

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF)
HARDIN COUNTY WATER DISTRICT)
NO. 2 FOR ACCREDITATION AND) CASE NO. 2018-00110
APPROVAL OF A PROPOSED WATER)
DISTRICT MANAGEMENT TRAINING)
PROGRAM)**

APPLICATION

Hardin County Water District No. 2 (“Hardin District No. 2”) applies for an Order from the Public Service Commission accrediting and approving a proposed water district management training program pursuant to KRS 74.020(6) and (7) and 807 KAR 5:070.

In support of its application, Hardin District No. 2 states:

1. The full name and post office address of Hardin District No. 2 is: Hardin County Water District No. 2, P.O. Box 970, Elizabethtown, Kentucky 42702-0970. Its electronic mail address is jjeffries@hardincountywater2.org.

2. Pursuant to 807 KAR 5:001, Section 4(8),1 copies of all orders, pleadings and other communications related to this proceeding should be directed to:

¹ On March 20, 2018, Hardin District No. 2 gave notice pursuant to 807 KAR 5:001, Section 8, of its intent to file this application and of its use of electronic filing procedures.

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jjeffries@hardincountywater2.org

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maryellen.wimberly@skofirm.com

3. Hardin District No. 2 is not a corporation, limited liability company, or limited partnership. It has no articles of incorporation or partnership agreements.

4. Hardin District No. 2 is a water district organized pursuant to KRS Chapter 74.

5. Hardin District No. 2's territory includes all of Hardin County, Kentucky, except for the city of Radcliff and the northern portion of Hardin County, and portions of Larue and Hart Counties.

6. Hardin District No. 2 proposes to sponsor and conduct a water management training program on April 23, 2018 at Hardin District's offices in Elizabethtown, Kentucky. The program is entitled "Hardin County Water Training 2018." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

7. As reflected in Exhibit 1, the proposed training program will include presentations on recent developments in utility regulatory law, including a general overview of recent Kentucky court and Public Service Commission decisions; the Public Service Commission's ratemaking treatment of employee compensation; regulatory issues surrounding meter testing and meter testing sampling; the findings and recommendations of the Kentucky Energy and Environment Cabinet's Working Group on Lead in Kentucky's Drinking Water; and a panel discussion on recurring legal issues present in the operation and management of water systems. These presentations will enhance the attendees' understanding of relevant legal issues involved in the management, operation, and maintenance of water treatment

and distribution systems and are calculated to enhance and improve the quality of the management, operation and maintenance of the attendees' water systems.

8. The proposed training program will consist of six hours of instruction and should be accredited and approved for six credit hours of water district management training.

9. A biographical statement containing the name and relevant qualifications and credentials for each presenter is attached at **Exhibit 2** of this application.

10. The written materials to be provided to each attendee are attached at **Exhibit 3**. In addition to a copy of each speaker's presentation, Hardin District No. 2 will provide each attendee with a flash drive containing an electronic copy of applicable laws, regulations, Kentucky court decisions, and Commission orders, as well as several reference publications. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, Hardin District No. 2 will include a copy of the revised presentation with its sworn statement and report regarding the instruction.

11. In addition to its own staff and commissioners, Hardin District No. 2 has invited the staff and members of the Boards of Commissioners of the following water district to attend the proposed training: Grayson County Water District;

Hardin County Water District No. 1; Larue County Water District; Meade County Water District, and North Nelson County Water District.

12. Hardin District No. 2 will retain a record of all water district commissioners attending the proposed training program.

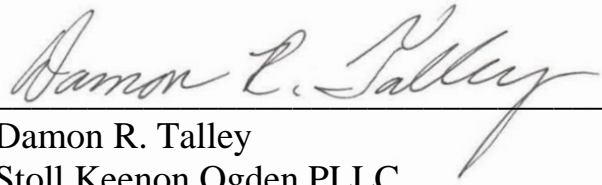
13. No later than May 31, 2018, Hardin District No. 2 will file with the Commission a sworn statement:

- a. Attesting that the accredited instruction was performed;
- b. Describing any changes in the presenters or the proposed program curriculum that occurred after certification;
- c. Containing the name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended; and,
- d. Including a copy of any written material given to the attendees that has not been previously provided to the Commission.

WHEREFORE, Hardin District No. 2 requests that the Commission approve and accredit the proposed training program entitled “Hardin County Water District No. 2 Water Training 2018” for six hours of water district management training.

Dated: March 22, 2018

Respectfully submitted,



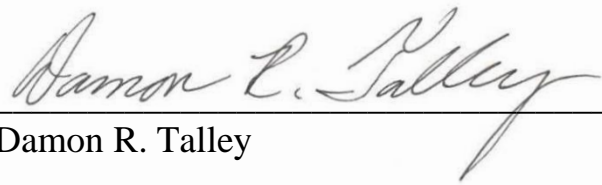
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*Counsel for Hardin County Water District
No. 2*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Hardin County Water District No. 2's March 22, 2018 electronic filing of this Application 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 March 22, 2018; 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 March 26, 2018.



Damon R. Talley

EXHIBIT 1

Hardin County Water Training Program 2018

Presented by

Hardin County Water District No. 2

April 23, 2018

360 Ring Road

Elizabethtown, Kentucky

- 7:45 - 8:30 **Registration and Refreshments**
- 8:30 – 8:35 **Program Overview and Welcome**
- 8:35 - 10:05 **Recent Developments in Utility Regulation – Damon Talley**
This presentation reviews recent developments in public utility law and regulation. Special emphasis will be given to unaccounted water loss and obtaining Commission authorization before issuing or refinancing debt instruments. Other topics include wholesale water purchase agreements, franchises, laws enacted by the 2017 and 2018 General Assembly, and their effect on water utility operations. The presenter will also examine recent court and Commission decisions and possible trends represented by these decisions.
- 10:05 - 10:15 **Break**
- 10:15 – 12:00 **Public Service Commission Treatment of Employee Compensation**
In the past year, the Public Service Commission has more closely scrutinized employee compensation of water utilities and has significantly revised its ratemaking treatment of employee wages, salaries, and fringe benefits. This presentation reviews the change in PSC policies and provides suggestions for ensuring compliance with the new PSC policy, while avoiding unnecessary disallowance of employee compensation expenses and continuing to obtain the rates necessary to provide competitive employee salaries and benefits.
- 12:00 – 12:30 **Lunch**
- 12:30 – 1:30 **Extending Meter Service Life – Mary Ellen Wimberly**
Studies show water meters remain largely accurate for 15 years, but PSC regulations require 5/8-inch x 3/4-inch meters be tested or removed every 10 years. This presentation will discuss whether sample testing is the functional equivalent of testing each meter, the ANSI Standard method of sample testing the PSC has approved for gas and electric meters, and the PSC's recent decisions on water utility efforts to extend meter service life to 15 years and beyond.
- 1:30 - 1:40 **Break**
- 1:40 - 2:40 **Keeping Lead Out of Kentucky's Drinking Water – Greg Heitzman**
In 2016 the Kentucky Energy and Environment Cabinet assembled a group of experts from a broad spectrum of Kentucky's water infrastructure whose mission was to examine existing protocols, lead/copper rules, service line replacement programs, compliance monitoring activities, and public education efforts and to report its findings and recommendations on how to prevent lead from entering Kentucky's drinking water. The working group recently completed its review and issued its report. The Chair of this Working will review the group's findings and recommendations.
- 2:40 - 2:45 **Break**

2:45 – 3:45 **Legal Issues in the Operation & Management of Water Systems – Panel Discussion**
Panelists: Damon Talley, Gerald Wuetcher, Other Panelists (TBD)

A panel of attorneys will entertain audience questions regarding frequently recurring legal issues face by water utilities. Discussion is expected to address KRS Chapter 74 and its effects on the management and operation of water districts, as well as other highly relevant statutory provisions, such as the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. Kentucky Public Service Commission regulatory requirements will also be discussed.

3:45 **Closing Remarks/Administrative Announcements**

EXHIBIT 2



Biography

Greg C. Heitzman, PE, MBA
President
BlueWater Kentucky
Louisville, KY

Greg Heitzman is President of BlueWater Kentucky, a management consulting firm serving the water and wastewater industry. From 2011 to 2015, he served as Executive Director/CEO of the Louisville Metropolitan Sewer District (MSD). Prior to MSD, he worked 31 years with the Louisville Water Company serving as Chief Engineer from 1991 to 2007 and President/CEO from 2007 to 2013.

In his executive roles for Louisville MSD and Louisville Water, Greg provided leadership for Mayor Fischer's One Water Partnership to consolidate water services and administrative functions of Louisville MSD and Louisville Water. Greg also led strategic initiatives to expand water and wastewater services in the region, develop high performance teams, establish model programs for corporate controls (policy, procedures and work instructions), and develop new lines of business and technology to enhance revenue and reduce costs.

Greg obtained his Bachelor and Master's degrees in Civil Engineering from the University of Kentucky and an MBA from the University of Louisville. He is a licensed Professional Engineer in Kentucky and recipient of AWWA George Warren Fuller Award. He is an active member in both AWWA and the Water Environment Federation/Association. He currently serves on the following industry and community boards: Water Research Foundation; Water Information Sharing and Analysis Center (Water ISAC); Louisville Water Foundation; Better Business Bureau; and Tree Louisville Commission.

He and his wife, Linda, reside in Louisville. Their daughter, Claire, is married and teaches high school in Lexington, KY.



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PRACTICES

Utility & Energy

INDUSTRIES

Public Utility

BAR & COURT ADMISSIONS

Kentucky

Kentucky Supreme Court

U.S. District Court, Eastern District Of Kentucky

U.S. District Court, Western District Of Kentucky

United States Supreme Court

EDUCATION

University of Kentucky College of Law

1975, J.D.

University of Kentucky College of Engineering

1972, B.S.M.E.

Damon R. Talley

Damon serves as Of Counsel and is a member of the Utility & Energy practice. He practices out of the Louisville, Lexington and Hodgenville, Kentucky offices. Damon brings to SKO more than 35 years of experience working in private practice focusing on public utility work. He serves as General Counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

He is a frequent speaker at training sessions sponsored by the Kentucky Rural Water Association, Public Service Commission, Division of Water, Utility Management Institute, and other Utility Industry Groups.

Damon received his J.D. from the University of Kentucky College of Law in 1975, and earned his B.S.M.E. in 1972 from the University of Kentucky College of Engineering. He served as a board member of the Kentucky Infrastructure Authority for 15 years (2000-2015), and was a charter member, a long-time board member and Board Chairman for two terms of the KY FFA Foundation, Inc. He also serves as a board member for a variety of other non-profit organizations.



