

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

APPLICATION

Kentucky Rural Water Association (“KRWA”) and Stoll Keenon Ogden PLLC (collectively “Joint Applicants”) jointly apply for an Order from the Public Service Commission accrediting and approving a proposed water district management training program pursuant to KRS 74.020 and 807 KAR 5:070.

In support of their application, the Joint Applicants state:

1. KRWA is a non-profit corporation incorporated in the Commonwealth of Kentucky pursuant to KRS Chapter 273 on March 19, 1979 and is currently in good standing.
2. KRWA’s mailing address is: 1151 Old Porter Pike, Bowling Green, Kentucky 42103. Its email address is: j.cole@krwa.org.
3. KRWA was organized to foster professionalism in the water and wastewater industry through non-regulatory training, technical assistance programs, and advocacy. Its membership consists of water districts, water associations, municipalities with populations of 10,000 persons or less, and other similar entities that provide water and wastewater utility services to rural Kentucky.
4. Stoll Keenon Ogden PLLC is a Kentucky Limited Liability Company that was organized under the laws of the Commonwealth of Kentucky on December 28, 2005 and is

currently in good standing. It provides legal services to local, regional, national and international clients.

5. Stoll Keenon Ogden PLLC's mailing address is: 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801. Its email address for purposes of this Application is: gerald.wuetcher@skofirm.com.

6. The Joint Applicants propose to sponsor and conduct a water management training program on October 30, 2018 at Holiday Inn University Plaza/Sloan Convention Center, 1021 Wilkinson Trace, Bowling Green, Kentucky. The program is entitled "2018 Water Law Series." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

7. As reflected in **Exhibit 1**, the proposed training program will include presentations on recent developments in utility regulatory law, including a general overview of recent Kentucky court and Public Service Commission decisions; the findings and recommendations of the Kentucky Energy and Environment Cabinet's Working Group on Lead in Kentucky's Drinking Water; a review of the process that the Public Service Commission uses to review the adjustment of municipal utility wholesale rates; and a panel discussion on recurring legal issues present in the operation and management of water systems. These presentations will enhance the attendees' understanding of relevant legal issues involved in the management, operation, and maintenance of water treatment and distribution systems and are calculated to enhance and improve the quality of the management, operation and maintenance of the attendees' water systems.

8. The proposed training program consists of six hours of instruction and should be accredited and approved as water management training satisfying the requirements set forth in KRS 74.020(7) to establish a water district commissioner's eligibility for a maximum annual

salary of \$6,000. **Joint Applicants are not requesting that the proposed training program be accredited as a program of instruction for newly appointed commissioners.**

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

10. The written materials that each attendee will be provided are attached at **Exhibit 3**. These materials are of the same type and nature as those provided at accredited training programs that Stoll Keenon Ogden PLLC has previously sponsored.¹ In addition to a copy of each speaker's presentation, the Joint Applicants will provide each attendee with a flash drive containing an electronic copy of applicable laws, regulations, Kentucky court decisions, and Commission orders, as well as several reference publications. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, the Joint Applicants will include a copy of the revised presentation with their sworn statement and report regarding the instruction.

11. The Joint Applicants have applied or will shortly apply for accreditation of the proposed training program to the Kentucky Bar Association; the Department of Local Government; and the Department of Environmental Protection (Division of Compliance).

12. The Joint Applicants have sent notice of the proposed training program by electronic mail to the water districts, water associations, and municipal utilities that are under Commission jurisdiction as well as representatives of investor-owned utilities, county

¹ See *Electronic Application of Hardin County Water District No. 2 For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00110 (Ky. PSC May 9, 2018); *Electronic Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00091 (Ky. PSC May 9, 2018); *Application of Kentucky Rural Water Association Request For Approval of Commissioner Training And Continuing Education Credit*, Case No. 2017-00436 (Ky. Mar. 28, 2018); *Application of Northern Kentucky Water District For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2017-00144 (Ky. PSC March 23, 2017); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2016-00146 (Ky. PSC May 5, 2016); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2015-00147 (Ky. PSC May 18, 2015).

judge/executives, county attorneys, and members of the Kentucky Bar Association who are believed to have an interest in the proposed program's subject matter.

13. The Joint Applicants will retain a record of all water district commissioners attending the proposed training program.

14. No later than November 30, 2018, the Joint Applicants will file with the Commission a sworn statement:

- a. Attesting that the accredited instruction was performed;
- b. Describing any changes in the presenters or the proposed program curriculum that occurred after certification; and
- c. Containing the name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended;

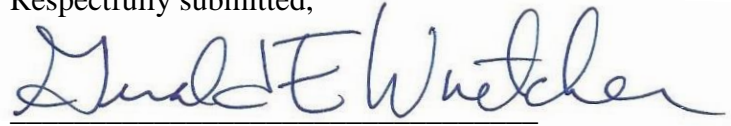
15. The Joint Applicants will include with the sworn statement documentary evidence of the program's certification by certifying authorities and a copy of any written material given to the attendees that has not been previously provided to the Commission.

16. Joint Applicants will admit representatives of the Public Service Commission to the proposed training program at no charge to permit such representatives to assess the quality of the program's instruction, monitor the program's compliance with the Public Service Commission directives, regulations or other requirements, or perform any other supervisory functions that the Public Service Commission deems necessary.

WHEREFORE, the Joint Applicants request that the Commission approve and accredit the proposed training program entitled “2018 Water Law Series” for six hours of annual water district management training.

Dated: September 18, 2018

Respectfully submitted,

A handwritten signature in blue ink that reads "Gerald E. Wuetcher". The signature is written in a cursive style and is positioned above a horizontal line.

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

*Counsel for Northern Kentucky Water District and
Stoll Keenon Ogden PLLC*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Joint Applicants' September 18, 2018 electronic filing of this Application is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on September 18, 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 September 20, 2018.

A handwritten signature in blue ink that reads "Gerald E. Wuetcher". The signature is written in a cursive style with a horizontal line underneath the name.

Gerald E. Wuetcher

EXHIBIT 1

Utility Law Seminar
Presented by
Kentucky Rural Water Association • Utility Leadership Institute
Stoll Keenon Ogden PLLC
October 30, 2018
Holiday Inn University Plaza/Sloan Convention Center
Bowling Green, Kentucky

- 7:45 - 8:25 **Registration and Refreshments**
- 8:25 – 8:30 **Program Overview and Welcome - Gary Larimore**
- 8:30 - 9:30 **Recent Developments in Utility Regulation – Damon R. Talley**
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 Commission decisions that affect water utility operations will be discussed.
- 9:30 – 9:40 **BREAK**
- 9:40 – 10:40 **Keeping Lead Out of Kentucky’s Drinking Water – Greg Heitzman**
In 2016 the Kentucky Energy and Environment Cabinet assembled a group of experts from a broad spectrum of Kentucky’s water infrastructure whose mission was to examine existing protocols, lead/copper rules, service line replacement programs, compliance monitoring activities, and public education efforts and to report its findings and recommendations on how to prevent lead from entering Kentucky’s drinking water. The working group recently completed its review and issued its report. The Chair of this Working will review the group’s findings and recommendations.
- 10:40 – 10:55 **BREAK**
- 10:55 - 11:55 **Clean Water Rule: Definition of Waters of the United States– LaJuana S. Wilcher**
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 utilities. Presenter will briefly discuss prior EPA efforts to develop the Rule, recent efforts to modify the Rule, and the litigation that the Rule has spawned.
- 12:00 – 1:00 **LUNCH**
- 1:00 - 2:00 **Public Service Commission Review of Municipal Utility Rates – Part One**
Damon R. Talley and Gerald Wuetcher
Presentation will provide an overview of the Public Service Commission’s regulation of municipal utility rates for wholesale water service to public utilities. Presenters will discuss 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 utility rate proceedings and offer practical suggestions to obtain a favorable outcome. Presenters will also discuss strategies that a wholesale customer may use to defend against wholesale rate increases.

