\$68.50
Associated Expenses	\$50.00	\$50.00	\$50.00
Net Income Before Taxes	\$50.00	\$32.50	\$18.50
Applicable Tax Rate	35.00%	35.00%	35.00%
<b>Tax Liability</b>	<b>\$17.50</b>	<b>\$0.00</b>	<b>(\$14.00)</b>
Net Income After Taxes	\$32.50	\$32.50	\$32.50

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### Our Friends At The IRS

- \* The issuance of any tax-exempt debt has to be reported to the IRS using IRS Form 8038G (Bond Counsel function)
- \* The IRS can audit any tax-exempt debt for compliance with federal tax law during the life of the loan and up to three years afterwards (keep good records!)
- \* If the IRS determines the debt was ineligible for tax-exemption, you will owe a settlement payment to the IRS equal to the difference between the interest generated by tax-exempt and taxable rates (monitoring compliance is important!)

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### What To Look For

- \* Tax-exempt loan proceeds sitting in a bank account earning interest for long periods of time (e.g., debt service reserve funds, replacement funds, and construction funds)
- \* Change in use or sale of a financed project (begin leasing a facility to a non-governmental utility)
- \* Arrangements where a non-governmental entity is using financed facilities to make money (management contracts, etc.)

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**STOLL KEENON OGDEN**  
PLLC

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## EEO No! A Discrimination Law Primer

**Stacy Miller, Esq.**  
**Stoll Keenon Ogden, PLLC**  
**859.231.3000**  
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SKOFIRM.COM

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PLLC

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## Protected Classes

- Age
- Race
- Religion
- National Origin
- Color
- Disability
- Sex
- Military/Veteran
- Sexual Orientation
- Gender Identity




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PLLC

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## Protected Classes

- **Sex**
  - Gender, pregnancy
- **Age**
  - Age 40 and over
- **Race/Color/National Origin**
  - Hair texture, skin color, facial features, language, citizenship
- **Religion**
  - Affirmative duty to accommodate

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## Pregnancy Discrimination

Darlene, who is visibly pregnant, applies for a job as office administrator at a campground. The interviewer tells her that July and August are the busiest months of the year and asks whether she will be available to work during that time period. Darlene replies that she is due to deliver in late September and intends to work right up to the delivery date. The interviewer explains that the campground cannot risk that she will decide to stop working earlier and, therefore, will not hire her.

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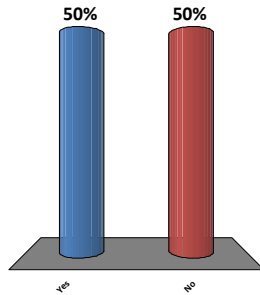
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Is the campground's refusal to hire Darlene on this basis pregnancy discrimination?

- A. Yes
- B. No



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## Pregnancy Discrimination

Shortly after Teresa informed her supervisor of her pregnancy, he met with her to discuss performance problems. Teresa had consistently received outstanding performance reviews during her eight years of employment with the company. However, the supervisor now tells Teresa that her performance is below expectations.

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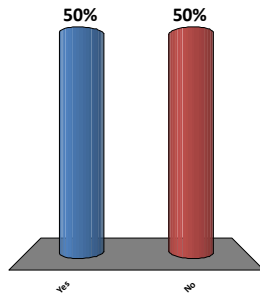
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Is this pregnancy discrimination?

A. Yes

B. No



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### Pregnancy Discrimination

- July 14, 2014 - EEOC issued new guidance concerning pregnancy discrimination:

[http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm)

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### Protected Classes

- **Sex**
  - Gender, pregnancy
- **Age**
  - Age 40 and over
- **Race/Color/National Origin**
  - Hair texture, skin color, facial features, language, citizenship
- **Religion**
  - Affirmative duty to accommodate

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### Golden Rule #1

- Keep a job description handy
- Make a checklist of essential functions of the job

**If it's not a skill, don't grill!**

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To ask or not to ask?  
That is the question.

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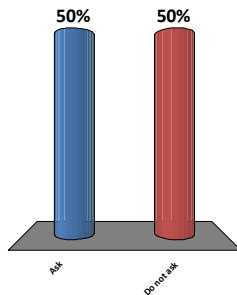
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Where were you born?

- A. Ask
- B. Do not ask



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When did you graduate?

A. Ask  
B. Do not ask

Response	Percentage
Ask	50%
Do not ask	50%

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What languages do you speak or write fluently?

A. Ask  
B. Do not ask

Response	Percentage
Ask	50%
Do not ask	50%

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STOLL KEENON OGDEN  
P.L.L.C.

**EEOC v. City of Moss Point**

**\$92,500 Settlement**

<p><b>Job Description</b></p> <ul style="list-style-type: none"> <li>• BA/BS in personnel management, business or a related field</li> <li>• 6 years of HR-related work experience</li> <li>• 3 years as a supervisor</li> </ul>	<p><b>61-Year Old Applicant</b></p> <ul style="list-style-type: none"> <li>• BBA</li> <li>• 38 years of HR experience</li> <li>• 15 years supervisory experience</li> </ul> <p><b>Selected Candidate</b></p> <ul style="list-style-type: none"> <li>• 20-year old</li> <li>• BA English/Journalism</li> <li>• No HR-related work experience</li> </ul>
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## EEOC v. Zenith Insurance Co.

### Job Description

- Mailroom Clerk
- 6 months of mailroom experience (min.)