Mary Ellen Wimberly
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BAR & COURT ADMISSIONS

Kentucky

EDUCATION

University of Kentucky
College of Law
2016, J.D., magna cum laude

University of Kentucky
2013, B.S.B.E., summa cum
laude

RECOGNITION

Singletery Scholar

Wethington Fellowship

John Todd Shelby Memorial
Merit Scholarship

Staff Editor, *Kentucky Law
Journal*, 2014-2016

Order of the Coif

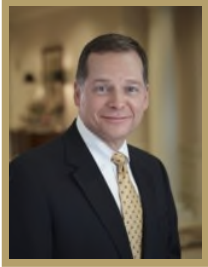
Mary Ellen Wimberly

Mary Ellen focuses her practice on Utility & Energy law, representing utility companies in regulatory proceedings before the Kentucky Public Service Commission and other state and federal agencies.

Previously as a Summer Associate at SKO, Mary Ellen conducted research, drafted motions and pleadings, and gained valuable insight into the challenges and opportunities facing a range of clients.

While earning her J.D. at the University of Kentucky College of Law, Mary Ellen was involved in the Women's Law Caucus and prepared tax returns through the Volunteer Income Tax Assistance Program.

Her background in finance and economics has turned Mary Ellen into a self-proclaimed numbers person. She uses her experience in business and numbers to "distill complex legal challenges into solutions for clients."



Gerald E. Wuetcher

Counsel to the Firm

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PRACTICES

Utility & Energy

BAR & COURT ADMISSIONS

Kentucky

Kentucky Supreme Court

U.S. Court Of Appeals For The Armed Forces

U.S. District Court, Eastern District Of
Kentucky

U.S. District Court, Western District Of
Kentucky

EDUCATION

Emory University

1984, J.D.

Johns Hopkins University

1981, B.A.

Gerald E. Wuetcher

Jerry is Counsel to the Firm and a member of the Utility & Energy practice. He brings to Stoll Keenon Ogden more than 25 years of experience working at the Kentucky Public Service Commission, where he served as a staff attorney, deputy general counsel and executive advisor. He frequently appeared before the Commission in administrative proceedings involving electric, natural gas, water and sewer utility issues and represented the Commission in state and federal courts. Jerry also served as the Commission's representative in a number of interagency groups addressing water and wastewater issues. Between 2009 and 2013, he was the Commission's representative on the Board of the Kentucky Infrastructure Authority. Jerry developed and implemented the Commission's training program for water utility officials and served as an instructor for that program. He is frequent speaker on utility and local government issues before such organizations as the Kentucky Rural Water Association, Kentucky League of Cities, the Kentucky Association of Counties, and the Utility Management Institute.

Jerry served for 27 years in the United States Army as a judge advocate before retiring at the rank of Colonel in 2011. His service encompassed numerous roles on active duty and in a reserve status.

Jerry received his J.D. from Emory University in 1984, and earned his B.A. in History with Honors in 1981 from Johns Hopkins University. Jerry also serves as a member of Board of Trustees of the Woodford County Library and has previously served as an adjunct professor at the University of Louisville Brandeis School of Law.

EXHIBIT 3

RECENT DEVELOPMENTS IN UTILITY REGULATION

Damon R. Talley, General Counsel
Kentucky Rural Water Association, Inc.
Stoll Keenon Ogden PLLC
damon.talley@skofirm.com
270-358-3187



DISCUSSION TOPICS

1. E-mail Address
2. Franchises & Contracts
3. Prevailing Wages
4. Pension Expense
5. Borrowing Money

Continued . . .



DISCUSSION TOPICS

6. Cases to Watch
7. Skeletons in the Closet
8. 911 Funding Update
9. GASB 68 & NPL
PSC Rate Making







E-Mail Address Regs.

- All PSC Orders Served by E-mail
- Duty to Keep Correct E-mail Address on file with PSC
 - Default Regulatory E-mail Address
- Duty to List E-mail Address in Application & All Other Papers
 - Utility Official
 - Its Attorney

PSC Case No. 2016 - 310

Opened: 9 - 9 - 2016

Utility: Unlucky WD

Type: Show Cause Case

Issue: Ignored PSC Order &
Wrong E-mail Address

Settled: \$500 Fine



E-Mail Address

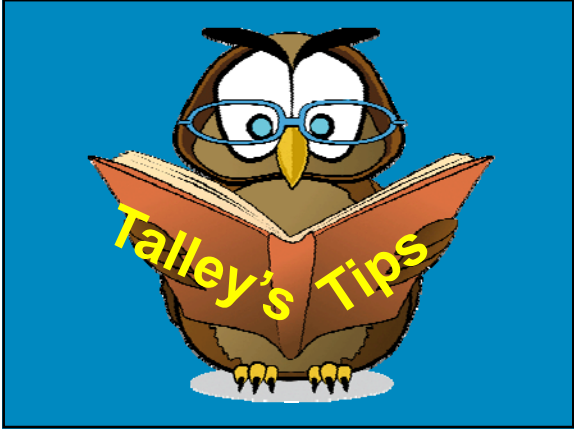
- Who Is Covered?
 - Water Districts
 - Water Associations
 - Investor Owned Utilities
 - **Municipal Utilities**



Why Municipals?


- Contract Filing
- Tariff Change (Wholesale Rate)
- Protest Supplier's Rate Increase
- Acquiring Assets of Another Utility
- Avoid Delays





**Default Regulatory
E-mail Address**

- Send E-mail to PSC
 - psc.reports@ky.gov
- Send Letter to PSC
 - Ms. Gwen R. Pinson
Executive Director



**Franchises
and
Contracts**



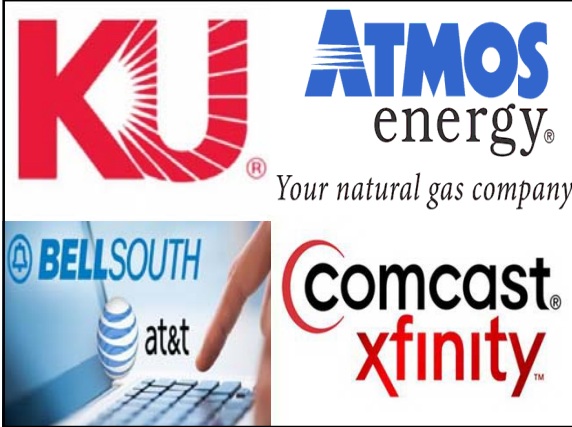
Franchise

- Definition
 - Private
 - Rights granted by company to individual or business to sell a product
 - Examples



Franchise

- Definition
 - Government
 - Privilege granted by government to utility to provide specific utility service
 - Permission to erect facilities over & under streets, alleys, & sidewalks
 - Fee: 3%
 - Examples



Livingston County Case
Ledbetter W.D.
vs.
Crittenden-Livingston WD
Circuit Court
Case No. 2015-CI-00079
Opinion Rendered: 1-25-17
Status: On Appeal

**Franchise Case - Holding
40-year
Water Supply Contract
Between 2 Water Districts
Invalid**

- Why? Contract = Franchise
- Over 20 Years
- Basis: Kentucky Constitution Section 164



Franchise Case
Crittenden - Livingston WD
vs.
Ledbetter WD
Court of Appeals
Case No. 2017-CA-000578
Briefs Filed: 7-31-17 & 9-21-17
Amicus Brief: 8-11-17
Status: Pending

Ky. Constitution Section 164
No county, city, town, taxing district or other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding **twenty years**. Before granting such franchise or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefor publicly, and award the same to the highest and best bidder; but it shall have the right to reject any or all bids.

Why?

- 340 Water Utilities
- 169 WTPs
- 50% Buy Water
- Need Water Supply Contract
- Long Term



How Long Is Long Term?

- Lender
 - RD: 40 years
 - KIA: 20 or 30 years
 - Bonds: Length of Bonds



Significance

- If Franchise . . . 20 Year Limit
 - Can't Borrow \$ from RD
 - Other Sources – Only if < 20 years
 - KIA
 - Bonds
 - KRWFC



Legal Analysis

- Does Water District Have Franchising Authority?
 - Constitution: **NO**
 - Judge: **YES**
 - Damon: **NO**

Circuit Judge's Rationale

- Sovereign Power → Franchise
- Water District is Sovereign Power
- Water District → Franchise
- Problem
 - Ignored Wording of Constitution

Legal Analysis

- Is Water Purchase Agreement a Franchise?
 - Constitution: Silent
 - Case Law: Silent
 - AG Opinion: Yes 1981
 - Judge: Yes
 - Damon: No

Circuit Judge's Rationale

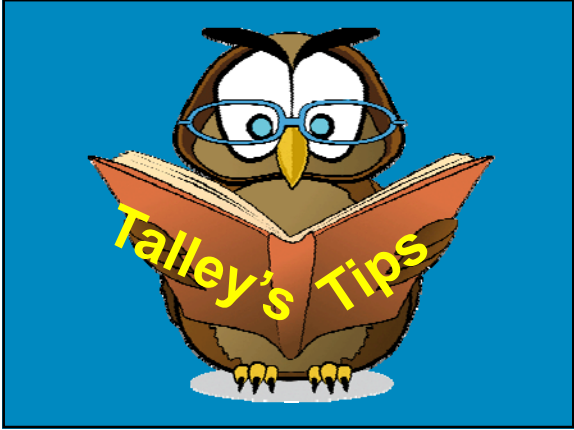
- "The court concludes that the Water Purchase Contract is in fact a franchise . . ."
- Conclusion
- No Explanation

KRWA's Role

- Filed Amicus Brief
 - "Friend" of Court
- Protect Validity of Contracts
- Protect Ability to Obtain \$

What's Next?

- All Briefs Filed
- Oral Arguments ? ? ?
- C/A Decision ? ? ?
- Ky. Supreme Court ? ? ?




