

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

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF</b>	)	
<b>KENTUCKY RURAL WATER ASSOCIATION</b>	)	
<b>AND STOLL KEENON OGDEN PLLC FOR</b>	)	<b>CASE NO. 2018-00309</b>
<b>ACCREDITATION AND APPROVAL OF A</b>	)	
<b>PROPOSED WATER DISTRICT</b>	)	
<b>MANAGEMENT TRAINING PROGRAM</b>	)	

**NOTICE OF FILING**

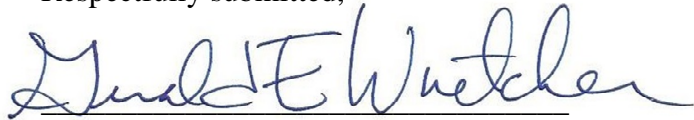
Kentucky Rural Water Association and Stoll Keenon Ogden PLLC give notice of the filing of the following documents in compliance with the Commission’s Order of September 27, 2018:

1. A sworn statement attesting that the proposed course of instruction entitled “2018 Water Law Series” was performed on October 30, 2018 (**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 (**Exhibits 2A and 2B**);
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 list of materials included on a flash drive provided to each program attendee and a copy of all written materials given to program attendees not included in the Application (**Exhibit 4**);
5. Approval of the proposed program for continuing legal education accreditation by the Kentucky Bar Association (**Exhibit 5**);
6. Approval of the proposed program for accreditation by the Department of Local Government for Elected County Officials Training Incentive Program (**Exhibit 6**); and

7. Application for approval of the proposed program for accreditation by the Division of Compliance Assistance for Continuing Education for Drinking Water and Waste Water System Operators (**Exhibit 7**) (The Kentucky Board of Certification of Water Treatment and Distribution System Operators met on October 16, 2018 to consider the application but has yet to formally announce its action on the application.).

Dated: October 31, 2018

Respectfully submitted,

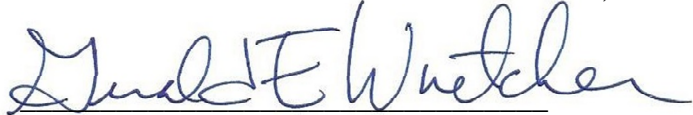


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*Counsel for Joint Applicants*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Joint Applicants' October 31, 2018 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 October 31, 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 November 2, 2018.



Gerald E. Wuetcher

# **EXHIBIT 1**

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF FAYETTE )

AFFIDAVIT

Gerald Wuetcher, being duly sworn, states that:

- 1. He is legal counsel for Kentucky Rural Water Association and Stoll Keenon Ogden PLLC in Case No. 2018-00309.
2. He served as one of the organizers and program coordinators of the water training program entitled "2018 Water Law Series."
3. The "2018 Water Law Series" was held on October 30, 2018 at Holiday Inn University Plaza/Sloan Convention Center, 1021 Wilkinson Trace, Bowling Green, Kentucky.
4. The presentations listed in the revised program agenda submitted to the Kentucky Public Service Commission were conducted for the length of the time specified and by the listed presenters. A copy of the revised program agenda is attached as Exhibit 2B to the Joint Applicant's Notice of Filing

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

Subscribed and sworn to before me by Gerald Wuetcher, on this October 31, 2018. My Commission expires: 1-19-19



Notary Public
No. 326001

# **EXHIBIT 2**

## **EXHIBIT 2A**

### **CHANGES TO PROPOSED AGENDA**

The agenda found at Exhibit 1 of the Application was revised to provide greater detail about Mr. Talley's presentation on "Recent Developments in Utility Regulation." Ms. Wilcher also expanded the scope of her presentation and revised the title of her presentation to "Top 10 Environmental Issues." Ms. Sarah P. Jarboe, Esq. was a co-presenter with Ms. Wilcher. Her biographical information is set forth in the speaker biographical information handout that was provided to each attendee and that is found at Exhibit 4 of this Notice. Ms. Mary Ellen Wimberly, Esq., was unable to attend the program and participate in the panel discussion entitled "Legal Issues in the Operation and Management of Water Utilities" in the original agenda or "Ask the Lawyers" in the revised agenda. With the exception of the presentation "Kentucky Lead Working Group: Findings, Best Practices, and Recommendations," all of the presenters made revisions to the presentations found at Exhibit 3 of the Application. A copy of each revised presentation is found at Exhibit 4 of this Notice.

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# EXHIBIT 2B

## 2018 WATER LAW SERIES

October 30, 2018  
Holiday Inn University Plaza  
Sloan Convention Center  
Bowling Green, Kentucky



### Morning Agenda

**7:45 - 8:25** Registration and Refreshments

**8:25 - 8:30** Welcome and Program Overview | Gary Larimore

**8:30 - 9:30** Recent Developments in Utility Regulation | Damon R. Talley

This presentation reviews recent court decisions involving public and municipal utilities and discusses courses of action to mitigate the decisions' impact on utilities. Topics include franchises, wholesale water purchase agreements, obtaining PSC approval before borrowing money, underground excavation, Call Before You Dig, and unaccounted water loss. Special emphasis will be given to laws enacted by 2018 Ky. General Assembly that affect water and wastewater utility operations.

**9:30 - 9:45** BREAK

**9:45 - 10:45** Keeping the Lead Out | Greg C. Heitzman, PE

Learn how to keep the lead out of Kentucky's drinking water. In 2016, the Kentucky Energy and Environment Cabinet assembled a group of water industry experts from across Kentucky to examine existing protocols, lead/copper rules, service line replacement programs, compliance monitoring activities, and public education efforts. The Chair of this Work Group will review its findings and recommendations.

**10:45 - 11:00** BREAK

**11:00 - Noon** Top 10 Environmental Legal Issues | LaJuana S. Wilcher & Sarah P. Jarboe

Gain insight into significant environmental legal issues facing water and wastewater utilities, including challenges to fluoridation, unregulated contaminant monitoring, nitrates, and risk management plans.

**12:00 - 1:00** LUNCH (Provided On-Site)



PRESENTED BY:



# 2018 WATER LAW SERIES

October 30, 2018  
Holiday Inn University Plaza  
Sloan Convention Center  
Bowling Green, Kentucky



## Afternoon Agenda

### 1:00 - 2:00 Municipal Wholesale Rate Workshop - Part I | Damon R. Talley & Gerald E. Wuetcher

Presentation will provide an overview of the PSC's regulation of municipal utility rates for wholesale water and wastewater service to public utilities. Presenters will identify the basic rules the PSC uses when reviewing municipal utility rates, stress the importance of communicating with wholesale customers, address the procedures that a municipal utility must follow when adjusting its wholesale rates, discuss frequently recurring issues, and offer practical suggestions to obtain a favorable outcome. Presenters will also discuss strategies that a wholesale customer may use to oppose or minimize wholesale rate increases.

### 2:00 - 2:15 BREAK

### 2:15 - 3:15 Municipal Wholesale Rate Workshop - Part II | Damon R. Talley & Gerald E. Wuetcher

Municipal Wholesale Rate Workshop continues.

### 3:15 - 3:25 BREAK

### 3:25 - 4:25 Ask the Lawyers | Shawn Rosso Alcott, Damon R. Talley, Mary Ellen Wimberly, & Gerald E. Wuetcher

A panel of utility attorneys will address audience questions about legal issues that water and wastewater utilities routinely face. Among expected topics are Easements, Eminent Domain, Bidding Requirements, Claims Against Local Government Act, Debt Service Coverage, Whistle Blowers Act, Open Meetings Act, Open Records Act, Pension and Retirement Issues, general laws related to Special Purpose Governmental Entities, and PSC regulatory requirements.

### 4:25 - 4:30 Closing Remarks & Administrative Announcements | Gary Larimore



PRESENTED BY:





# **EXHIBIT 3**

**WATER DISTRICT COMMISSIONERS ATTENDING  
2018 WATER LAW SERIES TRAINING PROGRAM**

<b>WATER DISTRICT</b>	<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>NUMBER OF HOURS</b>
Allen County Water District	Wayne	Jackson	6.0
Allen County Water District	Darace	Tabor	6.0
Christian County Water District	Steve	Hunt	6.0
Lyon County Water District	Charles	Murphy	6.0
Oldham County Water District	Bob	Durbin	6.0
Warren County Water District	Tad	Donnelly	6.0

# **EXHIBIT 4**

# DIGITAL LIBRARY CONTENTS

## **Presentations – 30 October 2018**

### Agenda

Municipal Utility Rate Workshop (PDF Format) (PowerPoint Format)

Recent Developments in Utility Regulation (PDF Format) (PowerPoint Format)

Kentucky Lead Working Group: Findings, Best Practices, and Recommendations (PDF Format) (PowerPoint Format)

## **Prior Presentations**

2016 Flint Water Crisis (PDF Format) (PowerPoint Format)

911Funding (PDF Format)

Accounting and Auditing Issues for Water Utilities (PDF Format)

Accounting and Auditing Issues for Water Utilities – Appendix (PDF Format)

All Things Meter (PDF Format) (PowerPoint Format)

Basics of Kentucky Water System Financings (PDF Format)

EEO No! An Employment Law Update (PDF Format)

Commissioner Board Meetings (PDF Format)

Drinking Water Law Basics (PDF Format)

Drinking Water System Basics (PDF Format)

EEO No! A Discrimination Law Primer (PDF Format)

Everything You Wanted to Know About Certificates of Public Convenience and Necessity But Were Afraid to Ask (PDF Format) (PowerPoint Format)

Extending Meter Service Life (PDF Format) (PowerPoint Format)

Kentucky PSC and Water Utility Inspections (PDF Format) (PowerPoint Format)

PSC Review of Municipal Utility Rates (PDF Format) (PowerPoint Format)

Public Service Commission Treatment of Employee Compensation (PDF Format) (PowerPoint Format)

Water Utilities and Fire Departments (PowerPoint Format)

When Bad Things Happen: PSC Investigations (PDF Format) (PowerPoint Format)

Why Did They Do That? Lessons Learned From Municipal Rate Cases (PDF Format)

E-911 Funding Alternatives (PDF Format)

## **General Reference**

American Water Works Association - Glossary of Terms

Compilation of Kentucky Public Utility Laws as of August 7, 2018

Institute of Public Utilities Regulatory Research & Education (IPU) - Glossary of Terms Used in Water Regulation

IPU – Primer on Water Pricing

Kentucky Division of Water, Organization Chart (As of October 1, 2018)

Kentucky Division of Water, Phone Listing (As of October 1, 2018)

Kentucky Division of Water, Water Referral Directory (As October 1, 2018)

Kentucky League of Cities, Insurance Vocabulary 101

Office of Financial Management and Administration, Department of Local Government, Special Districts Manual (2012)

Public Service Commission Organization Chart  
Public Service Commission Staff Directory  
Public Service Commission, Letter Guidance on the Implementation of House Bill 201  
(Aug. 19, 2010)  
Public Service Commission, Procedures For Approval of Meter Testing Facilities, Basic  
Measurement Standards and Meter Testing (May 31, 2017)  
Public Service Commission, Procedures For Approval of Meter Testing Facilities, Basic  
Measurement Standards and Meter Testing - Notice of Extension (December 27,  
2017)  
Rural Community Assistance Partnership (RCAP) – Non-Operator’s Guide to Drinking  
Water Systems  
RCAP – Non-Operator’s Guide to Wastewater Systems  
RCAP – USDA Rural Utilities Service Borrower’s Guide  
Timeline for A Rate Adjustment Proceeding – Historical Test Period  
U.S. Fire Administration, Water Supply Systems and Evaluation Methods, Volume 1:  
Water Supply System Concepts (Oct. 2008)  
U.S. Fire Administration, Water Supply Systems and Evaluation Methods, Volume 2:  
Water Supply Evaluation Methods (Oct. 2008)

### **911 Fees**

*City of Lancaster v. Garrard County, Kentucky*, No. 2013-CA-000716-MR (Ky. Ct. App.  
July 3, 2014)  
*City of Lancaster v. Garrard County, Kentucky*, No. 2013-CA-000716-MR (Ky. Ct. App.  
Aug. 11, 2017)  
*Garrard County Water Association v. Garrard County*, No. 2017-SC-000469 (Ky.  
Supreme Court filed Sept. 8, 2017) (Motion for Discretionary Review)  
*Greater Cincinnati/Northern Kentucky Apartment Association, Inc.*, 2014-SC-000383-TG  
(Ky. Oct. 29, 2015)  
E-911 Funding Alternatives (Presentation to KACo County Officials Leadership Institute  
(Oct. 12, 2017)  
Whitley County Fiscal Court Ordinance No. 2016-02 (Apr. 19, 2016)

### **Abandonment of Utility**

*Bullitt Utilities Inc.*, Case No. 2014-00255 (Ky. PSC Aug. 31, 2015)  
*Bullitt Utilities Inc.*, Case No. 2016-00401 (Ky. PSC Oct. 12, 2017)  
*Cedar Hills Sanitation Disposal Corporation, Inc.*, Case No. 2015-00100 (Ky. PSC  
Apr. 11, 2016)  
*Friendly Park Development, Inc.*, Case No. 2015-00101 (Ky. PSC Apr. 11, 2016)  
PSC Staff Opinion 2015-011 (Aug. 21, 2015)

## **Asset Management**

Environmental Finance Center - Asset Management: A Guide for Water and Wastewater Systems (2006)  
General Accounting Office, Water Infrastructure: Comprehensive Asset Management Has Potential to Help Utilities Better Identify Needs and Plan Future Investments (GAO-04-461) (Mar. 2004)  
National Rural Water Association – An Introduction to Water System Operation and Maintenance (2007)  
Office of Water, Environmental Protection Agency, EPA 816-B-14-001, A Reference Guide for Asset Management Tools (May 2014)

## **Auditor of Public Accounts**

Recommendations to Strengthen Technology Security (Aug. 2009)  
Recommendations for Public and Nonprofit Boards (Mar. 2010)  
Examination of Certain Bullitt County Internal Controls and Procedures Governing the Process of Automated Payroll Transactions (Sept. 2009)  
Examination of Certain Financial Transactions, Policies, and Procedures of the Kentucky Association of Counties, Inc. (Oct. 29, 2009)  
Examination of Certain Financial Transactions, Policies, and Procedures of the Kentucky League of Cities, Inc. (Dec. 2009)  
Examination of Certain Policies, Procedures, Controls, and Financial Activity of Mountain Water District (Jan. 2011)  
Examination of Certain Policies, Procedures, Controls, and Financial Activity of Sanitation District No. 1 (Aug. 2011)  
Examination of Certain Policies, Procedures, Controls, and Financial Activity of Metropolitan Sewer District (Dec. 2011)  
Ghost Government: Report on Special Districts (Nov. 2012)

## **Auditing Issues**

General Accounting Office, *Public Accounting Firms: Required Study on the Potential Effects of Mandatory Audit Firm Rotation* (GAO-04-216) (Mar. 2004)  
GuideStar, The Sarbanes-Oxley Act and Implications for Nonprofit Organizations (Mar. 2003)  
Sarbanes-Oxley Act of 2002  
Vincent Ryan, *PCAOB Abandons Auditor Rotation*, CFO.com (Nov. 2003)

## **Board Member Guidance**

Gerald Wuetcher, Legal Issues in the Operation and Management of Water Districts (Dec. 6, 2016)  
Rural Community Assistance Partnership (RCAP), The Big Guide for Small Systems: A Resource for Board Members (2011)  
Rural Development Letter of Conditions Re: Code of Conduct for Board Members

## **Boiled Water Advisories**

*Deviation From Requirements of Administrative Regulation 807 KAR 5:066, Section 3(4)(B) Regarding Notice To Commission, Case No. 2017-00355 (Ky. PSC Oct. 12, 2017)*

Press Release, Kentucky Public Service Commission, *PSC Cuts Red Tape – Ends Redundant Reporting Requirement* (Oct. 12, 2017)

## **Certificates of Public Convenience and Necessity**

*Aqua Corporation, Case No. 89-307 (Ky. PSC Dec. 7, 1989)*

*Beech Grove Water System, Case No. 2016-00255 (Ky. PSC Aug. 3, 2016)*

*Columbia Natural Gas of Kentucky, Case No. 2016-00181 (Ky. PSC Sept. 9, 2016)*

Continuum of PSC Certificate Holdings

Everything You Wanted to Know About Certificates of Public Convenience and Necessity But Were Afraid to Ask (Presentation to 2017 KRWA Annual Conference (PDF Format) (PowerPoint Format)

*Northern Kentucky Water District, Case No. 2014-00171 (Ky. PSC Aug. 6, 2014)*

PSC Staff Opinion 2017-002

PSC Staff Opinion 2017-005

[House Bill 366](#)

## **Credit Cards**

David Mims, *Using Online Payments to Reduce Cost and Increase Quality of Service*, Kentucky City (Mar. 2012)

Jim Plunkett, *Credit Card Companies Change Rules on Convenience Fees*, Treasury Management Newsletter (Nov. 2008)

Mastercard, *The MasterCard® Convenience Fee Program for Government and Education*

Tamara E. Holmes, *Convenience fees: When is it OK to charge extra to use a credit card?*, CreditCards.com (Dec. 20, 2012)

## **Cyber Security**

American Water Works Association, *Process Control System Security Guidance for the Water Sector* (2014)

Auditor of Public Accounts, *Recommendations to Strengthen Technology Security* (Aug. 2009)

Centre for Protection of National Infrastructure, *Configuring and Managing Remote Access for Industrial Control Systems* (Nov. 2010)

Congressional Record (Oct. 20, 2015), *Debate on Senate Amendment SA2713 to S.754 (Cybersecurity Information Sharing Act of 2015)*

Environmental Protection Agency, *Cyber Security 101 for Water Utilities* (July 2012)

Environmental Protection Agency, *Response to Executive Order 13636* (undated)

ICS-CERT, *ICS-CERT Monitor* (Oct.-Dec. 2012)

Marshall Abrams and Joe Weiss, *Malicious Control System Cyber Security Attack Case Study–Maroochy Water Services, Australia*  
NAS Insurance Services, *Cyber Risks in Industrial Control Systems* (Oct. 2015)  
National Institute of Standards and Technology, *Guide to Industrial Control Systems (ICS) Security* (NIST Special Publication 800-82 Rev. 2) (May 2015)  
Senate Report No. 114-32 (Apr. 15, 2015), Report on S. 754 (Cybersecurity Information Sharing Act of 2015)  
Trend Micro, *IT Security for Dummies*  
Water ISAC, “10 Basic Cybersecurity Measures: Best Practices to Reduce Exploitable Weaknesses and Attacks” (June 2015)

### **Denial of Service**

U.S. Dept. of Justice, *Refusal to Provide Social Security Number Improper Grounds For Denial of Service, Overview of the Privacy Act of 1974* (2012 ed.)