### Black Applicant

- 6 years experience
- Degree in graphic arts

### Selected Candidate

- White
- No mailroom experience

### \$180,000 Settlement

- Hiring rate of at least 18.3% African Americans
- Semiannual reports on recruitment and hiring
- Annual reports on applicants and hires, by race

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## Disability Discrimination

- “Disability”
  - A physical or mental impairment that substantially limits one or more major life activities,
  - A record of such an impairment, or
  - Regarded as having such an impairment
- Courts now instructed to construe the definition broadly
  - *“To the maximum extent permitted by the terms of the Act.”*

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## Major Life Activities

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working

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### Plus: Major Bodily Functions

- Immune system
- Normal cell growth
- Digestive
- Bowel
- Bladder
- Neurological
- Brain
- Circulatory
- Endocrine
- Reproductive
- Respiratory

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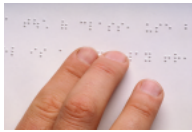
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### Disability Discrimination

- Duty to provide reasonable accommodation
  - Engage in the “interactive” process to find an accommodation that will work



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### Golden Rule #2

**If you haven't hired,  
don't inquire!**



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## Harassment

- Interferes with work
- Creates an intimidating, hostile or offensive working environment
- Can be verbal, physical or visual
- Two types:
  - Hostile Environment
  - Quid Pro Quo

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## Harassment



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## Harassment

- Harassment can occur on the basis of ANY protected status
  - Age
  - Race
  - Religion
  - National Origin
  - Color
  - Disability
  - Sex
  - Military/Veteran
  - Sexual Orientation
  - Gender Identity

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### Hostile Environment Harassment

- Isolating, degrading or showing hostility or aversion toward an individual based on that person’s protected trait through:
  - Comments, jokes, suggestions, stereotypes
  - Pictures, cards, calendars, toys, emails
  - Unwanted touching

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### Reasonable Person Standard

- Victim’s perception matters more than intention of accused
- Would a reasonable person:
  - Consider the behavior out of bounds?
  - Feel uncomfortable?
  - Be humiliated?
  - Be embarrassed?
  - Feel unsafe?

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### Harassment by Outsiders

- Harassers can be outsiders, including customers, vendors, suppliers or service providers

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### Sexual harassment that is made a condition of employment

- Work-related rewards in exchange for sexual favors

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### Anti-Harassment Policy

- Outlines Complaint Procedure –
  - Complaint process should allow employee to bypass alleged harasser
- Complaints will be promptly and thoroughly investigated
- Violations of the policy will result in discipline
- Confidentiality will be protected
- Retaliation is prohibited
- Train employees and supervisors on the policy and complaint procedure

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**Stacy Miller, Esq.**  
Stoll Keenon Ogden, PLLC  
859.231.3000  
stacy.miller@skofirm.com

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STOLL KEENON OGDEN  
PLLC

## RECENT DEVELOPMENTS IN UTILITY LAW

**Northern Kentucky Water Training Seminar  
May 4, 2016**

<p>Damon Talley Stoll Keenon Ogden PLLC damon.talley@skofirm.com Hodgenville, Kentucky (270) 358-3187</p>	<p>Gerald Wuetcher Stoll Keenon Ogden PLLC gerald.wuetcher@skofirm.com <a href="https://twitter.com/gwuetcher">https://twitter.com/gwuetcher</a> (859) 231-3017</p>
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LOSINGTON | LOUISVILLE | FRANKFORT | OWENSBORO | KYANSVILLE | GREATER PITTSBURGH | SKOFIRM.COM

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STOLL KEENON OGDEN  
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**ORDER OF PRESENTATION – PART 1**

- Recent Legislation
- PSC Personnel/Budget Issues
- Water District Commissioner Cases
- Municipal Utility Wholesale Rates
- Incident Reporting
- Water Storage Tank Alert

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**ORDER OF PRESENTATION – PART 2**

- PSC Electronic Notice
- PSC Ratemaking Trends
  - Rate Indexing
  - Depreciation
  - Revenue Requirements

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STOLL KEENON OGDEN 

## RECENT LEGISLATION

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STOLL KEENON OGDEN 

### HOUSE BILL 303

- Bright-Line Test To Determine if Certificate is required
- Applicable only to **Class A & B** Water Districts/Associations
- Effective Period (07/01/2016 – 06/30/2018)
- Applies to **“water line extension or improvement project”**
- No Certificate of Public Convenience & Necessity if:
  - Total Cost < \$500,000 **OR**
  - Project does not involve issuance of debt requiring PSC approval **AND** no rate increase will result

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### HOUSE BILL 261

- Amends KRS 278.020 and KRS 278.021
- Reaction to Recent PSC Rulings
- New Sewer Facilities must provide bond or guarantee of reasonable operation for 1<sup>st</sup> five years
- No transfer of sewer facilities without evidence of financial integrity to continue service should acquirer fail
- Notice must be given to AG, DOW, local authorities at time of any application to abandon sewer utility
- Nothing in KRS 278.021 requires PSC to permit abandonment

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**HOUSE BILL 189**

- Approval of AG/DLG and jurisdictional agency no longer required for amendments to interlocal agreements if:
  - Amendment is to add or remove a party to agreement
  - No substantive changes to agreement
- Specifies Docs to be sent to AG or DLG/SecState/County Clerk by all parties to the amended agreement
- Parties to ILA may specify manner of joining or leaving agreement, including approval of legislative body
- In the absence of provision, legislative body of each entity must approve

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STOLL KEENON OGDEN 

**OTHER ENACTED LEGISLATION**

- HB 309 – Allows for creation of public-private partnerships to finance capital projects/procure services (**WATER DISTRICTS ARE INELIGIBLE**)
- HB 529 – Creates the Kentucky Water Resources Board
- HJR 152 – Directs DOW to meet with Corps of Engineers & Natural Resources Conservation Service  
Re: procedures for developing water resources for agriculture

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**UNSUCCESSFUL BILLS**

- HB 80: Would apply Open Records Act to all public utilities
- HB 365: Would require underground facilities operators to be members of the Kentucky Contact Center
- SB 71: Would require SPGEs to obtain county/city government approval of rates and fees

