

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF HARDIN)
COUNTY WATER DISTRICT NO. 2 AND)
STOLL KEENON OGDEN PLLC FOR) CASE NO. 2019-00082
ACCREDITATION AND APPROVAL OF A)
PROPOSED WATER DISTRICT)
MANAGEMENT TRAINING PROGRAM)**

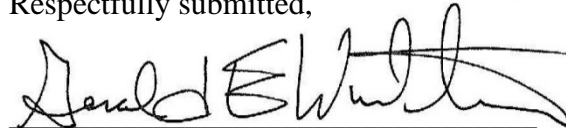
NOTICE OF FILING

Hardin County Water District No. 2 and Stoll Keenon Ogden PLLC (“Joint Applicants”) give notice of the filing of the following documents:

1. A sworn statement attesting that the proposed course of instruction entitled “Hardin County Water Training 2019” was performed on April 29, 2019 (**Exhibit 1**);
2. A description of any changes in the presenters or the program curriculum that occurred after the submission of the application for accreditation (**Exhibit 2**);
3. The name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended (**Exhibit 3**); and
4. A copy of the written materials given to program attendees (**Exhibit 4**).

Dated: May 1, 2019

Respectfully submitted,

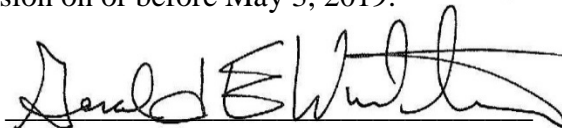


Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
gerald.wuetcher@skofirm.com
Telephone: (859) 231-3017
Fax: (859) 259-3517

*Counsel for Hardin County Water District No. 2
and Stoll Keenon Ogden PLLC*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Joint Applicants' May 1, 2019 electronic filing of this Notice of Filing is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on May 1, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this Application will be delivered to the Commission on or before May 3, 2019.

A handwritten signature in black ink, appearing to read "Gerald E. Wuetcher", written over a horizontal line.

Gerald E. Wuetcher

EXHIBIT 1

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF JEFFERSON)

AFFIDAVIT

Gerald Wuetcher, being duly sworn, states that:

- 1. He is special legal counsel for Hardin County Water District No. 2 and Stoll Keenon Ogden PLLC in this matter and served as an organizer and program coordinator of the water training program entitled "Hardin County Water Training 2019."
3. "Hardin County Water Training 2019" was held on April 29, 2019 at the offices of Hardin County Water District No. 2, 360 Ring Road, Elizabethtown, Kentucky.
4. Except as noted in Exhibit 2 of this Notice of Filing, the presentations listed in the proposed program agenda submitted to the Kentucky Public Service Commission were conducted for the length of the time specified and by the listed presenters.
5. Materials for each presentation, as well as the materials originally identified in the Joint Applicants' Application or attached as an exhibit to this Notice of Filing, were distributed to all attendees. The document labelled "Digital Library Contents" sets forth the materials found on the flash drive distributed to each program attendee.

[Handwritten signature of Gerald Wuetcher]

Gerald Wuetcher
Stoll Keenon Ogden PLLC
500 West Jefferson Street
Suite 2100
Louisville, Kentucky 40202

Subscribed and sworn to before me by Gerald Wuetcher, on this May 1, 2019. My Commission expires: June 24 2019

[Handwritten signature of Janet M. Postman]

Notary Public
No. 536742



EXHIBIT 2

DESCRIPTION OF CHANGES IN THE PROGRAM

There were no changes in the program presenters. However, the presenters for the following topics revised or updated their presentations:

Recent Developments in Utility Law
Hot Topics in Employment Law: 2019 Update
Aging Infrastructure: Your Role in Solving the Problem
Regulatory Issues in the Construction and Financing of Water and Wastewater Facilities

The presenter for “PSC Consumer Services” did not provide a PowerPoint presentation nor distribute any materials to the program attendees.

EXHIBIT 3

**WATER DISTRICT COMMISSIONERS ATTENDING
HARDIN COUNTY WATER TRAINING PROGRAM 2019**

LAST NAME	FIRST NAME	WATER DISTRICT	HRS
BELL	MICHAEL	HARDIN COUNTY WATER DISTRICT NO. 2	6.0
BOOTHE	KEITH	MEADE COUNTY WATER DISTRICT	6.0
CHISM	MICKEY	MEADE COUNTY WATER DISTRICT	6.0
CORNETT	DOUGLAS	MEADE COUNTY WATER DISTRICT	6.0
DAVIS	TIM	HARDIN COUNTY WATER DISTRICT NO. 2	6.0
DETRE	JOHN	LARUE COUNTY WATER DISTRICT	6.0
EFFINGER	JOHN	HARDIN COUNTY WATER DISTRICT NO. 2	6.0
GOSSETT	TIM	MEADE COUNTY WATER DISTRICT	6.0
GOSSETT	WILLIAM	HARDIN COUNTY WATER DISTRICT NO. 1	6.0
HOCKMAN	RON	HARDIN COUNTY WATER DISTRICT NO. 1	6.0
HOGAN	STEPHEN	HARDIN COUNTY WATER DISTRICT NO. 1	6.0
LOVE	JANET	GRAYSON COUNTY WATER DISTRICT	6.0
MILLER	MORRIS	HARDIN COUNTY WATER DISTRICT NO. 2	6.0
PIKE	AMBER	HARDIN COUNTY WATER DISTRICT NO. 2	6.0
PRATHER	WESLEY	MEADE COUNTY WATER DISTRICT	6.0
SHARP	KENNY	GRAYSON COUNTY WATER DISTRICT	6.0
SHELTON	JAMES	HARDIN COUNTY WATER DISTRICT NO. 1	6.0
STIVERS	ALLEN	MEADE COUNTY WATER DISTRICT	6.0
TABB	CORDELL	HARDIN COUNTY WATER DISTRICT NO. 2	6.0
TINDALL	JOHN	HARDIN COUNTY WATER DISTRICT NO. 1	6.0
YOURAVICH	SHAUN	HARDIN COUNTY WATER DISTRICT NO. 2	6.0

EXHIBIT 4

**HARDIN COUNTY
WATER COMMISSIONER
TRAINING SEMINAR**

April 29, 2019



WELCOME

Michael L. Bell, Chairman
Hardin County Water District No. 2



HOT LEGAL TOPICS

Damon R. Talley
Stoll Keenon Ogden PLLC
damon.talley@skofirm.com

April 29, 2019



DISCUSSION TOPICS

1. Notice to PSC
2. Franchises & Contracts
3. Sovereign Immunity
4. Filed - Rate Doctrine 101
5. Open Meetings Act

Continued . . .



DISCUSSION TOPICS

6. Call Before You Dig
7. 911 Litigation Update
8. 2019 General Assembly
9. Recent PSC Orders
10. Excessive Water Loss





PSA for PSC



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

LEGAL ISSUE

40-year

Water Supply Contract
Between 2 Water Districts

Valid or Invalid

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

Court of Appeals

Crittenden-Livingston WD
vs.

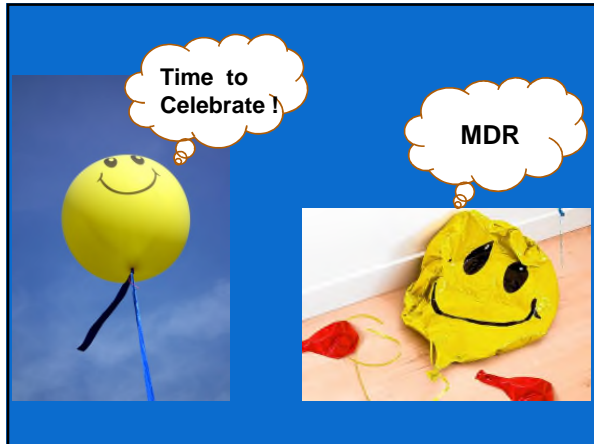
Ledbetter WD

Case No. 2017-CA-000578

Oral Argument: 4-24-18

Decided: 8-17-18

Holding: No Franchise



Ky. Supreme Court

Ledbetter W.D.
vs.
Crittenden-Livingston WD

Case No. 2018-SC-000494-DG
Motion DR: 09-12-18
DR Granted: 02-07-19
Brief Filed: 04-02-19
Amicus Filed: 04-16-19

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



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 Holding

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



What's Next?

- Decision Not Final
- Ky. Supreme Court
 - Appellee Brief Due on May 31, 2019
 - Oral Arguments ? ? ?
 - Decision ? ? ?



KRWA's Role

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



Sovereign Immunity

The
King
Can Do
No
Wrong



Campbell County Case

Kate Carucci

vs.

Northern Ky. WD

Circuit Court

Case No. 2016 - CI - 00476

Decided: 04-12-17

Ruling: Case Dismissed

Why? S/I Defense

Court of Appeals

Kate Carucci

vs.

Northern Ky. WD

Case No. 2017-CA-000941-MR

Decided: 01-18-19

Holding: Abolished S/I
For Water Districts





Ky. Supreme Court

Northern Ky. WD

vs.

Kate Carucci

Case No. 2019-SC-000105-D

Motion DR: 02-19-19

Response: 03-21-19

Action on Motion: ?? ?? ??



Court of Appeals

South Woodford WD

vs.

Byrd

352 S.W.3d 340 (Ky. App. 2011)

Holding: WD Immune from
Negligence Suit
Because of S/I



Supreme Court

Coppage Construction Co., Inc.

vs.

Sanitation District No. 1

459 S.W.3d 855 (Ky. 2015)

Holding: SD Not Entitled to
S/I Because It Was
Not a County-Created Entity



Filed - Rate Doctrine 101



Filed – Rate Doctrine

- **Definition:** No utility shall charge a greater or less rate for any service than the rate contained in its filed schedules (Tariff).

KRS 278.160



Filed – Rate Doctrine

- Application - 2 Aspects
 1. If it is in your Tariff, you **must** charge it.
 2. If it is **not** in your Tariff, you can **not** charge it.