### **Depreciation Practices**

Commission on Rural Water, *Guide for the Support of Rural Water-Wastewater Systems* (1974)  
National Association of Regulatory Utility Commissioners, *Depreciation Practices for Small Water Utilities* (1979)

### **Electronic Filing – Public Service Commission**

How to Register and Create Your E-Filing Account: Training Video  
How to Prepare Your Documents for Tariff Filing System (Part 1): Training Video  
How to Prepare Your Documents for Tariff Filing System (Part 2): Training Video  
How to Upload Your Filing Into Tariff Filing System: Training Video

### **Emergency Planning**

CIPAC Workgroup, *All-Hazard Consequence Management Planning for the Water Sector* (Nov. 2009)  
Environmental Protection Agency (EPA), *Planning for an Emergency – Drinking Water Supply* (June 2011)  
EPA, EPA 816-K11-003, *How to Develop a Multi-Year Training & Exercise (T&E) Plan* (May 2011)  
Kentucky Division of Water, *Drinking Water Emergency Response Planning* (Mar. 29, 2011) (Power Point Presentation)  
Kentucky Division of Water, *Emergency Response Plan Template: Public Drinking Water Systems* (Dec. 3, 2012)  
Kentucky Public Service Commission, *Guidance on Notification Procedures for Utility Related Incidents* (Mar. 27, 2015)  
Water and Emergency Management Agency Coordination: *A Vital Component of A Successful Response* (Webcast) (Note: Must first install player)



## **Employment Law**

*Oakley v. Flor-Shin, Inc.*, 964 S.W.2d 438 (Ky.App. 1998)

*Tilley v. Kalamazoo County Road Commission*, 777 F.3d 303 (6th. Cir. 2015)

Stacy Miller, EEO No! A Discrimination Law Primer (May 4, 2016)

U.S. Equal Employment Opportunity Commission, Notice No. 915.003, EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues (June 25, 2015)

## **Energy Efficiency**

Chris Barren and Jeremy Boyer, "Water Utility Infrastructure Management - Reducing Energy Costs in Water Utilities," Water Utility Infrastructure Management (July 1, 2010)

David Denig-Chakroff, National Regulatory Research Institute, Reducing Electricity Used for Water Production: Questions State Commissions Should Ask Regulated Utilities (June 13, 2008)

EPA, Ensuring a Sustainable Future: An Energy Management Guidebook for Wastewater and Water Utilities (Jan. 2008)

Grant Van Hemert, P.E., "Reducing Energy Usage in Water and Wastewater Facilities", Water Online: The Magazine

John E. Regnier and Richard Winters, Small System Electric Power Use: Opportunities for Savings (May 8, 2008)

New York State Energy Research & Development Authority, Water & Wastewater Energy Management: Best Practices Handbook (Sept. 2010)

World Bank, A Primer on Energy Efficiency for Municipal Water and Wastewater Utilities (Feb. 2012)

## **Ethics for Utility Board Members**

Andrea Shindlebower Main, "Decoding Your Local Code of Ethics," Kentucky City, Vol. 3, No. 4 (Dec. 2013)

Department of Local Government, Local Government Ethic Codes

OAG, Incompatible Offices and Conflicts of Interest (1995)

Ethics Policy for the Louisville and Jefferson County Metropolitan Sewer District

Ethics Policy for the Louisville and Jefferson County Metropolitan Sewer District – Disclosure Statement

Ethics Policy for the Louisville and Jefferson County Metropolitan Sewer District – Hearing Procedures

House Bill 276 (2014 Ky. General Session)

House Bill 348 (2015 Ky. General Session)

## **Filing Requirements Checklists**

Application for Initial Approval of Water District Commissioner's Training Program

Application for Authority to Adjust Rates – Sewer Utility

Application for a Certificate of Public Convenience and Necessity (Sewer Facilities)  
Application for a Certificate of Public Convenience and Necessity – General  
Application for a Certificate of Public Convenience and Necessity (Federally Funded Projects)  
Application for a Certificate of Public Convenience and Necessity (Initial Operations with Tariff)  
Application for a Certificate of Public Convenience and Necessity (Initial Operations without Tariff)  
Application for Authorization to Borrow Funds  
Application for General Rate Adjustments (Fully Forecasted Test Period)  
Application for General Rate Adjustments (Historical Test Period)  
Application for Non-recurring Charges  
Application for Purchased Water Adjustment (Privately Owned Utilities)  
Application for Purchased Water Adjustment (Water Districts and Water Associations)  
Application for Sewage Treatment Adjustment  
Application to Transfer Control/Ownership of Facilities

### **Financial Management**

RCAP, The Basics of Financial Management for Small-Community Utilities (2011)  
RCAP, The Basics of Financial Management for Small-Community Utilities - Part 1 (Video)  
RCAP, The Basics of Financial Management for Small-Community Utilities - Part 2 (Video)

### **Fire Protection**

807 KAR 5:095, Fire Protection Service For Water Utilities  
*An Investigation into Fees for Fire Protection Services*, Administrative Case No. 385 (Ky. PSC Dec. 7, 2001)  
*Kentucky-American Water Company*, Case No. 2007-00450 (Ky. PSC Feb. 28, 2008)  
Letter from Thomas M. Dorman, Executive Director, PSC, to Dr. William H. Tudor (Jan 31, 2002)  
Letter from Thomas M. Dorman, Executive Director, PSC, to David Wilson, Counsel, Hardin County Water District No. 1 (Sept. 20, 2002)  
Letter from Thomas M. Dorman, Executive Director, PSC, to William Ballard, East Clark County Water District No. 1 (Feb. 13, 2003)  
Letter from David M. Samford, PSC General Counsel, to David Wilson, Counsel, Hardin County Water District No. 1 (Dec. 1, 2008)  
*North Mercer Water District*, Case No. 99-486 (Ky. PSC Mar. 2, 2001)  
*North Shelby Water Company*, Case No. 2013-00027 (Ky. PSC Sept. 20, 2013)  
OAG Opinion 78-253  
OAG Opinion 78-790  
OAG Opinion 84-147  
PSC Staff Opinion 2011-007 (Apr. 19, 2008)

Michael Lippert, "How Can We Coordinate Fire Hydrant Maintenance Better?" *Opflow* (Oct. 2012)

William Lauer, "How Do I Ensure Proper Fire Hydrant Use When So Many People Have Access?" *Opflow* (May 2012)

John Stubbart, "Who Controls the Fire Hydrants?" *Opflow* (April 2006)

*Kenton County Water District No. 1*, Case No. 96-020 (Ky. PSC June 24, 1996)

U.S. Fire Administration, *Water Supply Systems and Evaluation Methods*, Volume 1: *Water Supply System Concepts* (Oct. 2008)

U.S. Fire Administration, *Water Supply Systems and Evaluation Methods*, Volume 2: *Water Supply Evaluation Methods* (Oct. 2008)

### **Franchise Agreements-Water Purchase Agreements**

*Crittenden-Livingston Water District v. Ledbetter Water District*, No. 2017-CA-000578 (Ky. Ct. App. Aug. 17, 2018)

Amicus Brief of KRWA, *Crittenden-Livingston Water District v. Ledbetter Water District*, No. 2017-CA-000578 (Ky. Ct. App. filed Aug. 11, 2017)

Appellant's Brief, *Crittenden-Livingston Water District v. Ledbetter Water District*, No. 2017-CA-000578 (Ky. Ct. App. filed July 21, 2017)

Declaration of Rights and Order Granting Plaintiff's Motion for Summary Judgement, *Ledbetter Water District v. Crittenden-Livingston Water District* (Livingston Cir. Ct. Jan. 25, 2017)

KRWA Motion for Leave to File An Amicus Brief, *Crittenden-Livingston Water District v. Ledbetter Water District*, No. 2017-CA-000578 (Ky. Ct. App. filed Aug. 11, 2017)

### **Government Pensions**

Cavanaugh McDonald Consulting LLC, GASB Statement No. 68 Report for the County Employees Retirement System Prepared as of June 30, 2014 (May 13, 2015)

Lee Ann Watters, Jonathan M. Hollinger, and R. Douglas Martin, *New Accounting Standards for Government Pensions*, Kentucky Bench and Bar Magazine, Mar. 2014

Government Accounting Standards Board, *Guide to Implementation of GASB Statement 67 on Financial Reporting for Pensions*

Government Accounting Standards Board, *Guide to Implementation of GASB Statement 68 on Accounting and Financial Reporting for Pensions*

Government Accounting Standards Board, *Statement No. 67, Financial Reporting for Pension Plans*

Government Accounting Standards Board, *Statement No. 68, Accounting and Financial Reporting for Pension Plans*

Government Accounting Standards Board, *Pension Plan Implementation Kit Marion County Water District*, Case No. 2016-00068 (Ky. PSC Nov. 10, 2016)

PSC Staff Memorandum, *Marion County Water District*, Case No. 2016-00068 (Ky. PSC Filed Sept. 16, 2016)

PSC Staff Report, *Marion County Water District*, Case No. 2016-00068 (Ky. PSC Filed Aug. 11, 2016)

## **Health Insurance and Other Employee Fringe Benefits**

Bureau of Labor Statistics, Employee Benefits In The United States – March 2016 (July 22, 2016)  
Bureau of Labor Statistics, Employee Benefits In The United States – March 2017 (July 21, 2016)  
Bureau of Labor Statistics, Employer Costs for Employee Compensation – March 2017 (June 9, 2017)  
Bureau of Labor Statistics, Employer Costs for Employee Compensation – December 2017 (Mar. 20, 2018)  
Bureau of Labor Statistics, Employee Benefits In The United States – March 2018 (July 20, 2018)  
Bureau of Labor Statistics, Employer Costs for Employee Compensation – June 2018 (Sept. 28, 2018)  
Bureau of Labor Statistics, *Monthly Labor Review* Trends in Employment-based Health Insurance Coverage (Oct. 2014)  
*Cumberland Valley Electric, Inc.*, Case No. 2016-00169 (Ky. PSC Feb. 6, 2017)  
*Estill County Water District No. 1*, Case No. 2017-00176 (Aug. 9, 2017) (Staff Report)  
*Farmers Rural Electric Cooperative Corp.*, Case No. 2016-00365 (Ky. PSC May 12, 2017)  
Kaiser Family Foundation and Health Research & Educational Trust, Employer Health Benefits – 2016 Annual Survey (2016)  
Kentucky League of Cities, *Wage and Salary Survey of Kentucky Cities (2016)*  
Kentucky Rural Water Association, *2017 KRWA Compensation and Benefit Survey Results*  
*Nebo Water District*, Case No. 2016-00435 (Ky. PSC June 5, 2017)  
*Nolin Rural Electric Cooperative Corp.*, Case No. 2016-00367 (Ky. PSC June 21, 2017)  
*North Mercer Water District*, Case No. 2016-00325 (May 19, 2017)  
Robert J. Cicero, Comments at the Kentucky Chamber of Commerce Energy Conference (Jan. 18, 2018)  
Willis North America, Inc., The Willis Benefits Benchmarking Survey – Survey Report 2015

## **House Bill 1**

House Bill 1 (2013 General Session)  
House Bill 192 (2014 General Session)  
House Bill 348 (2015 Ky. General Session)  
House Bill 348 – Senate Floor Amendment 2 (2015 Ky. General Session)  
Emergency Administrative Regulation (With Regulatory Impact Analysis and Fiscal Note)  
109 KAR 16:010  
Department of Local Government, SPGEs Informational Portal  
DLG, Registration and Board Reporting Tutorial  
Kentucky Rural Water Association, “House Bill 1 Impact on Utilities” (Mar. 14, 2013)

Legislative Research Commission, "Final Report of The Task Force on Local Taxation" Research Memorandum No. 500 (June 27, 2006)

Legislative Research Commission, "Special Districts in Kentucky" Research Report No. 48 (July 1968)

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**

Department of Local Government, Protection of Personal Information: Security and Incident Investigation Procedures and Practices for Local Governmental Units (Fall 2014)

Destruction of Records Act (KRS 365.720 .730)

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

Federal Trade Commission, Fighting Identity Theft with the Red Flags Rule: A How-To Guide for Business (May 2013)

House Bill 5

House Bill 232

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America's Water Infrastructure Act of 2018

### **Inspection Procedures**

*Grant County Sanitary Sewer District*, Case No. 2018-00097 (Ky. PSC June 12, 2018)

*McCreary County Water District*, Case No. 2017-00246 (Ky. PSC Feb. 1, 2018)

*Wood Creek Water District*, Case No. 2017-00307 (Ky. PSC Jan. 31, 2018)

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*Cassidy v. City of Bowling Green*, 368 S.W.2d 318 (Ky. 1963)

*Hardin County Water District No. 1*, Case No. 9383 (Ky. PSC Aug. 26, 1985)

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### **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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Carl Brown, "Sued: A Quick Lesson in Water Litigation", Utility Infrastructure Management  
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*City of Olive Hill v. Public Service Commission*, 203 S.W.2d 68 (Ky. 1947)  
*McClellan v. Louisville Water Co.*, 351 S.W.2d 197 (Ky. 1961)  
*City of Georgetown v. Public Service Commission*, 516 S.W.2d 842 (Ky. 1976)  
*Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994)  
*City of Greenup v. Public Service Commission*, 182 S.W.3d 535 (Ky.App. 2005)  
*Submission of Contracts and Rates of Municipal Utilities*, Adm. Case No. 351 (Ky. PSC Aug. 10, 1994)  
*South Shores Water Works v. City of Greenup, Ky.*, Case No. 2009-00247 (Ky. PSC Oct. 5, 2010)  
*City of Franklin v. Simpson County Water District*, Case No. 92-084 (Ky. PSC Jan. 18, 1996)  
*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)  
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Lebanon Water Works, Case No. 2017-00417 (Ky. PSC July 12, 2018)

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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. 2015)  
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)  
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Sample Open Records Act Policy (Kentucky Rural Water Ass'n Form) (MS Word Format)

### **Pensions – State and Local**

Letter from John Chilton, State Budget Director, to all CERS Employers, CERS Pension Plans (Sept. 7, 2017)

### **Privacy Protection**

Destruction of Records Act (KRS 365.720 .730)

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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)

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### **PSC Investigations**

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

## **PSC Orders Discussed in Presentation**

*Aqua Corporation*, Case No. 89-307 (Ky. PSC Dec. 7, 1989)  
*Beech Grove Water System*, Case No. 2016-00255 (Ky. PSC Aug. 3, 2016)  
*Caldwell County Water District*, Case No. 2016-00054 (Ky. PSC July 21, 2016)  
*Columbia Natural Gas of Kentucky*, Case No. 2016-00181 (Ky. PSC Sept. 9, 2016)  
*Hardin County Water District No. 2*, Case No. 2016-00432 (Ky. PSC Mar. 12, 2018)  
*Kenergy Corp.*, Case No. 2015-00312 (Ky. PSC Sept. 15, 2015)  
*Monroe County Water District*, Case No. 2017-00070 (Ky. PSC Jan. 12, 2018)  
*Mountain Water District*, Case No. 2015-00353 (Ky. PSC Feb. 15, 2016)  
*Nebo Water District*, Case No. 2016-00425 (Ky. PSC June 5, 2017)  
*North Mercer Water District*, Case No. 2016-00310 (Ky. PSC Oct. 12, 2016)  
*North Mercer Water District*, Case No. 2016-00325 (Ky. PSC May 19, 2017)  
*Southeast Daviess Water District*, Case No. 2017-00458 (Ky. PSC Feb. 27)  
*West Daviess Water District*, Case No. 2017-00458 (Ky. PSC Feb. 27)  
*Wood Creek Water District*, Case No. 2016-00338 (Ky. PSC Feb. 23, 2017)

## **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)

## **PSC Reorganization**

Executive Order No. 2016-832  
Public Service Commission Organization Chart  
Senate Bill 183

## **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



## **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)

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

## **Regulated Substances for Accidental Release Prevention**

List of Substances, 40 CFR 68.130

## **Salaries and Wages**

*Caldwell County Water District*, Case No. 2016-00054 (Ky. PSC May 4, 2016) (Staff Report)

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*Kenergy Corp.*, Case No. 2015-00312 (Ky. PSC Sept. 15, 2016)

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*Water Service Corporation of Kentucky*, Case No. 2013-00237 (Ky. PSC July 24, 2014)

## **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

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Kentucky Public Service Commission, 2015 Guidance on Security Deposit Interest Rates

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Kentucky Public Service Commission, 2017 Guidance on Security Deposit Interest Rates

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KRS 278.460

PSC Staff Opinion 2013-001

## **Sovereign Immunity**

*Coppage Construction Company, Inc. v. Sanitation District No. 1 and DCI Properties-DKY, LLC*, 459 S.W.3d 855 (Ky. 2015)

*Sliding Sales Inc. v. Warren County Water District*, 984 S.W.2d 490 (Ky.App. 1998)

*South Woodford Water District v. Byrd*, No. 2009-CA-000854-MR (Ky. Ct. of App. Sept. 23, 2011)

## **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 Commissioner Show Cause Proceedings**

*Estill County Water District No. 1*, Case No. 2017-00176 (Ky. PSC Aug. 18, 2017)  
*Estill County Water District No. 1*, Case No. 2017-00467 (Ky. PSC Feb. 20, 2018)  
*Estill County Water District No. 1*, Case No. 2017-00467 (Ky. PSC Feb. 28, 2018)  
*Mountain Water District*, Case No. 2015-00353 (Ky. PSC Feb. 15, 2016)  
*North Mercer Water District*, Case No. 2016-00310 (Ky. PSC Oct. 12, 2016)  
*U.S. 60 Water District*, Case No. 2015-00037 (Ky. PSC Apr. 2, 2015)  
*U.S. 60 Water District*, Case No. 2015-00037 (Ky. PSC Aug. 17, 2015)  
*Western Fleming County Water District*, Case No. 2014-00400 (Ky. PSC Dec. 16, 2014)  
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## **Water District Commissioner Training**

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Letter to All Water Districts Re: Implementation of House Bill 201 (Aug. 19, 2010)  
PSC Staff Opinion 2014-017 (Dec. 16, 2014)  
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## **Water Meter Testing**

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Inductive Flowmeters," *AWWA Journal*, June 2007  
Damon Talley, All Things Meter (Oct. 27, 2015) (PDF Format) (PowerPoint Format)  
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*Graves County Water District*, Case No. 2011-00233 (Ky. PSC Nov. 3, 2011)  
*Hardin County Water District No. 2*, Case No. 2016-00432 (Ky. PSC Mar. 22, 2018)  
Ken Mercer, "How Often Should Residential Water Meters Be Replaced?", *Opflow*,  
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*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)

Notification to Utilities Furnishing Metered Electric, Gas or Water Service Regarding  
Meter Testing Requirements, Case No. 2018-00226 (July 17, 2018)  
Public Service Commission, Procedures For Approval of Meter Testing Facilities, Basic  
Measurement Standards and Meter Testing (May 31, 2017)  
Public Service Commission, Procedures For Approval of Meter Testing Facilities, Basic  
Measurement Standards and Meter Testing - Notice of Extension (December 27,  
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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  
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### **Water System Management and Sustainability**

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



**2018 WATER LAW SERIES**  
**October 30, 2018**



Sponsored by:





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2018 WATER LAW SERIES

# Hot Legal Topics

**October 30, 2018**

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





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## DISCUSSION TOPICS

1. Notice to PSC
2. Franchises & Contracts
3. Borrowing Money
4. 911 Litigation Update

Continued . . .