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STOLL KEENON OGDEN 

**PSC PERSONNEL/BUDGET ISSUES**

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STOLL KEENON OGDEN 

**DEPARTURES**

- David Armstrong (Chair)
- Jim Gardner (Chair/Vice Chair)
- Roger Thomas (Commissioner)
- Jeff Derouen (Executive Director)
- George Wakim (Engineering Branch)
- Ruth Rowles (GIS Services)
- Ann Ramser/Jonathan Beyer (General Counsel)

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STOLL KEENON OGDEN 

**ARRIVALS**

- Chair-To-Be Named
- Robert Cicero (Commissioner)
- David Spenard (Office of General Counsel)
- Mark Rasche (Engineering - Water Branch)
- Jason Pennell (Engineering - Water Branch)

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STOLL KEENON OGDEN 

**BUDGET REDUCTIONS: EFFECT ON PSC**

- Research Division Cut (No Economists)
- Financial Audits Branch Eliminated
- Management Audits Branch Eliminated
- Water Engineering Branch – 3 Engineers Cut
- Meter Testing Lab: Reduced to 1 Part-time Employee (Limited Testing)
- GIS Personnel/Services Eliminated

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STOLL KEENON OGDEN 

**PERSONNEL CHANGES: EFFECT ON PSC**

- Institutional Memory Lost
- Less Continuity
- Less Experienced Workforce
- Fewer Specialists (e.g., no economists)
- Tight Budgets = Fewer Training Opportunities

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STOLL KEENON OGDEN 

**WHAT DO BUDGET CUTS & PERSONNEL CHANGES MEAN FOR YOU?**

- Longer Review Times
- PSC Staff will have Lesser Familiarity with PSC Precedent & Procedures
- Larger/More Frequent Requests for Information
- Lesser Flexibility/Discretion to Deal With Non-substantive Issues
- Greater Reliance upon Formal Procedures

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STOLL KEENON OGDEN 

**ADAPTING TO THE NEW ENVIRONMENT: Part I**

- Incorporate Longer Review Periods Into Planning Process
- Do not Wait Until Last Minute
- Alert PSC Staff to Timing Requirements
- More Comprehensive Application
  - Provide Historical Information – Don't Assume PSC Staff Knows
  - Provide Greater Narrative/Testimony of Utility Officials
  - Anticipate & Provide Documents PSC Staff Likely To Request

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STOLL KEENON OGDEN 

**ADAPTING TO THE NEW ENVIRONMENT: Part II**

- Place Greater Emphasis on Pre-filing efforts
  - Pre-filing conferences with PSC Staff
  - Identify potential issues prior to filing
  - Review Prior PSC Orders/Proceedings
  - Identify/Gather Evidence & Argument to address potential issues
- Strictly Adhere to Filing Checklists
- Don't Underestimate Importance of Public Notice

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STOLL KEENON OGDEN 

**ADAPTING TO THE NEW ENVIRONMENT: Part III**

- Don't Be Afraid to Request Deviations, But Have Good Reason For Request
- Check Periodically with PSC Staff on Status of Proceeding
- Use Electronic Filing Procedures
- Take Advantage of Available Resources

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**ADAPTING TO THE NEW ENVIRONMENT:  
AVAILABLE RESOURCES**

- PSC Website (psc.ky.gov)
  - PSC Orders since 1980 **SEARCHABLE**
  - All Active Utility Tariffs **SEARCHABLE**
  - All Utility Tariff Filings since 2005 **SEARCHABLE**
  - Staff Opinions **SEARCHABLE**
  - Audits
  - Annual Reports since 1990
  - PSC Case Records Since 2005 **SEARCHABLE**
  - PSC Video Transcripts (Available online from 2011)
  - Listing of Daily Filings & Orders

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**ADAPTING TO THE NEW ENVIRONMENT:  
AVAILABLE RESOURCES**

- Statutes (<http://www.lrc.ky.gov/Statutes/index.aspx>)
- Regulations (<http://www.lrc.ky.gov/Statutes/index.aspx>)
- Compilation of Utility Laws App (<http://bitly/1AsC9NB>)
- PSC Staff Directory ([http://psc.ky.gov/agencies/psc/reports/psc\\_staff.pdf](http://psc.ky.gov/agencies/psc/reports/psc_staff.pdf))
- Kentucky Water Utility Law Twitter Feed (<https://twitter.com/gwuetcher>)
- Small Utilities Web Page (<http://smallutilities.ky.gov/>)
- PSC Regulations Web Page (<http://psc.ky.gov/home/pscregulations>)

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STOLL KEENON OGDEN 

**WATER DISTRICT COMMISSIONERS**

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STOLL KEENON OGDEN 

**CASES INVOLVING WATER DISTRICT COMMISSIONERS**

- Appointment of Commissioners
- A Water District Commissioner’s Liability for Water District’s Violations
- Water Commissioner Training Requirements

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STOLL KEENON OGDEN 

**APPOINTMENT OF COMMISSIONERS**

- KRS 74.020(1): Commissioner “shall be appointed by the county judge/executive with **the approval of the fiscal court**”
- If appointment and approval does not occur within 90 days of vacancy, local officials **forfeit authority** to fill the vacancy
- Vacancy occurs:
  - Death
  - Resignation
  - Removal
  - Expiration of Term

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STOLL KEENON OGDEN 

**APPOINTMENT OF COMMISSIONERS**

- KRS 74.020(4): Vacancy shall be filled by the PSC if, 90 days following the vacancy, it has not been filled
- PSC Procedure:
  - Initiate Formal Proceeding
  - Notify County Judge/Fiscal Court/Water District
  - Request Nominations
  - Review/Investigate Nominees
  - Make Appointment

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STOLL KEENON OGDEN 

**APPOINTMENT OF COMMISSIONERS**

- PSC Review:
  - Questionnaire to Each Nominee
    - Education
    - Business/Government/Utility Experience
    - Business Dealings with Water District
    - Family Members Affiliated with Water District
    - Legal Qualifications (Residence, Incompatible Offices)
    - Water Commissioner Training
    - Attendance at Water District Board Meetings
  - Background Check
  - Endorsements