Filed – Rate Doctrine

Requires Filing of:


- Rates
- Rules & Conditions of Service
- **Contracts**





Filed – Rate Doctrine

- File Wholesale Contracts with PSC
 - War Stories (2)
 - Length of Contract
 - Buy All Water
- Check PSC Website When You Return



Open Meetings Act



Attending Board Meeting Via Skype

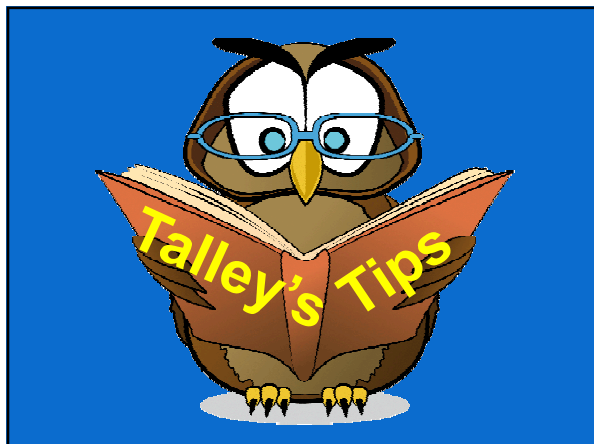
- KRS 61.826 Amended: 2018
- Now Easier to Conduct Meeting via Video Teleconference (VTC)
 - All Meetings
 - Board Member Attend Remotely
 - Count in Quorum Call
 - Fully Participate
 - More Than One



Special Rules - VTC

- Identify Primary Location
- Everyone Must Be Able to **See** and **Hear** Everyone Else
- Notice Requirements
 - Meeting Will Be VTC
 - Primary Location





Notice of VTC Meetings

1. Regular Meetings
 - Adopt Schedule (61.820)
 - Some or All of the Regular Meetings Will Be VTC
 - Primary Location at _____
 - Public May Attend at Primary Location



Notice of VTC Meetings

2. Special Meeting
 - Normal Rules (61.823) Plus
 - May Be VTC Meeting
 - Primary Location at _____
 - Public May Attend at Primary Location
3. Minutes
 - Comm. _____ Attended via VTC






**CALL
BEFORE
YOU DIG**






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**



Why Did Law Change?

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



Who Is Affected?

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



Requirements

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



What Happens Next?

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



Fines

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



Resources:
PSC website: psc.ky.gov
New call-before-you-dig webpage
launched in June

- Statutes
- FAQs
- News releases

Kentucky 811 website: Kentucky811.org

For more information:
Mike Nantz
Division of Inspections
502-782-2602
502-545-2141
Michael.Nantz@ky.gov

Andrew Melnykovich
Director of Communications
502-782-2564
Andrew.Melnykovich@ky.gov

911 Litigation 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

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: **Settled**



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

Oral Arguments: 03-22-19

Opinion Rendered: ??-??-??





Recent Developments

- Mercer County (Harrodsburg)

- NMWD Leadership Role

- Forum: 01-16-19

- Result - Fee on Tax Bill

Not on Water Bill ?



Recent Developments

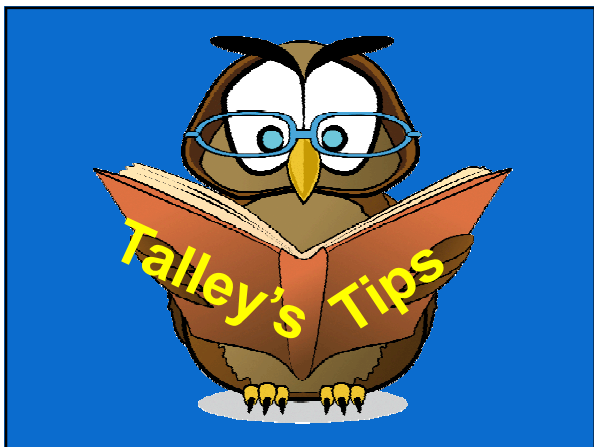
- Jessamine Co. (Nicholasville)
 - Fee on Water Service
 - Water Utilities Must Collect Fee
 - \$4.75 per Month
 - 2% Collection Fee



Recent Developments

- Barren Co. (Glasgow)
 - Fee on Water Service (Under Consideration)
- Other Counties





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





2019 General Assembly



Notable Bills (6-27-19)

- SB 129 – Ky. 811 - Defeated
- SB 256 – CPCN Exemption
KRS 278.020(2) & (3)
- HB 26 – Procurement
\$30,000
- HB 69 – Investment of Funds



**Recent
PSC
Orders**



PSC Case No. 2018 - 291

Filed: 10-11-2018
Utility: Northern Ky. WD
Type: General Rate Case
Issue: No Hearing
Phased-In Rates
Decided: 03-26-2019



PSC Case No. 2019 - 044

Filed: 3-27-2019
Utility: Meade County WD
Type: ARF
Issue: ARF vs. PWA
Rate Increase
Decided: 4-09-2019



PSC Case No. 2018 - 166

Filed: 5-29-2018
Utility: Hardin Co. WD No. 1
Type: Deviation
Issue: Daily Inspection of
Sewer Lift Stations
Decided: 3-08-2019





PSC Case No. 2019 - 115

Filed: 4-11-2019
Utility: Grayson Co. WD
Type: Deviation
Issue: 15 Year Meters
Sample Testing
Decided: Pending



PSC TFS 2019 - 164

Filed: 3-22-2019
Utility: LaRue Co. WD
Type: Tariff Filing
Issue: Non-Recurring Charges
Comprehensive Revision
Decided: Pending



PSC Case No. 2018 - 394

Filed: 12-18-2018
Utility: All Water Utilities
Type: Investigation
Issue: Water Loss, Measuring,
& Reporting



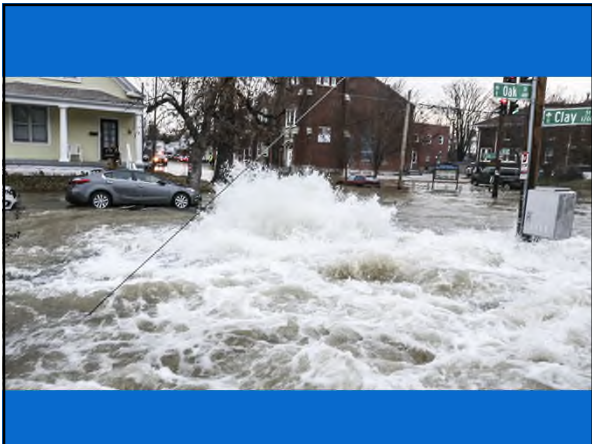
PSC Case No. 2019 - 041

Filed: 03-12-2019
Utility: 12 Water Utilities
Type: Investigation
Issue: Excessive Water Loss



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?





QUESTIONS?

damon.talley@skofirm.com
270-358-3187

STOLL
KEENON
OGDEN
INC.

EXCERPTS OF ORDER

Show Cause Case No. 3

PSC Case No. 2017-469¹

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)**

¹ Order Dated September 17, 2018 at Pages 7-8




1



**Hot Topics in Employment Law:
2019 Update**

Amy L. Miles, Esq.
Stoll Keenon Ogden PLLC
amy.miles@skofirm.com
www.skofirm.com


2



Overview

- General Employment Law Principles
- Avoiding Pitfalls in Pre-Employment
- Drug Testing
- A #MeToo World
- Sexual Orientation: a protected class?
- Employee Leave Proposals
- Legal Developments on the State & Federal Levels

3

 **Employment Law Principles**

- General Rule: Employment At-Will
 - Employees without a written employment contract generally can be discharged for good cause, no cause or a cause that some may view as morally indefensible
- Exceptions:
 - Implied Contracts
 - Public Policy
 - Employment protection laws

4

 **Federal and State Statutory Protections for Employees**



- Anti-Discrimination Laws
- Wage & Benefit Protections
- Labor-Relations Protections
- State programs (e.g., workers' comp., unemployment benefits)

5

 **Harassment**


Harassment can occur on the basis of which protected status?

- A. Age
- B. Race
- C. Religion
- D. National Origin
- E. Color
- F. Disability
- G. Sex
- H. Pregnancy
- I. Military/Veteran
- J. Sexual Orientation
- K. Gender Identity
- L. All of the above



**NO BULLYING
OR HARASSMENT
ALLOWED**


6



Harassment

- ❖ Can occur on the basis of any protected trait
- ❖ Interferes with work
- ❖ Creates an intimidating, hostile or offensive working environment
- ❖ Can be verbal, physical or visual


7



Harassment

- ❖ Isolating, degrading or showing hostility or aversion toward an individual based on that person's protected trait through:
 - Comments, jokes, suggestions, stereotypes
 - Pictures, cards, calendars, toys, emails
 - Unwanted touching
- ❖ Work-related rewards in exchange for sexual favors


8



Kentucky Case


- ❖ **Barber v. United Postal Service, Inc.**
(Fayette 2016)
 - Racial harassment claim
 - Effigy of black driver hung by time clock
 - \$5.3 million verdict
 - Motion to overturn verdict denied
 - “The evidence was [the managers] didn’t do anything.”
 - Judge Scorsone
 - Affirmed on appeal (August 2018)

9




Retaliation

- ✦ Taking adverse action against an employee for exercising a protected activity
 - Example: Discharge for reporting harassment or any other violation of the law




10



Which of the following could be retaliation if an employer acts because of the employee's EEO activity?

- A. Reprimand the employee or give a performance evaluation that is lower than it should be
- B. Treat a family member negatively (ex. cancelling a contract with the employee's spouse)
- C. Threaten to make, or actually make reports to authorities (ex. reporting immigration status or contacting the police")
- D. Spread false rumors
- E. All of the above

11



Retaliation: a law unto itself


Kentucky Case:

- ✦ Meads v. LFUCG (E.D. Ky. 2017)
 - Sanitation worker in Lexington alleged that he was treated differently from younger, white co-workers
 - Complained to Human Resources and Lexington-Fayette Urban County Human Rights Commission
 - Jury finding: No age or race discrimination


\$200,000 jury verdict for retaliation

12


12

 **The Pre-Employment Stage**


- EEOC's Strategic Enforcement Plan: Priority of "eliminating barriers in recruitment and hiring"
 - "Restrictive application processes"
 - "Screening tools with a disparate impact" – e.g., "pre-employment tests; background checks impacting African Americans and Latinos..."
 - "Qualification standards ... that discriminate against individuals with disabilities"




13

 **Avoiding Pitfalls in Interviews**

- Questions should be job- and business- related
- Disability-related questions or medical examinations
 - Pre-offer stage?
 - **None** – even if job-related.
 - But, can ask about ability to perform essential functions
 - Can ask about reasonable accommodations **only if** the applicant has a visible disability or voluntarily discloses




14

 **Avoiding Pitfalls in Interviews**

- Disability-related questions or medical examinations (cont'd)
 - After a conditional offer of employment?
 - Employer can make certain disability-related inquiries or medical examinations – as long as it does so for all employees in the same job category
 - If an applicant tells you his/her disability will not affect job performance, **hiring managers may not pursue the matter.**

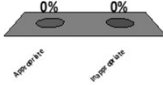
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 **Avoiding Pitfalls in Interviews**


“What impairments do you have?”

A. Appropriate
B. Inappropriate

Instead → “This job involves lifting 50 pounds on a regular basis, and standing for long periods. Can you perform these essential functions of this job with or without an accommodation?”



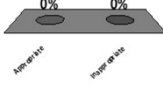
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 **Avoiding Pitfalls in Interviews**


“Please list all arrests and/or criminal convictions.”

A. Appropriate
B. Inappropriate

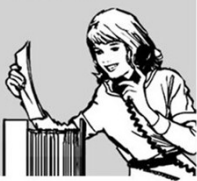
Instead → Limit criminal history inquiries (if any) to convictions that relate to job requirements.