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## DISCUSSION TOPICS

5. Call Before You Dig
6. 2018 General Assembly
7. Recent PSC Orders
8. Excessive Water Loss



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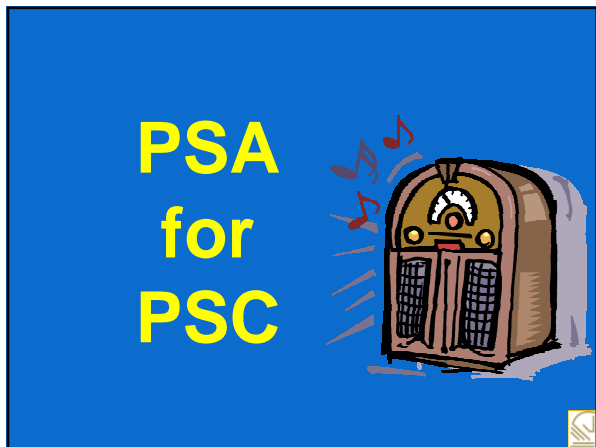
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## Reporting Requirements

- Must Notify PSC if . . .
  - Vacancy Exists
  - Appointment Made
- 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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## 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



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## E-Mail Address

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



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## Why Municipals?

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



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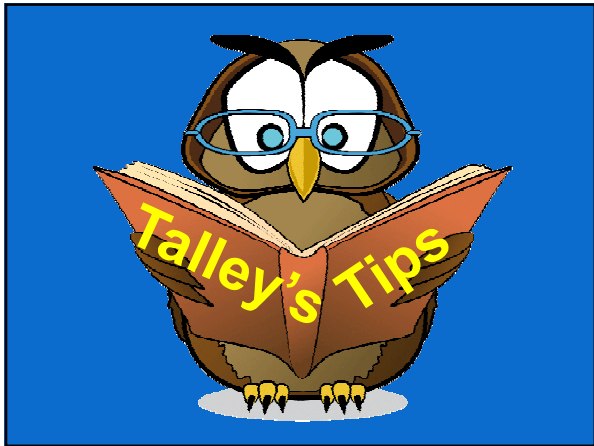
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**Default Regulatory E-mail Address**

- Send E-mail to PSC
  - [psc.reports@ky.gov](mailto:psc.reports@ky.gov)
- Send Letter to PSC
  - Gwen R. Pinson,  
Executive Director



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**Franchises  
and  
Contracts**



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## Franchise

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



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## 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



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**Livingston County Case**  
Ledbetter WD  
vs.  
Crittenden-Livingston WD  
Circuit Court  
Case No. 2015-CI-00079  
Opinion Rendered: 1-25-17  
Status: **REVERSED**



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**Court of Appeals**  
Crittenden-Livingston WD  
vs.  
Ledbetter WD  
Case No. 2017-CA-000578  
Oral Argument: 4-24-18  
Decided: 8-17-18  
Holding: No Franchise



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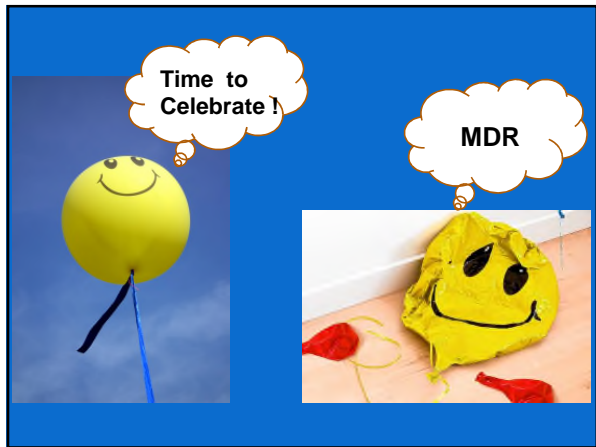
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**Ky. Supreme Court**  
Ledbetter W.D.  
vs.  
Crittenden-Livingston WD  
Case No. 2018-SC-000494-D  
Motion DR: 09-12-18  
Response: 10-12-18  
Action on Motion: ? ? ? ?

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

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



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**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.



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## Why?

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

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## How Long Is Long Term?

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



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## Significance

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



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## Court of Appeals @ Page 4

A **franchise** is generally defined as a **right or privilege granted by** a sovereign power, government or a governmental entity **to a party to do some act which such party could not do without a grant from the government.** A franchise is a grant of a right to use public property or at least the property over which the granting authority has control.



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## C/A Rationale

- Distinction:

For - Profit Utility

versus

Non - Profit Utility

- Water District

- Public Entity



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## C/A Legal Analysis

- One Public Entity Acquiring Service From Another Public Entity

- Purchase of Water Service

- Contract Not Franchise



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**C/A Legal Analysis**

- Franchise Grants Governmental Rights
  - WD Already Has Rights
- Contract Grants
  - Service
  - Commodity (Water)



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**C/A Legal Analysis**

- Contract – Provided Water
- Contract – Allowed WD to Better Serve Customers



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**C/A Holding**

- Contract Not Franchise
- Section 164 N/A
  - Longer Than 20 Years
  - No Advertising



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## What's Next?

- Decision Not Final
- Motion for Discretionary Review Filed: 09 -12-18
- Response Filed: 10 -12-18
- Ky. Supreme Court ? ? ?



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## KRWA's Role

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



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# Borrowing



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## 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.



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## Practical Effect

- Must Obtain PSC Approval Before Incurring Long-term Debt (Over 2 Years)
- Exception:
  - 2 Years or Less
  - Renewals
    - (3 X 2 = 6 Years)
    - (6 X 1 = 6 Years)



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**Violation**

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# Show Cause Cases

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**Show Cause Case # 3**  
Case No. 2017 - 469  
Opened: 01- 11 - 2018  
Hearing: 02 - 27- 2018  
Issue: KRS 278.300  
Decision: 09 - 17 - 2018

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**Show Cause Case # 1**


Case No. 2016 - 338

Opened: 10 - 11 - 2016

Closed: 02 - 23 - 2017

Issue: KRS 278.300

Hearing: 12 - 13 - 2016



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**Show Cause Case # 1**

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



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**Show Cause Case # 1**

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




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**Show Cause Case # 2**  
 PSC Case No. 2017-176  
 2017-467

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




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**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  
 Decision: 12-20-17




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### Hearing on 11-1-17

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

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### Hearing on 11-1-17

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

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### Show Cause Case # 2

Case No. 2017 - 467  
Opened: 01- 11 - 2018  
Hearing: 02 - 27- 2018  
Resigned: 02 - 27- 2018  
Dismissed: 05 - 04- 2018

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## Show Cause Case # 2

- No Fines
- Lost Revenue
  - Over \$60,000
- Commissioners Resigned

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## Show Cause Case # 3

Case No. 2017 - 469

Opened: 01- 11 - 2018

Hearing: 02 - 27- 2018

Issue: KRS 278.300

Decision: 09 - 17 - 2018

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## Timeline

<b>05 - 03 - 2016</b>	<b>Obtained Loan</b>
08 - 03 - 2017	ARF Application Filed
11 - 30 - 2017	Staff Report Issued
01 - 11 - 2018	Show Cause Order
02 - 27 - 2018	Formal Hearing
09 - 17 - 2018	Order

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### Show Cause Case # 3

This is the **third** case in the last year and a half involving a show cause order against a water district utility and/or its commissioners for violating KRS 278.300 by obtaining a loan, the term of which is in excess of two years, without prior approval of the Commission. To date the Commission has **assessed, but not sought, to collect** civil penalties against individual water district commissioners for essentially two reasons.

(Continued)

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### Show Cause Case # 3

**First**, the Commission's goal has been to obtain **compliance** with the requirements of the statute and not to exact a penalty and, **second**, the Commission was determined to **send a message** to these utilities and their local commissioners that they were out of compliance and **future violations** could result in **individual penalties** as well as a **separate penalty against the utility**.

(Continued)

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### Show Cause Case # 3

The Commission also intended to place **all other water districts on notice** that obtaining loans in violation of KRS 278.300 could subject both the utility and its commissioners to civil penalties, and **to provide fair notice that strict enforcement could be expected in future cases**.

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### Show Cause Case # 3

Water districts and their commissioners are hereby put on **final notice** that unauthorized debt incurred after the date of this order may well result in **substantial** civil penalties being **assessed and collected against both** in future show cause cases.

Pages 7 and 8 of Order

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### Show Cause Case # 3

- District Fined \$2,500
  - Pay \$500
  - \$2,000 Suspended
  - Good Behavior
  - One Year
- Commissioner Matthews Dissented



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### Show Cause Case # 3

- Commissioners Fined \$2,000
  - Pay Zero
  - Entire \$2,000 Suspended
  - Good Behavior
  - One Year
- 12 Hours Training



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### Show Cause Case # 3

- Develop Written Policy
  - Borrow \$
  - Hire Lawyer
- Adopt Policy
- File Policy with PSC



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### PSC Commissioners:

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



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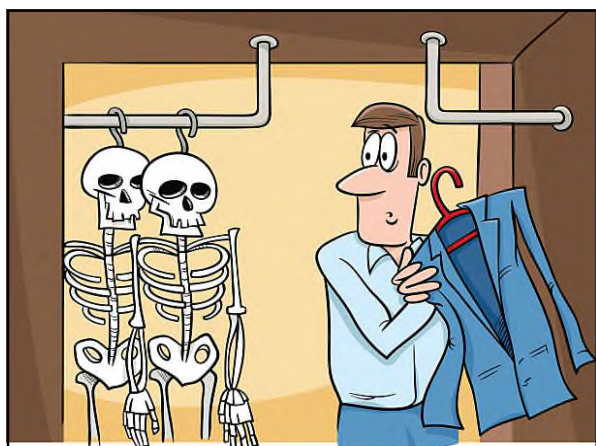
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# 911 Litigation Update

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**Garrard County Case**  
City of Lancaster, et al **Unpublished  
Opinion**  
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

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## 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



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## Current Status

- Campbell Co. – Parcel Fee OK
- Fee On Water Service – OK
- Unresolved Legal Issues



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## 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?



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**Recent Developments**

- New Ordinances
  - Garrard County
  - Lincoln County
- Fee On Water Service
- Water Utilities to Collect



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**New Garrard County Case**

Garrard Co. Water Association  
vs.  
Garrard County, Kentucky

Garrard Circuit Court  
Case No. 2017 - CI - 00281  
Date Filed: 12-11-17  
Status: Discovery  
Opinion Rendered: ??-??-??



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## Lincoln County Case

City of Stanford, et al

vs.

Lincoln County, Kentucky

Lincoln Circuit Court

Case No. 2018 - CI - 00062

Date Filed: 03-02-18

Briefs Filed: 10-12-18

Opinion Rendered: ??-??-??



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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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## Changes to Law KRS 367.4901 to 367.4917

- Membership Still Voluntary
- Mandatory Fines . . . If Damage
  - Natural Gas Pipeline
  - Hazardous Liquid Pipeline
- PSC Is the **Enforcer**



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## Why Did Law Change?

- Conform with Federal Law
- Too Many Gas Line Accidents
- Effective: 07-14-2018



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## Who Is Affected?

- Excavators
  - All Utilities
  - Contractors
- **THIS MEANS YOU!**



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## Requirements

- Call 811
- Hand Dig or Use  
"Nonintrusive Means"
- Stop Work If Cause Damage
  - Notify Gas Company
  - Notify PSC



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## What Happens Next?

- Report Due to PSC Within 30 days
- Use Online Report Form
- PSC Staff Investigates
- PSC Demand Letter  
or
- Hearing Before PSC



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## Fines

- Mandatory
  - First Offense: \$1,250
  - Second Offense: \$2,000
  - Third Offense: \$4,000
- Exception for Emergency
  - Defined Term: 367.4903(7)



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Resources:

PSC website: [psc.ky.gov](http://psc.ky.gov)

New call-before-you-dig webpage launched in June

- Statutes
- FAQs
- News releases

Kentucky 811 website: [Kentucky811.org](http://Kentucky811.org)

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For more information:

Mike Nantz

Division of Inspections

502-782-2602

502-545-2141

[Michael.Nantz@ky.gov](mailto:Michael.Nantz@ky.gov)

Andrew Melnykovich

Director of Communications

502-782-2564

[Andrew.Melnykovich@ky.gov](mailto:Andrew.Melnykovich@ky.gov)

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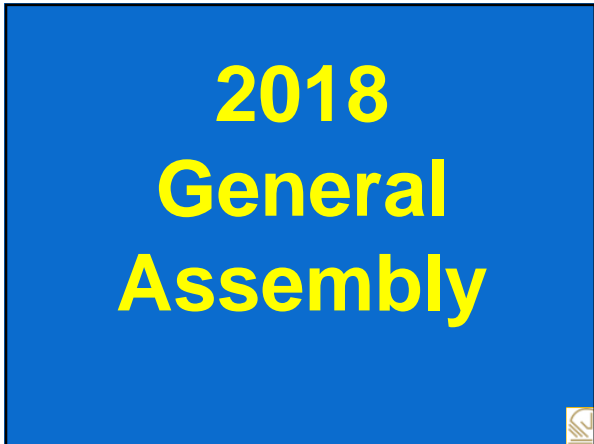
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## Notable Bills

- SB 117 – Ky. 811 - Defeated
- SB 151 – Sewage (Pension)
- HB 513 – Private WWTPs
- HB 362 – Pension Cap
- HB 366 – CPCN Exemption  
KRS 278.020(2)



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Cases  
to  
Watch

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Recent  
PSC  
Orders



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**PSC Case No. 2016-432**

Filed: 12-29-2016  
Utility: Hardin Co. WD No. 2  
Type: Deviation  
Issue: 15 Year Meters  
Sample Testing  
Decided: 03-22-2018



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**PSC Case No. 2017-127**

Filed: 3-10-2017  
Utility: North Mercer WD  
Type: Deviation  
Issue: Office Open  
4 Days a Week  
Decided: 3-16-2018



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**PSC Case No. 2017- 458**

Filed: 12-22-2017  
Utility: Southeast Daviess WD  
Type: CPCN  
Issue: Smart Meters  
Decided: 02-27-2018



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**PSC Case No. 2017- 246**

Filed: 6-30-2017  
Utility: McCreary Co. WD  
Type: Deviation  
Issue: Daily Inspection of  
Grinder Pumps  
Decided: 2-01-2018



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**PSC Case No. 2016 - 394**

Filed: 11-18-2016  
Utility: Ky. American  
Type: Deviation  
Issue: Annual Inspection of  
Meters & Valves  
Decided: 12-12-2017



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**PSC Case No. 2016-427**

Filed: 12-08-2016  
Utility: Northern KY WD  
Type: Deviation  
Issue: Annual Inspection of  
Meters & Valves  
Decided: 02-01-2018



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# Excessive Water Loss



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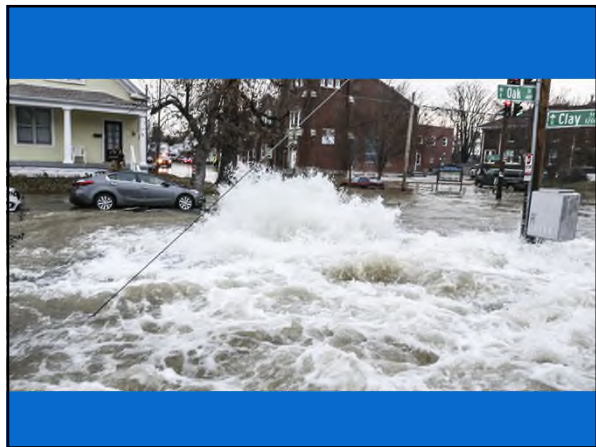
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## Unaccounted-for Water Loss

▪ 807 KAR 5:066, Section 6(3)

“... for **rate making purposes** a utility’s unaccounted-for water loss shall not exceed fifteen (15) percent of total water produced and purchased, excluding water used by a utility in its own operations.”