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STOLL KEENON OGDEN 

**APPOINTMENT OF COMMISSIONERS**

- PSC Deference to Local Officials
  - PSC will defer to Local Officials where County Judge/Fiscal Court in agreement
  - Rationale: Local officials have a better understanding of the candidates’ qualifications and water district’s needs and are directly accountable to voters
  - Exception: The presence of “circumstances that raise clear concerns about an agreed candidate’s qualifications”
  - PSC Less likely to defer to local officials if no agreement or silence

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STOLL KEENON OGDEN 

**APPOINTMENT OF COMMISSIONERS:  
REQUIRED NOTICE OF VACANCY**

- KRS 65.008
  - Requires district to notify appointing authority at least sixty (60) days before the expiration of the term of office of an appointed member of governing body
- KRS 74.020(9)
  - Requires written notice to PSC of existence of **vacancy** no later than **30 days after occurrence of vacancy**
  - Requires written notice to PSC that vacancy has been **filled** no later than **30 days after vacancy filled**

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STOLL KEENON OGDEN 

**APPOINTMENT OF COMMISSIONERS:  
RECENT PSC CASES**

- 2015: 3 Cases Involving WD Commissioner Vacancies
  - 2015-00305 (Adair County Water District)
  - 2015-00313 (Jessamine County Water District No. 1)
  - 2015-00352 (Western Pulaski County Water District)
- 2015-00305
  - Newly-elected County Judge alleged improper appointment (appoint occurred more than 90 days after vacancy)
  - PSC investigated/invalidated appointment
  - Filled vacancy after receiving 8 nominations
- Other Cases: Each WD had failed to notify County Judge of pending vacancy

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STOLL KEENON OGDEN 

**APPOINTMENT OF COMMISSIONERS:  
POINTS FOR WATER DISTRICTS**

- Maintain records to ensure knowledge of term ending date
- Provide at Least 60 Days' Notice of Pending Vacancies to County Judge
- Advise Fiscal Court of the Consequences of Failure to file within 90 days of vacancy
- Notify PSC of Vacancy Upon Vacancy's Occurrence
- Encourage the Judge-Executive to List Term-ending date on appointment order
- Request PSC ratify any post-90 day appointment

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STOLL KEENON OGDEN 

**WATER COMMISSIONER:  
PERSONAL LIABILITY FOR DISTRICT ACTIONS**

- Recent Trend: WD commissioners held personally liable for violations of PSC Statutes/Regs
- Last 3 proceedings involving non-operational issues – Commissioners ordered to show cause
  - 2014-00400 – Construction & Debt issued w/o PSC OK
  - 2015-00155 – Debt issued without PSC OK
  - 2015-00353 – Debt issued without PSC OK
- Commissioners threaten with assessment of maximum penalty (\$2,500)

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STOLL KEENON OGDEN 

**WATER COMMISSIONER:  
PERSONAL LIABILITY FOR DISTRICT ACTIONS**

- Based upon KRS 74.080: Bd of Com’rs “shall control and manage the affairs of the district”
- Commissioners have “agreed” to attend Water Training Programs ILO Penalties
  - 2014-00400: 12 hours annually for remaining term
  - 2015-00155: 12 hours annually for remaining term
  - 2015-00353: Ex-com’rs agree to attend new com’rs training plus 5 hours in first year if appointed again
- Contrast with Action Taken vs. Non-WD Utilities for similar offenses

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STOLL KEENON OGDEN 

**WATER COMMISSIONER TRAINING**

- Prior to 2010: No mandatory training
- 1998: KRS 74.020 revised to encourage training
  - Maximum Annual Salary increased from \$3,600 to \$6,000 if 6 hours of accredited training attended in year
  - Fiscal Court Approval required for increase
  - PSC accredited Training
- 2010: New Commissioner Training Mandated

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STOLL KEENON OGDEN 

**“NEW” WATER COMMISSIONER TRAINING**

- KRS 74.020(8)
  - PSC directed to develop program for newly appointed commissioners
  - “Within twelve (12) months of **his or her initial appointment**, each commissioner shall complete the program of instruction”
  - Failure to complete: Forfeiture of Office
- Initial Interpretation: Training Requirement applied only to Commissioners appointed to first term after 7/14/2010

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STOLL KEENON OGDEN 

**“NEW” WATER COMMISSIONER TRAINING**

- New Interpretation
  - PSC Staff Opinion 2014-017: Requirement applies to any Commissioner appointed after 7/15/2010 unless in office on 7/14/2010 & continuously serving since then
  - PSC adopts in Case No. 2015-00313 (11/17/2015)
  - Basis: Intent of Statutory Revision that WD Commissioners Be Adequately Trained
- Consistent with recent PSC efforts to aggressively promote water training program

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STOLL KEENON OGDEN 

**MUNICIPAL UTILITY  
WHOLESALE RATES**

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STOLL KEENON OGDEN 

**DANVILLE CASE**

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STOLL KEENON OGDEN 

**CASE NO. 2014-00392: FACTS**

- Danville filed proposed wholesale rate adjustment
- Wholesale customers objected
- PSC suspended proposed rate/initiated proceeding
- Throughout proceeding Danville announced its intention to seek recovery of rate case expenses (\$57,000) through a surcharge

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STOLL KEENON OGDEN 

**CASE NO. 2014-00392: PSC ACTION**

- PSC denies rate case expenses
- Danville failed to provide proper notice
- Danville did not request surcharge in its filing, but made request in response to a request for information
- Danville did not amend its initial filing to reflect the request for surcharge

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STOLL KEENON OGDEN 

**CASE NO. 2014-00392: DANVILLE'S RESPONSE**

- Brings an Action for Review
- Argues:
  - PSC acted in unlawful and unreasonable manner
  - PSC's action inconsistent with historic treatment of such requests
  - No statutory/regulatory support for PSC's action
    - PSC refers to laws/regs re: "utilities"
    - Cities are not utilities, therefore laws do not apply