17


 **Background Checks**

I'm sorry, we can't hire you, but your background check was hilarious.



your eCards
someecards.com


18



Background Checks Criminal History Checks


- EEOC is concerned about discriminatory *impact*
 - i.e., unintentional discrimination
- EEOC Guidance: Federal law permits asking about criminal history, **with limitations:**
 - Narrowly tailored and relevant to the job
 - Conviction vs. arrest

19




Background Checks Criminal History Checks

- Some best practices, per EEOC Guidelines:
 - Eliminate policies that wholly exclude persons from employment based on criminal record
 - Don't ask for arrest-related information




20



Shifts in Hiring Practices


- Ban the Box Legislation
 - Primarily impacts government employers
- "Past Salary" question in interviews
 - Perpetuation of gender and racial disparities in compensation

21




Background Checks

Social Media in the Hiring Process




- **Risk Balancing:**
 - **Benefits:**
 - Screen out bad actors
 - Safeguard your reputation
 - Observe candidates who have a lack of discretion or confidentiality
 - **Drawbacks and Risks:**
 - Can reveal protected statuses
 - Unreliable information?

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Drug Testing




- **Stages:**
 - Pre-Employment
 - Reasonable suspicion
 - Random
 - Post-Accident
- Uniformly applied
- Consent, Acknowledgment
- Limits on Alcohol Testing

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Drug Testing

Post-Accident Testing



- 2016 OSHA regulations prohibit “blanket” post-accident drug testing
- Conduct post-accident drug tests only when:
 - Employee drug use is likely to have contributed to the incident; and
 - A drug test can accurately identify impairment caused by drug use.
- Exception: Federal or state law requires testing

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 **Federal Legislative Developments**

- ◆ Drug Testing and Unemployment Benefits
 - As of March 31, 2017, states are no longer prohibited from drug testing unemployment applicants




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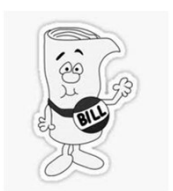
 **#MeToo, More than a Year Later**

- The original #MeToo → 2017 momentum
- Cultural shift, but has legislation followed?

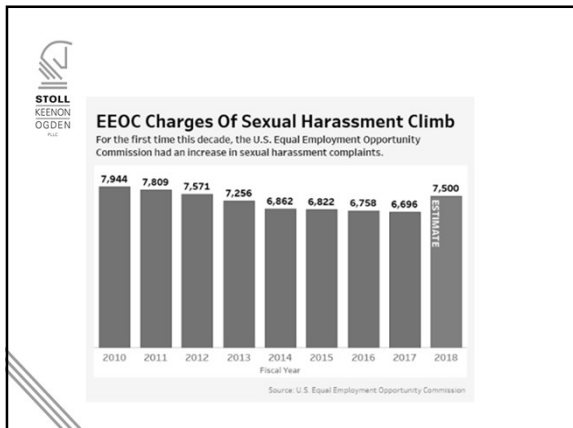
26

 In the year and a half following the #MeToo movement, how many pieces of legislation has Congress passed related to sexual harassment in the workplace?

- a. 1
- b. 2
- c. 3
- d. 0



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**#MeToo,
More than a Year Later**

- What's an Employer to do?
 - "Time Line" for response has shortened
 - Train—early and often!
 - Walk the Walk of an open door policy

29

How many states have enacted legislation prohibiting employment discrimination on the basis of sexual orientation and gender identity?

- a. 12
- b. 20
- c. 31
- d. 50

30



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**Sexual Orientation:
A Protected Class Under Title VII?**


- 2015: EEOC broadens definition of discrimination based on "sex"
- 2017: Seventh Circuit
- 2018: Second Circuit
- Sixth Circuit

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Employee Leave Proposals

- National Paid Leave and "Workflex"
- Paid family leave through Social Security


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 **Administrative Updates under Trump**

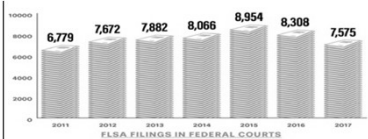
- **DOL**
 - Overtime Rules?
- **NLRB**
 - Employee Handbook Policies
- **EEOC**
 - "100% Healed Policies"

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 **Kentucky Legal Developments**

- Mandatory Arbitration Agreements
- State Wage & Hour Class Actions



Year	FLSA Filings
2011	6,779
2012	7,672
2013	7,882
2014	8,066
2015	8,954
2016	8,308
2017	7,575

35

 **Questions? Comments?**

36

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**Report Card on
Kentucky's Drinking
Water Infrastructure**

**HARDIN COUNTY
WATER TRAINING**

**ELIZABETHTOWN,
KENTUCKY**

APRIL 29, 2019

**Presentation by:
Greg C. Heitzman, PE
BlueWater Kentucky**






**2019
KENTUCKY
INFRASTRUCTURE
REPORT CARD**

**NEW 2017 ASCE GUIDELINES FOR
GRADING INFRASTRUCTURE**

A = EXCEPTIONAL: FIT FOR THE FUTURE
The infrastructure in the system or network is generally in excellent condition, typically new or recently rehabilitated, and meets capacity needs for the future. A few elements show signs of general deterioration that require attention. Facilities meet modern standards for functionality and resilient to withstand most disasters and severe weather events.

B = GOOD: ADEQUATE FOR NOW
The infrastructure in the system or network is in good to excellent condition; some elements show signs of general deterioration that require attention. A few elements exhibit significant deficiencies. Safe and reliable with minimal capacity issues and minimal risk.

C = MEDIOCRE: REQUIRES ATTENTION
The infrastructure in the system or network is in fair to good condition; it shows general signs of deterioration and requires attention. Some elements exhibit significant deficiencies in conditions and functionality, with increasing vulnerability to risk.

D = POOR: AT RISK
The infrastructure is in poor to fair condition and mostly below standard, with many elements approaching the end of their service life. A large portion of the system exhibits significant deterioration. Condition and capacity are of significant concern with strong risk of failure.

F = FAILING/CRITICAL: UNFIT FOR PURPOSE
The infrastructure in the system is in unacceptable condition with widespread advanced signs of deterioration. Many of the components of the system exhibit signs of imminent failure.

3

NEW 2017 EVALUATION CRITERIA FOR GRADING INFRASTRUCTURE

- 1. Capacity
- 2. Condition
- 3. Operations and Maintenance
- 4. Public Safety
- 5. Historical and
- 6. Future Need
- 7. Resilience
- 8. Innovation/Best Practices



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2017 NATIONAL ASCE REPORT CARD GRADES

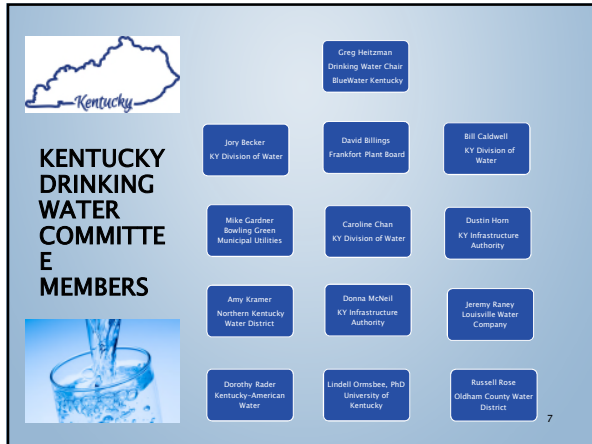


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KENTUCKY ASCE REPORT CARD PROCESS 2018



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KENTUCKY DRINKING WATER COMMITTEE MEMBERS

- Greg Heitzman, Drinking Water Chair, BlueWater Kentucky
- Jory Becker, KY Division of Water
- David Billings, Frankfort Plant Board
- Bill Caldwell, KY Division of Water
- Mike Gardner, Bowling Green Municipal Utilities
- Caroline Chan, KY Division of Water
- Dustin Horn, KY Infrastructure Authority
- Amy Kriner, Northern Kentucky Water District
- Donna McNeil, KY Infrastructure Authority
- Jeremy Rahey, Louisville Water Company
- Dorothy Rader, Kentucky-American Water
- Lindell Ormsbee, PhD, University of Kentucky
- Russell Rose, Oldham County Water District

DRINKING WATER COMMITTEE ACTIVITIES

- ✓ 13-member committee, representing: small, medium, large water utilities; consultants; regulators; funding agencies; and academia.
- ✓ Met in person and by conference call from July to September 2018
- ✓ 10 draft versions prepared and reviewed by Drinking Water Committee and KY ASCE Steering Committee
- ✓ Reviewed 2010 KY Report Card and 2017 National Report Card
- ✓ Extensive Data provided by KY Division of Water and KY Infrastructure Authority
- ✓ Conducted a weighted evaluation using the national ASCE Criteria

KENTUCKY ASSIGNED 2019 DRINKING WATER GRADE OF C+

- ✓ 2017 National Drinking Water Grade of D
- ✓ Kentucky Drinking Water Grade was a B in 2010 and C in 2017
- ✓ Kentucky has improved in some areas but slipped in other areas
- ✓ New ASCE grading system includes operating, safety and resiliency elements not in prior assessments