Your Role

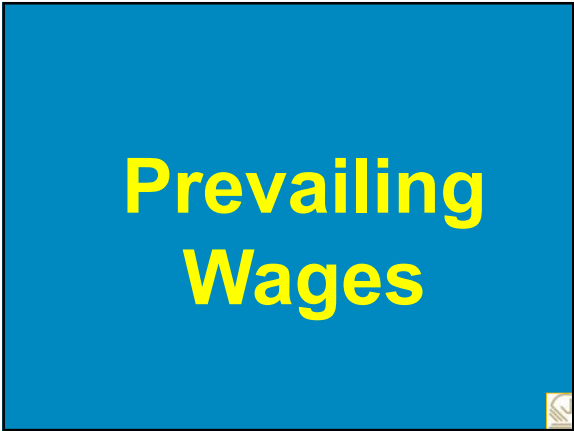
- Ruling Is Limited to Livingston County . . . for Now
- Don't Change Behavior . . . for Now
- Stay Tuned
- Alert KRWA

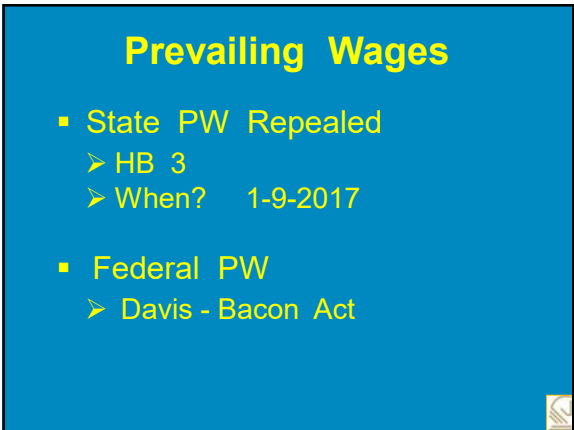


Prevailing Wages









Old Law

- State PW Triggered By:
 - Public Works Project
 - Public Authority and
 - Over \$250,000
- Funding Source Immaterial

Davis - Bacon Wages

- DB Triggered By:
 - Public Works Project
 - Public Authority and
 - **Funding Source**

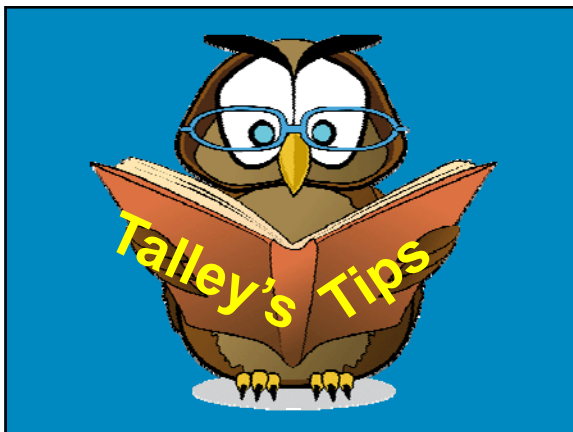
Davis - Bacon Wages ?

| Funding Source | Yes | No |
|--------------------|-----|----|
| Reserve Funds | | ✓ |
| RD | | ✓ |
| KIA (Under Review) | ✓ | |
| CDBG | ✓ | |
| ARC | ✓ | |
| EDA | ✓ | |

Davis - Bacon Wages ?

| Funding Source | Yes | No |
|------------------|-----|----|
| Tax Exempt Bonds | | ✓ |
| KRWFC | | ✓ |
| KLC | | ✓ |
| KACo | | ✓ |
| Multiple Sources | ? | ? |
| | | |






Davis - Bacon Wages

- Multiple Funding Sources
 - Does **Any** Funding Source Require DB Wages?
 - If Yes . . . Then Entire Project Requires DB Wages

Pension Expense

Pension Expense

- CERS
- Letter from State Budget Director
 - Revised Assumptions
 - Contribution Rate 
 - FYE 6-30-18 19%
 - FYE 6-30-19 29%
- Actual Rates: December 2017

Pension Expense

- 67 of 112 Water Districts
- 60% of Water Districts
- Increase:
 - Total: \$3,912,147
 - Average: \$ 58,390
 - Median: \$ 32,183



Pension Expense

| | Utility (Water Districts) | Increased Pension Expense | Gallons Sold (000) | \$ Per 1,000 Gallons |
|---|------------------------------|---------------------------------|--------------------------|----------------------------|
| 1 | East Clark | \$ 23,681 | 110,000 | \$ 0.22 |
| 2 | Farmdale | \$ 12,857 | 151,113 | 0.09 |
| 3 | Hardin # 2 | \$ 307,326 | 2,102,525 | 0.15 |
| 4 | Henderson | \$ 39,694 | 337,801 | 0.12 |
| 5 | LaRue | \$ 32,619 | 162,477 | 0.20 |


Pension Expense

| | Utility (Water Districts) | Increased Pension Expense | Gallons Sold (000) | \$ Per 1,000 Gallons |
|----|------------------------------|---------------------------------|--------------------------|----------------------------|
| 6 | Montgomery | \$ 6,117 | 34,089 | \$ 0.18 |
| 7 | Northern Ky. | \$ 762,756 | 7,810,113 | 0.10 |
| 8 | North Marshall | \$ 43,829 | 397,160 | 0.11 |
| 9 | North Nelson | \$ 20,185 | 261,887 | 0.08 |
| 10 | Ohio County | \$ 78,113 | 475,182 | 0.16 |

| Pension Expense | | | | |
|-----------------|------------------------------|---------------------------------|--------------------------|----------------------------|
| | Utility (Water Districts) | Increased Pension Expense | Gallons Sold (000) | \$ Per 1,000 Gallons |
| 11 | Oldham Co. | \$ 82,578 | 1,286,711 | \$ 0.06 |
| 12 | So. Madison | \$ 32,462 | 263,225 | 0.12 |
| 13 | Webster Co. | \$ 45,237 | 278,268 | 0.16 |
| 14 | | | | |
| 15 | | | | |

Options

- Absorb
- Pass Through to Customers
- Rate Increase
 - PSC
 - City Council
- **Change Law**




KRS 278.015

Purchased
Water
Adjustment


Law Change

Pension
Expense
Adjustment



P E A

- Base Year: 2017
- Increased Pension Expense
- Divide by Gallons Sold
- Per 1,000 Gallons Adjustment
- Line Item on Bill



Law Changes

- Your Thoughts
- Convince
 - KRWA Legislative Committee
 - KRWA Board
 - Legislators



Municipal Utilities

- Convince City Council
- Ordinance
 - Enact Once
 - Automatic **PEA** Annually

Borrowing



KRS 278.300(1)

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

Practical Effect

- Must Obtain PSC Approval Before Incurring Long-term Debt (Over 2 Years)
- Exception:
 - 2 Years or Less
 - 2 Renewals
(3 X 2 = 6 Years)





Violation

**Show
Cause
Case**



Method of Resolution

- Historically . . .
 - Acknowledge Mistake
 - Settle Out of Court . . . Very Quietly
 - Go to Training
 - Pay Small Fine
 - Stay Out of Trouble



Range of Outcomes

- No Show Cause Case Opened
- \$100 Fine (Suspended)
- Go to PSC Training
- \$250 Fine (Suspended)
- More Training (Manager Also)

Range of Outcomes

- No Show Cause Case Opened
- \$100 Fine (Suspended)
- Go to PSC Training
- \$250 Fine (Suspended)
- More Training (Manager Also)

...



Range of Outcomes (continued)

- ~~×~~ \$500 Fine (Sometimes Suspended)
- ~~×~~ \$500 Fine & Much More Training
- No More Settlements
- Public Hearing & Then Fined (Suspended)



Who Is Affected?

- Utility
- Current Commissioners
- Former Commissioners
- Manager
- Attorney
- Lender ???



Show Cause Case # 1

Case No. 2016 - 338
Opened: 10 - 11 - 2016
Closed: 02 - 23 - 2017
Issue: KRS 278.300
Hearing: 12 - 13 - 2016

Timeline - Bond Refinancing

05 - 13 - 2013 Board Adopts Resolution
Borrow \$1,530,000
12 - 17 - 2014 PSC Application Filed
Borrow \$1,485,000
01 - 05 - 2015 PSC Order Issued
02 - 05 - 2015 KRWFC Bond Sale
02 - 19 - 2015 Loan Closing
Borrow \$2,780,000

Timeline

03 - 31 - 2015 Board Lawyer Filed
Docs
12 - 28 - 2015 ARF Application Filed
04 - 15 - 2016 Staff Report Issued
10 - 11 - 2016 Show Cause Order
11 - 16 - 2016 Informal Conference
12 - 13 - 2016 **Formal Hearing**
02 - 23 - 2017 Order

Facts

Total Savings: \$478,376
NPV Savings: \$326,209
Amount Approved: \$1,485,000 + 10%
Amount Borrowed: \$2,780,000

Show Cause Case # 1

- Ruling:
 - \$500 Fine (Suspended)
 - Rejected Advice of Counsel Argument
 - Lawyer on Hook

Show Cause Case # 1


- Process Is Noteworthy:
 - Begged to Settle
 - PSC Said No
- Formal Hearing

Show Cause Case # 2
PSC Case No. 2017-176

Order: 8-18-2017
 Utility: Water District
 Type: ARF Case
 Holding: Hold Hearing
 Why? Violated 278.300

Show Cause Case # 2

Staff Report: 8-9-2017

Recommended: 24%  Rates
 \$360,000 Annual
 \$30,000 per Month
 3 Loans - Local Bank

Hearing: 11-1-17

Hearing on 11-1-17

- Purposes:
 - Line Loss - 33%
 - Violation of 278.300
 - Purpose of Loans
 - Fringe Benefits

Hearing on 11-1-17

- Who Must Attend?
 - Each Commissioner
 - Office Manager
 - Distribution System Manager

Talley's Take Aways


PSC Commissioners:

- Take Their Jobs Seriously
- Hands On
- Love Hearings
- Promote Transparency
- Oversight Means Oversight



PSC Case No. 2016-432

Filed: 12-29-2016
Utility: Hardin Co. WD No. 2
Type: Declaratory Order
Issue: 15 Year Meters
Sample Testing
Decided: ? ? ? ? ?