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STOLL KEENON OGDEN 

**CASE NO. 2014-00392:  
POTENTIAL CONSEQUENCES FOR MUNICIPAL  
CASES**

- Danville’s Argument Strikes at the Heart of PSC’s Current Framework
- If Court Accepts:
  - PSC will no longer be able to apply existing PSC Regulations & KRS Chapter 278
  - PSC will need to promulgate regulation for municipal wholesale rate adjustments

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STOLL KEENON OGDEN 

**CASE NO. 2014-00392:  
TAKEAWAY FOR ALL UTILITIES**

- Rate case expenses should be built into any request for rate adjustment
- Be liberal in forecasting the level of rate case expense
- Later request may “reset statutory clock”
- **BEWARE:** PSC will no longer use its authority to set “fair, just, & reasonable rates” to order rates above requested levels

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STOLL KEENON OGDEN 

**INCIDENT REPORTING**

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STOLL KEENON OGDEN 

**INCIDENT REPORTING REQUIREMENTS**

- PSC has reissued guidance re: incident notification procedures
- Action follows water tank collapse in which PSC received no notice
- New Telephone Number & E-mail address to contact
- All water utilities must provide PSC with utility emergency contact information

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STOLL KEENON OGDEN 

**INCIDENT REPORTING REQUIREMENTS**

- 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

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STOLL KEENON OGDEN 

**WATER STORAGE TANK ALERT**

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STOLL KEENON OGDEN 

**PSC ALERT ON GLASS WATER STANDPIPES**

- Issued to all water utilities on 7/30/2015
- Noted recent catastrophic failure of a glass lined bolted steel water standpipe due to corrosion
- Advised Utilities to regularly inspect water tanks
- Advised thorough inspection of interior & close review of inspection findings/recommendations
- PSC Staff will review inspection findings & recommendations and utility's response when conducting is periodic inspections

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STOLL KEENON OGDEN 

**PSC ELECTRONIC NOTICE**

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STOLL KEENON OGDEN 

**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**

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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 Cause
- Link to Posted Documents will be E-mailed to the E-mail address listed on filed papers

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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

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STOLL KEENON OGDEN 

**PSC TRENDS**

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**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)

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**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

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**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

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**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

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**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**

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**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)

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**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 & requesting lower revenues

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**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

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PLLC

**WATER UTILITIES AND FIRE  
DEPARTMENTS**  
Northern Kentucky Water Training Seminar  
May 4, 2016

<p>Damon Talley Stoll Keenon Ogden PLLC damon.talley@skofirm.com Hodgenville, Kentucky (270) 358-3187</p>	<p>Gerald Wuetcher Stoll Keenon Ogden PLLC gerald.wuetcher@skofirm.com <a href="https://twitter.com/gwuetcher">https://twitter.com/gwuetcher</a> (859) 231-3017</p>
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STOLL KEENON OGDEN 

**ORDER OF PRESENTATION**

- Building Relationships with Fire Departments
- Water Utility's Duty To Provide Fire Protection Service
- Free Water Service to Fire Departments
- Fire Department's Duty to Report Usage
- Fire Hydrant Issues

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STOLL KEENON OGDEN 

**ORDER OF PRESENTATION**

- ISO Rating
- Water Utility's Role In The ISO Process

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**BUILDING RELATIONSHIPS**

KEYS TO GOOD RELATIONS

- Communicate
- Show Appreciation
- Educate
- Mutual Respect




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**DUTY TO PROVIDE FIRE SERVICE**

- No statute requires water utilities to furnish water for fire protection
- Kentucky Courts: Water utilities have no common law duty to provide fire protection service
- Water utility must provide fire protection service if expressly commits by contract to provide such service

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**DUTY TO PROVIDE FIRE SERVICE**

“Kentucky law does not expressly confer an obligation upon any water utility to provide fire protection service unless the utility expressly commits by contract to provide.”

*An Investigation Into Fees for Fire Protection Services, Administrative Case No. 385 (Ky. PSC Dec. 7, 2001) at 18.*

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**DUTY TO PROVIDE FIRE SERVICE**

- Source of Commitment
  - Franchise Agreement
  - Contract with Individual Customer
  - Tariff
- Express Provision Re: Service Creates Duty
  - Fire Protection Rates
  - Fire Hydrants

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**FREE WATER SERVICE TO FIRE DEPARTMENTS**

- KRS 278.170(1):
 

“No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.”
- OAG 84-147: Free water service to fire protection districts violates KRS 278.170(1)

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**FREE WATER SERVICE TO FIRE DEPARTMENTS:  
PSC CASE NO. 96-020**

- WD proposes tariff to permit free water to Fire Departments for fire events & training
- PSC rejects
  - KRS 278.035: No preferential rates for any entity receiving public funds for at least 50% of its operational expenses
  - Most Fire Depts in service area Gov’t-Supported
  - Fire Depts not eligible for free service under KRS 278.170(1)

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**FREE WATER SERVICE TO FIRE DEPARTMENTS:  
LEGISLATIVE RESPONSE**

- General Assembly adds New Section to KRS 278.170 to permit free service to fire depts
- Requirements for free service
  - PSC-approved Tariff
  - Permitted for Fire fighting/training fire personnel only
  - Tariff must require user to maintain estimates of usage and report “on a regular basis”

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**FREE WATER SERVICE TO FIRE DEPARTMENT:  
WHO PAYS FOR WATER SERVICE?**

- Costs of Providing Service Must Be Recovered
  - Variable costs related to water used
  - Infrastructure Costs
- Fire Department
  - Taxes
  - Assessment to Members/Billing Insurers
- General Public: Rates