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## Terms

- Unaccounted-for Water Loss
  - 15% Maximum
  - Allowance for Flushing, Etc.
- NRW – Non Revenue Water
  - No Allowance for Flushing

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## PSC Case No. 2016 - 068

Decided: 8-17-16

Utility: Water District

Type: ARF

Issue: Excessive Line Loss

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## PSC Held:

- Water Loss 39%
  - 15% Maximum Allowed
  - Disallowed 24% Excess
- Disallowed \$135,000 Expenses  
Excess Water Loss  
(Cost to Purchase & Pump)

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**PSC Ordered:**

“The Commission is concerned with **excessive water loss** and related costs and directs \_\_\_\_\_ District to **develop and formally adopt a written plan to reduce excessive water loss**. The plan should identify all sources of water loss and each corrective action \_\_\_\_\_ District will take to minimize water loss from each source.”



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**Other  
Recent  
Water Loss  
Cases**



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**PSC Case No. 2017 - 064**

Decided: 3-09-2017  
Utility: Water District  
Type: CPCN Granted  
Holding: Reprimand & Warning  
Loss = 17%



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### PSC Ordered:

“Failure by \_\_\_\_\_ District to make **significant** progress towards **reducing** unaccounted-for water loss may cause the Commission to pursue **additional action** with the utility.”



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### Actions by PSC

- Inspection Report
- ARF Case
- CPCN Case
- .023 Case
- PWA Case
- Financing Case
- Deviation Case
- Sewer CPCN Case



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### Actions by PSC

- Emphasis at Training
- Reduce Rates
- Reprimand & Warning
- PWA Cases
  - Dollars & Cents

Continued . . .



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## Actions by PSC

- Copy of Inspection Report
  - CJE & Fiscal Court
  - Utility Commissioners
  - Local Newspaper?
- PSC Website?

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[damon.talley@skofirm.com](mailto:damon.talley@skofirm.com)

270-358-3187

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KEENON  
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# EXCERPTS OF ORDER

## Show Cause Case No. 3

### PSC Case No. 2017-469<sup>1</sup>

This is the **third** case in the last year and a half involving a show cause order against a water district utility and/or its commissioners for violating KRS 278.300 by obtaining a loan, the term of which is in excess of two years, without prior approval of the Commission. To date the Commission has **assessed, but not sought, to collect** civil penalties against individual water district commissioners for essentially two reasons. **First**, the Commission's goal has been to obtain **compliance** with the requirements of the statute and not to exact a penalty and, **second**, the Commission was determined to **send a message** to these utilities and their local commissioners that they were out of compliance and **future violations** could result in **individual penalties** as well as a **separate penalty against the utility**. The Commission also intended to place **all other water districts on notice** that obtaining loans in violation of KRS 278.300 could subject both the utility and its commissioners to civil penalties, and to **provide fair notice that strict enforcement could be expected in future cases.** (emphasis added)

\*\* \*\* \* (Paragraphs Omitted) \*\* \*\* \* \*

. . . Water districts and their commissioners are hereby put on **final notice** that unauthorized debt incurred after the date of this order may well result in **substantial** civil penalties being **assessed and collected against both** in future show cause cases. (emphasis added)

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<sup>1</sup> Order Dated September 17, 2018 at Pages 7-8



**TOP 10**

**Top 10 Legal issues Facing Water and Wastewater Utilities**

October 30, 2016  
Bowling Green, KY

**LAJUANA S. WILCHER & SARAH P. JARBOE, ESQ.**

English, Lucas, Priest & Owsley, LLP

1101 College Street  
Bowling Green, KY

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**LETTERMAN'S**

Book of **TOP TEN LISTS**

and Daily Lists

From the 1950s to the Present

From the 1950s to the Present

By David Letterman with 100 Lists from his 50 Years on the Air

David Letterman

We don't have a drum roll, but we do have ...

**TOP TEN WORDS THAT ALMOST RHYME WITH "PEAS"**

1. MEATS
2. LEAKS
3. NURSE
4. ICE
5. LENS
6. NEEDS
7. TIES
8. MOSS
9. RICE
10. HEATS

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**TOP 10 BEST WATER PURIFIERS IN INDIA**

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## FLINT FALLOUT

**15 CURRENT AND FORMER CITY AND STATE EMPLOYEES, INCLUDING THE FLINT DIRECTOR OF PUBLIC WORKS, FACING WATER CRIMINAL CHARGES.**

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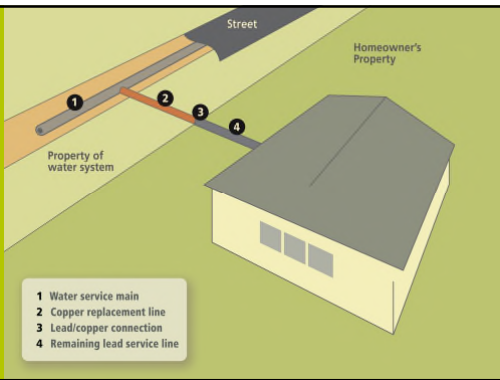
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**Pb/  
Cu**

**in Water  
Distribution  
Systems**



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## REGULATION OF LEAD AND COPPER

- HEALTH EFFECTS FROM LEAD
- CHALLENGES TO REGULATING
- EPA LEAD AND COPPER RULE 1991



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## FOCUS ON FLINT

- JANUARY 21, 2016 - EPA EMERGENCY ADMINISTRATIVE ORDER
- CRIMINAL INDICTMENTS
- RESIGNATIONS
- CONGRESSIONAL INVESTIGATIONS
- FUNDING



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## LEGIONNAIRES' DISEASE

- 12 DEATHS LINKED TO LEGIONNAIRES' DISEASE IN 2014 AND 2015 IN FLINT AREA. DOZENS MORE WERE SICKENED.
- IN PREVIOUS YEARS, SIX TO 13 CASES WERE TYPICALLY CONFIRMED ANNUALLY IN THE COUNTY.
- DIRECTOR OF MI DEPARTMENT OF HEALTH AND HUMAN SERVICE AND CHIEF MEDICAL EXECUTIVE CHARGED WITH INVOLUNTARY MANSLAUGHTER, GROSS NEGLIGENCE, MISCONDUCT IN OFFICE, OBSTRUCTION OF JUSTICE, LYING TO A PEACE OFFICER.



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## UNREGULATED CONTAMINANT MONITORING

- FINAL RULE FOR UCMR 4  
DECEMBER 2016
- REQUIRES MONITORING 30  
CONTAMINANTS BEGINNING 2018



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**PERFLUORINATED COMPOUNDS (PFC)**

**PFOA** **PFOS**

perfluorooctane sulfonates

PERFLUOROOCTANOIC ACID

PFNA

perfluorononanoic acid

**EPA HEALTH ADVISORY LEVELS OF 70 PPT**

**NJ LIMIT OF 13PPT FOR PERFLUORONONANOIC ACID PFNA. PROPOSED LIMITS OF 14 FOR PFOA AND 13 PPT FOR PFOS**

**WASHINGTON NICHIGAN AND NC CONDUCTING ADDITIONAL TESTING RECOMMENDING HOME RO AND OR GAC TO REMOVE PFOS AND PFOA**

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**CYANOTOXINS**

- PRODUCED BY NATURALLY OCCURRING B/G ALGAE
- UNDER CERTAIN CONDITIONS FORM HABS
- ESPECIALLY IN LATE SUMMER
- SOME SPECIES PRODUCE TOXIC SECONDARY METABOLITES
- INGESTION, DIRECT CONTACT, INHALATION
- DBPS




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**WATERS OF THE US - (WOTUS)**

What is regulated by the CWA?


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## DISCHARGES TO OR VIA GROUNDWATER

6<sup>th</sup> Circuit: *Ky. Waterways All. v. Ky. Utils. Co.*

- “neither groundwater nor the karst through which it travels is a point source . . . .”
- “. . . for a point source to discharge *into* navigable waters, it must dump *directly* into those navigable waters—the phrase ‘into’ leaves no room for intermediary mediums [groundwater] to carry the pollutants.”




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## STORMWATER & RESIDUAL DESIGNATION AUTHORITY



NPDES permits for stormwater discharges on a case-by-case basis when EPA determines that:

- The discharges contribute to a violation of water quality standards,
- The discharges are a significant contributor of pollutant to federally protected surface waters, or
- Controls are needed for the discharge based on wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutant(s) of concern.

*Los Angeles Waterkeeper, et al. v. Pruitt, et al*

**Two Choices: Require NPDES Permits or Prohibit the Stormwater Discharges**

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## NITRATES

### WHO PAYS TO REMOVE NITRATES?

- *Bd. of Water Works Trs. of Des Moines v. Sac Cnty. Bd. of Supervisors As Trs. of Drainage Dists.*, 32, 2017 U.S. Dist. LEXIS 39025, \*3 (N.D. Iowa March 17, 2017)




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## FLUORIDATION

- KENTUCKY REQUIRES FLUORIDATION OF DRINKING WATER: KRS 211.190(11); 902 KAR 115:010- 115:020
- EPA SETS MAXIMUM CONTAMINANT LEVEL
- EPA'S DECEMBER 2016 SIX-YEAR REVIEW 3
- *TOXIC SUBSTANCES CONTROL ACT???*




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## RISK MANAGEMENT PLAN RULE UPDATE

**JANUARY 2017 RMP AMENDMENTS NOW EFFECTIVE:**

- EMERGENCY COORDINATION
- EMERGENCY RESPONSE PROGRAM
- PREVENTION PROGRAM
- SAFETY INFORMATION
- TRAINING



- COMPLIANCE AUDITS
- INCIDENT INVESTIGATION
- COMPLIANCE WITH OTHER AMENDMENTS BY 2021

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## TOP 5 REASONS TO END PRESENTATION

1. IT'S TIME FOR LUNCH!
2. WE AIN'T BO DEREK
3. YOU'RE JUST HERE FOR THE SWAG
4. HALF OF YOU ARE ASLEEP
5. YOU ALREADY KNEW IT ALL

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## QUESTIONS?

PRESENTED BY:

LAJUANA S. WILCHER & SARAH P. JARBOE

ENGLISH LUCAS PRIEST & OWSLEY, LLP

BOWLING GREEN, KY

[LWILCHER@ELPOLAW.COM](mailto:LWILCHER@ELPOLAW.COM); [SJARBOE@ELPOLAW.COM](mailto:SJARBOE@ELPOLAW.COM)

OFFICE 270-781-6500

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## Top 10 Environmental Legal Issues Facing Water and Wastewater Utilities

Presenters: LaJuana S. Wilcher and Sarah P. Jarboe  
English Lucas Priest & Owsley, LLP

1. Flint criminal actions update
  - a. Who is subject to criminal charges and on what theories
2. Legionella and lead
3. Challenge to Fluoridation
  - a. *Food & Water Watch, Inc., et al. v. United States Environmental Protection Agency*, Case No. 17-CV-02162-EMC, Northern District of California
4. Unregulated Contaminant Monitoring
5. PFC Water Contamination
6. Nitrates
  - a. *Board of Water Works Trustees of the City of Des Moines, Iowa v. SAC County Board Of Supervisors as Trustees of Draining Districts 32, 42, 65, 79, 81, 83, 86, et al.*, Case No. C15-4020-LTS, Northern District of IOWA
  - b. NRDC report of nitrates in Illinois drinking water
7. Stormwater and Residual Designation Authority
  - a. *Los Angeles Waterkeeper, et al. v. Pruitt, et al.*, Case No. 2:17-CV-03454-SVW-KS, Central District of California
8. WOTUS update
  - a. Regulatory status
  - b. Current rule in Kentucky v. other jurisdictions
9. Clean Water Act Point Source Liability for Discharges via Groundwater
  - a. Circuit Split
  - b. Sixth Circuit
    - i. *Kentucky Waterways Alliance v. Kentucky Utilities Co*
    - ii. *Tennessee Clean Water Network v. Tennessee Valley Authority*
10. Risk Management Plan Regulatory Update

# RMP Amendments Compliance Information

## 2017 RMP Amendments Compliance Obligations

Because EPA is proposing to revise and repeal significant portions of the 2017 final rule that amended the Accidental Release Prevention Requirements for Risk Management Programs, EPA delayed the effective date of the rule. However, due to a court decision that vacated the effective date delay, and the court's expedited issuance of its mandate, the final RMP Amendments rule is now in effect. Because the 2017 rule contains a schedule of compliance dates for many of the major provisions, the issuance of the mandate does not create current compliance obligations for some parts of the rule. The following describes the RMP Amendments rule provisions that have current compliance obligations and those for which compliance will be due in the future. EPA has proposed to repeal many of the provisions with future compliance dates.

### 2017 RMP Amendments with current compliance obligations:

#### *Emergency Coordination Provisions*

Emergency response coordination activities (§ 68.93) - (applies to sources with Program 2 and Program 3 processes)

- The facility owner or operator must coordinate response needs at least annually with local emergency planning and response organizations, and document these coordination activities.
- The facility owner or operators must provide to the local emergency planning and response organizations:
  - the stationary source's emergency response plan if one exists,
  - the source's emergency action plan,
  - updated emergency contact information, and
  - any other information that local emergency planning and response organizations identify as relevant to local emergency response planning.

Responding stationary sources must consult with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b) before the March 15, 2021 compliance date for exercise provisions.

#### *Emergency Response Program Provisions*

Revisions to the Emergency Response Program requirements in § 68.95:

- Inform Federal and state emergency response agencies about accidental releases.
- Review and update the source's emergency response plan, as appropriate. Base updates on changes at the stationary source or new information obtained from:
  - coordination activities,
  - emergency response exercises,
  - incident investigations, or
  - other available information.
- Ensure that employees are informed of the changes to the source's emergency response plan.

# RMP Amendments Compliance Information

A facility owner or operator must develop and implement an Emergency Response Program within three years of when the facility becomes subject to the requirements (i.e., a need for a facility Emergency Response Program is determined) (see § 68.10(c)).

## *Prevention Program Provisions*

Changes to the Program 2 and Program 3 Prevention Program requirements (Subparts C and D) for which the effective date is the compliance date (§ 68.10(a)(4)):

### Safety information (§ 68.48)

- Maintain Safety Data Sheets (SDS) instead of Material Safety Data Sheets (MSDS).

### Hazard review (§ 68.50)

- Include findings from incident investigations in the hazard review.

### Training (§§ 68.54 & 68.71)

- Employee training requirements also apply to supervisors responsible for directing process operations and supervisors with process operational responsibilities.

### Compliance audits (§§ 68.58 & 68.79)

- The owner or operator must evaluate compliance with the provisions of the RMP rule “for each covered process” at least every three years.

### Incident investigation (§§ 68.60 & 68.81)

- Added the phrase “(i.e., a near miss)” to describe incidents that “could reasonably have resulted in a catastrophic release.”
- An investigation is required when an incident resulting in a catastrophic release also results in the affected process being decommissioned or destroyed.
- Require incident investigation teams to be established for incident investigations on Program 2 processes (§ 68.60(c)).
- Incident investigation reports shall be completed within 12 months of the incident, unless the implementing agency approves, in writing, an extension of time.
- Replaced the word “summary” with “report” to describe the documentation required for an incident investigation (§ 68.60).
- Specified content of the investigation report – new provisions are underlined:
  - Date, time, and location of the incident;
  - description of incident, in chronological order, providing all relevant facts;
  - the name and amount of the regulated substance involved in the release (e.g. fire, explosion, toxic gas loss of containment) or near miss and the duration of the event.
  - the consequences, if any, of the incident including, but not limited to:
    - injuries;
    - fatalities;
    - the number of people evacuated;

# RMP Amendments Compliance Information

- the number of people sheltered in place; and
- the impact on the environment;
- emergency response actions taken;
- the factors that contributed to the incident including the:
  - initiating event;
  - direct and indirect contributing factors; and
  - root causes. Root causes shall be determined by conducting an analysis for each incident using a recognized method. (for incidents that occur after March 15, 2021).
- recommendations resulting from the investigation and a schedule for addressing them.

## Process safety information (§ 68.65)

- Owner or operator required to keep process safety information up-to-date.
- Material Safety Data Sheets revised to Safety Data Sheets (SDS) in note to paragraph (b).

## Process hazard analysis (§ 68.67)

- PHA must include the findings from all incident investigations required under § 68.81, as well as any other potential failure scenarios.

## *Information Availability Provisions*


The RMP availability provision was revised to include a reference to regulations that limit disclosure of the RMP offsite consequence analysis (§ 68.210(a)).

## RMP Amendments with future compliance obligations :

The compliance date for the following RMP Amendments provisions is March 15, 2021:

- Third-party audit provisions in §§ 68.58(f), 68.58(g), 68.58(h), 68.59, 68.79(f), 68.79(g), 68.79(h), and 68.80;
- Incident investigation root cause analysis provisions in §§ 68.60(d)(7) and 68.81(d)(7);
- Safer technology and alternatives analysis in § 68.67(c)(8); and
- Emergency response exercise provisions in § 68.96.
- Providing chemical hazard information or community preparedness information to the public and conducting a public meeting 90 days after an RMP accident in § 68.210 (b) –(e).

Facilities are required to update their RMPs to comply with new or revised provisions by March 14, 2022.

STOLL KEENON OGDEN PLLC 

# MUNICIPAL UTILITY RATE WORKSHOP®

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## ORDER OF PRESENTATION

- Historical Background
- PSC Procedure: An Overview
- Lebanon Water Works:  
A Case Study
- Appendix: Ratemaking 101

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## HISTORICAL BACKGROUND

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**CURRENT DEFINITION OF "UTILITY"**

"Utility" means any person **except . . . a city**, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . [t]he diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation

KRS 278.010(3)

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**Simpson County Water Dist. v. City of Franklin (1994)**

- 1963 Contract (\$0.21/1,000 gals rate – changes OK if applied to both wholesale & retail)
- 1986 Contract Revision sets rate at \$0.84 per 1,000 gals. for 5 years
- 1990: Franklin raises rate to \$1.35 per 1,000 gallons

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**Simpson County Water Dist. v. City of Franklin (1994)**

- 1991: Franklin raises rate to \$1.67/1,000 gallons
- Simpson County refuses to pay increases
- Franklin brings action to collect unpaid amounts & to declare contract void
- Simpson District: Courts lack jurisdiction - **PSC must approve rate increase**

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**Simpson County Water Dist. v. City of Franklin (1994)**

KRS 278.040(2):

The jurisdiction of the commission shall extend to all utilities in this state. **The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.**

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**Simpson County Water Dist. v. City of Franklin (1994)**

KRS 278.200:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by **any contract, franchise or agreement between the utility and any city**, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, **regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission** in the manner prescribed in this chapter.