PSC Case No. 2017-070

Staff
Report: 6-30-2017
Utility: Monroe Co. WD
Type: ARF
Issue: Depreciation
Fringe Benefits



PSC Case No. 2017-246

Filed: 6-30-2017
Utility: McCreary Co. WD
Type: Deviation
Issue: Daily Inspection of
Grinder Pumps



PSC Case No. 2016-394

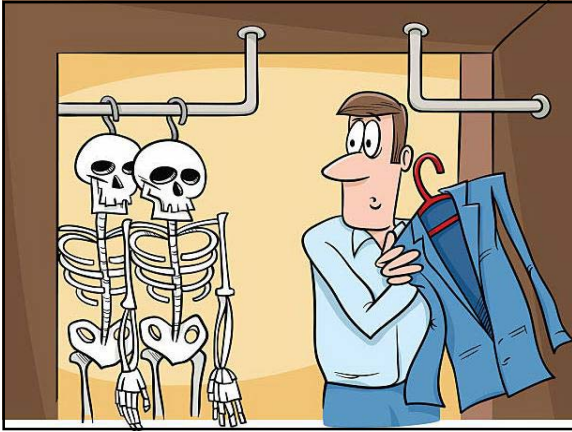
Filed: 11-18-2016
Utility: KAW
Type: Deviation
Issue: Annual Inspection of
Meters & Valves
Hearing: 10-31-2017



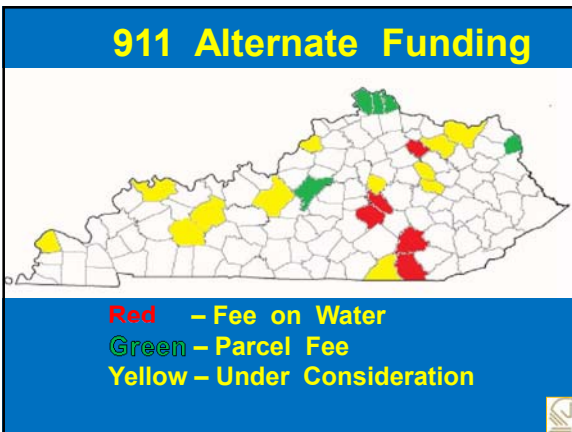
PSC Case No. 2016-427

Filed: 12-08-2016
Utility: Northern KY WD
Type: Deviation
Issue: Annual Inspection of
Meters & Valves



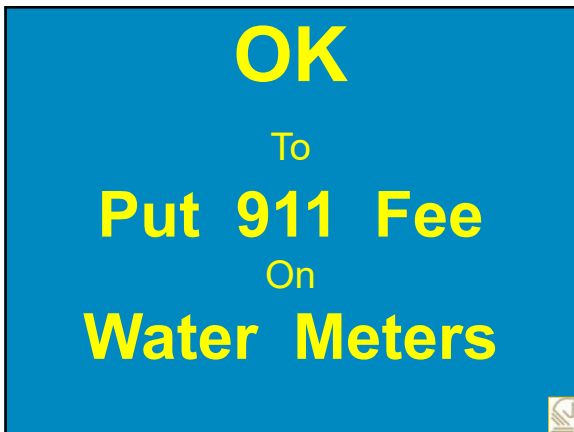


911 Funding Update















Garrard County Case

City of Lancaster, et al

vs.

Garrard County, Kentucky

Court of Appeals

Case No. 2013-CA-000716-MR

Opinion Rendered: 7-03-14

Opinion Vacated: 2-18-16

New Opinion: 8-11-17



Campbell County Case

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

vs.

Campbell Co. Fiscal Court, et al

Supreme Court of Kentucky

479 S.W.3d 603 (Ky. 2015)

Opinion Rendered: 10-29-15

Became Final: 02-18-16



Parcel Fee

▪ 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



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

Unresolved Legal Issues

- Does County Have Legal Authority to:
 - Compel City to Collect Fee?
 - Compel WD to Collect Fee?
 - Compel WA to Collect Fee?
 - Compel IOU to Collect Fee?

Unresolved Legal Issues

- Does County Have Legal Authority to:
 - Impose 911 Fee on:
 - City Utility?
 - Water District?
 - Water Association?
 - Investor Owned Utility?

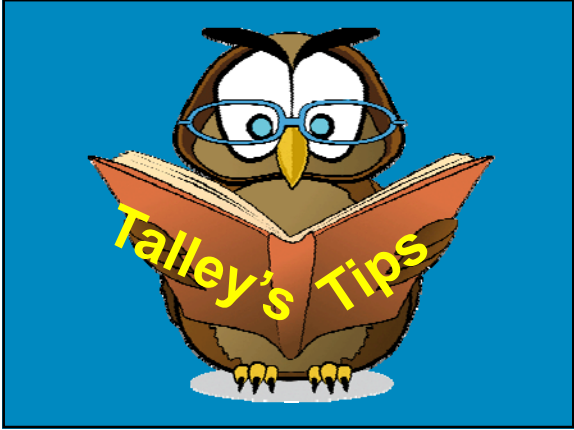


Current Status

- Campbell County – Parcel Fee OK
- Garrard Co. – Water Meter Fee OK
 - But **Wait!!!** Motion for Discretionary Review Filed
 - In Limbo


Your Role

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



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)





GASB 68 & NPL PSC Rate Making

Background GASB 68

- CERS
 - Net Pension Liability
 - Utility's % of NPL
- GASB 68
 - Adopted: 2012
 - Effective:
 - Cities FYE 6-30-15
 - WDs FYE 12-31-15

Background GASB 68

- Purpose
 - Financial Statements Reflect Potential Impact of Unfunded Pension Liability
 - Each CERS Employer Reports Its % of NPL
- Impact on Rate Making

PSC Case No. 2016 – 163
Issued: 8-11-16 (Staff Report)
Utility: Marion Co. Water Dist.
Type: ARF Case
Issue: PSC Rate Making
Treatment Under
GASB 68 & NPL

Staff Report

- Thorough Analysis (21 pages)
- Cash Flow Needs
 - Utility's Cash Contribution to CERS
 - Ignores NPL for Rate Making
- Avoids Wide Fluctuations
- No Change – Revenue Requirements

Staff Report

- Balance Sheet Treatment
 - Complicated
 - Creates Regulatory Asset
 - Prevents "Big Hit"
 - Avoids Wild Fluctuations
- PSC Approved: 11-10-2016
- Adopted Staff Report

QUESTIONS?

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STOLL
KEENON
OGDEN

STOLL KEENON OGDEN
PLLC

**PUBLIC SERVICE COMMISSION
TREATMENT OF EMPLOYEE
COMPENSATION**

Hardin County Water Training Program 2018
April 23, 2018

Gerald Wuetcher
Stoll Keenon Ogden PLLC
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ORDER OF PRESENTATION

- Legal Standards
- Salaries/Wages
- Bonuses
- Commissioner Salaries/Fringe Benefits
- Health Insurance Coverage
- Other Insurance
- Pension/Retirement Benefits

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LEGAL STANDARDS


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PRESUMPTION OF REASONABLENESS

Management decisions are presumed to be reasonable.


Presumption continues until shown:

- Expenses are inefficient/improvident
- Managerial discretion has been abused
- Action is contrary to the public interest
- Expenses are in excess of just and reasonable charges

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PSC AUTHORITY LIMITED TO REGULATION OF RATES AND SERVICE

- KRS 278.040 grants PSC the authority to regulate utility rates and service
- No authority to operate or manage the affairs of the utility
- PSC may disallow recovery of unlawful or unreasonable expense
- Disallowance of the expense does not prohibit the utility from incurring the expense, only from passing on to ratepayers through utility rates

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WAGES AND SALARIES

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**REVIEW OF WAGES & SALARIES:
ANNUAL WAGE INCREASES**

Potential Problem Areas

- Unusual or Disparate Increases in Salaries
- Excessive/Unreasonable Increases
- Unexplained Increases

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CASE NO. 2016-00054

- Water District Sought Rate Increase
- PSC Staff challenges annual increases for select employees who receive percentage increases greater than other employees
- PSC **disallowed** higher increases:
"The annual wage rate increase for all employees should be comparable **unless there is evidence demonstrating a reasonable basis for a different increase amount**, such as when an employee receives a promotion for accepting additional responsibilities."

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CASE NO. 2016-00054

- AG challenged wage expense related to annual wage increase of **3% for all employees** & health, life & vision insurance (at no cost)
- PSC rejected challenges and found wage increase & fringe benefit package reasonable
- PSC focused not on reasonableness of the amount of increase but whether **the total compensation was unreasonable**

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CASE NO. 2016-00325

- Utility provided varying annual wage increases
- Range of increases: 3.0% to 4.5%
- No written explanation for variations
- No discussion in Board minutes
- GM provided explanation to PSC Staff
- PSC Staff recommends approval

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CASE NO. 2016-00325


- PSC accepts recommendation but expresses concerns
- Notes “the lack of information to evaluate salaries and wages paid to North Mercer’s employees, especially given that no basis or justification has been provided for its annual wage and salary increases”
- **Note:** PSC focus is on **ALL** increases

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CASE NO. 2016-00325


The Commission has begun placing more emphasis on performance-based evaluations of salary and benefits provided by utility providers as they relate to **competitiveness in a broad marketplace**. Future rate applications . . . should include a performance-based validation method to justify raises

Order of 5/29/2017 at 3-4

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CASE NO. 2017-00070

- Utility reviewed wages 2X annually:
 - Cost-of-living
 - Performance Evaluation
- Utility did not use a defined price index to establish cost-of-living increase
- Utility did not provide written evaluations
- Utility awarded all employees performance increases of 2%


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CASE NO. 2017-00070

PSC warns all water utilities:


In future rate cases, cost-of-living adjustments without a sound basis, such as a relevant inflation index or written performance-based metric, will be disallowed.

Order of 1/12/2018 at 16

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SUPPORTING WAGE/SALARY INCREASE

- Support for Wage/Salary Increases
 - Consumer Price Index
 - Bureau of Labor Statistics
 - Employee Performance Evals
- Annual Increases In Excess of Cost of Living:**
 - Written Performance Evaluations
 - Other factors: Labor Market/Location
 - Total Salary Comparison**

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SUPPORTING WAGE/SALARY INCREASE

- Document Wage Decisions
 - Bd Minutes should reflect Bd's reasoning for increases
 - Specific, detailed reasons preferred over general
- Implement Evaluation System to better support selective wage/salary increases
- **Avoid across-the-board performance raises**

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SUPPORTING WAGE/SALARY INCREASE

- Adopt written policy re: wage increases & evaluations
- Follow the policy
- Ensure Board witness can articulate basis for decision
- If competition for local labor is a basis for a wage increase, provide supporting info re: local labor market

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**REVIEW OF WAGES & SALARIES:
TOTAL SALARY AND WAGE LEVELS**

Are the Utility's Wages and Salaries Reasonable?