KY 2003	US 2009	KY 2010	US 2013	US 2017	KY 2019
C	D-	B	D	D	C+

KENTUCKY DRINKING WATER ASSESSMENT

GREEN - Very Good
5 areas

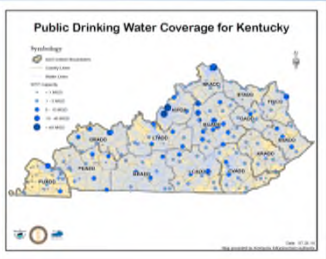
YELLOW - Average
1 area

RED - Needs Improvement
2 areas

2018 Kentucky ASCE Report Card - Drinking Water									
Category	ASCE	Key Indicator and Supporting Data	Performance	Relative	National	Percent	Score	Grade	Notes
10 Capacity	Water availability	Water availability is generally sufficient to meet current and projected demand. However, some areas may experience shortages during periods of drought or high demand.	1	1	1	100%	100	A	
	Water treatment capacity	Water treatment capacity is generally sufficient to meet current and projected demand. However, some areas may experience shortages during periods of drought or high demand.	1	1	1	100%	100	A	
20 Condition	Water quality	Water quality is generally good, but some areas may experience issues with taste, odor, or color. Some areas may also experience issues with hardness or mineral content.	2	2	2	67%	67	B	
	Infrastructure	Infrastructure is generally good, but some areas may experience issues with aging pipes, leaks, or other infrastructure problems.	2	2	2	67%	67	B	
30 Operations & Maintenance	Water loss	Water loss is generally low, but some areas may experience issues with leaks or other water loss problems.	1	1	1	100%	100	A	
	System reliability	System reliability is generally good, but some areas may experience issues with aging infrastructure or other reliability problems.	2	2	2	67%	67	B	
40 Public Utility Characteristics with (PUC)	Customer service	Customer service is generally good, but some areas may experience issues with response time or other customer service problems.	2	2	2	67%	67	B	
	Rate of return	Rate of return is generally good, but some areas may experience issues with high rates or other rate of return problems.	2	2	2	67%	67	B	
50 Historical and Current Funding	Water infrastructure investment	Water infrastructure investment is generally low, but some areas may experience issues with aging infrastructure or other infrastructure problems.	2	2	2	67%	67	B	
	Water infrastructure investment	Water infrastructure investment is generally low, but some areas may experience issues with aging infrastructure or other infrastructure problems.	2	2	2	67%	67	B	
60 Future Readiness	Water infrastructure investment	Water infrastructure investment is generally low, but some areas may experience issues with aging infrastructure or other infrastructure problems.	2	2	2	67%	67	B	
	Water infrastructure investment	Water infrastructure investment is generally low, but some areas may experience issues with aging infrastructure or other infrastructure problems.	2	2	2	67%	67	B	
70 Resilience	Water infrastructure investment	Water infrastructure investment is generally low, but some areas may experience issues with aging infrastructure or other infrastructure problems.	2	2	2	67%	67	B	
	Water infrastructure investment	Water infrastructure investment is generally low, but some areas may experience issues with aging infrastructure or other infrastructure problems.	2	2	2	67%	67	B	
80 Innovation and Best Practices	Water infrastructure investment	Water infrastructure investment is generally low, but some areas may experience issues with aging infrastructure or other infrastructure problems.	2	2	2	67%	67	B	
	Water infrastructure investment	Water infrastructure investment is generally low, but some areas may experience issues with aging infrastructure or other infrastructure problems.	2	2	2	67%	67	B	
Overall Score			2.0	2.0	2.0	67%	67	B	

KENTUCKY WATER SYSTEMS OVER 95% SERVICE COVERAGE

- ✓ 2000 Governor Paul Patton Senate Bill 409
- ✓ 435 Kentucky Public Water Systems serve 4.3 million people
- ✓ Over 95% of Kentucky served with public water system
- ✓ Recognized nationally for consolidation and regional solutions

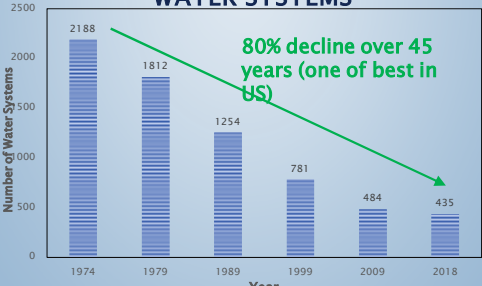


Public Drinking Water Coverage for Kentucky

Legend:
● 100,000+
● 50,000-100,000
● 25,000-50,000
● 10,000-25,000
● 5,000-10,000
● 1,000-5,000
● 0-1,000

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KENTUCKY PUBLIC DRINKING WATER SYSTEMS

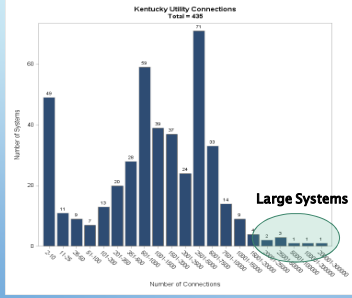


80% decline over 45 years (one of best in US)

Year	Number of Water Systems
1974	2188
1979	1812
1989	1254
1999	781
2009	484
2018	435

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KENTUCKY WATER SYSTEMS BY SIZE



Top 10 Systems Serve:

- ✓ 35 % of KY Population
- ✓ 51% of Water Produced

1. Louisville Water Company
2. Kentucky-American Water Co
3. Northern Kentucky Water District
4. Bowling Green Municipal Utilities
5. Owensboro Municipal Utilities
6. Ashland Water Works
7. Paducah Water Works
8. Frankfort Plant Board
9. Somerset Water Service
10. Logan-Todd Regional Commission

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KENTUCKY WATER SYSTEMS

Public Water Systems and Source:

435 Public Water Systems (Total)

- 137 Surface Water (31%)
- 172 Surface Water Purchasers (40%)
- 101 Ground Water (23%)
- 25 Ground Water Purchasers (6%)

Population Served:

- 22% serve a population over 10,000
- 19% serve a population of 5,000 to 10,000
- 59% serve a population of less than 5,000

Water Assets:

- 213 Water Treatment Plants (average age 36 years)
- 1,842 Water Storage Tank (average age 26 years)
- 58,783 total miles of Water Main (average age 38 years)
- 11,697 miles of Water Main more than 50 years of age (19.9%)

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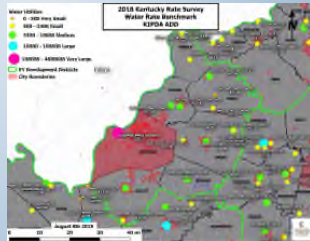
KENTUCKY WATER RATES

✓ Average Kentucky Water Bill for 5,000 gallon per month

- 2012 – \$33.77
- 2016 – \$37.66
- 2018 – \$39.75

✓ Average 2.75% annual increase since 2012

✓ Kentucky water rates competitive nationally, Circle of Blue Survey average of \$35.40 for top 30 US Cities



Source: 2018 Cannon and Cannon Rate Survey

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KENTUCKY WATER LOSS

- ✓ **Kentucky Water Loss averages 29 percent**
- ✓ **National Best Practice and KY PSC at 15%**
- ✓ **Needs Improvement**

Water Supply Drought Risk Assessment
Non Revenue Water Loss

Percent Loss

0 - 10
11 - 20
21 - 30
31 - 40
41 - 50

0 20 40 60 Miles

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KENTUCKY DRINKING WATER COMPLIANCE

- ✓ **Past 10-year trend less than peak of 1,400+ Violations in FY 2006-07**
- ✓ **Increase in 2014 for Disinfection By-Product Violations**
- ✓ **Decline in Violations last 4 years since 2014**
- ✓ **Expect improvement again in 2018 and 2019**

Drinking Water Violations by Violation Type
Calendar Years 2008 - 2017

Number of Violations

Violation Type: MDN, MCL, RPT, PH, TT, SS

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KENTUCKY DBP COMPLIANCE

- **2013 New EPA Disinfection By Product Rule**
- **DBP Violations increases from 2014 to 2016**
- ✓ **Decline in DBP Violations in 2017 with technical assistance from KDOW and KY Rural Water**
- ✓ **Expect DBP Improvement again in 2018 and 2019**

Disinfection Byproduct Violations by Violation Type
Calendar Years 2008 - 2017

Number of Violations

Violation Type: MDN, MCL, RPT

DBP's

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KENTUCKY LEAD COMPLIANCE

- ✓ All 435 Public Water Systems in Compliance with Lead and Copper Rule
- ✓ Kentucky in good shape if LCR Action Level reduces to 10 parts per billion (ppb)
- ✓ EPA estimates LY has 53,000 Lead Service Lines
- ✓ KY estimates less than

19

KENTUCKY WATER SYSTEM RESILIENCE

- ✓ Kentucky has significantly reduced its drought risk, with less than 1% of population in drought high risk areas
- ✓ Only 3 Southeastern Counties in *High Risk* category
- ✓ Kentucky Rural Water coordinates KY WARN

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EPA DRINKING WATER NEEDS ASSESSMENT

- > 2011 EPA Survey identified \$6.2 billion KY Need
- > 2018 EPA Survey identified \$8.2 billion KY Need (a 32% increase since 2011)

Area	\$Millions	Percent
Transmission and Distribution	\$ 6,320.70	76.8%
Treatment	\$ 929.70	11.3%
Storage	\$ 648.80	7.9%
Source	\$ 206.70	2.5%
Other	\$ 126.20	1.5%
Total	\$ 8,232.10	100.0%

Source: 2018 EPA Published Drinking Water Needs Survey (data from 2016)

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KENTUCKY WATER RESOURCE INFORMATION SYSTEM

- 2018 Kentucky WRIS identifies \$1.9 billion in drinking water projects
- Not all Kentucky projects are included in the WRIS

Timeframe	WRIS Project Estimate (\$Million)
0-2 years	\$ 785.1
3-5 years	\$ 893.1
6-10 years	\$ 172.4
11-20 years	\$ 59.2
Total	\$ 1,909.8

Source: 2018 KY WRIS Drinking Water Projects

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KENTUCKY DRINKING WATER GRANTS & LOANS

- ✓ Kentucky has access to multiple federal grant and loan programs
- ✓ \$615.5 million from 2014 to 2018
- ✓ FY2018 Rural Development Funding up to \$147 million

Funding Source	FY Period	KY FY 2013-14 (Actual)	KY FY 2014-15 (Actual)	KY FY 2015-16 (Actual)	KY FY 2016-17 (Actual)	KY FY 2017-18 (FY Allocation)	\$YR TOTAL
Abandon Mine Lands (AML)	July 1 to June 30	\$ 11,694,569	\$ 23,289,430	\$ 8,455,208	\$ 21,296,456	\$ 3,723,340	\$ 68,459,013
Appalachian Regional Commission (ARC)	July 1 to June 30	\$ 1,125,500	\$ 68,000	\$ 2,575,146	\$ 1,434,938	\$ 4,820,408	\$ 10,024,092
Community Development Block Grant - Water	July 1 to June 30	\$ 1,832,000	\$ 620,000	\$ 947,000	\$ 3,271,000	\$ 2,647,046	\$ 9,317,046
USA State Revolving Loan Fund (SRF)	July 1 to June 30	\$ 32,124,411	\$ 27,423,179	\$ 36,811,817	\$ 38,916,649	\$ 19,309,000	\$ 155,585,156
Rural Development (RD)	Oct 1 to Sept 30	\$ 76,292,000	\$ 76,525,250	\$ 41,409,910	\$ 58,792,000	\$ 94,937,000	\$ 348,956,250
Total		\$ 123,028,580	\$ 127,923,059	\$ 90,579,515	\$ 108,720,707	\$ 177,413,894	\$ 615,600,407

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AGING WATER INFRASTRUCTURE

- ✓ Many KY Water Systems do not replace aging infrastructure at AWWA best practice of 1% annually (100 Year life)
- ✓ Water loss is high, 29% average
- ✓ Federal and State funding focused on treatment compliance, not replacing distribution systems



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Summary Best Practice Areas to Celebrate

1. Consolidation of KY systems by over 80 % decline since 1974 (national best practice)
2. 97% public water service available to KY through 57,000 miles of pipe (top 5 is US)
3. KY advisory council – stakeholder group for collaboration (national best practice)
4. Compliance with lead and copper rule
5. KY drought risk significantly mitigated since 2010
6. Water quality – DBPs beginning to decline
7. Competitive water rates
8. Access to federal and state funding for water projects