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**FREE WATER SERVICE TO FIRE DEPARTMENT:  
POTENTIAL ISSUES**

- Accountability
  - Taxes/Government Expenditures Easily Identified
  - Costs Hidden if Recovered through General Rates
  - Renders Informed Decisions on Availability & Appropriateness of Service More Difficult
- Potential Discrimination/Subsidies
  - Customers outside Fire Dept’s area pay for services not provided

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**FIRE DEPARTMENT'S DUTY TO REPORT WATER USAGE**

- Need for Water Usage Reports
  - Needed to Determine Causes of Non-Revenue Water
  - Necessary to Determine the Cost of Fire Service to Community
- KRS 278.170(3)
  - Imposes Reporting Requirements as Condition of Free Service
  - user to maintain estimates of usage and report "on a regular basis"

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**FIRE DEPARTMENT'S DUTY TO REPORT WATER USAGE**

- Complaints of fire department abuse/non-compliance with reporting rules
- PSC promulgates 807 KAR 5:095
  - Tariff must require submission of quarterly reports
  - Provide a penalty for failure to submit reports
- PSC Staff develops imputed usage rate (0.3% of monthly usage) to supplement penalty

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**FIRE HYDRANT ISSUES:  
WHEN CAN FIRE HYDRANT BE INSTALLED?**

- 807 KAR 5:066, §10(2)(B):
 

"[F]ire hydrants may be installed by a utility only if ... A professional engineer with a Kentucky registration has certified that the system can provide a minimum fire flow of 250 gallons per minute; and . . . [t]he system supporting this flow has the capability of providing this flow for a period of not less than two (2) hours plus consumption at the maximum daily rate
- PSC Staff: 4-Inch water mains are insufficient to support fire flows, 6-Inch mains minimum diameter for fire protection purposes

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**FIRE HYDRANT ISSUES:  
WHEN CAN FIRE HYDRANT BE INSTALLED?**

- Fire Hydrants should not be install if unable to meet requirements & are intended for flushing  
 “[T]he installation of fire hydrants may mislead . . . customers into believing that the water distribution system is capable of providing adequate and reliable volumes of water for fire protection purposes.”

PSC Case No. 99-486

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**FIRE HYDRANT ISSUES:  
WHEN CAN FIRE HYDRANT BE INSTALLED?**

- Flushing hydrants & Blowout assemblies should be installed with caution
- PSC Staff: If flushing hydrants & blowoff assemblies are installed, reasonable measures should be taken to inform the public and the insurance community of their limitations.

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**WATER DISTRICT’S OBLIGATION UNDER  
KRS 74.415(1) – WATER MAIN EXTENSIONS**

- Prohibits elimination of hydrants from new/extended lines unless they are “unfeasible”
- WD must conduct analysis which considers
  - Incremental cost of adequately sized pipe & other facilities
  - Benefits of real estate development
  - Water sales
  - Availability of fire insurance/reduce insurance premiums

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**WATER DISTRICT'S OBLIGATION UNDER KRS 74.415(2) – REAL ESTATE DEVELOPMENTS**

- Addresses Real Estate Developments
- WD may require Developer to include adequately sized pipe and hydrants in development plan
- WD **shall** require developer to provide an analysis showing why hydrants not feasible
- Analysis must include
  - Incremental cost of facilities
  - Effect of Hydrants on cost/availability of fire insurance

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**ROLE OF PLANNING COMMISSIONS IN HYDRANT PLACEMENT**

- KRS 100.324 exempts public utilities from any requirement for approval of a local P&Z Commission
- OAG 78-253: P&Z can still specify the size of pipe & dimension of water mains as part of subdivision regulations
- OAG 78-790: P&Z Commission can require WD to attach fire hydrants to water mains
- KRS 74.415 overrules OAG 78-253

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**FIRE HYDRANT ISSUES: RESPONSIBILITY FOR HYDRANT MAINTENANCE**

- General Rule:
 

“Although hydrants are operated by members of the fire department, it is generally the water utility’s responsibility to maintain them in working order.”

*AWWA Manual M17, Installation, Field Testing, and Maintenance of Fire Hydrants.*

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**FIRE HYDRANT ISSUES:  
RESPONSIBILITY FOR HYDRANT MAINTENANCE**

- PSC Case No. 2013-00027 (9/20/2013):  
The Commission recognizes that . . . water utilities have also imposed maintenance and inspection responsibilities for fire hydrants upon local fire departments. While a utility may impose responsibilities on its customers, it cannot delegate its obligation to properly maintain and operate its facilities. It is ultimately responsible for the operation of its facilities.

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**FIRE HYDRANT ISSUES:  
RESPONSIBILITY FOR HYDRANT MAINTENANCE**




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**FIRE HYDRANT ISSUES:  
RESPONSIBILITY FOR HYDRANT MAINTENANCE**

- Reasons for Utility Responsibility
  - Hydrant Owner
  - Insures the Hydrant Against Damage
  - Responsible for Replacing Damaged or Inoperative Equipment
  - Legal Duty to Provide Reasonable and Adequate Service
  - Subject to Potential Liability If Equipment is not maintained

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**FIRE HYDRANT ISSUES:  
RESPONSIBILITY FOR HYDRANT MAINTENANCE**

- Water Utility May Contract re: Maintenance/Other Issues
  - 807 KAR 5:066, Section 10(2)(b)
  - Case No. 2013-00027
- Contract Provisions
  - Details of Maintenance Program
  - Maintenance Procedures

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**FIRE HYDRANT ISSUES:  
RESPONSIBILITY FOR HYDRANT MAINTENANCE**

- Contract Provisions (cont'd)
  - Timing of Maintenance
  - Qualifications/Training for Personnel Performing Maintenance
  - Permissible Uses of Water
  - Notice/Reporting Procedures

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**ISO RATINGS**

- Insurance Services Offices: Gauges the Ability of Local Fire Departments to Respond to Fires
- ISO Classification Scale
  - Class 10 - Worst
  - Class ? - Your Community
  - Class 1 - Best