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CASE NO. 2015-00312

- Electric Utility Sought Rate Increase
- Attorney General (AG) raised concerns re: wage & salary increases/fringe benefits
- PSC:
 - Shares AG's concerns
 - No basis in record to justify determination that wages and benefits are not reasonable
 - Notes problems with studies re: wages

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CASE NO. 2015-00312

"[T]he Commission believes that employee compensation and benefits need to be more sufficiently researched and studied. The Commission will begin placing more emphasis on evaluating salary and benefits as they relate to competitiveness in a broad marketplace. **Future rate applications will be required to include a salary and benefits survey that is not limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies. The study must include local wage and benefit information for the geographic area where the utility operates and must include state data where available.**"

Order of 9/15/2016 at 15

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SUPPORTING SALARY/WAGE LEVELS

- Applications for Rate Adjustment should support any adjustment in test period expense **AND** total salary levels
- ARF Regulation/Application Form do not require such support – **PROVIDE ANYWAY**

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EMPLOYEE COMPENSATION: SUPPORTING SALARY/WAGE LEVELS

- Comparison with other utilities
 - KRWA Salary Survey
 - Kentucky League of Cities' Wage and Salary Survey
 - AWWA Wage/Salary Survey
 - Bureau of Labor Statistics
 - PSC Annual Reports


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EMPLOYEE COMPENSATION: SUPPORTING SALARY/WAGE LEVELS


- When using surveys, ensure appropriate category used
- PSC will closely examine/critique employees in excess of average
- Provide Complete Job Descriptions
- Identify Special Employee Skills & Education
- Emphasize Experience/Longevity w/Utility

Comparison of Water District Wages with State and National Water Industry Wages/Salaries

| Years Employed by District | Age | District Annual Pay | 2016 | | 2017 | | 2017 | 2016 | |
|-----------------------------------|-----|---------------------|------------------------|---------------------------|------------------------|---------------------------|--------------|-------------|-------------|
| | | | AWWA - 50th Percentile | AWWA - Mid Average Salary | AWWA - 50th Percentile | AWWA - Mid Average Salary | KRWA Average | KLC | |
| General Manager | 36 | 65 | \$58,240.90 | \$81,120.00 | \$84,708.00 | \$75,000.00 | \$76,513.00 | \$64,063.00 | \$58,355.00 |
| Office Manager | 26 | 46 | \$47,902.40 | \$48,256.00 | \$59,754.00 | \$49,098.00 | \$54,151.00 | \$50,033.00 | \$35,880.00 |
| Distribution Crew Supervisor | 20 | 46 | \$45,634.40 | \$56,000.00 | \$56,496.00 | \$53,800.00 | \$54,449.00 | \$46,522.00 | \$46,236.00 |
| Accounts Receivable III | 20 | 60 | \$33,696.00 | \$47,996.00 | \$52,701.00 | \$47,955.00 | \$53,689.00 | \$35,394.00 | \$31,606.00 |
| Customer Service Rep Supervisor | 17 | 61 | \$39,540.80 | \$52,358.00 | \$48,804.00 | \$50,534.00 | \$48,463.00 | \$30,142.00 | \$35,652.00 |
| Meter Tester/Equip. Operator II | 15 | 56 | \$40,622.40 | \$47,000.00 | \$47,603.00 | \$45,000.00 | \$45,462.00 | \$37,348.00 | \$35,652.00 |
| Laborer II | 13 | 42 | \$30,480.20 | \$37,950.00 | \$43,873.00 | \$36,872.00 | \$36,506.00 | \$37,348.00 | \$38,375.00 |
| Accounts Receivable II | 6 | 28 | \$25,854.40 | \$40,000.00 | \$40,404.00 | \$38,480.00 | \$39,219.00 | \$35,394.00 | \$33,006.00 |
| Laborer I | 2 | 47 | \$26,948.44 | \$37,950.00 | \$43,873.00 | \$36,872.00 | \$36,506.00 | \$30,244.00 | \$28,375.00 |
| Accounts Receivable I (2017 Hire) | 0 | 30 | \$24,294.40 | \$40,000.00 | \$40,404.00 | \$38,480.00 | \$39,219.00 | \$35,394.00 | \$33,006.00 |
| Laborer (2017 Hire) | 0 | 25 | \$23,337.60 | \$37,950.00 | \$43,873.00 | \$36,872.00 | \$36,506.00 | \$30,244.00 | \$28,375.00 |


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BONUSES

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PSC RATEMAKING TREATMENT

- **PSC has historically disallowed bonuses**
- **Reasoning:**
 - Salary adequate
 - Non-recurring
 - Discretionary

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RECENT PSC CASES

- **Case No. 2016-00325**
 - WD provided 1 wk's salary for all employees
 - Paid at discretion of Board
 - Disallowed
- **Case No. 2016-00435**
 - WD provided \$4,800 gift cards to employees
 - "Incentive Pay"
 - AG objected
 - Disallowed

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LEGAL CONCERNS

- **Kentucky Constitution, § 3:**
no “grant[s] of exclusive, separate public emoluments or privileges shall be made to any man or set of men, **except in consideration of public services.**”
- **AG Opinion 62-1:**
The granting or award of bonus contravenes Constitution since it is using public funds for services not actually rendered


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SUGGESTED APPROACH

- Consider Implementing Incentive Compensation Policy to Overcome Legal Concerns
- Forego Rate Recovery of Bonuses
- If Seeking Rate Recovery, Be Prepared to Explain Why Existing Salary/Wage System Is Inadequate


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COMMISSIONER SALARIES/BENEFITS

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Commissioners' Salaries

- KRS 74.020 establishes Maximum Annual Salary at \$3,600
- Exception: \$6,000 Maximum if 6 Hours of Certified Water Management Training
- Fiscal Court Sets the Salary Level
- Failure to Attend Board Meetings does not affect right to salary

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Commissioners' Salaries

- Have Fiscal Court Ordinances re: salary level available for inspection
- Retroactive Approval of Salary Level Permitted
- Have proof of training attendance if compensation > \$3,600 awarded
 - Water District
 - Individual Commissioner


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Commissioners' Benefits

- Benefits must be same as those provide to WD Employees
- Free or reduced service
 - Requires PSC Approval
 - PSC Historically Denied
- Insurance benefits should not exceed those provided employees
- Future Issue: Why are benefits other than salary needed?


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HEALTH INSURANCE

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HEALTH INSURANCE: SUMMARY

- PSC reviewing employers' contribution for health insurance cost
- If employer's contribution (%) exceeds BLS estimate of national average, PSC **denies recovery** for excess
- PSC **encouraging** utilities to establish a policy that requires employees to pay a portion of health & dental insurance

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FACTORS CONTRIBUTING TO EMPLOYER'S HEALTH INSURANCE COSTS

- Deductible Levels
- Co-pay Amounts
- Benefit Levels
- Geographical Area
- Workforce Demographics
- Local Healthcare Market
- Firm/Bargaining Unit Size
- **Employer Contribution Rate**

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BLS: Estimate of National Average

| Coverage | Average | Private Industry | State & Local Government |
|----------|---------|------------------|--------------------------|
| Family | 68/32 | 67/33 | 71/29 |
| Single | 80/20 | 79/21 | 86/14 |

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KAISER FOUNDATION REPORT (2016)

- 12% of Covered Workers – Employers paid full cost of single coverage
- 30% of Covered Workers in Small Firms (> 200 employees) – Employers pay full cost
- Covered Workers pay 18% of premium (single coverage) (17% for small firms)
- Public Firms: Workers paid 8% of single coverage (small firms)

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CASE NO. 2016-00169

- AG challenges utility's 100% payment of health, life & vision insurance premiums
- PSC finds that employer contributions should be "more in line with other businesses" to reduce expenses
- PSC: Majority of businesses do not pay 100% of employees' insurance costs
- Expenses should be based upon National Average

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CASE NO. 2016-00169

- National Average based on BLS Study
- Limited to salaried Employees
- Union Employees exempted
- PSC **ORDERS** utility to limit to national average percentages its contributions to employee insurance

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CASE NO. 2016-00365

- RECC paid for single coverage; employee paid \$149/month for other coverages
- PSC: RECC should limit its contribution to BLS national average employer rate
- PSC: Expects RECC **to establish policy** to limit contribution & require all employees to pay portion of premium
- Portion of health insurance cost disallowed

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CASE NO. 2016-00325

- Water District paid 100% of insurance cost
- PSC Staff Rpt: Accepted w/o comment
- PSC: WD should exercise financial prudence & reduce expense related to employee benefits **by establishing policy** that requires employees to pay a portion of premiums
- Portion of health insurance cost disallowed
- WD given **no notice** of possible action

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CASE NO. 2016-00435

- Water District paid 100% of insurance cost
- PSC Staff Rpt: Accepted w/o Comment
- PSC: WD should exercise financial prudence & reduce expense related to employee benefits **by establishing policy** that requires employees to pay a portion of premiums
- Portion of health insurance cost disallowed
- WD given **no notice** of possible action

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CASE NO. 2016-00367

- RECC paid 100% of insurance cost
- PSC: RECC should exercise financial prudence & reduce expense related to employee benefits **by establishing policy** that requires employees to pay a portion of premiums
- Portion of health insurance cost disallowed

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CASE NO. 2016-00434

- RECC requires non-union employees to pay 8%, union employees to pay 10% of insurance cost
- PSC: RECC should increase efforts to rein in expenses **by establishing policy** that requires employees to pay **an increased percentage** of premium
- Portion of health insurance cost disallowed

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CASE NO. 2017-00070

- WD paid 100% of insurance cost (Single Coverage)
- PSC Staff Report: Determination of reasonableness of cost should be based upon total compensation costs (Wages + Health Insurance + Pension); WD's overall cost lower than others and should be considered reasonable

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CASE NO. 2017-00070

"The reasonableness of the cost of an employee compensation package . . . should be evaluated in its totality recognizing that the combination of the individual components included in an employee benefit package often vary widely from one business entity to another. One entity may provide higher wages with limits on other benefits when compared to another entity that offers lower wages while providing better insurance coverages or retirement benefits to remain competitive for employee services."

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CASE NO. 2017-00070

"As a result, evaluating the level of one benefit of a compensation package in isolation, such as wages or health insurance, without giving consideration to the level of all other benefits included with the package is neither fair, just, nor reasonable ."

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CASE NO. 2017-00070: AT HEARING

- WD offered evidence re: local job market competitors
- WD presented evidence cost of employee benefits vs. national cost of such benefits
- WD questioned use of BLS “private firm” percentage
- WD suggested use of Private Firm – Utility Rate

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CASE NO. 2017-00070: AT HEARING

- WD argued for use of State/Local Government Percentage
- WD argued PSC should apply same employee contribution rate that KY State Govt uses (11%)

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CASE NO. 2017-00070: PSC RESPONSE

- PSC “placing greater on evaluating employees’ total compensation packages”
- Ignore Total Compensation Argument
- Applied Private Firm Rate
- Did not explain why Local/State Gov’t Rate not applicable

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CASE NO. 2017-00070: PSC RESPONSE

- No rescission of PSC Staff findings re: total compensation
- No explanation why KY State Gov't rate should not be applied

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HEALTH INSURANCE COSTS DISALLOWED IN 2017-18

- Last 13 WD rate cases:
 - Rule Applied/Costs disallowed – 9
 - PSC Hearing on Costs – 1 (Disallowed)
 - Allowed – 1
 - No health insurance costs – 3

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PSC ORDERS: COMMON CHARACTERISTICS

- No discussion of employer's health insurance plan specifics
- No comparison of employer's health costs with other utilities
- Ignores Utility and PSC Staff arguments and evidence
- No finding that employer's cost for health insurance is unreasonable

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PSC ORDERS: COMMON CHARACTERISTICS

- No explanation for use of the private firm standard or why other standards are inappropriate

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COMMISSIONER CICERO: PSC POLICY ON HEALTH INSURANCE BENEFITS

- Appearance before KY Chamber of Commerce Energy Conference (01/18/2018)
- All PSC Commissioners present
- VC Cicero stated PSC Policy
- Posted at <http://bit.ly/2sBUL1d>

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COMMISSIONER CICERO: PSC POLICY ON HEALTH INSURANCE BENEFITS

- “[F]or rates to be fair, just, and reasonable - both to the ratepayers and the utility - the utility’s employees should reasonably participate in the cost of their health and dental insurance premiums”
- “Absent any employee participation, PSC will apply 21% contribution for single & 32% for family”

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COMMISSIONER CICERO: PSC POLICY ON HEALTH INSURANCE BENEFITS

“From a personal perspective, I’m concerned that the utility industry in general, regardless of the entity’s financial viability, seems to have a philosophy that health, dental and many other benefit programs should be completely or majority funded by the company; that somehow all employees, regardless of their skill level or occupation, are so valuable as to be irreplaceable.”