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SUMMARY CHALLENGES AND AREAS TO IMPROVE



1. Improve water loss and leak detection
2. Continue to reduce Disinfection By-Products
3. Adopt "Cost of Service" rate methodology and full cost pricing of water
4. Recruit and develop managerial and technical capacity and expertise in water
5. Improve access to funding
6. Promote the value of water in our communities

MANAGERIAL AND TECHNICAL CHALLENGES IN KENTUCKY

1. Aging workforce and retirement of baby boomers with extensive knowledge
2. Challenge in attracting new talent into water industry (managers, engineers, operators)
3. Need to recruit managerial and technical capacity/expertise in water
4. Need for training and development, especially for smaller water systems
5. Need to adopt best practices into utility operations
6. Continued consolidation will provides economies of scale and accelerate adoption of best practices





RETIRING WORKFORCE

TRAINING

WATER LOSS Seminar
Best Practice Water Audits and Loss Control Programs

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CAPITAL PLANNING NEEDED

Best Practices in Water include:

- 1. **Condition Assessment** – the evaluation of the condition and performance of assets
- 2. **Asset Management** – a comprehensive approach to managing the assets of the Water/WW utility
- 3. **Capital Planning** – the projection of future Water/WW capital needs over 5, 10, 20 years
 - > Source water
 - > Treatment
 - > Storage
 - > Distribution



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Recommendations

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KENTUCKY WATER SYSTEM RECOMMENDATIONS

- 1. Continue regional water planning and coordination of drinking water infrastructure
- 2. Maintain and enhance the Kentucky Water Resource Information System (WRIS)
- 3. Continue updates of the 20-year drinking water infrastructure needs assessment every three to five years
- 4. Promote the use of cost-of-service water rate methods and full-cost pricing of water as defined in AWWA M-1 Manual on Water Rates, Fees, and Charges. Full-cost pricing will allow for water systems to build, operate, maintain, and reinvest in their water systems and provide safe, reliable drinking water supply to their community.

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**KENTUCKY WATER SYSTEM
RECOMMENDATIONS**

- 5. Conduct a statewide assessment of water loss and promote the use of the AWWA M-36 Water Audit and Loss Control methodology to reduce water loss
- 6. Pursue water system mergers and regional solutions where economically beneficial
- 7. Continue grant and low-interest loan programs offered by federal and state funding agencies (ARC, AML, CDBG, KIA, RD, SRF)
- 8. Pursue new sources of state and local funding for water infrastructure to bridge the funding needs gap and leverage federal and private investment in water infrastructure
- 9. Monitor the development of regulations for emerging contaminants (pharmaceuticals, personal care products, herbicides, and pesticides) in drinking water and identify the infrastructure improvements needed to comply with future regulations

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**KENTUCKY WATER SYSTEM
RECOMMENDATIONS**

- 10. Promote the use of best practices in water treatment and optimization of disinfection methods to reduce byproducts of disinfection
- 11. Conduct a state-wide inventory of public lead service lines and promote best practices for corrosion control, lead service line replacement, and public education on lead in drinking water
- 12. Develop a state-wide program for voluntary testing of lead in public schools through a partnership with the Kentucky Environmental Protection Cabinet, Department of Public Health, Department of Education, and drinking water providers
- 13. Develop proactive programs for recruiting and retaining plant and distribution operators

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Questions and Discussion

Contact Info:

Greg C. Heitzman, P.E.
www.bluewaterky.com
 gheitzman@bluewaterky.com
 502-533-5073


 BlueWater
 Kentucky

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**REGULATORY ISSUES IN
THE CONSTRUCTION AND
FINANCING OF WATER AND
WASTEWATER FACILITIES**

Gerald Wuetcher
Stoll Keenon Ogden PLLC
gerald.wuetcher@skofirm.com
<https://twitter.com/gwuetcher>
(859) 231-3017

ORDER OF PRESENTATION

- Who Must Obtain PSC Approval?
- What Projects Require A Certificate?
- What Financing Requires PSC Authorization?
- Preparing the Application
- Expediting PSC Review

**WHO MUST OBTAIN PSC
APPROVAL?**

PUBLIC SERVICE COMMISSION

- Regulates **Utilities** & Enforces KRS Chapter 278
- Has Exclusive Jurisdiction Over **Utility** Rates & Service
- Investigates the Methods & Practices of **Utilities** to Require Conformance With KRS Chapter 278

WHO IS A UTILITY?

- Investor-Owned Water & Sewer Service Providers
- Water Districts
- Water Associations
- WD/WA Sewer Operations

WHO IS NOT A UTILITY?

- Municipal Utilities
- Metropolitan Sewer Districts
- Joint Sewer Agencies
- Sanitation Districts
- Water Commissions

WHAT PROJECTS REQUIRE PSC APPROVAL?

KRS 278.020(1)(a)

No person, partnership, public or private corporation, or combination thereof **shall . . . begin the construction of any plant, equipment, property**, or facility for furnishing to the public any of the services enumerated in KRS 278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

PROJECTS REQUIRING A CERTIFICATE

- Construction of Any Plant or Facility
- Large Scale Installation
- Repurposing of An Existing Facility
- Pre-Construction Contracting
- Buildings

NOT REQUIRING A CERTIFICATE

- Purchase of Building or Land
- Maintenance/Replacement Projects
- Demolition/Destruction of Existing Facility
- Acquisition of Non-Jurisdictional Facilities
- **Extensions In the Ordinary Course**

EXTENSIONS IN THE ORDINARY COURSE

"A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers."

807 KAR 5:001, §13(3)

EXTENSIONS IN THE ORDINARY COURSE: THE FACTORS

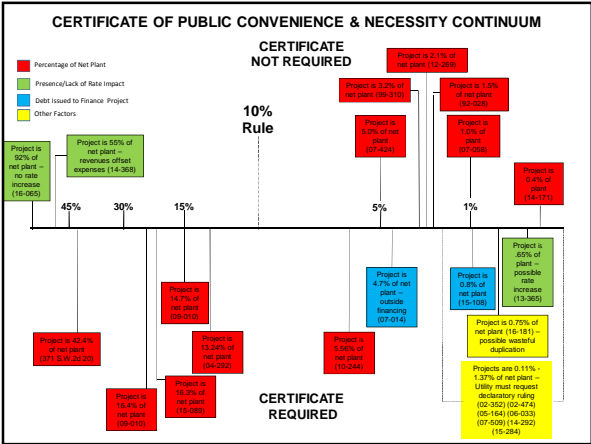
- No **Wasteful** Duplication of Plant or Facilities
- No Conflict With Existing Certificates or Service of Other Utilities
- Capital Outlay Is Insufficient to **Materially Affect** Existing Financial Condition
- Will Not Result In **Increased Charges** to Customers

WASTEFUL DUPLICATION

- Excess of Capacity Over Need
- Excessive Investment In Relation To Productivity” – Cost-effectiveness
- Unnecessary Multiplicity of Physical Properties
- Premature Replacement
- **Duplication Requires Review**

MATERIALLY AFFECT

- Percentage of Net Utility Plant
 - 10% Rule (**Abandoned**)
 - 2 Percent Rule (Staff Opinions)
 - 1 Percent Rule – Case No. 2014-00171
- Revenue Neutral
- Debt-Financed



“WATER DISTRICT EXCEPTION”

- Applicable to Water Districts and Water Associations
- First appeared in FY 2004-2005 Budget Act
- Made Permanent in 2018 Session
- Exception to General Rule
- Establishes “Bright Line Test”

“BRIGHT LINE TEST”

No Certificate Required **IF**

- Total Cost < \$500,000 **OR**
- **NO** debt requiring PSC approval & **NO** rate increase

AND

- Class A or B Water Utility
- H₂O Line Extension/Improvement Project

“BRIGHT LINE TEST”

- PSC: Exception Applies Only To Water Mains
- Case No. 2016-00255
- “[T]he proposed installation of the new metering system is not a ‘waterline extension or improvement project,’ as it does not extend or improve an existing waterline”

“BRIGHT LINE TEST”

Is a “Water Main Extension or Improvement Project” Limited to Construction of Water Mains Only?

“BRIGHT LINE TEST”

- Case No. 2005-00278
- H₂O District proposes improvements to its water treatment plant
- No Water Main Improvements
- Total Cost: \$1,900,000
- Improvements funded through Coal Development Fund Grants
- PSC finds project exempt

“BRIGHT LINE TEST”

- PSC Case No. 2018-00355
- Water District Project: 32,000 feet of main, pump station, & 2 storage tanks
- Total Project Cost: \$1,950,000
- Tank construction = 20% of project
- No Borrowing/Grant Funded
- PSC dismisses application as within exception

“BRIGHT LINE TEST”

- PSC Staff Opinion No. 2017-002
- H₂O Association to construct H₂O booster station, including 300 feet of 2” water line, & install pressure reducing valve
- PSC Staff: “[T]he project improves existing water lines & qualifies as a ‘water line extension or improvement project.’”
- Project involving non-mains may qualify if beneficial effect on existing water mains

METHOD OF ANALYSIS - I

- Large Scale Equipment Installation?
- Purchase?
- Construction of Facility?
- Bright Line Test Applicable?
 - H₂O Main Extension/Improvement?
 - \$500,000 or less?
 - PSC-approved debt issued?
 - Rate increase required?

METHOD OF ANALYSIS - II

- Replacement/Maintenance?
- Directly Debt Financed?
- Percentage of Net Utility Plant?

WHEN IN DOUBT

- CYA: Private Attorney Opinion Letter
 - Thorough Analysis Essential
- Avoid Requests for Staff Opinion
- DO **NOT** Request A Deviation - Not Permitted Under Statute
- Request Declaratory Order
- File Application for a Certificate

CONSTRUCTING WITHOUT CERTIFICATE: CONSEQUENCES

- Penalty Up to \$2,500 To:
 - Utility
 - Utility Management
 - Engineering Firm/Contractors
- Injunctive Relief
- Does Not Affect Rate Recovery

WHAT FINANCING REQUIRES PRIOR PSC AUTHORIZATION?

KRS 278.300(1)

No utility shall **issue** any **securities or evidences of indebtedness**, or **assume any obligation or liability** in respect to the securities or evidences of indebtedness of any other person **until it has been authorized** so to do by order of the commission.

WHAT IS AN EVIDENCE OF INDEBTEDNESS?