- 2:00 – 2:15 **BREAK**
- 2:15 - 3:15 **Public Service Commission Review of Municipal Utility Rates – Part Two**
Damon R. Talley and Gerald Wuetcher
Presentation on municipal utility rate adjustments continues.
- 3:15 – 3:25 **BREAK**
- 3:25 – 4:25 **Legal Issues in the Operation and Management of Water Systems: A Panel Discussion**
Shawn Rosso Alcott, Damon R. Talley, Mary Ellen Wimberly and Gerald Wuetcher
A panel of attorneys will address audience questions about legal issues that water 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 related to special districts, and PSC regulatory requirements.
- 4:25 - 4:30 **Closing Remarks/Administrative Announcements - Gary Larimore**

EXHIBIT 2

SHAWN ROSSO ALCOTT

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.



Biography

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

2016

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

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

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

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



625 Myrtle Street
Louisville, Kentucky
502-533-5073



Damon R. Talley

Direct Phone: 270.358.3187

damon.talley@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. District Court, Eastern
District Of Kentucky

U.S. District Court, Western
District Of Kentucky

United States Supreme Court

EDUCATION

University of Kentucky College
of Law
1975, J.D.

University of Kentucky College
of Engineering
1972, B.S.M.E.

RECOGNITION

Sullivan Medallion, presented to
Outstanding Graduating Student,
University of Kentucky

Moot Court Board,
president, University of Kentucky
College of Law

Damon R. Talley

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

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

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

Outstanding Student, University
of Kentucky College of
Engineering

Omicron Delta Kappa,
president, University of Kentucky

Kentucky Association of Future
Farmers of America, president

Outstanding Citizen Award,
LaRue County Chamber of
Commerce, 1990

Outstanding Citizen Award,
Cave City Chamber of
Commerce, 1981

Outstanding Citizen Award,
Horse Cave Chambers of
Commerce, 1979

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LAJUANA S. WILCHER

Partner

English, Lucas, Priest & Owsley, L.L.P.

1101 College Street, P.O. Box 770

Bowling Green, KY 42102-0770

(270) 781-6500 (Phone)

(860) 227-3524 (Cell)

lwilcher@elpolaw.com



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.

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. Ms. Wilcher is the only woman confirmed in this position in the 40+ year history of EPA.

In that post, she was involved in the significant water policy, regulatory and legislative matters before the Agency, including EPA's positions on the scope of regulation under the CWA and wetland delineation, water quality standards, stormwater, CSOs, TMDLs, and drinking water issues. She also served as EPA's representative in the \$1.3 billion Exxon Valdez oil spill settlement, managed a staff of 600 Office of Water employees, and was the senior Office of Water official responsible for managing over \$1 billion per year in SRF loans and grants.

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 English, Lucas, Priest & Owsley, LLP in 2002.

From 2003-2006 Ms. Wilcher served as Secretary of Kentucky's Environmental and Public Protection Cabinet.

Ms. Wilcher has taught environmental law and policy courses at Vanderbilt University Law School and Vermont Law School. She has been listed in "The Best Lawyers in America" since 2009, where she currently is included in the Environmental Law and Environmental Litigation categories. She speaks frequently at national CWA conferences and presentations.



Mary Ellen Wimberly

Direct Phone: 859.231.3047

maryellen.wimberly@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

EDUCATION

University of Kentucky College
of Law

2016, J.D., magna cum laude

University of Kentucky

2013, B.S.B.E., summa cum
laude

RECOGNITION

Singletary Scholar

Wethington Fellowship

John Todd Shelby Memorial
Merit Scholarship

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

Order of the Coif

Mary Ellen Wimberly

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

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

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

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



Gerald E. Wuetcher

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BAR & COURT ADMISSIONS

Kentucky

U.S. Court Of Appeals For The
Armed Forces

U.S. District Court, Eastern
District Of Kentucky

U.S. District Court, Western
District Of Kentucky

EDUCATION

Emory University
1984, J.D.

Johns Hopkins University
1981, B.A.

Gerald E. Wuetcher

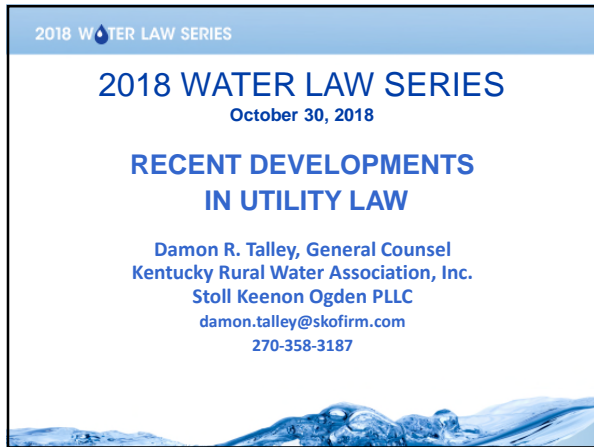
Jerry is Counsel to the Firm and a member of the Utility & Energy practice. He brings to Stoll Keenon Ogden more than 25 years of experience working at the Kentucky Public Service Commission, where he served as a staff attorney, deputy general counsel and executive advisor. He frequently appeared before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

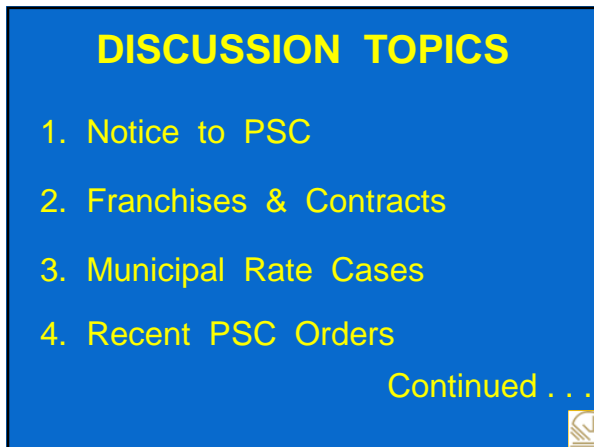
Jerry served for 27 years in the United States Army as a judge advocate before retiring at the rank of Colonel in 2011. His service encompassed numerous roles on active duty and in a reserve status.

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

EXHIBIT 3





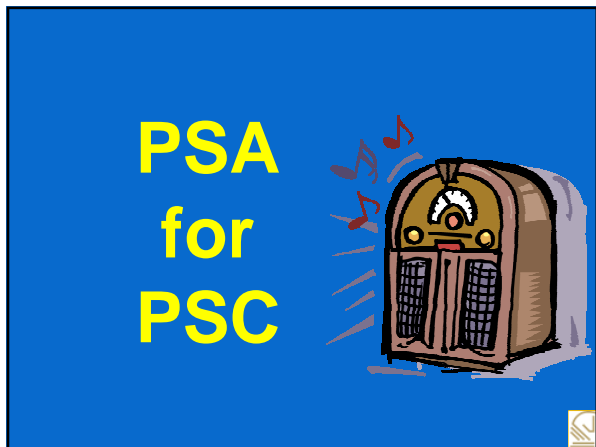


DISCUSSION TOPICS

5. Excessive Water Loss
6. Borrowing Money
7. 2018 General Assembly
8. 911 Funding Update







Reporting Requirements

- Must Notify PSC if . . .
 - Vacancy Exists
 - Appointment Made
- When? Within 30 Days

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



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



E-Mail Address

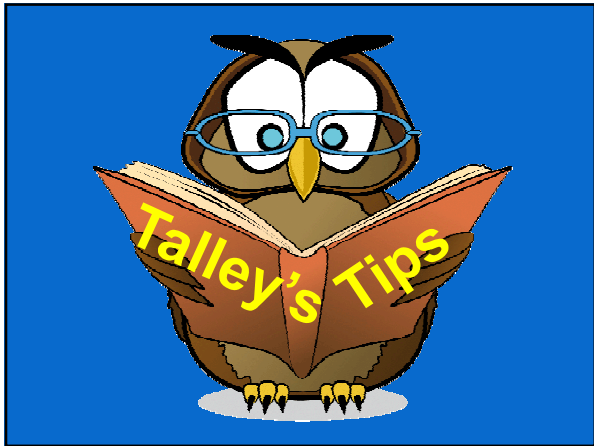
- Who is Covered?
 - Water Districts
 - Water Associations
 - Investor Owned Utilities
 - **Municipal Utilities**



Why Municipals?