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COMMISSIONER CICERO: PSC POLICY ON HEALTH INSURANCE BENEFITS

“Essentially, **utility employee benefits need to be market competitive** as measured against not only other utilities but other business sectors and public employees.”

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COMMISSIONER CICERO’S POLICY ON HEALTH INSURANCE BENEFITS

The Commission has been questioned as to why it doesn’t utilize the statistical percentages for “Service-providing industries – utility category” instead of the “all workers” category. The reason is obvious: **if all utilities offer the same program benefits the comparative percentages will be skewed for that category.**

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COMMISSIONER CICERO'S POLICY ON HEALTH INSURANCE BENEFITS

I will emphasize this point - if the employee percent cost participation is not exactly at the standard percentage levels, but the company does require employee cost participation **at a reasonable level**, the Commission will not adjust those costs. However, the further the actual percentage is below the **standard statistical average percent participation**, the greater the probability that the Commission could make an adjustment.

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PROBLEMS WITH PSC APPROACH

- Due Process Concerns
 - No notice to utilities
 - Utility has no opportunity to confront BLS "National Average" Statistics
 - Failure to Address Utility Arguments
- KRS Chapter 13A: PSC adopts a rule without following proper procedure

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PROBLEMS WITH PSC APPROACH

- PSC Assumption: Utility Industry and Government payment of insurance costs is "skewed" – no supporting evidence
- Improper Use of BLS Statistics
 - No recognition of State/Local Gov't Data
 - Refusal to Use "Utilities Information"
- No empirical or statistical evidence to support any finding that current compensation costs are unreasonable

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PROBLEMS WITH PSC APPROACH

- PSC refuses to consider:
 - Insurance Policies of Utility
 - Local Labor Markets
 - Utilities' Efforts to contain/reduce health insurance costs
 - Reputable/recognized studies on issue

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RESPONSES TO PSC APPROACH

- Use Good Procurement Practices
 - Request Bids/Seek cost estimates from various suppliers annually
 - Document your costs/efforts to reduce costs
- Determine the amount of likely disallowance prior to filing and whether it is cost-effective to mount significant protest
- If not cost-effective, still document the record

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RESPONSES TO PSC APPROACH

- Compare **Total Compensation Cost** vs. Other Regulated Utilities/Municipal Utilities
- Offer comparisons of benefits/costs by other regional/state utilities (Use KRWA/KLC Surveys)
- Provide evidence on local labor markets
- Emphasize unique aspects of your workforce

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RESPONSES TO PSC APPROACH

- Consider differences between the quality of WD's insurance coverage & National Average Policy (e.g. deductibles, benefits)
- Propose use of BLS State/Local Government Category or KY State Contribution Rate
- Argue for use a different study for National Average (e.g., Kaiser Family Foundation)

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RESPONSES TO PSC APPROACH

- Consider challenging disallowance in response to PSC Staff Report (even if accepting PSC Staff recommended rates)
- Conditional Waiver
- If Hearing – Challenge PSC Staff's knowledge on utility's health insurance policy and understanding of utility industry's practices


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PSC AUTHORITY TO MANDATE EMPLOYEE CONTRIBUTION

- Level of Employer Contribution is a matter of managerial discretion
- PSC jurisdiction limited to ratemaking & rate recovery of employer contributions
- PSC **CANNOT** restrict the amount that an employer contributes to employee health insurance
- PSC **CANNOT** mandate that employees contribute to health insurance cost


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OTHER INSURANCE

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DENTAL INSURANCE

- PSC: National Average Employer Contribution is 60%
- Based upon Willis Benefits Benchmarking Survey (2015)
- Employer contribution is limited to 60% for ratemaking purposes


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LIFE INSURANCE

- IRS Ceiling for Employer-Provided Life Insurance: \$50,000 (>\$50,000 FICA taxes incurred)
- If Cost of Employer-Provided >\$50,000, must clearly demonstrate the need for this additional compensation

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PENSION & RETIREMENT BENEFITS

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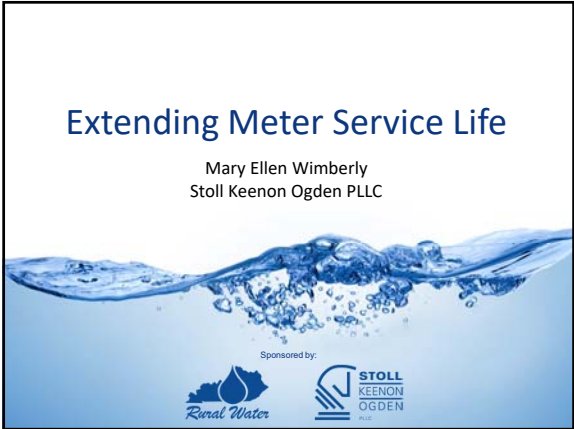
PENSION/RETIREMENT BENEFITS

- No disallowances for contributions to WD retirement plans
- Limits for utilities with more than 1 retirement plan for employees
- Rate recovery limited to employer contributions to one plan if employees eligible for 2 or more retirement plans

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QUESTIONS









Meter Testing Requirements

- KRS 278.210
 - Establishes statutory standard for meters
 - Meter may not be more than two percent to the disadvantage of the customer (2% **fast**)



Meter Testing Requirements

- KRS 278.210(4):
 - “If a utility demonstrates through sample testing that no statistically significant number of its meters over-register above the limits set out in subsection (3) of this section, the meter testing frequency shall be that **which is determined by the utility to be cost effective.**”




Meter Testing Requirements

- 807 KAR 5:066, Section 15
 - Requires meters be tested prior to initial placement into service
 - Provides accuracy limits for new, rebuilt, and repaired cold water meters
 - Prohibits any new, rebuilt, or repaired meter from being placed in service if it does not register within accuracy limits




Accuracy Limits:
5/8 x 3/4 Inch Displacement Meters

- Maximum Rate
 - Flow Rate: 15 gpm
 - Accuracy Limit: 98.5-101.5%
- Intermediate Rate
 - Flow Rate: 2 gpm
 - Accuracy Limit: 98.5-101.5%




Accuracy Limits:
5/8 x 3/4 Inch Displacement Meters

- Minimum Rate
 - Flow Rate: 1/4 gpm
 - Accuracy Limit:
 - 95-101% (New and Rebuilt)
 - 90% (Repaired)



Meter Testing Requirements

- 807 KAR 5:066, Section 16
 - “Each utility shall test periodically all water meters so that no meter will remain in service without test for a period longer than specified[.]”
 - 5/8 x 3/4 Inch: 10 years



Significant Savings Example

- Utility: 5,000 meters
- Meter cost: \$100
- Annual Savings:
 - 10 years: 500 meters replaced yearly
 - 15 years: 333 meters replaced yearly
 - 167 fewer meters purchased annually → \$16,700 annual savings



Significant Savings Example

- Utility: 5,000 meters
- Meter cost: \$100
- Avoided Capital Expenditures:
 - Utility avoids replacing 2,500 meters over next five years (500 meters per year)
 - One-time savings: \$250,000



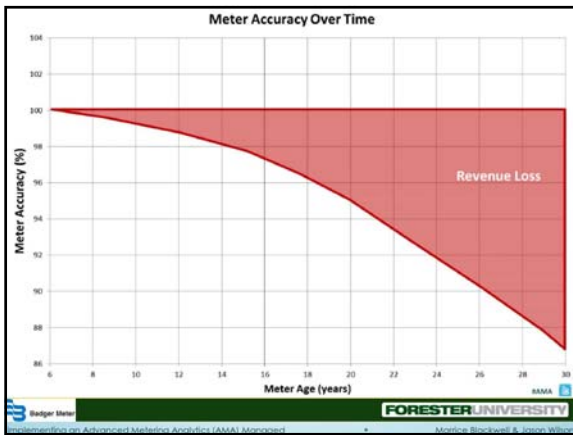
Meter Accuracy



Meter Accuracy

- Meter accuracy > 10 years
- Most meters warranted for accuracy for **at least 15 years**
 - Example: Sensus warranty
 - Sensus SR11: 15 years
 - Sensus iPERL: 20 years





Meter Accuracy

- Declining meter accuracy = slow meters
- Without regulation, utilities would change meters when revenue loss from slow meters > cost to replace meters



Utilities Achieving Extended Service Life



Warren County Water Dist. v. PSC

- Background
 - Case No. 89-110
 - Requested deviation for 14 years → received deviation for 10 years
 - Case No. 97-434
 - Requested deviation for 13 years → approved
 - Case No. 2003-00391
 - Requested to establish sample group → approved



Warren County Water Dist. v. PSC

- Case No. 2011-00220
 - Joint Applicants sought deviation from 10-year testing requirement based upon results of sample testing from Case No. 2003-00391
 - Testing Results:
 - Meters remained within standards for 15 years
 - Lost revenue from inaccurate meters did not exceed cost of testing until 21 years in service



Warren County Water Dist. v. PSC

- Utility: Cost-effective for meters to remain in service without testing for 21 years
 - KRS 278.210(4)
- PSC authorized deviation to permit meters in service for 15 years without testing
 - KRS 278.160(2): Utility may not charge more or less than filed rate schedules
 - KRS 278.170(1): Utility may not give preference or advantage for performing same service