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**Simpson County Water Dist. v. City of Franklin (1994)**

**HOLDING:**

- KRS 278.040: PSC may restrict City’s contract rights in area of utility rates & service
- Cities are generally exempted from PSC regulation because they are not “utilities”
- KRS 278.200 specifically addresses contracts between a city & a utility
- KRS 278.200 requires hearing before PSC before such contracts can be changed

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STOLL KEENON OGDEN PLLC 

## PROCEDURE FOR MUNICIPAL WHOLESALE RATE ADJUSTMENT

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### NOTICE OF RATE ADJUSTMENT

- Municipal Utility Must Give Notice of Rate Change to
  - PSC
  - Wholesale Customer
- Notice must be made at **least 30 days prior** to the proposed increase
- Notice must conform with 807 KAR 5:011\*

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### NOTICE TO PSC

- File Tariff Sheet
  - Name of Wholesale Customer (if not a uniform rate)
  - Proposed Rate
  - Effective Date (**30 Days From Date of Filing**)
  - Name & Signature of Authorized Official
  - Proof of Notice to Wholesale Customer
  - Tariff Sheets Are Available from PSC Website
- Electronically Submitted 

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**NOTICE TO WHOLESALE CUSTOMERS**

- 807 KAR 5:011, §8(4) governs
- Proposed Effective Date
- Date Filed with PSC
- Dollar & Percentage Amount of Proposed Change



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**NOTICE TO WHOLESALE CUSTOMERS**

- Effect on Average Bill
- Location of Filing for Examination
- Right to Intervene
- Right to Comment on the Proposed Rate



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**CONTRACT NOTICE REQUIREMENTS**

- Contract Notice Requirements still apply
- Required notice in excess of 30 days should be given prior to filing with PSC unless the Contract provides otherwise
- **Strategic Considerations:** Running out the clock vs. lost review time

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**NOTICE TO WHOLESALE CUSTOMERS**

- PSC has previously required **strict compliance** with notice regulation
- Acceptable Methods of Notice: Mail - Personal Delivery - Newspaper
- Mailed/Delivered/Published **NLT Date of Filing**
- Notice to the Public is **NOT** required

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**ADDITIONAL DOCUMENTS**

- Cost-of-Service Study **OR** Rate Study
- Financial Reports
- Historical Narrative
- Explanation for Increase
- Ordinance Establishing New Rates\*
- Wholesale Customer's Statement of No Objection/Waiver of Hearing

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**PSC'S RESPONSE**

- Posts proposed contract/rate to PSC Website
- Reviews for compliance with filing requirements
- If filing requirements are met, PSC must act before proposed effective date

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**PSC'S RESPONSE**

- KRS 278.190: Before a rate becomes effective, PSC may suspend operation of that rate for 5 months beyond its proposed effective date to further review
- Waits for comments/objections
- May request additional information

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**WHOLESALE CUSTOMER'S OPTIONS**

- No Response Required
- Notice of No Objection
- Request PSC Review/Investigation
- Identify Specific Areas of Concern or Objections

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**STANDARD FOR PSC INVESTIGATION**

- Does a **customer** object to the proposed increase?
- Does the propose rate/rule conflict with existing PSC regulations/rulings?
  - Rate Indexing (Case No. 2000-00067)
  - Service Practice that conflicts with PSC Regulations (Case No. 2001-230)

**YES** – Suspend **NO** – No Action (Rate Takes Effect)



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**PSC INVESTIGATION: PROCEDURAL RULES**

Following the [Supreme] Court's decision in *Simpson County*, the Commission has allowed city-owned utilities to file rate adjustments by a tariff filing, and if a hearing is requested and the Commission suspends the proposed rate, the requirements, and procedures set forth in KRS Chapter 278, and the Commission's regulations *apply equally to filings by a city-owned utility or a jurisdictional utility.*

Case No. 2017-00417, Order of 7/12/2018

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**PSC INVESTIGATION: PROCEDURAL RULES**

- Formal Proceeding Established
- Proposed Rate Suspended For 5 Months
- Scope Of Review: Reasonableness Of Rate
- Burden of Proof on Municipal Utility

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**PSC INVESTIGATION: PROCEDURAL RULES**

- Proposed Rate May Be Assessed After 5 Months subject to refund
- Final Decision Due Within 10 Months Of Filing (Case No. 2006-00403)
- Extensive requests for information possible\*
- Written Testimony required\*

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### PSC INVESTIGATION: PROCEDURAL RULES

- No cost-of-service study required (But Recommended)
- Intervening Parties not required to present testimony or participate in proceedings

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### PSC INVESTIGATION: PROCEDURAL RULES

- Hearing
  - No opening/closing statements
  - Cross-examination only
  - PSC Staff participates
- Decision issued within 240-280 days
- Agreement terminates Investigation

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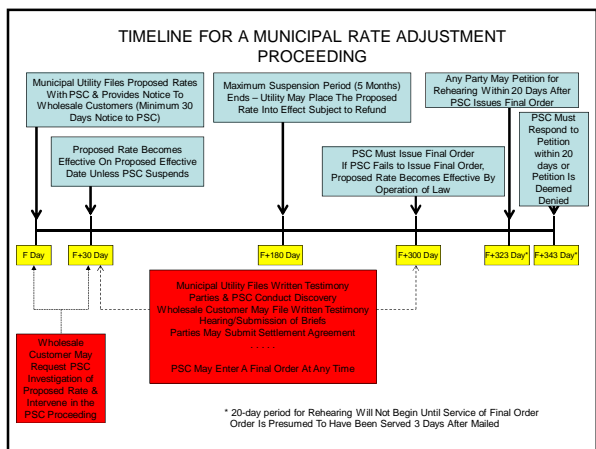
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**APPEAL PROCESS**

- Request Rehearing NLT 23 days after Order's Issuance
- PSC Must Rule Within 20 Days of Request
- Action for Review in Franklin Circuit Ct NLT 23 days of Rehearing Order

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**APPEAL PROCESS**

- Party May Bring Action For Review NLT 33 days of Initial Order Without Requesting Rehearing
- Appealing Party Must Demonstrate that Order is Unlawful or Unreasonable

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**LEBANON WATER WORKS:  
A CASE STUDY**

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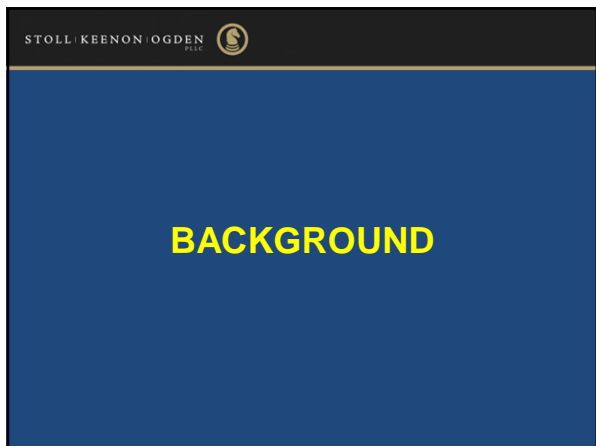
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**FINAL OUTCOME**

- Requested: 34% ↑
- Approved: 16% ↑
- Rate Case Expense Surcharge
  - \$72,000
  - \$2,000 per Month
  - 36 Months

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**BACKGROUND**

- Lebanon Annual Revenues: \$2,640,000
- Marion County WD Purchases >50%
- No Wholesale Rate
- Marion County WD Pays Retail Rate
- Flat Rate: \$2.50 per CCF
- No Cost of Service Study

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**BACKGROUND**

- Contractual Limitations (1988)
  - Several Amendments
  - Uniform Rate
  - 60-day Advance Notice
  - PSC Approved Contract
- Ordinance
- No Negotiation Room

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STOLL KEENON OGDEN PLLC 

**BACKGROUND**

- Customers
  - Lebanon: 2,650
  - MCWD: 5,800
- Last Rate Increase: 2013
- Revenue Increase: \$798,000

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**REASONS FOR RATE ADJUSTMENT**

- Campbellsville Water Line
  - Water Purchases \$490,000
  - Debt Service \$128,000
  - Depreciation \$ 63,000
- Other New Debt Service
- Deferred Maintenance
- Fully Funded Depreciation
- Increased Operating Expenses

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**TIMELINE**

Spring 2017	Rate Review
07-07-2017	Lebanon & MCWD Rate Discussions
07-10-2017	First Reading of Ordinance
July 2017	Numerous Public Meetings
08-07-2017	2d Reading Postponed (at MCWD's Request)
08-15-2017	Lebanon & MCWD Meet

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TIMELINE	
09-11-2017	Rate Ordinance Enacted
09-12-2017	Lebanon Notifies MCWD
09-20-2017	Rate Ordinance Published
09-27-2017	Retail Rates Implemented
11-15-2017	Proposed Effective Date (Wholesale Rate)
06-20-2018	Hearing
07-12-2018	Final Decision Issued

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STOLL KEENON OGDEN PLLC

## RATE CASE PREPARATION AND MANAGEMENT

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STOLL KEENON OGDEN PLLC

## COMMUNICATIONS

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**PRE-FILING DISCUSSIONS**

- Explain reasons for rate adjustment
- Provide supporting data/documents
- Negotiate before filing the rate with PSC
- Supplier should consider any objections & critiques of supporting data
- Customer should voice all reasonable objections and concerns

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**CONTRACT REVIEW**

- Limitations on frequency of rate adjustment
- Contract formula?
- Notice Requirements
- Is wholesale rate tied to retail rate adjustment?
- Other Concerns

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**RATE CASE PREPARATION**

- Assemble documents/materials necessary for response to 1<sup>st</sup> PSC Info Request
- Obtain a working knowledge of PSC process
- Research potential issues
- Begin tracking rate case expenses
- Retain attorney & rate expert & include them in preparation & negotiations

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**IF AGREEMENT IS REACHED**

- Wholesale customer's agreement should be in writing
- Ask for/prepare Wholesale Customer's letter stating no objection to proposed rate
- Include Acknowledgement of Notice & Waiver of right to a hearing
- File Letter/Acknowledgement with tariff sheet

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**COST OF SERVICE STUDY**

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**WHAT IS A COST OF SERVICE STUDY?**

- Used to determine the cost of providing service to customer groups based upon each group's water use characteristics and service requirements
- Used to determine a supplier's cost of providing service to a wholesale customer

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**BENEFITS OF A COST OF SERVICE STUDY**

- Produces critical information about Muni’s cost to serve all customer groups
- Identifies the specific cost to serve a wholesale customer
- Allows assessment of the applicant’s case for rate adjustment prior to proceeding
- Facilitates rate negotiations

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**PSC VIEW OF COST OF SERVICE STUDY**

“The Commission is of the opinion that a cost-of-service study is a **valuable tool** to developing fair, just and reasonable rates. It provides a thorough analysis of a utility’s expenses and revenues and serves as a starting point for ratemaking.”

Case No. 2009-00373, Order of 7/2/2010 at 7.

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**TIME TO PREPARE COST-OF-SERVICE STUDY**

“[T]he better practice in municipal rate adjustment proceedings is for the applicant to undertake and complete its cost-of-service study **prior to filing notice of its proposed wholesale adjustment**. Regardless of whether the municipal utility chooses to strictly adhere to the study’s results, the study provides critical information regarding costs for the wholesale supplier and customer that, if widely known, is likely to result in agreement on prospective rate adjustments.”

Case No. 2009-00373, Order of 7/2/2010 at 9.

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### TIME TO PREPARE COST-OF-SERVICE STUDY

“We place . . . all municipal utilities on notice that, in future proceedings where a municipal utility has failed to conduct such studies **prior** to the filing of its proposed rate adjustment, the additional litigation costs incurred by all parties will be a factor that will be considered in assessing the reasonableness of the costs related to an “after-filing cost-of-service study.”

Case No. 2009-00373, Order of 7/2/2010 at 9.

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### MUNICIPAL TAKEAWAYS

- Consider performing COSS as part of rate case preparations
- If study recently performed (< 5 years), across the board rate adjustment may be appropriate
- Provide wholesale customer with copy of COSS and access to COSS preparer

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### CUSTOMER TAKEAWAYS

- Request a copy of the COSS from Supplier
- Request opportunity to question COSS preparer
- Closely review the COSS’s assumptions to determine if realistic
- If assumptions are unrealistic, propose alternative assumptions
- Consider retaining own expert to review COSS

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STOLL KEENON OGDEN PLLC 

## RATE CASE ISSUES

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STOLL KEENON OGDEN PLLC 

## TEST PERIOD

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## TEST PERIOD

- A consecutive 12-month period
- Generally the 12 month-period reflected in the utility's most recent annual report or audit.

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**TEST PERIOD**

- Lebanon proposed a test period based on FY 2016 actual but adjusted for FY 2018 budget
- Significant changes in operations occurred in FY 2017 and were planned for FY 2018
- Significant Post-FY 2016 construction
- Audit Reports/Accounting Records for FY 2016 & FY 2017 filed in record Per PSC Staff Request

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**TEST PERIOD**

- (At close of hearing) Lebanon argues FY 2017 most representative of present operations
- PSC denies "request" for use of FY 2017 test period
- PSC: Proceeding was "conducted to determine the results, as adjusted, of" FY 2016 test period
- No discussion re: which period most representative

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**TEST PERIOD**

- PSC: Pro forma adjustments based on **budgetary projections** are neither known nor measurable and should be **disallowed**
- Actual FY2016 used – most adjustments based upon FY 2018 budget rejected
- PSC based salary/wage expense on **current wages & salaries**

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**TEST PERIOD**

- Employee retirement expense based on **current CERS contribution rate** (Not FY 2016)
- Depreciation based upon **existing facilities** (including post-test year construction)

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**TEST PERIOD:  
MUNICIPAL TAKEAWAYS**

- Use the most current year as test period
- Do not base adjustments upon budget projections
- Inflation factors unlikely to be accepted
- Time Rate Filing with completion of audit
- If major construction projects in progress, consider completion date

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**TEST PERIOD:  
MUNICIPAL TAKEAWAYS**

- Implement wage/salary changes NLT rate filing date
- Review operations for all known and measurable changes

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**TEST PERIOD:  
CUSTOMER TAKEAWAYS**

- Identify use of budgeted amounts or assumptions
- Can "Matching Principle" be applied to proposed adjustment?
- Identify the use of inflation factors

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**DEPRECIATION**

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**DEPRECIATION EXPENSE**

- Lebanon's proposed depreciation expense based on internally developed schedule of useful lives
- MCWD: Depreciation should be calculated using NARUC mid-point instead
- Use of NARUC mid-point reduced depreciation expense by \$168,648

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### DEPRECIATION EXPENSE

- No evidence offered in support of Lebanon’s schedule of useful lives
- Lebanon conceded issue for current proceeding, but reserved right to challenge future proceedings

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### PSC POSITION ON DEPRECIATION

- Utility bears burden of proof to demonstrate appropriateness of its useful lives
- In absence of evidence to the contrary, mid-point on NARUC Guide will be used
- PSC is skeptical of expert testimony questioning the use of NARUC Guide
- Consistent use of NARUC Guide mid-point since 2016 in all cases – jurisdictional & municipal utilities
- No successful challenge in last two years

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### DEPRECIATION: MUNICIPAL TAKEAWAY

- Compare your useful lives to NARUC Guide mid-point when calculating proposed rate
- If significant difference, determine if any support to justify continued use of current useful lives
- Retain engineer to assist in analysis & to prepare evidentiary support for present useful lives
- Perform cost-benefit analysis of accepting NARUC mid-point vs. cost of litigating issue
- Consider adjustments to useful lives when developing proposed rate

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STOLL KEENON OGDEN PLLC 

**DEPRECIATION:  
MUNICIPAL TAKEAWAY**

- **Tactical Consideration:** Request rates based upon current useful life revision, but consider conceding issue in negotiations or PSC proceeding
- Make no permanent concession but reserve right to challenge in future proceedings

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**DEPRECIATION:  
CUSTOMER TAKEAWAY**

- Request & examine Muni's depreciation schedule
- Compare Muni's useful lives to NARUC Guide mid-points – note variances
- Highlight significant variances at **each stage** of proceeding
- Depreciation on debt-financed assets is inappropriate; requires customer to pay 2X

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STOLL KEENON OGDEN PLLC 

**FRINGE BENEFITS**

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STOLL KEENON OGDEN PLLC

### FRINGE BENEFITS

- Lebanon in FY 2017 achieved 22.3% (\$54,144) reduction in employee health insurance costs
- PSC ordered disallowance of \$130,767 (\$76,623 more than savings)
- Reason for disallowance: Employees not required to pay a portion of the costs of single health insurance coverage

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### PSC POLICY

- PSC reviewing employers' contribution for health insurance cost
- If employer's contribution (%) exceeds BLS estimate of national average, recovery for excess **DENIED**
- PSC **encouraging** utility policies requiring employees to pay portion of health & dental insurance costs

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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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### MUNICIPAL UTILITY TAKEAWAYS

- Use Good Procurement Practices
  - Request Bids/Seek cost estimates from various providers annually
  - Document costs/efforts to reduce costs
- Determine the amount of likely disallowance prior to filing and if cost-effective to contest likely disallowance
- If not cost-effective, still document the record

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### MUNICIPAL UTILITY TAKEAWAYS

- 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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### MUNICIPAL UTILITY TAKEAWAYS

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

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**CUSTOMER TAKEAWAYS**

- Conduct discovery on employee's required contribution for the cost of health, vision, and dental insurance
- Argue for application of the PSC's rules on fringe benefits

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**PSC AUTHORITY TO MANDATE EMPLOYEE CONTRIBUTION**

- Employer Contribution is a **matter of managerial (Board) discretion**
- PSC jurisdiction limited to ratemaking
- PSC **CANNOT** restrict what employer pays for employee health insurance
- PSC **CANNOT** mandate employees contribute to health insurance cost