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





Default Regulatory E-mail Address

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



**Franchises
and
Contracts**



Franchise

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





Franchise

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





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

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

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



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

Why?

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

...

How Long Is Long Term?

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

Significance

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

Legal Analysis

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

Court of Appeals

Crittenden - Livingston WD

vs.

Ledbetter WD

Case No. 2017-CA-000578
Briefs Filed: 7-31-17 & 9-21-17
Amicus Brief: 8-11-17
Oral Argument: 4-24-17
Reversed: 8-17-17



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.



C/A Rationale

▪ Distinction:

For - Profit Utility

versus

Non - Profit Utility

➤ Water District

➤ Public Entity



C/A Legal Analysis

- One Public Entity Acquiring Service From Another Public Entity
 - Purchase of Water Service
- Contract Not Franchise




C/A Legal Analysis

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



C/A Legal Analysis

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



C/A Holding

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

What's Next?

- Decision Not Final
- Rehearing ? ? ?
- Ky. Supreme Court ? ? ?
 - Discretionary Review

KRWA's Role

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

Municipal Wholesale Rate Increase

PSC Case No. 2017- 417

Seller: Lebanon
Buyer: Marion Co. WD.
Filed: 09-13-17
Hearing: 06-20-18
Decided: 07-12-18

Lebanon Results

- Requested: 34% ↑
- Granted: 16% ↑
- Rate Case Expense Surcharge
 - \$72,000
 - \$3,000 Per Month
 - 36 Months

Same Rules

“... 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.”



Issues

- Depreciation
- Fringe Benefits
- Wholesale Rate
- Free Water

Continued . . .



Issues

- Test Year
- Budgeted Numbers
- Cost-of-Service Study
- Rate Case Expense
- Other Twists & Turns







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

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



PSC Case No. 2017- 458

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



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



PSC Case No. 2016 - 394

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



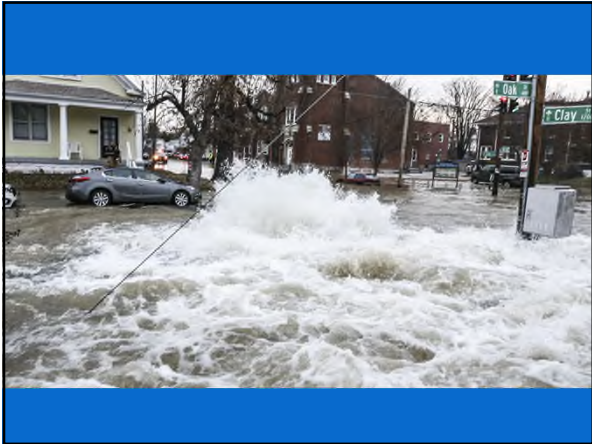
PSC Case No. 2016-427

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



**Excessive
Water
Loss**






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.”



Terms

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



PSC Case No. 2016 - 068

Decided: 8-17-16

Utility: Water District

Type: ARF

Issue: Excessive Line Loss



PSC Held:

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



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.”



Other Recent Water Loss Cases

PSC Case No. 2017 - 064


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

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.”

Actions by PSC


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



Actions by PSC


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

Continued . . .



Actions by PSC

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





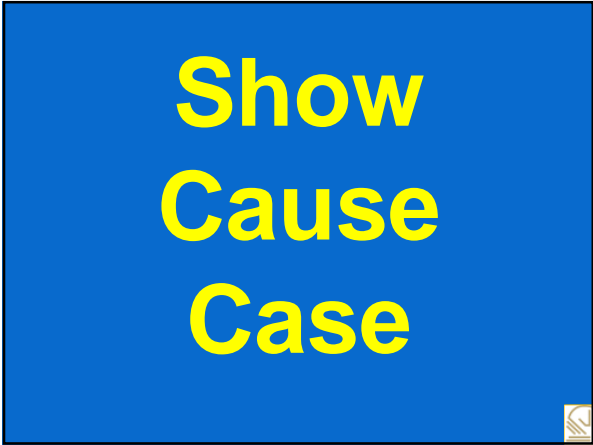
KRS 278.300(1)

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

Practical Effect

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










Consequences


- Debt Service Expense Excluded From Rates
- Delay Implementation of New Rates
- Formal Hearing
- Must Hire Attorney (1 or 2)

Continued . . .



Consequences

- Must Advertise Hearing
 - Link to PSC Website
- Hearing Livestreamed
- Commissioners Resign
- Fine (Suspended?)
- Threaten Merger
- Go to Training



Who Is Affected?

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

Talley's Take Aways

PSC Commissioners:

- PSC is **Serious** About . . .
 - Excessive Water Loss
 - Borrowing Money
 - Enforcing Its Orders

PSC Commissioners:

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



2018 General Assembly



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)



911 Funding Update

Campbell County Case
Greater Cincinnati / Northern Ky.
Apartment Assoc., Inc., et al
vs.
Campbell Co. Fiscal Court, et al
Supreme Court of Kentucky
479 S.W.3d 603 (Ky. 2015)
Opinion Rendered: 10-29-15
Became Final: 02-18-16

Parcel Fee

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

Current Status

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



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?



Recent Developments

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



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: ??-??-??



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 Due: 10-31-18

Opinion Rendered: ??-??-??



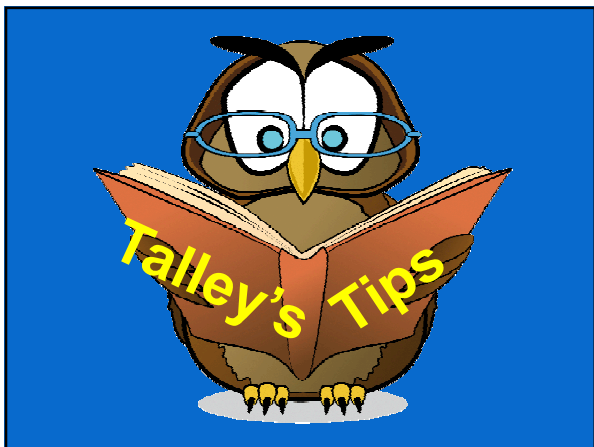


If Stuck With A Fee

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







QUESTIONS?

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270-358-3187

STOLL
KEENON
OGDEN

Kentucky Lead Workgroup Findings, Best Practices and Recommendations




Water Commissioner Training Seminar

Greg Heitzman, P.E.
Chair, KY Lead Workgroup
October 30, 2018
Bowling Green, Kentucky

1

Flint Public Health Crisis - 2015




HOUSE PANEL CHAIR ASSAILS EPA MISSTEPS IN FLINT CRISIS

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

Flint Spiggle
@flintspiggle

considering that he brought the question to EPA, doesn't believe officials acted in that manner in the past. That, of course, leaves the question of whether he should have been provided information in an earlier period by the

2



Trouble Spreading in 2016-2018



Which Cleveland suburbs have the most lead water pipes?