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**ISO RATING CRITERIA**

- Fire Department 50
- Water Supply 40
- Other 15
- Total Points 105



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**IMPROVING AN ISO RATING**

- Fire Department's Role
- Water Utility's Role
- Local Government's Role



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## **Government Pensions**

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## **House Bill 1**

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House Bill 192 (2014 General Session)

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Emergency Administrative Regulation (With Regulatory Impact Analysis and Fiscal Note)

109 KAR 16:010

Department of Local Government, House Bill 1 Compliance Website

DLG, Registration and Board Reporting Tutorial

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Legislative Research Commission, “Special Districts in Kentucky” Research Report  
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M. Todd Osterloh and Charles D. Cole, *Taxpayer Revolt, Enhanced Scrutiny of Special Districts, and House Bill 1*, Kentucky Bench and Bar Magazine, Mar. 2014.

## **Identity Theft Prevention and Notification**

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Destruction of Records Act (KRS 365.720 .730)

Federal Trade Commission, 16 C.F.R. Part 681, Identity Theft Rules (Dec. 2012)

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House Bill 5

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Kara Millonzi, Coates' Canons Blog: Utility Bill Postcards (Sept. 23, 2010)

Kentucky Rural Water Association, Identity Theft Prevention Program Compliance Model (Sep. 29, 2009)

Red Flag Program Clarification Act of 2010, Pub. L. 111-319

## **Municipal Separate Storm Sewer System**

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## **Municipal Utility Rate Issues**

Frequently Asked Questions Regarding PSC Regulation of Municipal Utilities

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*South Shores Water Works v. City of Greenup, Ky.*, Case No. 2009-00247 (Ky. PSC Oct. 5, 2010)  
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*City of Lawrenceburg, Kentucky*, Case No. 2006-00067 (Ky. PSC Nov. 21, 2006)  
*City of North Middletown, Kentucky*, Case No. 2006-00072 (Ky. PSC Jan. 12, 2007)  
*Kentucky-American Water Co.*, Case No. 2001-230 (Ky. PSC Oct. 19, 2001)  
*Hopkinsville Water Environment Authority*, Case No. 2009-00373 (Ky. PSC July 2, 2010)  
*City of Danville, Kentucky*, Case No. 2014-00392 (Ky. PSC Aug. 13, 2015)  
*City of Versailles, Kentucky*, Case No. 2011-00419 (Ky. PSC Aug. 12, 2014)

### **Open Meetings/Records Act Materials**

Open Meetings Statutes, KRS 61.800-.850  
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Open Records and Open Meetings Decisions – Administrative Regulations, 40 KAR 1:030  
Legislative Research Commission, Kentucky Open Meetings and Open Records Laws – Questions and Answers (Sept. 2005)  
Office of Attorney General (OAG), Managing Government Records: A Cooperative Undertaking (Aug. 2012)  
OAG, Open Records and Open Meetings: Outline (Feb. 2006)  
OAG, Promoting the Public Trust (Video)  
OAG, Protecting Your Right to Know: Kentucky Open Records and Open Meetings Acts (Jan. 2008)  
OAG, Your Duty Under the Law (July 2013)  
Sample Open Records Act Policy (Kentucky Rural Water Ass'n Form) (MS Word Format)

### **Privacy Protection**

Destruction of Records Act (KRS 365.720 .730)  
House Bill 5  
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Department of Local Government, Protection of Personal Information: Security and Incident Investigation Procedures and Practices for Local Governmental Units (Fall 2014)

## **Public-Private Partnerships**

Michael H. Novak, "Entering into a public-private partnership for operations and maintenance? Here are five pitfalls to avoid," *Rural Matters* No 3 (2013)

## **PSC Investigations**

*Corinth Water District*, Case No. 2013-00187 (Ky. PSC May 21, 2013)

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Damon Talley, When Bad Things Happen: PSC Investigations (Oct. 27, 2015) (PDF Format) (PowerPoint Format)

Kentucky Public Service Commission, Guidance on Glass Lined Bolted Steel Water Standpipes (July 30, 2015)

Kentucky Public Service Commission, Guidance on Notification Procedures for Utility Related Incidents (Mar. 27, 2015)

*U.S. 60 Water District*, Case No. 2015-00037 (Ky. PSC Apr. 2, 2015)

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*Western Mason County Water District Commissioners*, Case No. 2015-00155 (Ky. PSC June 9, 2015)

*Western Mason County Water District Commissioners*, Case No. 2015-00155 (Ky. PSC Sept. 11, 2015)

## **PSC Regulatory Issues**

Alternative Rate Filing Procedures: Rate Adjustments Made Easy (Power Point Presentation) (Sep. 2015)

Common Mistakes When Dealing with the Public Service Commission (Power Point Presentation)

Revenue Requirements: A Primer (Dec. 2013) (PDF Presentation)

## **Purchased Water Adjustment**

Model Resolution for Board of Directors/Commissioners

Purchased Water Adjustment Form for Investor-Owned Water Utilities (PDF) (MS Word)

Purchased Water Adjustment Form for Water Associations/Water Districts (PDF) (MS Word)

Treated Sewage Adjustment for Water Associations/Water Districts (PDF) (MS Word)

## **Rate Application Forms**

Alternative Rate Filing Application Forms

## **Recent Legislation – 2016 General Assembly**

House Bill 189 (Interlocal Government Agreements)  
House Bill 261 (Utility Abandonment)  
House Bill 303 (Executive Branch Budget)  
House Bill 309 (Public Private Partnerships)  
House Bill 529 (Kentucky Water Resources Board)

## **Records Retention**

Kentucky Department of Libraries and Archives, Local Governments General Records Retention Schedule  
Kentucky Department of Libraries and Archives, Managing Government Records  
National Association of Regulatory Utility Commissioners (NARUC), Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities (1974)  
NARUC, Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities (2007)