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STOLL KEENON OGDEN PLLC 

**FREE WATER**

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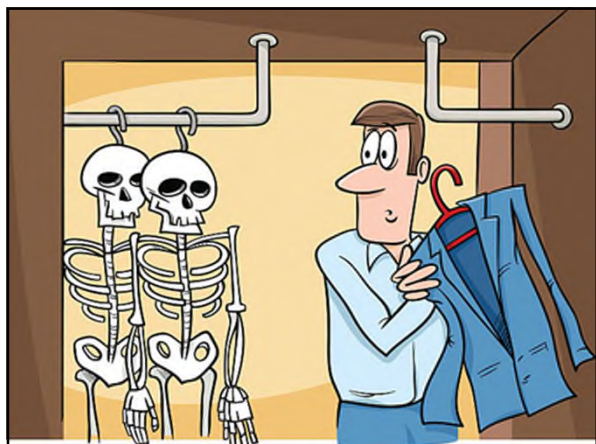
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**FREE WATER SERVICE**

- Lebanon provided 3,700,000 cf of water to City for sludge disposal service
- Not disclosed in initial testimony
- Revealed in responses to discovery
- Total Cost: \$92,500
- Estimated Cost of Sludge Disposal: \$64,980

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STOLL KEENON OGDEN PLLC

**FREE WATER SERVICE**

- MCWD: Revenue Requirement should be reduced to reflect water transfer
- Lebanon: Water revenues should be increased by \$92,500; Treatment costs increased by \$64,980
- PSC: Water revenues increased by \$92,500

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**FREE WATER SERVICE:  
MUNICIPAL TAKEWAYS**

- Muni will not be allowed to recover cost related to free services in wholesale rate
- Identify all free services
- City government should pay at minimum actual cost of service
- In-kind transactions should be avoided

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STOLL KEENON OGDEN PLLC 

**FREE WATER SERVICE:  
MUNICIPAL TAKEWAYS**

- Execute separate agreements for the provision of in-kind services
- Water service to City should be metered or measured

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**FREE WATER SERVICE:  
CUSTOMER TAKEWAYS**

- Request information on all services provided to various city departments
- Ensure a cost is assigned to such service & revenue requirement calculation reflects imputed income from such service
- Other services may be provided (e.g., billing and collection services for sewer/garbage/911 operations)

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STOLL KEENON OGDEN PLLC 

## RATE CASE EXPENSE

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## PAST PRECEDENT

- US Supreme Court (1939): “the utility should be allowed its fair and proper expenses for presenting its side to the commission
- *City of Owenton* (1998): City entitled to recovery regardless of when requested
- *City of Danville* (2015): City must provide notice of proposed recovery in its notice to PSC

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## RATE CASE EXPENSE PROPOSAL

- Separate charge to recover reasonable rate case expense
- PSC determines “reasonable level”
- Recovery over 36 Months
- Equal Installments
- Notice contains example (\$72, 000)
- Actual Expense: \$162,696

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### PSC RESPONSE

- Level of rate case expense “excessive”
- Limits Recovery to \$72,000
- Compares Lebanon’s expense to MCWD’s Expense to determine reasonableness
- Magnitude of Rate Case Expense to Requested Revenue Increase

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### PSC RESPONSE

- Lebanon had “duty to reasonably manage & control its expenditures” based upon original estimate
- Lebanon failed to give notice of actual amount
- Re-notice when estimated level exceeded

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### MUNICIPAL TAKEAWAYS

- Surcharge is most effective means of rate recovery
- Must be identified in initial notice
- If estimate of costs used, base estimate on robust litigation from PSC & customer
- Estimate will likely serve as cap
- Consider “actual costs” ILO estimate

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**MUNICIPAL TAKEAWAYS**

- Avoid re-notice for increased expense level – resets statutory clock
- Require Attorney to provide detailed invoices
- Be prepared to address comparisons with customer’s expense level

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**CUSTOMER TAKEAWAYS**

- Request and review Muni invoices
- Argue for longer recovery period
- Remember: Assessed rate case expense can be recovered through PWA

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STOLL KEENON OGDEN 

**CONCLUSION**

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STOLL KEENON OGDEN PLLC



# QUESTIONS?

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gerald.wuetcher@skofirm.com  
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## APPENDIX: RATE MAKING 101

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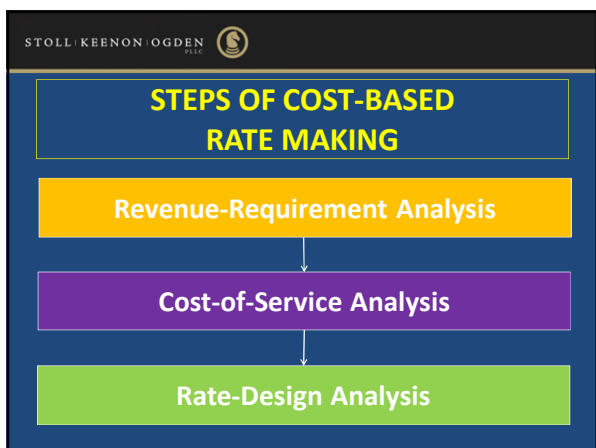
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STOLL KEENON OGDEN PLLC 

**WHAT IS A REVENUE REQUIREMENT?**

- The reasonable level of revenue required for a utility to properly operate and maintain its system and meet its financial obligations.
- A revenue requirement provides a basis for determining the amount of revenue to be collected from rates.

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**REVENUE TO BE COLLECTED FROM RATES**

TOTAL REVENUE REQUIREMENT

- Miscellaneous Operating Revenues
- Unrestricted Interest Income

= **Operating Revenue from Rates**

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**DETERMINING REVENUE REQUIREMENTS: DEBT SERVICE METHOD**

- Adjusted Operating Expenses
- + Average Annual Debt Service Requirement
- + Debt Service Coverage

= **Total Revenue Requirement**

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**AVERAGE ANNUAL DEBT SERVICE REQUIREMENT**

- Principal + Interest payable on long-term debt
- PSC generally uses a 5-year average

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**DEBT SERVICE COVERAGE**

Debt service coverage (DSC) is calculated based on the DSC required to issue bonds. This requirement is generally stated in the bond indenture.

- RD Debt                      120% or 1.2x
- KIA Debt                      110% or 1.1x
- Private Debt                      Varies

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**TEST YEAR**

- A consecutive 12-month period
- Generally the 12 month-period reflected in the utility's most recent annual report or audit.

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### REVIEW OF TEST YEAR

- Reconciliation of books to test year
- Review accountant's adjusting journal entries
- Review for proper accrual accounting
- Review of test year expenses

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### ADJUSTMENTS TO TEST YEAR

- Test year operations are adjusted to reflect 12 months representative of the utility's on-going, normal operations
- Adjustments must be **BOTH** known and measurable
- Adjustments must be **adequately documented**

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### PRO FORMA ADJUSTMENTS

- **Known or anticipated** increases or decreases in revenues and expenses
  - Increase in wage rates
  - Changes in Insurance –Taxes - CERS Contributions
- Supporting documentation required

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### NORMALIZING ADJUSTMENTS

- Adjustments to reflect a full 12 months of operations for items that changed during the test period
- Example: Electric Rate Increased During Test Period
- Supporting documentation required

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STOLL KEENON OGDEN PLLC 

### OPERATION & MAINTENANCE EXPENSES

- Salaries & Wages
- Employee Benefits
- Purchased Power
- Purchased Water
- Rent
- Chemicals

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STOLL KEENON OGDEN PLLC 

### OPERATION & MAINTENANCE EXPENSES

- Materials & Supplies
- Repairs & Maintenance
- General Overhead
- Includes Allocated Portion of **Common or Shared Costs** Between Utility Divisions

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**DEPRECIATION EXPENSE**

- Included in Revenue Requirement Determination for Non-Profit Water Districts & Water Associations
- Depreciation Expense for Non-contributed Property
- PSC Uses NARUC Guide

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**ALLOCATION OF COMMON COSTS**

- Combined Water/Sewer/Public Works Operations share costs
- Necessary to prevent subsidies
- Methodology to allocate expenses needed
- PSC will impose methodology if none

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**OTHER ADJUSTMENTS**

- Non-recurring expenses may be amortized over the life of expense
  - Tank painting
  - Rate case expense
- Capitalization of improperly classified expenses

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### ESTABLISHING RATES

- Cost of Service Study Used
- Across the Board Increase
- Balancing of Ratepayer Interests
- Rates must produce revenue requirement from rates

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RENDERED: AUGUST 17, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-000578-MR

CRITTENDEN-LIVINGSTON WATER DISTRICT

APPELLANT

v. APPEAL FROM LIVINGSTON CIRCUIT COURT  
HONORABLE C. A. WOODALL, III, JUDGE  
ACTION NO. 15-CI-00079

LEDBETTER WATER DISTRICT

APPELLEE

OPINION  
REVERSING

\*\* \*\* \* \*\* \* \*\*

BEFORE: ACREE, JOHNSON, AND JONES, JUDGES.

JOHNSON, JUDGE: On January 25, 2017, the Livingston Circuit Court entered a declaration of rights and summary judgment which voided an agreement for the purchase of water between appellant Crittenden-Livingston Water District (“Crittenden”) and appellee Ledbetter Water District (“Ledbetter”). Crittenden argues in this appeal that the circuit court erred in declaring the agreement to be a

franchise which failed to comply with Section 164 of the Kentucky Constitution and in voiding the agreement on that basis. Because we are convinced that the recent opinion of this Court in *Southeast Bullitt Fire Protection District v. Southeast Bullitt Fire and Rescue Department*, 537 S.W.3d 828 (Ky. App. 2017), is dispositive of the issues presented, we reverse the judgment of the Livingston Circuit Court.

### **BACKGROUND**

Ledbetter and Crittenden are non-profit water districts organized pursuant to Kentucky Revised Statutes (“KRS”) Chapter 74. Ledbetter was formed by orders of the Livingston Fiscal Court and Crittenden was formed by orders of the Fiscal Courts of both Crittenden and Livingston Counties.

In the year 2000, Crittenden and Ledbetter entered into a forty-year agreement whereby Ledbetter would purchase from Crittenden a minimum of 3 million gallons of water each month. Dissatisfied with the amount Crittenden was charging per thousand gallons of water, Ledbetter filed a complaint in 2015 alleging that the agreement was void as a franchise failing to comply with the requirements of Section 164 of the Kentucky Constitution. That section provides:

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. This section shall not apply to a trunk railway.

KY. CONST. § 164.

Ledbetter complained that because its agreement with Crittenden is for a period of more than twenty years and was not publicly bid, it is void and unenforceable under the Kentucky Constitution. In addition to its answer, Crittenden filed a counterclaim against Ledbetter. By agreed order, the circuit court bifurcated the proceedings and held Crittenden's counterclaim in abeyance pending a decision on the validity of the parties' agreement. After a hearing, the circuit court granted Ledbetter's motion for summary judgment, concluding that the water purchase agreement constitutes a franchise which failed to meet the requirements set out in Section 164.

This appeal followed.

### **STANDARD OF REVIEW**

In reviewing a grant of summary judgment, our inquiry focuses on “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scrifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). An appellate court need not defer to the trial court's decision on summary judgment because factual findings are not in issue. *Id.*

## ANALYSIS

As an initial matter, we note that when the circuit court issued its opinion of January 25, 2017, it did not have the benefit of our opinion in *Southeast Bullitt Fire Protection District, supra*. The facts of *Southeast* are strikingly similar to those of this appeal. In 1979, a fire protection district created under KRS Chapter 75 contracted with a non-profit fire department under KRS Chapter 273 to provide fire protection services in the district's area. The district agreed to pay the fire department the net proceeds of a fire protection tax for the provision of these services. With minor revisions and renewals, the contract remained in place until 2015 when the district's board filed an action for a declaration that the agreement constituted a franchise which, among other things, failed to comply with the requirements Section 164. The circuit court upheld the agreement. Pertinent to this appeal, the court in *Southeast* analyzed the types of entities subject to the proscriptions and requirements of Section 164. The Kentucky Supreme Court established the definition of "franchise" as follows:

A franchise is generally defined as a right or privilege granted by a sovereign power, government or a governmental entity to a party to do some act which such party could not do without a grant from the government. A franchise is a grant of a right to use public property or at least the property over which the granting authority has control.

*E.M. Bailey Distrib. Co. v. Conagra, Inc.*, 676 S.W.2d 770, 771 (Ky. 1984)

(citations omitted).

The court in *Southeast* noted that for a proper analysis, Section 164 must be read in conjunction with Section 163 which provides:

No street railway, gas, water, steam heating, telephone, or electric light company, within a city or town, shall be permitted or authorized to construct its tracks, lay its pipes or mains, or erect its poles, posts or other apparatus along, over, under or across the streets, alleys or public grounds of a city or town, without the consent of the proper legislative bodies or boards of such city or town being first obtained; but when charters have been heretofore granted conferring such rights, and work has in good faith been begun thereunder, the provisions of this section shall not apply.

KY. CONST. § 163. Construing these sections together, the court recognized a distinction between for-profit utilities and non-profit entities statutorily created for the provision of government services, emphasizing that the distinction “[r]emoves fire protection services from the utility category which would require a franchise and public bidding pursuant to Ky. Const. §164.” *Southeast*, 537 S.W.3d at 833.

As was the case in *Southeast*, this appeal concerns one public entity acquiring a service from another public entity in order to fulfill its public purpose, *i.e.*, the purchase of water to serve the citizens of its district. Each party is a non-profit, body corporate created and governed pursuant to KRS 74.010 *et seq.* In fact, KRS 74.070(1) unequivocally settles each district’s public character: “[t]he

commission shall be a body corporate for all purposes, and may make contracts for the water district with municipalities and other persons.” *See also Valla v. Preston Street Road Water District #1 of Jefferson County*, 395 S.W.2d 772, 774 (Ky. 1965) (“Preston District is a public corporation, sometimes called quasi-municipal, existing by virtue of KRS Chapter 74.”).

The import of the water districts’ public status was thoroughly explained by Kentucky’s highest court in an action involving a statutorily created sewer district:

When the Metropolitan Sewer District was established under the enabling statute, Chapter 76, Kentucky Revised Statutes, it became an independent body politic charged with administration of designated affairs. It was created by the sovereign power of the state as 'a public body corporate, and political subdivision'. KRS 76.010. The statute constitutes its charter. It exercises delegated powers of government which vitally affect the public health of the entire county. The Constitution in several sections recognizes the existence, present and future, of a municipal corporation other than a county, city, town or taxing district. Sections 157, 158, 159, 161, 164, 165, 180, 181. The Metropolitan District is a separate entity acting for its own purposes and possessing defined, though limited, powers of a municipal community. It meets the conventional descriptions or definitions of a 'municipality.'

*Rash v. Louisville & Jefferson County Metro Sewer District*, 309 Ky. 442, 217 S.W.2d 232, 236 (1949).

We are thus persuaded that, identical to the situation in *Southeast*, the public corporations in this appeal were free to contract for the provision of water service without implicating the franchise prohibitions and requirements of Section 164. Unlike a franchise, the contract did not grant governmental rights or privileges the other party did not already possess under KRS Chapter 74. It merely allowed Ledbetter to better serve its customers and fulfill its statutory duties by procuring water from Crittenden. We are therefore convinced that, under the rationale and holding of this Court in *Southeast*, the circuit court erred as a matter of law in concluding that the contract between Ledbetter and Crittenden constitutes a franchise and in voiding that agreement on that basis.

### **CONCLUSION**

Accordingly, the January 25, 2017 judgment of the Livingston Circuit Court is reversed.

ACREE, JUDGE, CONCURS.

JONES, JUDGE, CONCURS IN RESULT ONLY.

BRIEF AND ORAL ARGUMENT  
FOR APPELLANT:

Robert Frazer  
Marion, Kentucky

BRIEF AND ORAL ARGUMENT  
FOR APPELLEE:

Van F. Sims  
Paducah, Kentucky

BRIEF FOR KENTUCKY  
RURAL WATER ASSOCIATION,  
AMICUS CURIAE:

Stephen A. Sherman  
Louisville, Kentucky

Damon R. Talley  
Hodgenville, Kentucky

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

## **Scope of KPSC Authority**

### **Does the Public Service Commission regulate all municipal utilities?**

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

### **What is a “public utility”?**

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

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

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

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

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

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

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

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

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

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

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

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

No. In [City of Georgetown v. Public Service Commission](#), 516 S.W.2d 842 (Ky. 1974), Kentucky’s highest court held that the KPSC has no authority to resolve boundary disputes between a city and a public utility. See also [City of Lawrenceburg, Ky. v. South Anderson Water District](#), Case No. 98-256 (Ky. PSC June 11, 1998). KPSC, however, has the authority to prevent a public utility from constructing facilities to serve areas in which a municipal utility serves if the construction of such facilities would be a wasteful duplication of facilities. [City of Hawesville v. East Daviess County Water Association](#), Case No. 2004-00027 (Ky. PSC Mar. 25, 2004).

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

A municipal utility is not required to pay an assessment **unless** it provides telecommunications service. [KRS 278.150](#) requires only public utilities to pay an annual assessment to the KPSC, based upon its annual revenues, to pay for the KPSC’s operations. Except when it provides telecommunications services, a municipal utility is excluded from the definition of “utility.”

**Mandatory Filings with KPSC**

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

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



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

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

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

The KPSC has held that municipal utility wholesale rates that were in effect prior to April 21, 1994 do not require Commission approval and are presumed to be proper and valid. [City of Franklin v. Simpson County Water Dist.](#), Case No. 92-084 (Ky. PSC Jan. 18, 1996). Revisions or amendments to municipal rates for wholesale water or sewer service to a public utility that occurred after April 21, 1994 and that were not filed with the KPSC, however, may be considered unlawful or invalid and may be subject to refund. [KRS 278.200](#) prohibits any change in such rate "until a hearing has been had before the commission." The KPSC has asserted that failure to file revised rates with the KPSC prevents a municipal utility from lawfully charging the rate and requires refunds. [City of Danville, Kentucky](#), Case No. 2008-00176 (Ky. PSC Aug. 17, 2010).