Pittsburgh water continues to exceed federal lead threshold

Ohio schools find hundreds of water fixtures with lead

Kentucky maintains safe lead levels in water

3



and it continues today in 2018 !

Detroit public schools shut off drinking water because of elevated levels of lead, copper

Schools Across the U.S. Find Elevated Lead Levels in Drinking Water

By Kim Misher
Updated on 9/12/2018 10:00 AM

High levels of lead found in drinking water at certain Florida schools


Detroit and Flint are not the only Water Systems with Concerns

<https://www.abc15.com/news/national/high-levels-of-lead-found-in-drinking-water-at-certain-florida-schools>



BARTON, Fla. — Four out of five Pinellas County schools in Florida analyzed for random water testing showed positive levels of lead high enough to be deemed unsafe for drinking or using to cook, prompting a district-wide sweep of testing.

Kentucky Lead Workgroup Members


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

 **Kentucky Lead Workgroup Resources**



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


5

 **Kentucky Lead Workgroup**



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

6

 **Kentucky Lead Workgroup**



- Expect Final Report to be completed by Sumer, 2018
- Deliverables:
 - ✓ Recommendations
 - ✓ Power point presentations on each topic area
 - ✓ Workgroup, compiled by sub-team/topic area
- Workgroup report will provide the following:
 - ✓ Summary of Kentucky's compliance with EPA's Lead and Copper Rule
 - ✓ Best practices for treatment of lead in drinking water
 - ✓ Best practices for removal of lead pipes, fixtures, etc.
 - ✓ Preparation for future regulatory changes (lower action levels)
 - ✓ Best practices for sharing lead information and educating consumers
 - ✓ Financing practices to fund replacement programs
 - ✓ Recommendations to State Agencies, Utilities, and Industry Associations

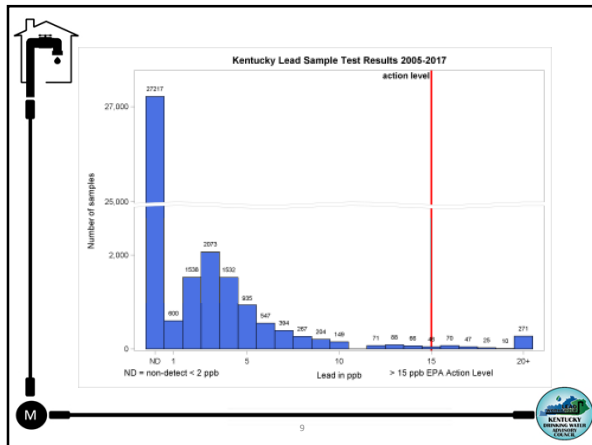
 

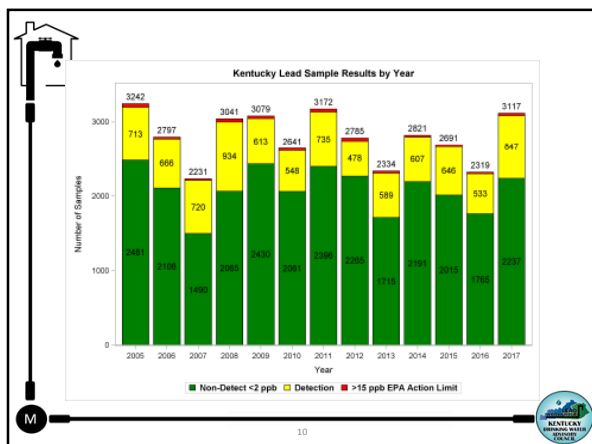
7

KY Lead Compliance Results

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









What Have We Learned?


US Lead Service Line Inventory



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


M

11



What Have We Learned?


Kentucky Lead Service Line Inventory



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

M

12




How does Kentucky Compare?


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

Kentucky Compares Favorably to National Average



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13





 **Regulatory Possibilities**


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




M 17

**32 Recommendations
of the
Kentucky Lead Workgroup**




M 18


 **State Level Recommendations (10)**

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



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




M 19

 **State Level Recommendations (10)**



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


20

 **State Level Recommendations (10)**



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


21

 **State Level Recommendations (10)**

9. Promote the use of U.S. EPA's 3T (Training, Testing and Telling) program for reducing lead in drinking water in schools and child care centers. The program includes: Training of school officials on the potential of lead in drinking water; Testing of drinking water in schools to identify potential problems and corrective actions (as needed); and Telling staff, parents, students and the local community about the testing results, potential risks and remedial actions taken by the school.
10. Monitor lead testing programs for schools and child care centers being used in other states and consider implementing in Kentucky following a review of benefits and costs.



 

22


 **Utility Recommendations (13)**

1. Conduct a Corrosion Control Evaluation (CCE) and develop a Corrosion Control Plan (CCP) for water treatment and distribution operations following the guidance provided in US EPA's Optimal Corrosion Control Treatment (OCCT) report published March 2016. A CCP should be developed when:
 - a) a new water source is introduced (including interconnects with utilities);
 - b) the water source is changed;
 - c) the water treatment process is changed (including chemical additives);
 - d) lead compliance sample results are near or exceed the EPA Action Level (currently 15 ppb);
 - e) an interim supply is needed (excludes emergency supply).



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


23

 **Utility Recommendations (13)**



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


24

 **Utility Recommendations (13)**



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


25

 **Utility Recommendations (13)**



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


26

 **Utility Recommendations (13)**



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


27

 **Industry Recommendations (4)**



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


28

 **Industry Recommendations (4)**



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


29

 **Research & Development Recommendations (5)**



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


30

 **R & D Recommendations (5)**

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



 

31



Approval Process and Next Steps

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




32



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Chair
Kentucky Lead Workgroup
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33

**Kentucky Rural Water Association**
Utility Management Institute

2018 Water Law Series
October 30, 2018
Bowling Green, KY

**What is WOTUS?
And Why Should I Care?**

By:
Lajuana S. Wilcher, English, Lucas, Priest & Owsley, LLP
Bowling Green, KY



Which of these
is not like the others?

A. POTUS B. FLOTUS

C. SCOTUS D. WOTUS



Who Should Care?



Utility Managers and Staff



- Construction of Buildings
- Installation of Tanks
- Development of Water Sources
- Installation of Utility Lines
- Build a Road (even temporary)
- Stream Crossing?

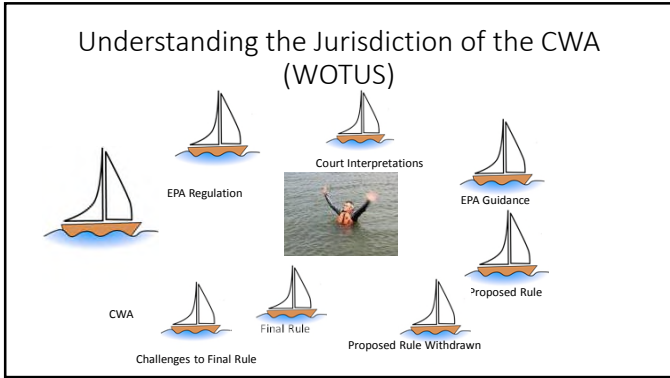
1 of 5



November 14, 2014
 Water Docket, EPA Docket Center
 EPA West, Room 3334
 1301 Constitution Avenue NW,
 Washington, DC.