## **Reciprocal Preference Bidding Law**

Finance and Administration Cabinet, Kentucky Preference Laws (Power Point Presentation)  
Required Affidavit for Bidders, Offerors and Contractors Claiming Resident Bidder Status  
Required Affidavit for Bidders, Offerors and Contractors Claiming Qualified Bidder Status  
General Preference Clause (Microsoft Word Document)  
Preference Clause for Sealed Bid Solicitation (Microsoft Word Document)  
Preference Clause – Request for Proposal (Microsoft Word Document)

## **Reduction of Lead In Drinking Water Act**

Reduction of Lead in Drinking Water Act (S. 3784)  
Environmental Protection Agency, EPA 815-S-13-001, Summary of the Reduction of Lead in Drinking Water Act and Frequently Asked Questions (Oct. 2013)

## **Security**

American Society of Civil Engineers, Guidelines for Physical Security of Water Utilities (2006)

## **Security Deposits**

Kentucky Public Service Commission, Frequently Asked Questions Regarding Interest on Customer Deposits  
Kentucky Public Service Commission, 2013 Guidance on Security Deposit Interest Rates  
Kentucky Public Service Commission, 2014 Guidance on Security Deposit Interest Rates

Kentucky Public Service Commission, 2015 Guidance on Security Deposit Interest Rates  
Kentucky Public Service Commission, 2016 Guidance on Security Deposit Interest Rates  
KRS 278.460  
PSC Staff Opinion 2013-001

### **Tariff Materials**

Adoption Notice Form (MS Word Format)  
Cover Page Form (MS Word Format)  
Blank Tariff Page Form (MS Word Format)  
Non-Recurring Charge Cost Justification Form (MS-Word Format)  
Request to PSC Revise Non-Recurring Charge (MS-Word Format)  
Tap-On Fee Cost Justification Form (MS-Word Format)  
Sample Tariff Pages

### **Uniform System of Accounts**

Uniform System of Accounts for Class A/B Water Associations and Districts (2002)  
Uniform System of Accounts for Class A/B Water Companies (2002)  
Uniform System of Accounts for Class C Water Associations and Districts (2002)  
Uniform System of Accounts for Class C Water Companies (2002)  
Uniform System of Accounts for Sewer Utilities (2002)

### **Water District Commissioner Appointments**

Letter to All County Judges Regarding Water District Commissioner Appointments  
(Aug. 19, 2010)

### **Water District Commissioner Training**

*Breathitt County Water District*, Case No. 2007-00493 (Ky. PSC Mar. 20, 2008).  
*Jessamine County Water District No. 1*, Case No. 2015-00313 (Nov. 17, 2015)  
*Rebekah Johnson*, Case No. 2012-00449 (Ky. PSC Apr. 2, 2013)  
Letter to All Water Districts Re: Implementation of House Bill 201 (Aug. 19, 2010)  
PSC Staff Opinion 2014-017 (Dec. 16, 2014)

### **Water Meter Testing**

AWWA Standards Subcommittee on Magnetic Devices, "Committee Report: Magnetic Inductive Flowmeters," *AWWA Journal*, June 2007  
Damon Talley, All Things Meter (Oct. 27, 2015) (PDF Format) (PowerPoint Format)  
Gene R. Barker, "Water Meter Testing Used to Raise Revenues," 13 *Opflow*, no. 12 (Dec. 1987)  
*Graves County Water District*, Case No. 2011-00233 (Ky. PSC Nov. 3, 2011)  
Ken Mercer, "How Often Should Residential Water Meters Be Replaced?," *Opflow*, Feb. 2011 at 1

*Kentucky-American Water Co.*, Case No. 2009-00253 (Ky. PSC Oct. 5, 2011)  
*Muhlenberg County Water District*, Case No. 2013-00043 (Ky. PSC Feb. 7, 2015)  
S.E. Davis, Residential Water Meter Replacement Economics (2005)  
*Warren County Water District*, Case No. 2011-00220 (Ky. PSC Mar. 5, 2013)  
*Warren County Water District v. Public Service Commission*, No. 13-CI-1078 (Franklin  
Cir. Ct. Jan. 13, 2014)

### **Water System Management and Sustainability**

Department of Agriculture (USDA)/Environmental Protection Agency (EPA), Rural and Small Systems Guidebook to Sustainable Utility Management (Oct. 2013)  
USDA/EPA, Workshop in a Box: Sustainable Management of Rural and Small Systems Workshops (Oct. 2013)  
Water Advisory Group, Effective Utility Management: A Primer for Water and Wastewater Utilities (June 2008)

# **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: XXXXXXXXXX

Re: CLE Activity Accreditation

Date: April 28, 2016

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 Kentucku Water Training

Location: Erlanger KY

Date: 05/04/2016

Activity No. 166261

Sponsor No. 1858

TOTAL CREDITS: 8.00

ETHICS CREDITS: 0.00

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

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**From:** Sharp, Scott (DLG) <Scott.Sharp@ky.gov>  
**Sent:** Friday, May 06, 2016 8:56 AM  
**To:** Wuetcher, Gerald  
**Subject:** RE: Status of Application for Approval

It was approved and entered into the system on 4/21/16.

Scott

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**From:** Wuetcher, Gerald [<mailto:Gerald.Wuetcher@skofirm.com>]  
**Sent:** Thursday, May 05, 2016 12:11 PM  
**To:** Sharp, Scott (DLG)  
**Subject:** Status of Application for Approval

Mr. Sharp:

I submitted a request for approval of a training program entitled "Northern Kentucky Water Training 2016" on 4/20/2016. I am writing to check on the status on the request. Any information would be greatly appreciated.

Sincerely,

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](mailto:gerald.wuetcher@skofirm.com)

Lexington | Louisville | Frankfort | Evansville | Greater Pittsburgh | Hodgenville | [skofirm.com](http://skofirm.com)

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