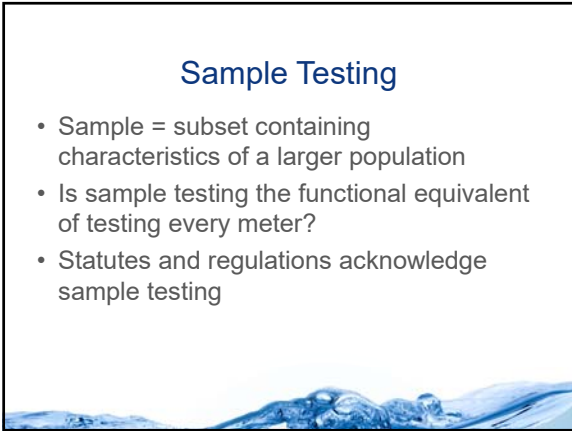
Warren County Water Dist. v. PSC

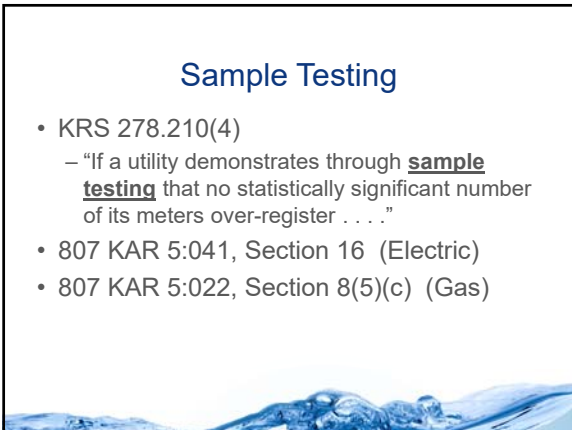
- Utility brings action for review → REVERSED
- Franklin Circuit Court found:
 - Significant that meters do not over register
 - Sampling plan was cost-effective → met KRS 278.210(4)

Case No. 2009-00253

- Kentucky-American sample tested group of meters
- Meters tested within standard after 15 years of service
- PSC extended time in service to 15 years for meters
- Estimated annual savings: \$90,000
- Estimated annual capital expenditure savings: \$545,000







Sample Testing

- ANSI/ASQ Z1.9-2003 (R2013), Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming ["ANSI Standard"]
 - Three Inputs
 - Acceptance Calculation



ANSI Standard

- Three Inputs
 - 1. Acceptance Quality Limit ("AQL")
 - Worst tolerable product average
 - Table A-1
 - PSC Cases
 - Use AQL of 2.0
 - Converts to 2.5

Table A-1
AQL Conversion Table

| For specified AQL values falling within these ranges | | Use this AQL value |
|--|----------|--------------------|
| – | to 0.109 | 0.10 |
| 0.110 | to 0.164 | 0.15 |
| 0.165 | to 0.279 | 0.25 |
| 0.280 | to 0.439 | 0.40 |
| 0.440 | to 0.669 | 0.65 |
| 0.700 | to 1.09 | 1.0 |
| 1.10 | to 1.64 | 1.5 |
| 1.65 | to 2.79 | 2.5 |
| 2.80 | to 4.39 | 4.0 |
| 4.40 | to 6.99 | 6.5 |
| 7.00 | to 10.9 | 10.0 |



ANSI Standard

- Three Inputs
 - 2. Inspection Level
 - Five different inspection levels
 - A7: "Unless otherwise specified, Inspection Level II shall be used."
 - PSC Cases
 - Inspection Level II



ANSI Standard

- Three Inputs
 - 3. Lot Size
 - Size of entire group
 - Example: Total number of meters of a certain age

ANSI Standard

- Variability Unknown – Standard Deviation
 - Double Specification Limit
- Sample Size Code Letter
 - Based upon inputs, Table A-2 provides Letter
 - 555 meters → Letter “J”

Table A-2^a
Sample Size Code Letters^b

| Lot Size | Inspection Levels | |
|--------------------|---|-----------------------|
| | Special S, S ₁ , S ₂ | General I, II, III |
| 2 to 4 | B | B B C |
| 5 to 8 | B | B B D |
| 9 to 15 | B | B B E |
| 16 to 25 | B | B C E |
| 26 to 30 | B | C D F |
| 31 to 40 | B | D E G |
| 41 to 50 | B | E F H |
| 51 to 80 | B | F G I |
| 81 to 100 | C | E G H J |
| 101 to 150 | C | F H I J |
| 151 to 280 | D | F G I J |
| 281 to 400 | C | E G H J |
| 401 to 500 | C | F G I J |
| 501 to 1,200 | D | F H I J K |
| 1,201 to 3,200 | E | G I K L |
| 3,201 to 10,000 | F | H J L M |
| 10,001 to 35,000 | G | I K M N |
| 35,001 to 150,000 | H | J L N P |
| 150,001 to 500,000 | H | K M P P |
| 500,001 and over | H | K N P P |

ANSI Standard

- Sample Size
 - Table B-3
 - Sample Size Code Letter “J” = 35
 - Must randomly select sample!
 - PSC has approved selections by Excel, billing software, or other computerized process
- Acceptability Criterion
 - Table B-3
 - Sample Size Code Letter “J” and AQL of 2.5 = 5.58

Case No. 2016-00432

Case No. 2016-00432

- Request: Sample testing satisfies 807 KAR 5:066, Section 16(1)
 - “Each utility shall test periodically all water meters . . .”
 - Does sample testing satisfy this requirement?
- Alternatively: Deviation from regulation requirements

Case No. 2016-00432

- Sample Testing at Minimum Flow Rate
- Yearly Selection of Sample Group
- Soft Cost Savings
- Different Meter Types
- Damaged Meters

Questions?

Mary Ellen Wimberly
maryellen.wimberly@skofirm.com
(859) 231-3047



Kentucky Lead Workgroup Findings, Best Practices and Recommendations




Water Commissioner Training Seminar

Greg Heitzman, P.E.
Chair, KY Lead Workgroup
April 23, 2018
 Elizabethtown, Kentucky

1

Flint Public Health Crisis



HOUSE PANEL CHAIR ASSAILS EPA MISSTEPS IN FLINT CRISIS

Lawmaker says agency ignored warnings about lead, didn't act on information

Flint Spigot | **House Panel** | **Flint Crisis**

2

Trouble Spreading

Which Cleveland suburbs have the most lead water pipes?

Pittsburgh water continues to exceed federal lead threshold



Ohio schools find hundreds of water fixtures with lead

Kentucky maintains safe lead levels in water






Kentucky Lead Workgroup Members



- Jennifer Burt, Kentucky Health Department
- Obe Cox, Carroll County Water District
- Tom Gabbard, Kentucky Division of Water
- Mike Gardner, Bowling Green Municipal Utilities
- Greg Heitzman, BlueWater Kentucky
- Ron Lovan, Northern Kentucky Water District
- Brad Montgomery, GRW Engineers
- Bill Robertson, Paducah Water
- Tom Rockaway, PhD, University of Louisville
- Justin Sensabaugh, Kentucky American Water Company
- Rengao Song, PhD, Louisville Water Company
- Brian Thomas, Marion Water Department




Kentucky Lead Workgroup Resources



- Peter Goodmann, KY Division of Water
- Claude Carothers, KY Division of Water
- Samantha Kaiser, KY Division of Water
- Susan Lancho, Kentucky American Water
- Gary Larimore, Kentucky Rural Water
- Kay Sanborn, KY-TN AWWA
- Kelley Dearing Smith, Louisville Water Company
- Victoria Wilhoite, KY Division of Compliance Assistance




Kentucky Lead Workgroup

- First meeting held April 20, 2016
- Workgroup generally meets monthly on third Wednesday
- Meetings open to the public
- Sub-teams established in the following areas:
 - ✓ Public health
 - ✓ Lead regulations and compliance record with LCR
 - ✓ Treatment/Corrosion control
 - ✓ Distribution/Piping/Plumbing infrastructure
 - ✓ Training/Education
 - ✓ Financing/Funding lead replacement
 - ✓ Communications/Education



Kentucky Lead Workgroup

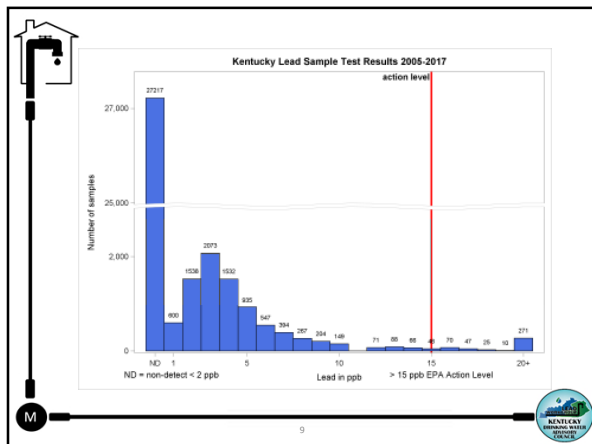
- Expect Final Report to be completed by Sumer, 2018
- Deliverables:
 - ✓ Recommendations
 - ✓ Power point presentations on each topic area
 - ✓ Workgroup, compiled by sub-team/topic area
- Workgroup report will provide the following:
 - ✓ Summary of Kentucky's compliance with EPA's Lead and Copper Rule
 - ✓ 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
 - ✓ Recommendations to State Agencies, Utilities, and Industry Associations

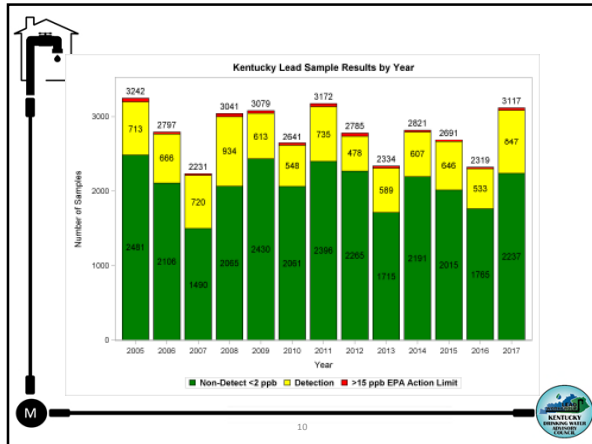


KY Lead Compliance Results

- 436 Public Water Supply Systems (PWS) in KY
- 390 PWS monitor for lead under the LCR
- # of samples based on population
- 36,270 Lead Compliance samples 2005-17
- 75% of samples had no detection (< 2 ppb)
- 98% of samples less than 15 ppb
- 3 systems (2%) exceeded 15 ppb
- 3 systems (<1%) required additional action
- Since 2012, all KY PWS comply with LCR









What Have We Learned?