RE: Proposed Rule - Definition of "Waters of the United States" Under the Clean
 Water Act (Docket ID No. EPA-HQ-OW-2011-0880)

The undersigned organizations represent the full spectrum of drinking water and
 wastewater service providers from both public and private sectors. Our organizations'
 members include both publicly owned and investor-owned utilities serving communities
 throughout the United States. We appreciate the opportunity to comment on the joint



Chantell and Michael Sackett

Sackett v. United States Environmental Protection Agency, 132 S. Ct. 1367 (2012)

9-0!

- EPA's compliance order was a "final agency action"
- Subject to an Article III (federal) court's judicial review.
- "The reach of the Clean Water Act is notoriously unclear."

U.S. Supreme Court Justice Samuel Alito

- CWA Section 404 provides that a person may not discharge “dredged or fill material” into “navigable waters of the United States” without a permit issued by the [U.S. Army Corps of Engineers].
- CWA Section 502 (7) **The term “navigable waters” means the waters of the United States**, including the territorial seas.

Joint Administration of Section 404



What “Waters” Are Covered by the CWA?




What "Waters" Are Covered by the CWA?



What Waters are WOTUS Subject to the CWA?


Concrete lined conveyances? Intermittent? Ephemeral?



What "Waters" Are Covered by the CWA?

Natural Resources Defense Council, Inc. v. Callaway, (D.C.) 1975

By defining the term 'navigable waters' to mean 'the waters of the United States, including the territorial seas,' Congress "asserted federal jurisdiction over the nation's waters to the maximum extent permissible under the Commerce Clause of the Constitution."



What is a wetland?

“... those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.”



1977 CWA Amendments

Added Section 404 (g) (1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters . . . which [are] or are susceptible to use . . . as a means to transport interstate or foreign commerce . . . **including wetlands adjacent thereto**), within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law . . .

What “Waters” Are Covered by the CWA?



U.S. v. Riverside Bayview Homes, Inc., (1985) The Corps’ interpretation of “the waters of the United States” includes wetlands that “actually abut” on “traditional navigable waters.”

What "Waters" Were Covered by the CWA?

- Defined by regulation
 - Waters used in interstate or foreign commerce
 - Interstate waters including interstate wetlands
 - "Other waters" which could affect interstate or foreign commerce, including those which are or would be used as habitat by... migratory birds that cross state lines
 - Impoundments of waters that would otherwise be within definition of waters of the United States
 - Tributaries of the above-listed waters
 - Territorial seas
 - Wetlands adjacent to waters



SWANCC v. Army Corps of Engineers
531 U.S. 159 (2001)

Corps exceeded its authority by asserting CWA jurisdiction over isolated, inland, non-navigable waters



EPA/Corps Guidance 2003

In the wake of SWANCC, EPA and the Corps issued guidance.

Abandoned 'Migratory Bird Rule' but jurisdictional reach remained broad.



Rapanos v. U. S., 547 U.S. 715 (2006)
No majority opinion (4-4-1)

- Scalia plurality . . . the term “waters of the United States” includes “only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic features’ that are described in ordinary parlance as ‘streams, oceans, rivers and lakes”
- Kennedy concurrence...waters with a “significant nexus to waters that are navigable in fact or that could reasonably be so made.”

Chief Justice Comments

"In response to the *SWANCC* decision, the Corps and the Environmental Protection Agency (EPA) initiated a rulemaking...

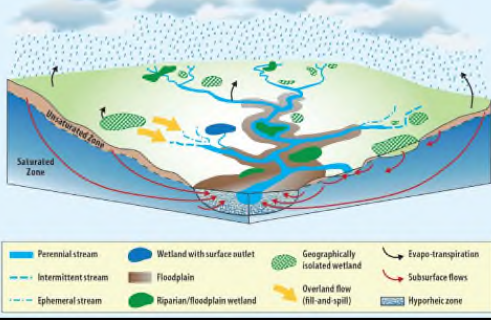


The proposed rulemaking went nowhere. Rather than refining its view of its authority... the Corps chose to adhere to its essentially boundless view of the scope of its power. The upshot today is another defeat for the agency."

Guidance and More Guidance

- June 2007 Memorandum of Agreement
- June 2007 Legal Memorandum
 - Public comments on Rapanos Guidance
 - Guidance revised
- December 2, 2008 Memorandum on Clean Water Act Jurisdiction Following Rapanos
- 2011 Draft Guidance
 - Extended comment period
 - Withdrawn

From EPA's Report on "Connectivity"





The Clean Water Rule (WOTUS)



In 2015, EPA and the Corps published the newly named "Clean Water Rule: Definitions of "Waters of the United States," after publishing a proposed rule and receiving 698,836 comments. 80 FED. REG. 37,054 (June 29, 2015).



- Defines tributary for the first time as water features with bed, banks, an ordinary high water mark, and downstream flow, additional case by case evaluations for adjacency.
- Includes waters adjacent to jurisdictional waters within a minimum of 100 feet and within the 100-year floodplain to a maximum of 1,500 feet of the ordinary high water mark.



- Includes specific waters that are similarly situated: Prairie potholes, Carolina & Delmarva bays, pocosins, western vernal pools in California, & Texas coastal prairie wetlands when they have a significant nexus.
- Includes waters with a significant nexus within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, as well as waters with a significant nexus within 4,000 feet of jurisdictional waters.

American Farm Bureau Federation



6th Circuit Court of Appeals

October 9, 2015: Rule stayed
"... we conclude that petitioners have demonstrated a substantial possibility of success on the merits of their claims."

February 22, 2016: 6th Circuit has jurisdiction over the petition for review the Clean Water Rule.

Briefing Schedule:
Petitioners due September 30th.
Agencies' consolidated response due November 30.
Intervenors' briefs due December 14.
Petitioners' consolidated reply due January 20.
Joint appendix due February 3rd.



So How Do You Get a Permit?



- Individual Permit?
- General Permit?
- Letter of Permission?
- 401 Certification?
- NEPA?
- ESA?
- NHPA
- 1987 Delineation Manual
- Regional Delineation Manuals



FEDERAL REGISTER

Vol. 77 Tuesday,
No. 34 February 21, 2012

Part III

Department of Defense
Department of the Army, Corps of Engineers
Reissuance of Nationwide Permits; Notice

Nationwide Permit 12 Utility Line Activities



CWA

What is a WOTUS? It depends on the day (or at least the month or the year or the Administration).

What is or is not regulated has changed over time . . . Even though the statute has not!



Conclusion

Moving dirt? Be alert
For fish and frogs and muck.
For if its wet, you'll regret
Not caring for a duck.

If soil is hydric, please don't try it
Unless you are permitted.
Don't break the law or soon you'll call
For help or be committed.

Don't be scared, just be aware
Of rules and regulations.
Do not cry. Just comply.
End of indoctrination.



Questions?

Contact
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860-227-3524





STOLL | KEENON | OGDEN
P L L C

**PUBLIC SERVICE COMMISSION REGULATION OF
MUNICIPAL UTILITY RATES**

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WHERE LAW IS AN ART.