- Bond
- Promissory Note
- KIA Assistance Agreement
- Installment Sales Contract
- Mortgage Loan
- Lease-Trust Agreement
- Power Purchase Agreement

**EXCEPTION:
2 YEARS OR LESS**

- Notes with Term of 2 Years or Less
 - Promissory Notes
 - Bond Anticipation Notes
- May be renewed/refunded up to Six years from initial date
- Must be for "Proper Purposes"

**EXCEPTION:
FEDERAL SUPERVISION**

- KRS 278.300(10)
- No Prior Approval required if subject to U.S. Government supervision
- Most Applicable:
 - RD Loans W/O Construction
 - Assumption of Another's RD Debt

DEBT INSTRUMENT MUST:

- Be for a lawful object within Utility's corporate purposes
- Be consistent with proper performance of Utility's service to the public
- Not impair Utility's ability to serve the public
- Be reasonably necessary & appropriate to Utility's service to public

**ISSUING DEBT WITHOUT PSC
APPROVAL: CONSEQUENCES**

- Penalty Up to \$2,500 To:
 - Utility
 - Utility Management
- Does Not Affect Rate Recovery
- Debt Instrument's Enforceability Is Unaffected

PREPARING THE APPLICATION

- CONTENTS OF APPLICATION: CERTIFICATE**
- Facts to Show Public Convenience & Necessity Require Project
 - Franchises/Permits
 - Full Description of Proposed Location/Route of Facilities
 - Description of Manner of Construction

- CONTENTS OF APPLICATION: CERTIFICATE**
- Maps
 - Drawings
 - Specifications
 - Method For Financing Project

**CONTENTS OF APPLICATION:
FINANCING**

- Description of Applicant's Property & Original Cost (Annual Report)
- Breakdown of Use of Proceeds
- Detailed Estimate of Construction IAW USoA Accounts
- Contracts: Property Acquisition & Construction

**CONTENTS OF APPLICATION:
FINANCING**

- Maps
- Drawings
- Specifications
- Notification to State Local Debt Officer
- Financial Exhibit

**CONTENTS OF APPLICATION:
FINANCIAL EXHIBIT**

- Annual Report If Revenues < \$5M
- If Annual Revenues > \$5,000,000
 - Listing of Bonds/Notes/Mortgages
 - Income Statement
 - Balance Sheet
 - Covers 12 months of operations ending with 90 days of application

DEMONSTRATING NECESSITY

- Condition of Existing Facilities
- Ability to Meet Demand: Existing & Future
- Other Options to Meet Demand
- Technical Feasibility
- Economic Feasibility
 - Least Cost vs. Most Reasonable
 - Duplication Not Fatal

DEMONSTRATING NECESSITY - II

- Complete Narrative in Application
- Engineering Reports
- Written Testimony
 - Historical Background
 - Address All Critical Issues
 - Explain Engineering Aspects
- Other Studies

PERMITS - I

- List & Provide Evidence of Permits
 - DOW Approval of Plans & Specs
 - Discharge Permits
 - Army Corp of Engineer Permits
 - Highway Encroachment Permits
 - Historical/Preservation Permits
- Note Status of Obtaining Easements

PERMITS - II

- PSC is **Last Stop**
- Request Deviation from Filing Requirements if Any Permits Still To Be Obtained

PROCEDURE

- Application
- Discovery
- Intervenors (Not Common)
- Hearings Not Frequently Held
- Financing Orders: 60-day Req
- Final Order: 90 – 120 Days

TIMING

- Avoid Executing Contracts/Starting Work Before PSC Approval
- File Application After Selecting Winning Bid
- Alert PSC to Timing Requirements
- Remind PSC Frequently
- Make All Contracts Contingent on PSC Approval

SUGGESTED APPROACHES TO OBTAINING PSC APPROVAL

EXPEDITING PSC REVIEW

- Use Electronic Filing Procedures
- Pre-Filing Conference with PSC Staff
- Confer with AG re: Application
- Advise PSC of Critical Dates
- Offer Informal Discovery Procedures
- Post-Filing Informal Conference

EXPEDITING PSC REVIEW

- Use Filing Checklists
- Submit Written Testimony with Application
- Engineering Docs Stamped/Signed By P.E.
- Make Periodic Inquiries to PSC Staff & Executive Director

AVOIDING PSC REVIEW WITH THE USE OF RD FUNDING

- KRS 278.023 Requires Expedited Review of RD-funded Construction
- Premise: RD Adequately Reviews Project – PSC Review Unnecessary
- Project Must Be Part of Financing Agreement Between RD and WD
- Utility Files Limited Documentation

AVOIDING PSC REVIEW WITH THE USE OF RD FUNDING

- PSC May Recommend Changes to Project

BUT

- PSC Must **APPROVE** Project NLT 30 Days After Application Accepted
- Approval Includes **All Actions** Necessary to Implement Agreement



gerald.wuetcher@skofirm.com
859-231-3017
<https://twitter.com/gwuetcher>

PUBLIC UTILITIES FORTNIGHTLY

Impact the Debate

MARCH 2019

Willie Phillips, Jeremy Fago
Keith Dennis, Art Bosshart
Sue Kelly, Betty Ann Kane
NARUC Winter Policy Summit

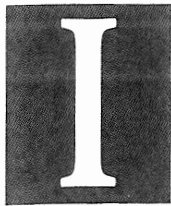
A Day at the Kentucky PSC



A Day at the Kentucky Public Service Commission



Chair Michael Schmitt,
Vice Chair Robert Cicero, Commissioner Talina Mathews,
Gwen Pinson, Executive Director, John Lyons, Deputy Executive Director,
J.E.B. Pinney, Acting General Counsel, Quang Nguyen, and Nancy Vinsel,
Assistant General Counsels,
Marybeth Purvis, Director, Division of Financial Analysis,
Stephanie Schweighardt, Division Director of General Administration, and
Rosemary Tutt, Manager, Customer Services Branch,
Andrew Melnykovich, Communications Director



It was a bright, crisp winter day when *Public Utilities Fortnightly* went to Kentucky's capital to meet with the Kentucky Public Service Commission. Despite the snow on the ground, we had a warm welcome inside. Kentuckians are proud of their state, and we quickly were regaled with stories about the importance of Frankfort and its prime location between Lexington and Louisville. We looked at the first book of Kentucky PSC meeting minutes from 1934. What a great start to our day!

PUF met with the three Commissioners and Staff. Business cards were exchanged and the beautiful outline of a horse head with flowing mane over the state's name and logo of unbridled spirit indeed captured the essence of the Bluegrass state. We knew we were near the famous Kentucky Bourbon Trail, but there was no time for it, as we got down to finding out how unique this PSC is.

The Commissioners bring diverse skill sets to the table, among them, finance, economics and law. (One Commissioner specializes in PJM and MISO.) They have oversight of a Commission that has been greatly reduced in size but still manages to somehow get the important work done. That says a lot about the dedication and camaraderie of the Commissioners and Staff. Enjoy this day at the Kentucky PSC. *PUF* sure did.

Chair Michael Schmitt

PUF's Steve Mitnick: What do you do on a typical day?

Chair Schmitt: Monday mornings usually begin with a series of Staff meetings concerning cases and issues pending before the Commission. These meetings typically last most if not all of the day. In preparation for these Staff meetings the commissioners will have already read the necessary file material and discussed our preliminary opinions as well as reviewed memoranda prepared by our financial analysts and attorneys the week before.

Discussions with Staff at the Monday meetings usually lead to the formation of a consensus opinion as to the final outcome on matters ripe for a decision. Prehearing discussions result in an agreement as to the core issues of a given case and a decision as to whether it can ultimately be decided on the record or whether a formal hearing will be necessary.

Tuesdays, Wednesdays and Thursdays are generally reserved for hearings and when no hearings are conducted, we review evidence and documents in upcoming cases and hold informal meetings with Staff to gain their insight on various issues presented in those cases.

Nothing is specifically scheduled for Fridays and the commissioners can become familiar with new filings or pursue issues of special interest to them. Reading and editing of orders of course is a daily task for each commissioner.

PUF: You regulate a number of utilities. It's not just investor-owned electrics, but you also regulate the co-ops, and others.

Chair Schmitt: We regulate two generation and transmission electric cooperatives and their nineteen distribution cooperative owners as well as four investor-owned electric utilities, a number of natural gas distribution companies and approximately 147

Since our commission in late 2016 formally rejected all black box settlements, the Commissioners themselves have been very active in case development.

water districts and associations. Altogether, we regulate approximately 1,100 utilities.

PUF: You don't have a lot of Staff. How do you manage everything, and how do people work together?

Chair Schmitt: Severe budget cuts as well as a number of retirements over the last few years have served to reduce our workforce, which numbered over a hundred ten years ago to about sixty-five employees today.

Although we are now budgeted for about seventy-six or so employees, we have not been

able to fill vacancies as quickly as they have occurred. Just three years ago our workforce numbered eighty-four and we are now down nineteen from that level, while at the same time our workload has increased.

We received over nine hundred more complaints in 2018 than we did in 2016 and held thirty-two formal hearings in both 2017 and 2018 compared to fifteen in 2016.

We have managed to keep our heads above water so to speak by reorganizing our Staff into smaller and more focused work groups, utilizing updated computer software to reduce the time necessary to draft and edit orders.

Our younger attorneys and financial analysts have been

required to shoulder more responsibility than was formerly expected of them.

Each of our Commissioners has also assumed increased responsibility in terms of case research and preparation so as to lessen the burden on the Staff. I must also add that our Staff has accepted the increase in workload and greater individual responsibility without complaint and in the opinion of the Commissioners is second to none in state government

PUF: I guess you prioritize.

Chairman Schmitt: We do. Rate cases of course are a top priority if for no other reason than because of the statutory deadlines we must meet in deciding before the date a utility can go ahead and place proposed rates into effect.

Documents and prehearing testimony in an investor owned electricity rate case may number close to fifty thousand pages and our financial analysts and attorneys organize the work assignments, prepare the data requests and provide a detailed memorandum for the commissioners to review in advance of the hearing.

Each of our three Commissioners will also have read the testimony presented by the utility and the intervenors and focus on specific issues presented separate and apart from the Staff's analysis. Since our commission in late 2016 formally rejected all black box settlements, the Commissioners themselves have been very active in case development including the drafting of data requests, analysis of the responses and preparation of final orders.

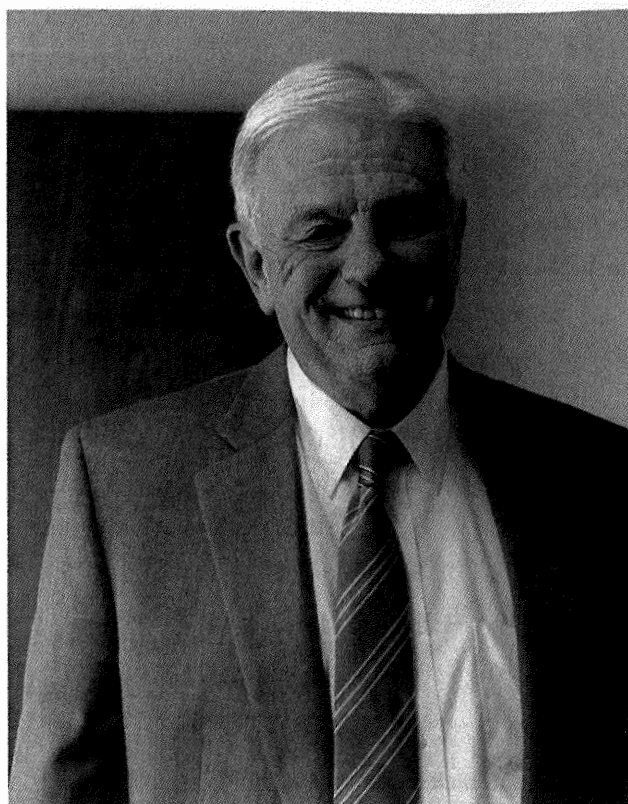
We have also emphasized the hearing of rural water district rate and investigative cases in light of what appears to have been a systemic failure of local county governments to manage water utility finances, replace deteriorating infrastructure and to reliably provide safe and clean water for their residents. The Commission is working to develop in coordination with other state agencies a comprehensive plan to address these deficiencies and to hold individual water district officials accountable for their malfeasance and misfeasance in office.