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

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

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

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

If a written agreement exists and allows the municipal utility to revise the rate, a municipal utility will generally revise the rate through the adoption of an ordinance. Because the

ordinance changes a rate or service standard, [KRS 278.200](#) requires the municipal utility to obtain KPSC approval.

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

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

**Municipal Utility Rate Revisions**

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

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

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

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

**Are there any exceptions to this requirement?**

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

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

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

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

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

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

The KPSC has held that the proposed revision may not be placed into effect if the municipal utility fails to provide adequate notice. [City of Hodgenville, Kentucky](#), Case No. 96-326 (Ky. PSC July 12, 1996). The Kentucky Court of Appeals has found that a municipal utility's failure to comply with [KRS 278.180](#) will render its proposed revision void. [City of Russellville, Kentucky v. Public Service Commission](#), No. 2003-CA-002132 (Ky. Ct. App. Feb. 18, 2005).

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

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

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

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

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

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

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

**What is a tariff sheet?**

A tariff sheet is the form on which the KPSC requires all rates and conditions of service to be listed. The tariff sheet form can be viewed and downloaded at [http://psc.ky.gov/agencies/psc/forms/Tariff\\_Form-2.pdf](http://psc.ky.gov/agencies/psc/forms/Tariff_Form-2.pdf). Instructions for completing the form are found at [807 KAR 5:011](#).

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

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

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

The KPSC no longer accepts paper filings. A tariff sheet or contract must be filed electronically through the KPSC’s Electronic Tariff Filing System (“TFS”). The log-in for the TFS is found at <https://psc.ky.gov/Security/account/login.aspx>. A person must have an account to use the TFS. Directions for registering for an account with the TFS are found at [http://psc.ky.gov/agencies/psc/tariffs/E-file\\_Register.pdf](http://psc.ky.gov/agencies/psc/tariffs/E-file_Register.pdf). Instructions for using the TFS are found at [http://psc.ky.gov/agencies/psc/tariffs/E-file\\_Filing.pdf](http://psc.ky.gov/agencies/psc/tariffs/E-file_Filing.pdf). A video presentation on the TFS, including instructions, can be found at [http://psc.ky.gov/agencies/psc/Videos/2\\_e-](http://psc.ky.gov/agencies/psc/Videos/2_e-)

[file\\_prepare1\\_2013\\_0315.mp4](#). Questions regarding TFS registration or use should be directed to KPSC Tariffs Branch at (502) 782-2626 or (502) 782-2627.

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

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

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

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

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

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

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

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

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

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

copy of the KPSC Order establishing a formal proceeding to investigate the proposed rate and ordering the suspension of the proposed rate.

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

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

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

The KPSC has interpreted [KRS 278.190\(3\)](#) as requiring the issuance of a final decision within 10 months of the date on which the municipal utility filed its proposed rate schedule. If a final decision is not issued within that time period, the KPSC has held that that the proposed rate becomes effective by operation of law. [City of Falmouth, Kentucky](#), Case No. 2006-00403 (Ky. PSC June 27, 2007).

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

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

Historically, when the KPSC establishes a formal proceeding to investigate a municipal utility's proposed wholesale rate, it establishes a [procedural schedule for the proceeding](#). In a typical proceeding, it will require a municipal utility to file written testimony within 60 days of the initiation of the proceeding and to provide basic documents and information about the municipal utility's operations and finances. Based upon the municipal utility's response to the KPSC's Order, KPSC Staff will typically submit additional questions and requests for information to the municipal utility. Intervening parties have the right to request information from the municipal utility. (In typical cases, the only intervenor to the proceeding is the municipal utility's wholesale customer.). An intervenor also has the right to file written

testimony to support its position on the proposed wholesale rate. If an intervenor submits written testimony, the municipal utility and KPSC Staff may request information from that party. Unless the parties waive a hearing or the KPSC determines that a hearing is unnecessary, the KPSC will conduct a hearing on the proposed rate at its offices in Frankfort, Kentucky. As the parties have already filed written testimony, the hearing is generally limited to the cross-examination of witnesses. After the hearing, all parties may submit written briefs. The matter is then submitted for decision.

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

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

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

The municipal utility bears the burden to demonstrate that its proposed rate is reasonable. See [\*City of Owenton, Kentucky\*](#), Case No. 98-283 (Ky. PSC Sep. 22, 1998).

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

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

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

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

No. The KPSC's assignment of costs and revenue requirements is used only to determine a reasonable wholesale rate for the public utility. The KPSC does not review the reasonableness of a municipal utility's retail rates. *See, e.g., [City of Owenton, Kentucky](#), Case No. 98-283 (Ky. PSC Feb. 22, 1999).*

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

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

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

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

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

Yes. A municipal utility's reasonable rate case expenses are recoverable. These expenses generally include attorney's fees, expert witness fees, and expenses associated with cost-of-service studies. Recovery of these expenses, however, is not automatic. The municipal utility must specifically request recovery of these expenses. The request should be reflected on the tariff sheet that the municipal utility submits. *See, e.g., [City of Danville, Kentucky](#), Case No. 2014-00392 (Ky. PSC Aug. 13, 2015).* Moreover, the KPSC reviews the expenses and has in some instances denied recovery of expenses that it deemed "excessive" or "unreasonable." *See, e.g., [Hopkinsville Water Environment Authority](#), Case No. 2009-00373 (Ky. PSC July 2, 2010).* The KPSC has previously allocated a portion of the costs associated with a rate study to non-wholesale customers when it determined that such study could be used to establish non-regulated rates. *See, e.g. [Frankfort Electric and Water Plant Board](#), Case No. 2008-00250, (Ky. PSC. April 6, 2009).* In cases in which a municipal utility has requested recovery of rate case expenses and the KPSC has found such expenses to be reasonable, it has permitted the municipal utility to assess a surcharge on its public utility customers for a defined period to recover reasonable rate case expenses. The surcharge is in addition to the wholesale water rate. *See, e.g., [City of Owenton, Kentucky](#), Case No. 98-282 (Ky. PSC Feb. 22, 1999).*



**Is there any alternative method for a municipal utility to revise its rate for wholesale service to a public utility?**

Yes. In lieu of filing a tariff sheet with the KPSC, a municipal utility may file an application for rate adjustment. *See, e.g., [Bowling Green Municipal Utilities](#), Case No. 95-044 (Ky. PSC Apr. 7, 1995).*

**What should an application for rate adjustment contain?**

While the KPSC's [Rules of Procedure](#) do not specify the contents of an application for a municipal utility wholesale rate adjustment, it does set forth some general requirements for any application. These include: applicant's name, mailing address, and electronic mail address; the facts upon which the application is based; a request for the order, authorization, or permission desired; and a reference to the particular law requiring the application. *See [807 KAR 5:001](#), Section 14.*

The application should also include a tariff sheet that sets forth the proposed wholesale rate, a copy of the notice of the proposed rate change that was provided to the wholesale customer(s), and a written statement verifying the notice was mailed or personally delivered. The municipal utility's chief executive officer or a utility officer authorized to sign on his behalf should sign the tariff sheet and statement regarding notice. The tariff sheet should state a proposed effective date for the rate revision. This effective date should not be earlier than 30 days after the filing of the application.

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

**How does the KPSC's review of an application for rate adjustment differ from a tariff filing?**

The principal difference in the KPSC's review is procedural. Upon receipt of an application, the KPSC will assign a docket number to the application and establish a formal proceeding to review the application. The KPSC interprets KRS 278.180 and KRS 278.190 as requiring it to act on the proposed rate prior to the rate's proposed effective date. This action will involve requesting additional information, suspending the proposed rate, or approving or denying the proposed rate. The KPSC will announce its action by written order.

Applying the same standard that is used for municipal utility tariff filings, the KPSC has historically approved a municipal utility's proposed rate if the wholesale customer does not object or otherwise request an investigation of the proposed rate. If an objection or request for investigation is received before the effective date of the proposed rate, the KPSC has historically

suspended the proposed rate and issued a schedule for a more extensive review of the proposed rate. It then uses the same formal investigation procedures that [were previously discussed](#).

**What benefit, if any, is obtained by submitting an application for rate adjustment rather than using the tariff filing method?**

The use of application ensures compliance with [KRS 278.200](#) and eliminates any uncertainty regarding the lawfulness of the rate adjustment. In [Simpson County Water District v. City of Franklin](#), 872 S.W.2d 460 (Ky. 1994), the Kentucky Supreme Court interpreted KRS 278.200 as prohibiting any change in a rate or a service standard in a contract between a city and a public utility **until a hearing had been held** before the KPSC. Unless the KPSC suspends the proposed rate, the KPSC establishes no formal proceeding or holds any hearing when the tariff filing method is used. If the application method is used, the KPSC holds a hearing, even if only a “paper hearing,” in which the KPSC reviews the application and issues a written decision based upon the application’s contents.

**Rate Issues**

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

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

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

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

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

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

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

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

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

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

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

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# 2018 WATER LAW SERIES



## About the Speakers:

**SHAWN ROSSO ALCOTT** is a partner with Kerrick Bachert where her practice focuses on health care, medical malpractice and environmental law. Shannon represents the Allen County Water District as well as numerous other clients. She is a frequent speaker on healthcare law and has served as an adjunct professor in environmental law in the Department of Geology and Geography at Western Kentucky University. Before entering private practice, Shawn was a staff attorney for the Kentucky Court of Appeals and an Assistant Warren County Attorney. She holds a bachelor's degree from Vanderbilt University and earned her J.D. from the University of Kentucky College of Law.

**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.

**SARAH P. JARBOE** practices environmental law and civil litigation at English, Lucas, Priest, & Owsley, LLP. As part of her practice, she has represented municipal water and wastewater utilities and industrial dischargers in permitting and enforcement actions. Sarah has also advised clients on various environmental matters, including the Clean Water Act, the Underground Injection Control Program under the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), the Resource Conservation and Recovery Act, the Clean Air Act, and the Nonindigenous Aquatic Nuisance Prevention and Control Act. She is an experienced negotiator, having participated in negotiations in enforcement and permitting cases with the U.S. Environmental Protection Agency and the Kentucky Department of Environmental Protection, including the Kentucky Division of Water, Kentucky Division of Waste Management, and Division for Air Quality.



**DAMON R. TALLEY** is a member of the Utility & Energy practice at Stoll Keenon Ogden, focusing on water and wastewater utility law. His career includes representing water districts, water associations, water commissions, municipalities, privately owned utilities and numerous other utility clients. Damon aided in the development of the Kentucky Rural Water Association and has served as its general counsel since 1979. Additionally, he served as KRWA's representative on the Kentucky Infrastructure Authority Board from 2000 to 2015. Damon is a frequent speaker at training sessions sponsored by the KRWA, Public Service Commission, Division of Water, Utility Leadership Institute, Utility Management Institute and other industry groups.

**LAJUANA S. WILCHER** has extensive experience handling Clean Water Act (CWA) matters as a federal and state government regulator, and in private law practice representing business and municipal interests. The depth and breadth her experience position her to provide unique perspectives concerning policies and regulations implementing the CWA. Ms. Wilcher has represented and continues to represent numerous clients in complex environmental permitting, strategic, legislative and enforcement matters.

**MARY ELLEN WIMBERLY** is an associate attorney at Stoll Keenon Ogden. Her practice focuses on Utility & Energy law, representing utility companies in regulatory proceedings before the Kentucky Public Service Commission and other state and federal agencies. Mary Ellen received her J.D. from the University of Kentucky College of Law and also received her undergraduate degree from the University of Kentucky, where she majored in finance and economics.

**GERALD WUETCHER** is a member of Stoll Keenon Ogden's Utility & Energy practice. He spent more than 26 years at the Kentucky Public Service Commission, serving as a staff attorney, deputy general counsel and executive advisor. Although he worked on matters involving electric, natural gas, water and sewer utility issues, he is known for his experience in water and wastewater issues. Jerry developed the PSC's training program for water utility officials in 1998 and served as one of its principal instructors during his tenure at the PSC. After 27 years of service as a judge advocate in the U.S. Army, Jerry retired with the rank of Colonel. He is a regular presenter at seminars on utility law and regulation.



# **EXHIBIT 5**

## CLE Program Information

### 2018 Utility Law Seminar

#### Program Details:

Date: Oct-30-2018  
Location: Bowling Green KY  
Total Credits: 6  
Ethics Credits: 0  
Length (Minutes): 360  
Subject Codes: env  
Activity Code: 192426

#### Sponsor's Information:

Stoll Keenon Ogden - Lexington  
300 W Vine St Ste 2100  
Lexington KY 40507

Phone: (606) 231-3000

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v2.1

# **EXHIBIT 6**



## Wuetcher, Gerald

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**From:** Thompson, Wendy (DLG) <wendy.thompson@ky.gov>  
**Sent:** Thursday, October 11, 2018 11:00 AM  
**To:** Wuetcher, Gerald  
**Subject:** FW: Request for Approval of Training Program  
**Attachments:** TrainingApprovalRequestformUpdated2012.pdf

Hi Gerry! I am the new "Scott" and your former PSC co-worker who is now handling the County Officials Training Program. Your request for the 2018 Water Law Seminar has been approved for 6 hours.

Please let me know if you have any questions,

Wendy Thompson  
County Official's Training Coordinator  
Counties Branch  
Department for Local Government  
Office of the Governor  
1024 Capital Center Drive, Suite 340  
Frankfort, KY 40601  
502-892-3479

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**From:** Sharp, Scott A (DLG)  
**Sent:** Tuesday, October 9, 2018 1:21 PM  
**To:** Thompson, Wendy (DLG) <[wendy.thompson@ky.gov](mailto:wendy.thompson@ky.gov)>  
**Subject:** FW: Request for Approval of Training Program

**\*\*CAUTION\*\* PDF attachments may contain links to malicious sites. To verify the destination of the hyperlink in an attachment, hover your mouse over the link and verify the link address. If you are unfamiliar with the address or the address looks suspicious, do not click on the link and delete the email immediately. Please contact the COT Service Desk [ServiceCorrespondence@ky.gov](mailto:ServiceCorrespondence@ky.gov) for any assistance.**

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**From:** Wuetcher, Gerald <[Gerald.Wuetcher@skofirm.com](mailto:Gerald.Wuetcher@skofirm.com)>  
**Sent:** Tuesday, October 9, 2018 11:55 AM  
**To:** Sharp, Scott A (DLG) <[Scott.Sharp@ky.gov](mailto:Scott.Sharp@ky.gov)>  
**Subject:** Request for Approval of Training Program

**\*\*CAUTION\*\* PDF attachments may contain links to malicious sites. To verify the destination of the hyperlink in an attachment, hover your mouse over the link and verify the link address. If you are unfamiliar with the address or the address looks suspicious, do not click on the link and delete the email immediately. Please contact the COT Service Desk [ServiceCorrespondence@ky.gov](mailto:ServiceCorrespondence@ky.gov) for any assistance.**

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Mr. Sharp:

Attached to this message is a completed application for approval of a training program for county officials to be conducted on 10/30/2018 in Bowling Green, Kentucky by the Kentucky Rural Water Association and Stoll Keenon Ogden PLLC. A paper copy of this application has been mailed to the Department of Local Government this day. Please direct any questions regarding the application to me.

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 | Hodgenville | Evansville | Indianapolis | [skofirm.com](http://skofirm.com)**

The following message, and any documents or previous e-mails attached to it, may contain confidential information protected by the attorney-client privilege. If it was sent to you in error, do not read it. Please inform the sender that you received it and then delete it. Thank you.

# Elected County Officials Training Incentive Program Training Approval Request Form

Training Approval Requested By: Gerald E. Wuetcher

Title: Attorney Agency: Kentucky Rural Water Ass'n

Phone: 859-231-3017 E-mail: gerald.wuetcher@skofirm.com

**Requester:** Please complete both pages of this form, attach a copy of the detailed agenda that lists the start and end times of all training sessions while also indicating any breaks that may be given and submit to: **Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, KY 40601**  
**Phone: 800-346-5606 Fax: 502-573-3712 E-mail: scott.sharp@ky.gov**

## Training Event Information

Training Title: 2018 Water Law Seminar

Training Provider: Kentucky Rural Water Association and Stoll Keenon Ogden PLLC

Contact Name: Gerald Wuetcher Title: Attorney

Phone: 859-231-3017 E-mail: gerald.wuetcher@skofirm.com

Fax: 859-259-3517 Website: www.krwa.org / www.skofirm.com

Training Intended For:  *Fiscal Court*  *County Clerk*  *Sheriff*  *Jailer*  *All*

Registration Fees:  *Yes: Dollar Amount:* \$ \_\_\_\_\_  *No*

Enrollment Limitations:  *Yes: Maximum Enrollment:* # \_\_\_\_\_  *No*

Proof of Attendance:  *Individual POA Form*  *Sign-In/Out Sheets*  *Individual Certificate*

Training Dates with Locations:

October 30, 2018 - Holiday Inn University Plaza/Sloan Convention Center, Bowling Green, Kentucky

### FOR DLG USE ONLY

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_ Hours: \_\_\_\_\_

Denied By: \_\_\_\_\_ Date: \_\_\_\_\_

Elected County Officials Training Incentive Program Training Approval Request Form  
Page Two

Training Title: 2018 Water Law Seminar Provider: Kentucky Rural Water Ass'n/ SKO

Has this training been specifically designed for Kentucky's elected county officials?  Yes  No

Describe the learning objectives and how the content pertains to improving job knowledge or skills.

Upon completion of course, elected officials will have increased knowledge of recently enacted legislation and recent Kentucky Court and Public Service Commission decisions that significantly affect the operation and management of water and wastewater utilities, including water districts and municipal water utilities. They will gain a greater appreciation of some of the common legal issues that water and wastewater utilities face and possible courses of action for addressing those issues. They will also have a greater understanding of the potential implications of pending regulatory changes involving the Clean Water Act.

List Trainers and their Titles/Qualifications (attach short Bio's if necessary):

See attached agenda and biographical materials.