LOUISVILLE | LEXINGTON | FRANKFORT | OWENSBORO | EVANSVILLE | GREATER PITTSBURGH | SKOFIRM.COM

Order of Presentation

- Historical Overview
- Basic Rules
- Procedure for Adjusting Wholesale Rates
- Potential Rate Issues
- Practical Suggestions for Rate Adjustments
- Resources

HISTORICAL OVERVIEW

Public Service Commission Act of 1934

- Created Public Service Commission
- Provided that PSC’s jurisdiction extended to rates and service of all “utilities”
- Defined PSC’s powers and duties in terms of “utilities”
- Set forth a utility’s obligations and duties to the public

Public Service Commission Act of 1934

Utility defined as:

persons and **corporations** or their lessees, trustees or receivers that now or may hereafter own, control, operate or manage ... any facility used or to be used for or in connection with the diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation

Public Service Commission Act of 1934

Corporation:

includes private, **quasi public and public** corporations, an association, a joint stock association, or a business trust

Cities fall within the definition of “utility” and are subject to PSC regulation

Public Service Commission Act of 1934

- Municipal Utilities Strongly Opposed PSC Act
 - Viewed PSC as threat to home rule/local control
 - Cities could regulate IOUs more effectively
 - No need to regulate publicly-owned utilities
 - Concern PSC would become captive of IOUs
 - Fear that PSC would prevent the creation and development of municipal utilities
- Efforts to exempt Municipal Utilities failed

1936 Amendment

Definition of “**Utility**” is amended :
 “Provided, however, that for the purposes of this act the term ‘utility’ or ‘utilities’ **shall not mean or include any city or town** or water districts established in pursuance of Chapter one hundred thirty-nine (139), Acts one thousand nine hundred twenty-six (1926), and amendments thereto, owning, controlling, operating or managing any facility or facilities enumerated in this paragraph.”

1936 Amendment

EFFECT OF AMENDMENT

Cities Excluded From Definition Of “**Utility**”
 No Longer Subject To PSC Regulation

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)

Horizontal lines for notes

PSC Regulation Resurrected: *Simpson County Water Dist. v. City of Franklin (1994)*

- Facts:
- 1963 Contract (\$0.21/1,000 gallons rate – changes permitted if applied to retail & wholesale alike)
 - 1986 Contract Revision Guarantees \$0.8478/1,000 gallon rate for 5 years
 - 1990: Franklin raises rate to \$1.3478/1,000 gallons
 - 1991: Franklin raises rate to \$1.67/1,000 gallons
 - Simpson County refuses to pay any amount in excess of \$0.845/1,000 gallons
 - Franklin brings action to collect unpaid portion of bills in Simpson Circuit Court & to declare contract void
 - Simpson District argues that Court lacks jurisdiction & only PSC can hear case – emphasizes **KRS 278.200**

Horizontal lines for notes

PSC Regulation Resurrected: *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.**

Horizontal lines for notes

PSC Regulation Resurrected:
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.**

PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin (1994)

MAJORITY:

- KRS 278.040 – A “Rates and Service” Exception exists to the exemption for cities & political subdivisions
- KRS 278.200 – Applies to Agreements between cities and utilities where the city is the seller of utility service
- While cities exempted from PSC regulation because they are not “utilities”, cities forfeit exemption when they contract to provide utility service to a utility
- Exception to exemption is designed to protect ratepayers of public utilities
- Contract will **always** exist when city sells to public utility

PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin (1994)

MINORITY:

- PSC has jurisdiction only over a **public utility’s** rates and service
- KRS 278.200 – Applies to agreements between cities and utilities only if **the seller is a public utility**
- KRS 278.200 designed to supersede any contrary provisions in franchise agreements between city & public utility

PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin (1994)

Unanswered Questions:

- What sections of KRS Chapter 278 apply to a city?
- What is the procedure for changing rates?
- How should PSC regulate cities?
 - Treat cities as a public utility?
 - Act as an arbitrator & intervene only if a dispute occurs?

BASIC RULES

RULE #1: Some, But Not All, Municipal Transactions are Subject to PSC Jurisdiction

- Contract for Sale of Service to Water District **Yes**
- Contract for Sale of Service to Water Association **Yes**
- Contract for Sale of Service to Investor-Owned Utility **Yes**
- Retail Service **No**
- Service to Other Cities **No**
- Service to Sanitation Districts/Other Special Districts **No**
- Service to Public Utilities **Without Contract** **No**

RULE #2: A Written Contract Is Necessary for PSC Jurisdiction

- KRS 278.200 refers to a **contract** between city and utility
- *City of Greenup, Ky. v. Pub. Serv. Com'n*, 182 S.W.3d 535 (2005):
 - The contract must be “made and executed by the mayor.”
 - If mayor has not executed a contract, no PSC jurisdiction
- *South Shore Water Works v. City of Greenup*, Case No.2009-00247 (Oct. 5, 2010). Sales made without a contract are **NOT** subject to PSC jurisdiction

RULE #3: Contracts/Rates Must Be Filed With PSC

- Administrative Case No. 351 (08/10/1994)
 - Municipal Utilities directed to file wholesale contracts & schedule of rates with PSC NLT 09/09/1994
 - New/revised contracts must be filed 30 days prior to effective date
- All municipal utility wholesale rates prior to 04/21/1994 are presumed reasonable (Case No. 92-084 01/18/1996)

RULE #3: Contracts/Rates Must Be Filed With PSC

- Municipal Utility (**Not Public Utility Purchaser**) is responsible for filing contract (Adm. Case No. 351 08/10/1994; Case No. 2001-230 10/19/2001)
- Consequences of Failure to Submit
 - Violation of PSC Order
 - Possible Penalty (Min = \$25; Max = \$2,500)
 - Municipal Utility lacks legal authority to charge rate – possible refunds of all monies collected (Case No. 2006-00072 01/12/2007)

RULE #3: Contracts/Rates Must Be Filed With PSC
(Statutory Basis)

- KRS 278.160(1): “[E]ach **utility** shall file with the commission . . . schedules showing all rates and conditions for service established by it and collected or enforced.”
- KRS 278.160(2): “No **utility** shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules . . .”
- KRS 278.180(1): “[N]o change shall be made by any **utility** in any rate except upon thirty (30) days’ notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect.”

RULE #3: Contracts/Rates Must Be Filed With PSC
Is Your Contract or Rate on File with PSC?

- Check PSC Tariff Library at:
<http://psc.ky.gov/Home/Library?type=Tariffs&folder=Water/Municipals>
- Unfiled Contracts/Tariffs
 - Contact PSC Tariffs Branch (502) 782-2626
 - Submit with Explanation for Failure
 - Possible Sanctions

RULE #4: A Municipal Utility Must File Its New Rate With PSC Before Charging The Rate

- Statutory Basis
 - KRS 278.200: Hearing Required for Increase
 - KRS 278.160: Rates Must Be On File With PSC
 - KRS 278.180: 30 Days’ Notice Before Becoming Effective
- System Development Charges (**807 KAR 5:090**)
- New/Revised Conditions of Service
- Dangers of Ignoring PSC
- Exception: Rate Formula

**RULE #5: PSC Jurisdiction Is Limited to Rates
And Service Issues**

Areas Outside of PSC Jurisdiction:

- Construction of Facilities - Certificates of Public Convenience & Necessity
- Service Area Disputes
- Uniform System of Accounts
- Reports to the PSC
- Assessments for Maintenance of PSC


**PROCEDURE FOR WHOLESALE
RATE ADJUSTMENT**

Procedure For 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*


**Procedure For Changing Rates:
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



**Procedure For Changing Rates:
Notice To Wholesale Customers**

- Contents of Notice – 807 KAR 5:011, §8(4)
 - Proposed Effective Date
 - Date Filed with PSC
 - Dollar & Percentage Amount of Proposed Change
 - Effect on Average Bill
 - Statement Re: Location of Filing for Examination
 - Statements Re: Intervention
 - Statement Re: Comments on the Proposed Rate



**Procedure For Changing Rates:
Notice To Wholesale Customers**

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

**Procedure For Changing Rates:
Recommended 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

PSC’s Actions Upon Receipt of Contract/Rate

- 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
- KRS 278.190: At any time 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