In an attempt to reduce the time and work necessary to process rate cases involving rural electric cooperatives we have, under the leadership of Commissioner Talina Mathews and in cooperation with the distribution co-ops, developed a pilot program that will allow small periodic increases in rates without the necessity of filing a full-blown rate case.

PUF: What's the most rewarding part of your job?

Chair Schmitt: The most rewarding part of this job is the interaction I have had with my fellow Commissioners and the Staff in transforming the Commission from what I perceive was a somewhat passive administrative agency into an active force for positive change in our state.

We have established a vigorous inspection and enforcement division that has emphasized the enforcement of federal natural gas safety regulations and we have assigned one full time attorney



To reduce the time to process rural electric cooperative rate cases, under the leadership of Commissioner Talina Mathews, we developed a pilot program that will allow small periodic increases in rates without necessity of filing a full-blown rate case.

to handle enforcement cases. In prior years there was no serious enforcement program and civil penalties were only pursued after an injury, death or sizeable property damage.

We have also developed a comprehensive educational program for new water district commissioners and strengthened management programs for existing commissioners.

In addition, we have begun a series of natural gas safety seminars across the state designed to help ensure compliance by small natural gas utilities and municipal governments with state and federal regulations. And as mentioned earlier, we established a pilot program to fast track small rate increases for our distributive rural electric cooperatives.

PUF: Where do you see this job going in the next three years? Will it be more of the same or are you looking to change things in some way?

Chair Schmitt: As I just mentioned, we have overseen a number of changes to the Public Service Commission over the past three years including the elimination of the so-called black box settlements. We have more than doubled the number of hearings held by the Commission and have restructured our organization to promote water district management programs and enforcement of natural gas safety regulations.

Both Vice Chairman Cicero and Commissioner Mathews are dedicated to the exploration of new and innovative methods to make the Commission function more efficiently and more effectively. I expect at a minimum that over the next three years we will be moving to develop pilot programs designed to streamline rate cases for our investor owned utilities and to work toward improving the operational performance of our rural water utilities. ○

Robert Cicero, Vice Chair

PUF: There have been a lot of changes in how the Commissioners work and what they do relative to what Staff does and how they interact with utilities. Talk about that.

Vice Chair Cicero: The Commissioners are trying to implement a different approach as to how the agency views their responsibilities and in how we interact with the utilities. By that, I mean our experiences and background are all private-sector based. We're now trying to apply that perspective to agency operations.

For Staff, that sometimes has been a difficult transition because many have never been exposed to anything other than the public sector. Most of them are career public employees.

However, we have a good Staff and we're encouraging them to think outside their comfort zone and to approach their responsibilities from a different perspective. Sometimes that may mean to more thoroughly analyze utility-provided cost data for reasonableness or to request additional information that could support a utility's position.

PUF: You and Chair Schmitt were appointed around the same time but didn't know each other?

Vice Chair Cicero: That's correct, we didn't know each other but we did arrive around the same time. I was appointed Commissioner on April 26, 2016 and was re-appointed and named Vice Chairman on July 1, 2016. Chairman Schmitt arrived on either July 1 or August 1 of the same year.

My path into this position was an unusual one. After Governor Bevin was first elected, his leadership team placed media ads requesting individuals interested in making a difference in state government to send in their resumes to be considered for employment opportunities.

I had never met the governor, but when I saw the television ad, I thought it was intriguing. I said to my wife that I was tired of complaining about the government and maybe it was time to try to be part of a solution. I sent in my resume and was contacted three days later by an advance team screening potential candidates in Louisville.

I had a follow up interview in Frankfort and was considered for various positions, but none seemed to be a good fit. That

We are trying to bring a private sector perspective to the process.

all happened in November and December of 2015, but nothing came of it and, eventually, it went quiet. Then I received a telephone call in April 2016, and the contact person said he thought they had found a position I might be interested in, that could use my financial background. As a result, I was appointed by Governor Bevin to be a Commissioner at the Kentucky Public Service Commission a week later.

I think the Chairman's path was similar. No direct political connections to the Governor's office and he was pursued for the position because of his legal reputation. He is extremely intelligent with a varied legal background and he has a lot of colorful stories about his experiences as a lawyer in Eastern Kentucky; the Commission is very fortunate to have him as Chairman utilizing his skills here. My forte is finance, the Chairman's is legal, and Commissioner Mathews is an economist, so our skill sets complement each other.

As I said, we are trying to bring a private sector perspective to the process. So naturally we ask staff to think how they would do it if it was a for-profit business? We encourage them not to accept externally sourced information at face value without questioning or testing its validity, and we would like them to have an attitude of, how can I improve the system or make it better?

When I first arrived, the Commission employed several staff engineers. The problem was we weren't utilizing them and really didn't have a need for them. We contacted the Energy and Environmental Cabinet and reached an agreement to relocate the engineers into that organization, as their engineering group was understaffed.

The engineers maintained their state employment status at the same salary level, but in a different organization that needed their skill set, and it freed up positions for us to hire employees in functional areas where we needed help.

The agency is responsible for performing electric, gas, water

and sanitation inspections for compliance and safety, but we were severely understaffed. We've implemented several changes designed to improve the entire inspection process and frequency. There was a huge backlog of water inspection reports that hadn't been issued, some of them as much as three years old.

We wanted these reports to be brought current as soon as possible, because what good is an inspection if in the end the people that are being inspected don't know that they were inspected or what the issues were?

A dedicated inspection department was created, and its role expanded with a mandate to have all delinquent water inspection reports issued within eight months. As part of the process, a risk assessment of water utilities' operations utilizing different variables such as water loss, Water District Commissioner turnover and financial viability, as a means to determine with a higher degree of probability which ones required the most attention.

This criterion was used to establish a schedule for inspecting the higher risk water utilities on a more frequent basis as some need more attention than others. Kentucky, like many other states, has several water districts with infrastructure that is in very bad shape.

Martin County Water District has been talked about in the national, state and local media, and it's become a well-known water district outside of the state. Unfortunately, for all the wrong reasons. For the past twenty years, it had many issues with not being able to consistently deliver potable water.

Martin County's water loss is approximately seventy percent. That's fifty-five percentage points above the nationally accepted standard of fifteen percent. People in the district buy bottled water to drink and cook with because of health concerns over the water that's delivered by Martin County.

However, Martin County was just the tip of the iceberg. As we learned more about water systems problems, we decided to begin addressing the issues more aggressively. Inspections and water accountability have received a lot of attention.

We have now added language to purchased water adjustment



A letter is also sent to local government officials, so they understand the financial implications of the high water loss.

orders for utilities with unaccounted for water loss exceeding fifteen percent, indicating that their water loss is X percentage points above fifteen percent, dollarizing the costing as unnecessary spending and identifying the cost per thousand gallons above what it could be.

A letter is also sent to local government officials, so they understand the financial implications of the high water loss. We wanted to make certain the report was given the public attention it deserved and didn't become just a wasted exercise of issuing a report to someone that might not give it the attention it deserved.

Local public officials need to be aware of the problem, of people paying for water that they aren't actually receiving because it's going into the ground somewhere.

PUF: How many Staff members do you have?

Vice Chair Cicero: We have around sixty-four. When I arrived, the number was closer to eighty. The state is in a financial crisis with the pension fund, so when the legislators started to discuss the possibility of making changes to the retirement system, a number of career Commission employees with many years of service and experience decided to take their retirement.

State government traditionally compensates below private sector salary market rates, so it's been difficult to find and hire new

people. Nationally, we have an historically low unemployment economy that has driven up the cost of professionals with the skill set the Commission needs, and we're trying to hire them with salaries that are not necessarily competitive. It's taking us an exceptionally long time to fill some of those positions,

PUF: How do you attract talent, especially the young people, to want to come here as opposed to private sector?

Vice Chair Cicero: We're faced with some difficult challenges. We've reorganized to create an organization more focused on adding front-line staff, as the PSC was very top heavy when we first got here. That has helped and we've been very fortunate in that the people that we have hired are very good and that makes it easier to transition.

PUF: What's the most rewarding part of this job?

Vice Chair Cicero: The most rewarding part of this job is being able to contribute my talents to what is hopefully considered the long-term improvement in the way the Commission operates. To mentor Staff and provide them with a different perspective. We've been charged with the directive of ensuring rates are fair, just and reasonable and in my opinion, we are taking the viewpoint that utilities need to be more efficient in their cost structures.

I spoke at the Kentucky Energy Conference last year in which I attempted to provide some PSC guidelines for reasonableness of certain costs, especially with regard to employee cost participation in healthcare benefits and simultaneous company contributions for employees participating in multiple retirement plans.

The goal was to give utilities a transparent guideline on the agency's salary and benefit cost philosophy. Studies have shown

that most people share financially in the cost of their healthcare. As there are many variations to healthcare plans, some employees may benefit more than others.

We believe that everyone needs to have some skin in the game, to participate in the cost of their healthcare. If not, employees usually don't appreciate what the true costs of their benefits are. Many just presume that everybody's situation is the same and that's obviously not the case.

The utility industry in general is insulated to a great degree from the competitive pressures that organically lead to reduction of unnecessary expenses. That's particularly true of the

We are taking the viewpoint that utilities need to be more efficient in their cost structures.

non-profit utilities, which do not have to answer to investors who are expecting a certain level of return. So, they are not as conscious of the need to control expenses.