US Lead Service Line Inventory



- AWWA/EPA estimates 6.1 million public Lead Service Lines (LSL) in U.S. (range of 5.5 to 7.1 million LSL)
- Includes full and partial LSL (public and private)
- Largest density is with systems serving 10,000 to 50,000 Population.
- Generally utilities transitioned from lead to copper between 1930 and 1960
- National cost estimate of \$18 to \$30 billion for 6.1 million LSL, assumes \$3,000 to \$5,000 per LSL replacement costs

What Have We Learned?

Kentucky Lead Service Line Inventory




- AWWA/EPA estimate 53,000 Public LSL in Kentucky (*we think overestimated*)
- Replacement Cost Range of \$1,500 to \$3,000 each
- Estimate of \$79.5 to \$159 million for public portion
- Estimate 13,000 Private LSL in Kentucky
- Replacement Cost Range of \$1,000 to \$2,000
- Estimate of \$19.5 to \$26 million for private portion
- Total Kentucky Estimate for removal of Public and Private LSL of \$92.5 to \$185 million (*based on AWWA/EPA estimated #s*)

How does Kentucky Compare?

- **United States Survey Data:**
 - US 2015 Population 320 million people
 - 293 million people served by Community Water Systems (92% served)
 - 97.7 million household connections (assumes 3 people per connection)
 - 6.1 million Lead Service Lines (AWWA Journal Article June 2016)
 - **Estimate 6.2% of US Houses have full or partial Lead Service Lines**
- **Kentucky Survey Data:**
 - Kentucky 2015 Population of 4.4 million
 - 4.2 million people served by Community Water System (95%+ served)
 - 1.4 million household connections (assumes 3 people per connection)
 - 53,000 Lead Service Lines (AWWA Journal Article June 2016)
 - **Estimate 3.8% of KY Houses have full or partial Lead Service Lines**

Kentucky Compares Favorably to National Average



Best Practices Emerging

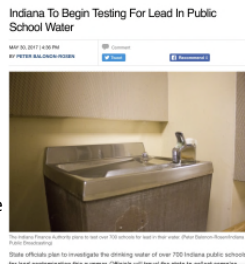


- On-line lead service GIS database
- Free water sampling for lead
- Proactive lead replacement programs (public and private)
- Lead replacement subsidy or finance program for homeowner's portion of lead piping





Best Practices Emerging

- Optimized water treatment for corrosion
- Best practices for sampling and monitoring
- School partnerships for lead inventory, testing, flushing and plumbing fixture replacement (Indiana Finance Authority school program)

Best Practices Emerging

- Lead education and communication materials
- Best Practices for Flushing

Flushing your pipes daily helps improve water quality. It's hard to flush the water line.

Flushing your pipes daily helps improve water quality. It's hard to flush the water line.

Flushing your pipes daily helps improve water quality. It's hard to flush the water line.

Typical Water Service Line

Flushing your faucet's aerator can also improve water quality.

Flushing your faucet's aerator can also improve water quality.

Flushing your faucet's aerator can also improve water quality.

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Regulatory Possibilities

- Reduction in Action Level below 10 ppb
- Possibly a MCL for Lead or a Household Action Level
- Change in sampling methods (cycles, size, frequency, locations)
- Strict water sampling protocol for lead
- Mandatory replacement programs (XX % per year)
- Mandatory lead education materials provided to for consumers, including health risk info.
- Private lead line replacement requirements for homeowners
- Specific lead action steps for schools, daycares and public facilities

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32 Recommendations of the Kentucky Lead Workgroup


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 **State Level Recommendations (10)**



1. Develop protocol, guidance and technical assistance for evaluation of treatment process changes using the US EPA's Optimal Corrosion Control Treatment (OCCT) report published March 2016. A Corrosion Control Plan (CCP) should be developed when:
 - a) a new water source is introduced (including interconnects with utilities);
 - b) the water source is changed;
 - c) the water treatment process is changed (including chemical additives);
 - d) lead compliance sampling results are near or exceed the EPA Action Level (currently 15 ppb);
 - e) an interim supply is needed (excludes emergency supply)


A CCP is a complex analysis. To assure optimal water treatment quality is achieved and regulatory compliance is maintained, the CCP should be conducted by a qualified water quality professional. As recommended by EPA, the CCP should be developed in coordination with the Kentucky Division of Water.



 **State Level Recommendations (10)**


2. Establish protocol and reporting requirements for utilities to use for the collection and reporting of special lead samples and when customers request water sample testing for lead.
3. Update the estimated number of lead service lines (public and private) in Kentucky and the associated replacement costs.
4. Revise prioritization criteria for state-wide water projects to include lead service line replacement.
5. Develop funding sources that utilities can use to finance lead service line replacement (public and private) and lead abatement projects. Funding sources may include: KIA, Rural Development, SRF funding, and state/local appropriations.

 **State Level Recommendations (10)**

6. Develop a lead training curriculum in partnership with utilities, state and local health departments and water industry associations. The training should include corrosion control treatment methods, lead service line replacement and repair practices, flushing practices and customer communications.
7. Consider Kentucky state legislation for requiring blood lead level testing for all children at 12 and 24 months of age.
8. Update the Kentucky Division of Water's website to serve as a resource for information on lead in drinking water, best practices, health impacts and regulatory requirements.



 




State Level Recommendations (10)

9. Promote the use of U.S. EPA's 3T (Training, Testing and Telling) program for reducing lead in drinking water in schools and child care centers. The program includes: Training of school officials on the potential of lead in drinking water; Testing of drinking water in schools to identify potential problems and corrective actions (as needed); and Telling staff, parents, students and the local community about the testing results, potential risks and remedial actions taken by the school.

10. Monitor lead testing programs for schools and child care centers being used in other states and consider implementing in Kentucky following a review of benefits and costs.

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Utility Recommendations (13)


1. Conduct a Corrosion Control Evaluation (CCE) and develop a Corrosion Control Plan (CCP) for water treatment and distribution operations following the guidance provided in US EPA's Optimal Corrosion Control Treatment (OCCT) report published March 2016. A CCP should be developed when:

- a) a new water source is introduced (including interconnects with utilities);
- b) the water source is changed;
- c) the water treatment process is changed (including chemical additives);
- d) lead compliance sample results are near or exceed the EPA Action Level (currently 15 ppb);
- e) an interim supply is needed (excludes emergency supply).

A CCP is a complex analysis. To assure optimal water treatment quality is achieved and regulatory compliance is maintained, the CCP should be conducted by a qualified water quality professional. As recommended by EPA, the CCP should be developed in coordination with the Kentucky Division of Water.






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Utility Recommendations (13)



- 2. Adopt the EPA recommended guidelines for lead compliance sampling.
- 3. Prepare for a reduction in the EPA Lead Action Level from 15 parts per billion (ppb) to less than 10 ppb as part of a revised Lead and Cooper Rule (LCR).
- 4. Prepare for more frequent sampling cycles and more diverse sampling locations for LCR compliance.
- 5. Adopt a policy or practice to remove public lead service lines when exposed during excavation. Communicate the discovery of any private lead service lines to the homeowner/occupant. The communication message should define the homeowner's responsibility for private plumbing, the benefits of flushing and the impacts of lead contained in plumbing fittings and fixtures.





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 **Utility Recommendations (13)**


6. Proactively investigate the location of public lead service lines using various methods (historical records, maps, construction plans, field surveys, home age, etc.). The service line information (public portion) should be added to the water distribution inventory, maps and records (include material type, age, condition, and other attributes where available).
7. Provide customers access to an on-line database of utility-confirmed lead service line locations (public portion).
8. Adopt a long-term goal of replacing all lead service lines. The implementation practices and the time line associated with this goal will be based on local conditions and financial capability.



 **Utility Recommendations (13)**


9. Develop consumer education materials on lead in drinking water in collaboration with industry associations, regulators and public health officials. The education materials should: include the health risks associated with lead; include guidance on common methods to reduce lead exposure; and identify the homeowner responsibility for private service lines and plumbing fixtures. The information should be provided to consumers and stakeholders through Consumer Confidence Reports, websites, social media, door hangers and other available communication methods.
10. Train field personnel to identify, locate, repair, and/or replace lead service lines and lead-containing fittings.



 **Utility Recommendations (13)**

11. Monitor state and national best practices on managing lead in drinking water. Practical and feasible practices should be implemented where appropriate.
12. Review the ANSI/AWWA Standard C810-17 on Replacement and Flushing of Lead Service Lines (published November 1, 2017). The standard should be adopted where feasible and practical.
13. Develop a program to partner with the health department, public/private schools and childcare centers for testing, education and coordination of replacement of lead piping and plumbing fixtures within school and childcare facilities. The program should include a protocol for reporting results of lead testing to the utility, schools and child care centers, local health department and Kentucky Division of Water.


 

 **Industry Recommendations (4)**



1. Develop a utility training curriculum on lead in drinking water, including: lead treatment (corrosion control); water sampling protocol; system assessment for lead; lead inventory; lead service line repair; lead service line replacement (public and private); the potential source of lead from homeowner plumbing fixtures; and communication materials for consumers.
2. Identify key stakeholders and develop lead communication tools, including web site links and templates, for utilities to use in communicating with customers. Utilize existing resources from national and local partners. The materials should include information on the homeowner responsibility for private lead service lines and plumbing fixtures that may be sources of lead.


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 **Industry Recommendations (4)**



3. Engage and educate key stakeholders on lead in drinking water. Key stakeholders include health departments, medical professionals, regulatory agencies, education officials, engineering professionals, building trades, homeowners and other organizations that are impacted by or establish policy or regulations regarding lead in drinking water.
4. Pursue financial assistance from local, state and federal agencies for public and private lead service line replacement, utilizing the State Revolving Loan Fund Program and other financial assistance programs for home lead abatement.


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 **Research & Development Recommendations (5)**

1. Develop technology to identify buried lead service lines (non-destructive).
2. Advance utility best practices for full (public and private) and partial (public portion only) replacement of lead service lines.
3. Conduct research on the impact of lead in drinking water on human health. This work will assist in identifying an appropriate action level for lead in drinking water.


 

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R & D Recommendations (5)

4. Evaluate the cost effectiveness of point of use (POU) and point of entry (POE) treatment devices for lead removal as an alternative to treatment changes or lead service line replacement to achieve compliance with the Lead and Copper Rule lead action level (currently 15 ppb).
5. Conduct research to determine the best sampling methods to obtain a representative sample of lead in drinking water for purposes of Lead and Copper Rule compliance monitoring.




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Approval Process and Next Steps

- The Kentucky Lead Workgroup met on February 21, 2018 and approved the final version on March 7, 2018 by email
- Recommendations were submitted to US EPA on March 8, 2018, as part of a Federal Consultation Process on the LCR (Peter Goodmann, KDOW)
- The Kentucky Drinking Water Council approved the recommendations on March 13, 2018
- Final Report to be available in the summer 2018.



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