**Regulatory Models For Reviewing
Municipal Rate Proposal**

- Arbitrator Model
 - PSC’s sole purpose is to resolve disputes
 - PSC reviews the reasonableness of proposed wholesale rate **only when a dispute exists or Customer requests**
- Utility Model
 - PSC’s function is to determine the reasonableness of the proposed rate
 - PSC suspends and reviews in **all instances**

Standards for Suspension/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. 2006-00067)
 - Service Practice that conflicts with PSC Regulations (Case No. 2001-230)
- YES** – Suspend **NO** – No Action (Rate Takes Effect)

PSC Investigation: Procedural Rules

- Formal Proceeding Established to Investigate Proposed Rate
- Proposed Rate suspended for 5 months
- Scope of review: Reasonableness of proposed rate
- Burden of Proof on Municipal Utility to demonstrate reasonableness of proposed rate
- After 5 months municipal utility may assess proposed rate subject to refund
- PSC must issue a final decision on proposed rate within 10 months of filing (Case No. 2006-00403)

PSC Investigation: Procedural Rules

- Extensive requests for information possible*
- Written Testimony required*
- No cost-of-service study required (But Helpful)
- Intervening Parties not required to present testimony or participate in proceedings
- Hearing
 - No opening/closing statements
 - Cross-examination only
 - PSC Staff actively participates
- Decision generally issued within 240 days of initial filing
- If Agreement Reached, Investigation terminates

Test Period

- A consecutive 12-month period
- Generally reflects in the utility's most recent audit.
- Adjustments may be made to ensure revenues/expenses are representative of normal, on-going operations
- Adjustments must be BOTH known and measurable
- Adequately documented

Types of Adjustments

- Pro forma
 - Known or anticipated increases or decreases in revenues and expenses
 - Examples: Increase in Insurance Premiums/Electricity Rates/Wage Rates
- Normalizing
 - Adjustments made to reflect a full 12 months of operations for revenue and expense items that changed during the test period.

Allocation of Common Costs

- Expenses Incurred to Serve More Than One City Division or Function
- Examples:
 - Rental/Heating/Lighting - Office Building/City Hall
 - City Clerk's Salary
 - Water/Sewer Superintendent Salary
 - O&M Expenses for Automobiles/Backhoes/Other Equipment
- Written allocation procedures?
- Time/Job Logging?

Depreciation Expenses

- PSC considers depreciation expense when determining revenue requirements for non-profit utilities.
- Length of Service Lives
- Assets kept separately from other departments.
- Depreciation schedules should be available for review

Other Considerations

- Non-recurring expenses
- Capitalization of improperly classified expenses
- Reasonableness of Expense
- Lawfulness of Expense
- Debt Service Requirement Calculation

**PRACTICAL SUGGESTIONS
FOR RATE ADJUSTMENTS**

SUGGESTION #1:
Discuss with Wholesale Customers Before Filing

- Negotiate before Filing the Rate with PSC
- Explain reasons for Rate Adjustment
- Provide Supporting Data/Documents
- Consider Any Objections/Critiques of Supporting Data
- Consider the Economics/Practical Aspects of Negotiated Rate

SUGGESTION #2:
Document Wholesale Customer's Agreement

- Wholesale customer's agreement should be in writing
- Ask for/Prepare Wholesale Customer Letter stating no objection to proposed rate
- Include Acknowledgement of Notice & Waiver of right to a hearing
- File Letter/Acknowledgement with Tariff Sheet or Application

SUGGESTION #3:
Prepare For Litigation Before/During Discussions

- Assemble Documents/Materials Necessary for Response to 1st PSC Info Request
- Obtain a Working Knowledge of PSC Process
- Research Potential Issues
- Pre-Filing Conference with PSC Staff
- Track Rate Case Expenses
- Include Attorney/Experts In Preparation & Negotiations
- Consider **Application** ILO Tariff Sheet Filing

Document Assembly: Required Documents - I

- Written Testimony
- Independent Auditor’s Reports (Last two years)
- Detailed General Ledger
- Adjusted Trial Balance & Audit Adjustments
- Detailed Payroll Records
- Employee Job Descriptions
- Allocation Procedures for Shared Costs (including Payroll)
- Detailed Depreciation Schedules

Document Assembly: Required Documents - II

- For Each Outstanding Bond Issuance
 - Ordinance or Resolution
 - Amortization Schedules
- COS Studies
- Uniform Financial Information Report
- Detailed System Map
- Minutes of Council Meetings
- Communications with Wholesale Customers

SUGGESTION #4:

Give Close Attention to The Filing’s Details

- Rate Ordinance Should Reflect Potential for PSC Action
- State an Effective Date That Is At Least 30 days From the Filing Date
- **Precisely** Follow the Notice Content’s Requirements When Notifying Wholesale Customer

SUGGESTION #5:
Proposed Rate Is NOT The Only Requested Relief

- Request that Proposed Rate Be Placed Into Effect Immediately Subject to Refund
- Request Expedited Discovery and Hearing
- Ask PSC to Require Customer to State Its Objections At Start of Proceeding
- Expressly Request Rate Case Expenses!!!!
 - Method of Recovery
 - Periodically Update Rate Case Amount
 - Provide Invoices/Supporting Docs

SUGGESTION #6:
Be Prepared to Address These Issues

- Allocation of Costs Between Departments & Services
- Depreciation: Useful Life of Facilities
- Debt Service Requirements
- Costs Re: Facilities Not Yet In Service
- Rate Case Expense

SUGGESTION #7:
Use Electronic Filing Procedures

- Allows for Submission of Documents During Non-Business Hours
- Requires the production of only one paper copy (**instead of 10 copies**)
- Easier to organize & distribute documents
- Prompt delivery of PSC/Intervenor Documents

SUGGESTION #8:
Avoid Tariff Filing – File Application

- KRS 278.200: **No change without PSC hearing**
- Tariff Filing may not result in a “hearing”
- If no Hearing – Is there Compliance with KRS 278.200?
- File Application – Request Order
- Order Issued – Paper Hearing has occurred and Increase in Compliance w/KRS 278.200 – **Better Position**

SUGGESTION #9:
Be Weary of AG Intervention

- If Customer has intervened, AG has no standing to intervene
- May make settlement difficult
- AG may use the wholesale proceeding as a forum to question retail rates or wholesale rates charged to non-utility wholesale customers
- Consider Prior Briefing to AG & Inquire Re: AG’s Concerns

SUGGESTION #10:
Avoid Overreliance on PSC Staff

- Limited PSC Resources
- Lack of Familiarity with Municipal Utilities
 - Specific Utilities
 - General Legal/Managerial Aspects
- General Expectation of Negotiated Settlement Reduces Zeal to Investigate
- Consider Retaining Expert Assistance

RESOURCES

Resources

- FAQS Re: PSC Jurisdiction – KLC Website www.klc.org/userfiles/files/PSCFrequentlyAskedQuestions.pdf
- Laws Affecting Public Utilities (Blue Book) – PSC Website psc.ky.gov
- Compilation of Kentucky Public Utility Laws – SKO Website <http://bit.ly/1AsC9NB>
- PSC Web Site – psc.ky.gov
- PSC Recent Developments - <https://twitter.com/gwuetcher>

Questions?

DISCUSSION TOPICS

For

ATTORNEYS' PANEL DISCUSSION

1. New Rules for Water Commissioner Training. The Public Service Commission recently announced new rules for water district commissioner training. How will these new rules affect new commissioners? How will they affect commissioners that have already received new commissioner training?

2. 911 Fees. My water district is located in a county whose fiscal court has announced its intention to impose a fee on water service to finance 911 service. Under the proposed fee, water suppliers must collect the fee. The fee, however is imposed on the customers, not the water district. My commissioners considered opposing the fee but determined that such opposition would damage the water district's public image and its relations with fiscal court. They have chosen not to oppose the fee but still have some concerns regarding the fee's imposition. What are the potential problems of What actions would you recommend that the water district take to protect its interests.