Describe any training materials that will be provided to the trainees:

Each attendee will be provided a paper copy of each presentation and the presenter's notes. Each will also be provided a flash drive containing approximately 1,500 pages in electronic format of applicable laws, regulations, Kentucky court decisions, and Public Service Commission orders, as well as several reference publications.

Is this training a requirement for County Officials? ( If Yes check applicable officials)  Yes  No

- Fiscal Court       County Clerk       Sheriff       Jailer       All

List corresponding KRS, KAR or other requiring entity:

KRS 74.020 (water district commissioners)

Attach detailed agenda to email prior to sending

Print Form

Submit by Email

# 2018 WATER LAW SERIES

October 30, 2018  
Holiday Inn University Plaza  
Sloan Convention Center  
Bowling Green, Kentucky



## Morning Agenda

**7:45 - 8:25** Registration and Refreshments

**8:25 - 8:30** Welcome and Program Overview | Gary Larimore

**8:30 - 9:30** Recent Developments in Utility Regulation | Damon R. Talley

This presentation reviews recent court decisions involving public and municipal utilities and discusses courses of action to mitigate the decisions' impact on utilities. Topics include franchises, wholesale water purchase agreements, obtaining PSC approval before borrowing money, underground excavation, Call Before You Dig, and unaccounted water loss. Special emphasis will be given to laws enacted by 2018 Ky. General Assembly that affect water and wastewater utility operations.

**9:30 - 9:45** BREAK

**9:45 - 10:45** Keeping the Lead Out | Greg C. Heitzman, PE

Learn how to keep the lead out of Kentucky's drinking water. In 2016, the Kentucky Energy and Environment Cabinet assembled a group of water industry experts from across Kentucky to examine existing protocols, lead/copper rules, service line replacement programs, compliance monitoring activities, and public education efforts. The Chair of this Work Group will review its findings and recommendations.

**10:45 - 11:00** BREAK

**11:00 - Noon** Top 10 Environmental Legal Issues | LaJuana S. Wilcher and Sarah P. Jarboe, English Lucas Priest & Owsley, LLP

Gain insight into significant environmental legal issues facing water and wastewater utilities, including challenges to fluoridation, unregulated contaminant monitoring, nitrates, and risk management plans.

**12:00 - 1:00** LUNCH (Provided On-Site)



PRESENTED BY:



# 2018 WATER LAW SERIES

October 30, 2018  
Holiday Inn University Plaza  
Sloan Convention Center  
Bowling Green, Kentucky



## Afternoon Agenda

### 1:00 - 2:00 Municipal Wholesale Rate Workshop - Part I | Damon R. Talley and Gerald E. Wuetcher

Presentation will provide an overview of the PSC's regulation of municipal utility rates for wholesale water and wastewater service to public utilities. Presenters will identify the basic rules the PSC uses when reviewing municipal utility rates, stress the importance of communicating with wholesale customers, address the procedures that a municipal utility must follow when adjusting its wholesale rates, discuss frequently recurring issues, and offer practical suggestions to obtain a favorable outcome. Presenters will also discuss strategies that a wholesale customer may use to oppose or minimize wholesale rate increases.

### 2:00 - 2:15 BREAK

### 2:15 - 3:15 Municipal Wholesale Rate Workshop - Part II | Damon R. Talley and Gerald E. Wuetcher

Municipal Wholesale Rate Workshop continues.

### 3:15 - 3:25 BREAK

### 3:25 - 4:25 Ask the Lawyers | Shawn Rosso Alcott, Damon R. Talley, Mary Ellen Wimberly, and Gerald E. Wuetcher

A panel of utility attorneys will address audience questions about legal issues that water and wastewater utilities routinely face. Among expected topics are Easements, Eminent Domain, Bidding Requirements, Claims Against Local Government Act, Debt Service Coverage, Whistle Blowers Act, Open Meetings Act, Open Records Act, Pension and Retirement Issues, general laws related to Special Purpose Governmental Entities, and PSC regulatory requirements.

### 4:25 - 4:30 Closing Remarks & Administrative Announcements | Gary Larimore



PRESENTED BY:



# 2018 WATER LAW SERIES



## About the Speakers:

**SHAWN ROSSO ALCOTT** is a partner with Kerrick Bachert where her practice focuses on health care, medical malpractice and environmental law. Shannon represents the Allen County Water District as well as numerous other clients. She is a frequent speaker on healthcare law and has served as an adjunct professor in environmental law in the Department of Geology and Geography at Western Kentucky University. Before entering private practice, Shawn was a staff attorney for the Kentucky Court of Appeals and an Assistant Warren County Attorney. She holds a bachelor's degree from Vanderbilt University and earned her J.D. from the University of Kentucky College of Law.

**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.

**SARAH P. JARBOE** practices environmental law and civil litigation at English, Lucas, Priest, & Owsley, LLP. As part of her practice, she has represented municipal water and wastewater utilities and industrial dischargers in permitting and enforcement actions. Sarah has also advised clients on various environmental matters, including the Clean Water Act, the Underground Injection Control Program under the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), the Resource Conservation and Recovery Act, the Clean Air Act, and the Nonindigenous Aquatic Nuisance Prevention and Control Act. She is an experienced negotiator, having participated in negotiations in enforcement and permitting cases with the U.S. Environmental Protection Agency and the Kentucky Department of Environmental Protection, including the Kentucky Division of Water, Kentucky Division of Waste Management, and Division for Air Quality.



**DAMON R. TALLEY** is a member of the Utility & Energy practice at Stoll Keenon Ogden, focusing on water and wastewater utility law. His career includes representing water districts, water associations, water commissions, municipalities, privately owned utilities and numerous other utility clients. Damon aided in the development of the Kentucky Rural Water Association and has served as its general counsel since 1979. Additionally, he served as KRWA's representative on the Kentucky Infrastructure Authority Board from 2000 to 2015. Damon is a frequent speaker at training sessions sponsored by the KRWA, Public Service Commission, Division of Water, Utility Leadership Institute, Utility Management Institute and other industry groups.

**LAJUANA S. WILCHER** has extensive experience handling Clean Water Act (CWA) matters as a federal and state government regulator, and in private law practice representing business and municipal interests. The depth and breadth her experience position her to provide unique perspectives concerning policies and regulations implementing the CWA. Ms. Wilcher has represented and continues to represent numerous clients in complex environmental permitting, strategic, legislative and enforcement matters.

**MARY ELLEN WIMBERLY** is an associate attorney at Stoll Keenon Ogden. Her practice focuses on Utility & Energy law, representing utility companies in regulatory proceedings before the Kentucky Public Service Commission and other state and federal agencies. Mary Ellen received her J.D. from the University of Kentucky College of Law and also received her undergraduate degree from the University of Kentucky, where she majored in finance and economics.

**GERALD WUETCHER** is a member of Stoll Keenon Ogden's Utility & Energy practice. He spent more than 26 years at the Kentucky Public Service Commission, serving as a staff attorney, deputy general counsel and executive advisor. Although he worked on matters involving electric, natural gas, water and sewer utility issues, he is known for his experience in water and wastewater issues. Jerry developed the PSC's training program for water utility officials in 1998 and served as one of its principal instructors during his tenure at the PSC. After 27 years of service as a judge advocate in the U.S. Army, Jerry retired with the rank of Colonel. He is a regular presenter at seminars on utility law and regulation.





# **EXHIBIT 7**

<p><b>Mail to:</b></p> <p>Division of Compliance Assistance          Certification and Licensing Branch          Operator Certification Program          300 Sower Blvd.          Frankfort, KY 40601</p>	<p>Commonwealth of Kentucky          Department for Environmental Protection</p> <p><b>Application for Approval of Courses for          Continuing Education Credit</b></p> <p><i>Drinking Water Treatment, Drinking Water Distribution,          Bottled Water,          Wastewater Treatment and Collection System</i></p> <p>Telephone: 1-800-926-8111          www.dca.ky.gov/certification</p>	<p><i>For Official Use Only          Do not write in this space</i></p>
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I. **Course Sponsor Information:** Agency Interest Number: 108571

A. Sponsoring Organization (school, business, association, etc.):

Kentucky Rural Water Association

Key Contact Person:

Name and Title: Janet Cole, Education Coordinator

Address: 1151 Old Porter Pike

City, State and Zip: Bowling Green, KY 42103

Phone and Fax: Ph: 270.843.2291 Fx: 270.796.8623

E-mail: j.cole@krwa.org

Web Page: www.krwa.org

One-Time Approval Requested  Two-Year Approval Requested

B. If individual requesting approval is different than the key contact person for the sponsor, please complete the following information:

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

II. **General Course Information:**

A. Title: 2018 Utility Law Seminar

B. Location and Date/s: Holiday Inn University Plaza/Sloan Convention Cntr, Bowling Green, KY / October 30, 2018

C. Cost per Student or Group: \$ \$199

D. Delivery Format or Media (check those that apply):

- |   |                                     |                                      |   |
|---|-------------------------------------|--------------------------------------|---|
| <input checked="" type="checkbox"/> Classroom | <input type="checkbox"/> Web/Online | <input type="checkbox"/> Laboratory  | <input type="checkbox"/> Exhibition     |
| <input type="checkbox"/> Field                | <input type="checkbox"/> CD-ROM     | <input type="checkbox"/> Video/Audio | <input type="checkbox"/> Correspondence |
| <input type="checkbox"/> Other<br>(Explain)   |                                     |                                      |   |



E. Continuing Education Credits (**hours**) Requested for Target Audience:

Drinking Water Treatment, Distribution and/or Bottled Water: 6 hrs.

Wastewater Treatment and/or Collection: 6 hrs.

**(Attach a detailed description explaining how this training relates to the wastewater treatment process.)**

**III. Required Items** (must be attached to submittal, check off as completed):

- A.  Course Learning Objectives
- B.  Criteria for Successful Completion by Operators
- C.  Agenda (timed with instructors identified and brief description of topics)
- D.  Credentials for All Instructors

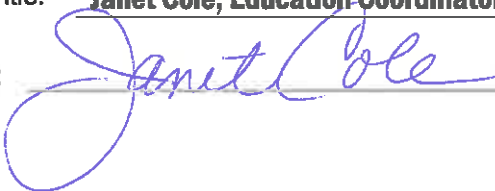
**IV. Additional Attachments** (required for distance learning courses, optional for other training):

- A.  Instructional Design (developed by whom/their credentials)
- B.  Curriculum Content (subject matter experts/their credentials)
- C.  Required Assignments and/or Examinations (type, passing score, etc.)
- D.  Mandatory Time Constraints (deadlines, granting of extensions, etc.)

**V. Signature of Sponsor's Contact Person**

I confirm that all information provided with this application is accurate to the best of my knowledge. A complete list of attendees and credits to be awarded to them will be forwarded on a "Continuing Education Activity Report" to the Kentucky Division of Compliance Assistance (within 30 days of completing the course when possible).

Printed Name and Title: Janet Cole, Education Coordinator

Signature and Date: 

September 25, 2018

**Training Sponsor:** Kentucky Rural Water Association  
**Session Title:** 2018 Utility Law Seminar  
**Date:** October 30, 2018  
**Location:** Holiday Inn University Plaza and Sloan Convention Center  
 Bowling Green, Kentucky

**Learning Objective:** The objective of the 2018 Utility Law Seminar is to provide useful information to attendees to help them better perform their roles as managers, operators, office personnel and decision-makers of water and wastewater utilities that will aid in performing their roles and enhance the operations at their facilities. The topics will address the latest in water utility (both municipal and public) regulation, governance and management.

**Criteria for Earning Training Credits:** Attendees will be granted credit for actual time attending the instructional sessions. The maximum number of continuing education credit hours that can be earned at this one-day class will be six (6) hours for water and wastewater operators.

### **TRAINING SUMMARY/TIMED AGENDA**

**8:30 a.m. - 9:30 a.m.** (DW/WW-1 hr.)

**Session 1:** Recent Developments in Utility Regulation  
**Presenter:** Damon Talley, Stoll Keenon Ogden

This presentation reviews recent developments in public utility law and regulation. Laws recently enacted by the Kentucky General Assembly, as well as recent court decisions and Public Service decisions that affect water and wastewater utility operations will be discussed.

**9:30 a.m. - 9:40 a.m.** BREAK

**9:40a.m. - 10:40 a.m.** (DW/WW -1 hr.)

**Session 2:** Keeping Lead out of Kentucky's Drinking Water  
**Presenter:** Greg Heitzman, BlueWater Kentucky

In 2016 the Kentucky Energy and Environment Cabinet assembled a group of experts from a broad spectrum of Kentucky's water and wastewater infrastructure whose mission was to examine existing protocols, lead/copper rules, service line replacement programs, 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 group will review the findings and recommendations.

**10:40 a.m. - 10:55 a.m.** BREAK

**10:55 a.m. - 11:55 a.m.** (DW/WW-1 hr.)

**Session 3:** Clean Water Rule: Definition of Waters of the United States  
**Presenter:** LaJuana S. Wilcher

This presentation will review U.S. Environment Protection Agency's rule defining the scope of waters protected by the Clean Water Act and discuss the rule's potential effects on water and wastewater utilities. A brief discussion of prior EPA efforts to develop the Rule, recent efforts to modify the Rule, and the litigation that the Rule has spawned will be included.

**12:00 p.m. - 1:00 p.m.** LUNCH

**1:00 p.m. - 2:00 p.m.** (DW/WW-1 hr.)

**Session 4:** Public Service Commission Review of Municipal Utility Rates – Part One  
**Presenters:** Damon Talley and Gerald Wuetcher, Stoll Keenon Ogden

An overview of the Public Service Commission's regulation of municipal utility rates for wholesale water and wastewater service to public utilities will be covered in this session. Discussion will include the history of such regulation, identify the basic rules that the Commission employs when reviewing municipal utility rates, address the procedures that a municipal utility must follow when adjusting its wholesale rates to a public utility, identify frequently recurring issues in municipal rate proceedings and offer practical suggestions to obtain a favorable outcome. The session will also address strategies that a wholesale customer may use to defend against wholesale rate increases.

**2:00 p.m. - 2:15 p.m.** BREAK

2:15 p.m. - 3:15 p.m. (DW/WW-1 hr.)

**Session 5: Public Service Commission Review of Municipal Utility Rates – Part TWO**

**Presenters: Damon Talley and Gerald Wuetcher, Stoll Keenon Ogden**

The presentation on municipal utility rate adjustments continues.

3:15 p.m. - 3:30 p.m. BREAK

3:30 p.m. - 4:30 p.m. (DW/WW -1 hr.)

**Session 6: Legal Issues in the Operation and Management of Water and Wastewater Systems: A Panel Discussion**

**Presenters: Shawn Rosso Alcott, Kerrick Bachert**

**Damon Talley, Mary Ellen Wimberly and Gerald Wuetcher, Stoll Keenon Ogden**

A panel of attorneys will address audience questions about legal issues that utilities routinely face. Among the expected topics are the Whistle Blowers Act, Claims against Local Government Act, Bidding Requirements, Eminent Domain, Local Model Procurement Law, general laws as related to special districts, and PSC regulatory requirements.

### **Speaker Bios**

**Damon R. Talley** is a member of the Utility & Energy practice at Stoll Keenon Ogden, focusing on water and wastewater utility law. His career includes representing water districts, water associations, water commissions, municipalities, privately owned utilities and numerous other utility clients. Damon aided in the development of the Kentucky Rural Water Association and has served as its general counsel since 1979. Additionally, he served as KRWA's representative on the Kentucky Infrastructure Authority Board from 2000 to 2015. Damon is a frequent speaker at training sessions sponsored by the KRWA, Public Service Commission, Division of Water, Utility Leadership Institute, Utility Management Institute and other industry groups.

**Greg Heltzman** 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. Greg, who is a licensed Professional Engineer in Kentucky, obtained his Bachelor and Master's degrees in Civil Engineering from the University of Kentucky and an MBA from the University of Louisville.

**Lajuana S. Wilcher** has extensive experience handling Clean Water Act (CWA) matters as a federal and state government regulator, and in private law practice representing business and municipal interests. In 1989 Ms. Wilcher was confirmed by the U.S. Senate to be the U.S. EPA's Assistant Administrator for Water in Washington, DC, where she served as the top federal official of EPA's Office of Water until 1993. In addition to her federal government service, Ms. Wilcher was a partner in the Washington, DC offices of large international law firms (focusing on water issues) before returning to her home town of Bowling Green and the firm of English, Lucas, Priest & Owsley in 2002. From 2003-2006 Ms. Wilcher served as Secretary of Kentucky's Environmental and Public Protection Cabinet. Lajuana Wilcher received a Biology degree from Western Kentucky University and Law degree from the Chase College of Law at Northern Kentucky University.

**Gerald Wuetcher** is a member of Stoll Keenon Ogden's Utility & Energy practice. He spent more than 26 years at the Kentucky Public Commission, serving as a staff attorney, deputy general counsel and executive advisor. Although he worked on matters involving electric, natural gas, water and sewer utility issues, he is known for his experience in water and wastewater issues. Jerry developed the PSC's training program for water utility officials in 1998 and served as one of its principal instructors during his tenure at the PSC. After 27 years of service as a judge advocate in the U.S. Army, Jerry retired with the rank of colonel. He is a regular presenter at seminars on utility law and regulation.

**Shawn Rosso Alcott** is a partner with Kerrick Bachert where her practice focuses on health care, medical malpractice and environmental law. Shawn represents the Allen County Water District as well as numerous other clients. She is a frequent speaker on healthcare law and has served as an adjunct professor in environmental law in the Department of Geology and Geography at Western Kentucky University. Before entering private practice, Shawn was a staff attorney for the Kentucky Court of Appeals and an Assistant Warren County Attorney. She holds a bachelor's degree from Vanderbilt University and earned her J.D. from the University of Kentucky College of Law.

**Mary Ellen Wimberly** is an associate attorney at Stoll Keenon Ogden. Her practice focuses on Utility & Energy law, representing utility companies in regulatory proceedings before the Kentucky Public Service Commission and other state and federal agencies. Mary Ellen received her J.D. from the University of Kentucky College of Law and also received her undergraduate degree from the University of Kentucky, where she majored in finance and economics.