3. Show cause Orders from Public Service Commission. My water district and its commissioners recently received an order for the Public Service Commission in which the Commission alleged that the water district had violated a provision of KRS Chapter 278 and that the water district's commissioners had aided and abetted the alleged violation. What general actions should a water district take when it receives such Order? What actions should its commissioners take? Can the water district's lawyer represent both the water district and the commissioners? If not, can the water district pay the water district commissioners' legal expenses to retain their own attorney? If the Public Service Commission assesses a fine or civil penalty against the water district commissioners, can the water district pay the fine or reimburse the commissioners? If a fine or penalty is assessed against the water district, can the water district's commissioners be liable for the fine or civil penalty? What are the water district commissioners' rights in such a proceeding? What are the sanctions that the Public Service Commission can impose against the water district commissioners?

4. Dealing with Public Service Commission Staff during Rate Cases. My water district has a rate case application pending before the Public Service Commission. Commission

Staff has scheduled a field visit to review the water district's records. How should I and my staff approach this review? Should the water district's lawyer be present? How should my staff handle questions that Commission Staff poses or its requests for documents? What are my district's obligations to provide documents or records? Are there any documents or records that I can withhold from Commission Staff (for example, personnel records, litigation records)? What, if anything, should I do to document the visit? If my water district receives informal requests after the visit for more information, how should my water district respond?

5. Application for Service.

a. Should a water utility require new applicants for service to complete and sign an application form?

b. What conditions of service or requirements should be set forth in the application form/contract for service?

c. Should the Application form/service contract be filed with the Public Service Commission if the utility is regulated by the Public Service Commission?

2. Automated Calls to Customers. Many utilities are instituting automated calling systems that permit utilities to make voice calls or send text messages to customers to advise of boiled water advisories, water line flushing and due bills. What, if any, laws should a water utility consider before implementing such a system?

3. Requesting PSC Staff Opinion. Last year, I went to a seminar and learned that the PSC will issue a legal opinion to utilities if requested. **The opinion is free.** Should a utility request an opinion from the PSC Staff? If so, under what circumstances? Are there alternatives to requesting an opinion from the PSC Staff?

4. Requesting AG Opinion. The Office of Attorney General advertises that it will provide legal opinions for local governments, water districts, and other public agencies. **The opinions are free.** If my utility needs legal advice, should it request an opinion from the Attorney General's office? What are the downsides to asking for an AG opinion?

5. Construction of New Office Building. Is a certificate of public convenience and necessity required? My utility has been saving money to construct a new office building.

What approvals, if any, does it need to obtain from the Public Service Commission before starting construction? Also, do we have to pay Prevailing Wages?

6. Expansion of Existing Office Building. Is a certificate of public convenience of necessity required? My utility just acquired another utility. We need to add a wing to our existing office building. Does it need to obtain permission from the Public Service Commission before starting construction? Also, do we have to pay Prevailing Wages? What if the water district employees do the work during “slow” times? Does this make a difference?

7. Local Model Procurement Code. What are the advantages and disadvantages of adopting the Local Model Procurement Code? Do many local governments and special districts adopt the Code?

8. Termination of Water Service for Failure to Pay Sewer Bill. My water district provides water to some customers who receive sewer service from the City. Some customers pay their water bill, but do not pay their sewer bill. The City wants the water district to “cut off” water service to those delinquent customers. Must my water district terminate water service to those customers? May my water district charge the City for turning off their water? What if the sewer service provider is another water district? Should the water district have a contract for terminating service?

9. Termination of Water Service for Failure to Pay Other Bills Owed to City or County Governments or Other Special Districts. Can my water district be required to bill for other governmental services such as garbage collection or storm drainage? If so, what are my district’s obligations to its customers? Does it need Public Service Commission approval? Can it terminate service for a customer’s failure to pay bills for those other services?

10. Providing Other Services.

a. My water district has been approached by a privately owned sewer utility about providing billing and collection services for it. May the water district provide such services?

b. Several out-of-state firms have approached my water district about advertising their water line warranty service. Under this service, the third party company charges a monthly fee or premium. In return, it will repair or replace a damaged water service

line when the repair or replacement is needed. Are there any approvals that my district needs to obtain before providing this service?

c. The county judge wants to find a better alternative to collecting county-wide garbage collection or solid waste fee. He has requested that the local water district bill and collect the fee and terminate water service to any person who fails to pay the garbage collection fee. Is this permissible? What, if any approvals are required?

11. Investment Policy. Does a water district need a written investment policy? In what investments can a water district invest its funds? **See KRS 66.480.**

12. Bidding Requirements. My water district provides water service to three different counties. When is it required to publish notice requesting bids to provide services or goods? Does it have to publish notice in each county?

13. Cybersecurity. Are there any specific laws or regulations that a water district must follow to protect its data?

14. Out-of-State Bidders. If an out-of-state entity bids on the project or a request to provide goods and services and is the successful bidder, are there any special requirements that a water district must observe before it can award the bid to the out-of-state firm?

15. Whistle Blower Act. There is something shady going on at my utility. I have to tell somebody. If I report this activity to the State Auditor, will I get fired? My friend works for the Federal Government. She says there is a federal Whistle Blower Act. Does Kentucky have a Whistle Blower Act? If so, am I covered?

16. Purchase of Real Property at Public Auction. My utility needs to buy land for a new water storage tank. We have had our eyes on a small farm located at the top of a hill. Our new tank would work great at that location. The farm is being sold at public auction. The Kentucky Open Meetings Act really “ties our hands.” I know we can go into Executive Session to discuss this matter, but we cannot vote on anything while in Executive Session. If we make a motion in Open Session to buy the property, the whole world will know our plans. The auctioneer will run the price up on us. What do we do? Any advice?

17. Email Communications with PSC. The Public Service Commission has contacted my water district several times to inquire about its failure to submit required reports or

answer correspondence. In each instance, the Public Service Commission official told us that it had sent the request or reminder by e-mail. Doesn't the Public Service Commission have to send its request by regular mail? What is the water district's obligation to maintain an e-mail address with the Public Service Commission? What e-mail address should we use? What is the water district's obligation to maintain a current e-mail address with the Public Service Commission? Who should be responsible for looking at the emails and distributing them to the appropriate person?

18. Service Boundary Agreements. There is an overlap in the City's water service area and my utility's service area. Developers are always trying to "play" one of us against the other to get the best deal possible. We are tired of this. The City has been talking to us about "dividing-up" the territory so there is a bright line separating our service areas. Is this legal? If we reach an agreement, will it be binding on future developers or customers? Does the agreement require Public Service Commission approval?

19. Trading Customers. Because of dead-end lines and low pressure, we are considering "giving" some of our customers to a neighboring utility. Is this legal? Does it have to be an "even swap?" Do we have to charge the other utility or may we simply "give" the customers away? Do we have to tell the PSC?

20. Customer Complaints. Recently, my water district has had several irate customers complaining about customer service issues. Though it has tried to address these concerns, on several occasions it has been unsuccessful. The complaining customers have contacted the PSC's Consumer Services Branch, who in turn have called us. On several occasions, the representative from the Consumer Services Branch has ordered us to take some action. Is the water district required to comply with the representative's "Order"? What happens if the water district does not comply?

21. Public Notice. Several water utilities operate webpages. Some water utilities lack the resources to have a web page, but operate a Facebook page. Do water utilities that have either a webpage or Facebook page have any obligation to post notices on those sites when adjusting their rates for water service.