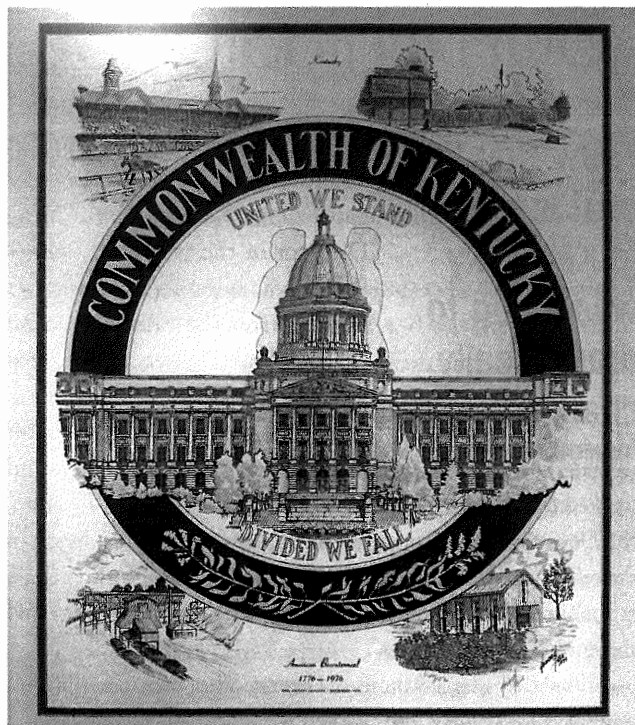
For example, many of the smaller utilities provide one hundred percent paid-for benefits to their employees. When questioned during rate case hearings many have said they need it to retain employees because of the fear their employees will be lured away by other utilities, that their employee salaries are too low, so they compensate with paid benefits, or they have to do it because they're compensating employees for operating in a very dangerous industry.

We explain to them that those are not valid reasons. Our philosophy has been evenly applied, and there hasn't been any evidence that employee retention is an issue. Many people work in dangerous industries, but that doesn't mean that they are receiving one hundred percent of paid healthcare benefits.

Our suggestion to them with regard to salaries is provide market analysis, perform salary surveys, and benchmark your salaries. If your salaries are not competitive, then raise your salaries but don't use fully paid healthcare benefit compensation as a makeup.

Some utilities, including a few investor-owned companies, have been contributing into two separate pension plans for the same employees. Many utilities, like the majority of most businesses, have terminated their defined benefit plans through the lock and freeze methodology.

However, a few utilities only terminated enrollment of new employees into their defined benefit plans and permitted current participants to continue to accrue benefits. New employees were moved to a 401k plan, but the defined benefit participants were also permitted to participate in the newly created 401k plan and the company contributed matching funds for them as well. As a result, some utilities are contributing matching money into a 401k plan and permitting the same employees to continue to earn



Kentucky celebrated America's Bicentennial.

time and benefit toward their defined benefit plan, essentially earning two pension benefits.

There are ratepayers that don't even have a pension plan, let alone having two pension plans and not having to pay anything for one hundred percent of healthcare benefits. Our position with utilities' healthcare plan funding is show us your employees are contributing something, and for pensions, company contributions will be permitted into one plan only.

If a utility applies to the Commission for a rate increase and during our evaluation it is determined that management is paying one hundred percent of employee healthcare benefits and/or are simultaneously contributing into both a defined benefit plan and a 401k plan, those costs will be adjusted out of the final rate calculation.

What's satisfying is you're able to change a mindset and guide an industry that's there to serve the public into a different cost management viewpoint. However, we agree that utilities need to be adequately compensated, they need to be competitive, and they need positive cash flow.

PUF: The public can see the strength when you ask tough questions in these proceedings.

Vice Chair Cicero: I try to ask probing questions to make certain that the respondents are forthright in the information they're providing and that it's accurate. We believe in conducting hearings because we've found there's no better way to find out case details than to put a witness on the stand, ask questions

and to listen to responses. Most of the time you can find out much more detail than you could ever imagine. I think most everyone wants to tell the truth and we try to give everybody the benefit of the doubt.

However, witnesses in general, tend to tangent into other areas that they might not have otherwise gone when they have the benefit of submitting their responses after writing and editing them on a piece of paper. Interaction through the question and answer process on the witness stand encourages witnesses to provide more detail in their responses.

As with some other Commissions, Kentucky does permit a black box settlement between the applicant and interveners. In the past, the parties agreed to a dollar amount and the Commission normally would accept it. All the variables were unknown to the Commission; only the settlement parties knew what had specifically been negotiated. We modified that process so that black box settlements are now transparent.

We encourage the parties to reach an agreement, but all the variables used, ROE, COSS, revenue calculation or any other factors that affected the case outcome must be provided to the Commission when submitting the agreed to stipulation. This eliminates the perception the Commission may be rubber-stamping settlements instead of being truly responsible for determining the case outcomes. It's been a little bit of a tough situation for the utilities, but I think they are adapting and they're finding out that the process is not all that bad. ○

Talina Mathews, Commissioner

PUF: You have an interesting background because you're a Commissioner, but you were on the Staff, and you've been at Organization of MISO States. Talk about your experiences.

Commissioner Mathews: I started my state government career with the Division of Water. Then I came over to the Commission as an economist, working in the research division.

In 2000, every office in this building was full and a couple of offices had folks sharing space.

Then, like most Commissions, we went from a hundred and thirty people to fewer than sixty-five. Some of that decrease was due to the deregulation of the telecom industry.

We're few but we're ferocious. Every other Commission that I've talked to suffers the same situation. Then the research division went away, and I became the Chairman's Policy Advisor. I held that role under the leadership of two chairmen.

After that, a new governor came in. They formed an Office of Energy Policy. There had been one in the '70s and '80s and then it was reformed. I had the opportunity to go work in that arena.

I saw that the coal industry in Kentucky was going to dramatically change.

When the executive director left and there was no one left to order paper clips, I became the Executive Director in the Office of Energy Policy, which was in the governor's office. After the administration changed again, I guess they wanted someone else buying paper clips.

I went to the private sector for a while, and then came back and worked for what the Office of Energy Policy had morphed into, the Department of Energy Development and Independence, in the reorganized Cabinet for Energy and the Environment. I think at the time Connecticut was the only state that had energy and the environment together.



We are dealing with aging ... with fewer and fewer customers [in east and west KY].

PUF: Was that the AEP project?

Commissioner Mathews: That was in West Virginia. It was at a plant that's owned by AEP, of which our utility Kentucky Power is a subsidiary, but it was at an AEP sister company, just across the river from Kentucky. I did carbon capture work with a Kentucky focus.

Then the Chairman's Policy Advisor at the Commission left, so I came back to the Commission and was the Senior Policy Advisor to my third chairman. Then I left and went back to the energy office to work on Kentucky's response to the Clean Power Plan that was in the works.

We did clean power plan modeling and economic impacts of what happens, which wasn't good. At the end of the administration before this one, in 2015, I went to the Organization of MISO States for a brief experiment in working from home. When the new administration came in, I was approached and asked, do you want to come be the Executive Director of the Commission?

It's not a coincidence that I keep coming back here because I think this is where I belong. I was the Executive Director for almost a year and then the Commissioner slot came open and

no one was more surprised than I was when asked to fill the position.

PUF: What's your typical day like?

Commissioner Mathews: We meet a lot. We're very hands on. It's a great mix of professions and personalities. We have an attorney, an accountant and an economist.

We do a lot of reading and have a lot of meetings. I probably have the most interest in electricity, PJM, and MISO because I was here before MISO was MISO and then I was here when the first company joined PJM.

That was my area when I was here as Staff, so I continue that and I'm on both regional state committees for PJM and MISO. I think I'm the only Commissioner that gets to be on both OMS and OPSI. Of our utilities, Duke, AEP and East Kentucky Power are in PJM, and Big River's in MISO.

We are responsible for setting rates that are fair, just and reasonable, not accepting rates that someone else has agreed to. That's a culture change from the utility perspective. It'll be awhile I think before we see many major settlements.

If there are settlement discussions, we don't sit in on them. When those settlement discussions are going on, we don't know about it. It's only parties to the case. In general, any meeting we have with utilities we tend to invite the Attorney General along, as our most frequent intervenor.

PUF: Do you have a feeling for where your Commission is headed?

Commissioner Mathews: No, my crystal ball doesn't seem to work. As for the Kentucky economy, I saw the Clean Air Act Amendments of 1990 and I knew that was going to be that next ratchet down that would be in 2013, 2014, 2015. I saw that the coal industry in Kentucky was going to dramatically change.

In Eastern Kentucky, the Appalachian basin with the low-sulfur coal had been able to help a lot of utilities around the country meet their sulfur-dioxide emissions. It was cheaper to buy the compliance coal than it was to put the scrubbers on.

Every year the emission limits were getting tighter and tighter, and suddenly you had to look at making one of the following decisions:

I'm going to put the scrubber on and if I do, I'm not going to

pay twice as much for compliance coal.

I'm going to go get Western Kentucky, or Illinois basin coal that's higher sulfur, high BTU and cheaper.

If I don't put on scrubbers or other equipment, then I am going to close the coal plant and likely build natural gas generation, if anything.

These changes have created hardship for both the Eastern and Western Kentucky areas, and consequently for their utilities as well. Fewer customers, buying less of your product, means fixed costs get spread among fewer and fewer customers. This is true of electricity, gas, water and wastewater utilities. This is and will continue to be an issue that we will deal with going forward.

PUF: How do you spread yourself to everything the Commission works on?

Commissioner Mathews: We all three work on everything that comes before us. We are dealing with aging water infrastructure and having to pay to replace that infrastructure with fewer and fewer customers.

In addition to large investor owned utilities, we also regulate the G&Ts and nineteen distribution co-ops, being one of the few states that regulates the distribution co-ops. We also have many small gas, water districts and associations and wastewater utilities under our regulation. It seems these days these take a large chunk of our time.

PUF: Are there any big issues coming up over the next three, four years that you anticipate?

Commissioner Mathews: The biggest issue is declining sales. Kentucky Power and Eastern Kentucky have been hit hard. As we discussed, this area lost most of the coal mining, they also lost a major manufacturing company, a steel mill. The steel mill uses a lot of electricity, so when that closed most of its facilities that was a huge hit.

Most of our utilities have a lot of excess capacity. Some of the municipals that were buying wholesale from LG&E and KU decided to leave and go look in other places. By and large, most everyone has excess capacity, but not all the utilities look the same. Duke, and LG&E and KU look very different than say Kentucky Power and some of the small co-ops that are in the east and in the far west.

PUF: Is there a solution for that?

Commissioner Mathews: In some areas the utilities are still growing somewhat. Some will stay flat. Kentucky Power and AEP are spending a lot of time working with the Cabinet for Economic Development.

In northeast Kentucky, the governor's office is trying to recruit new industries because they have folks who worked at the steel



**By and large,
most everyone has excess capacity,
but not all the utilities look the same.**

mills, folks who worked across the river at the gaseous diffusion plant and folks who did mining.

We had a lot of very technically skilled people in our workforce, such as welders, large equipment assemblers, mechanics, and electricians. They don't want to go to North Dakota, but there are some that have gone there or to other areas that have benefitted from the shale revolution.

PUF: How does that recruitment situation work?

Commissioner Mathews: It's going to a lot of trade shows and having a lot of conversations with folks. We have had a lot of success in the auto industry, for example. Toyota manufactures the Camry here. Central Kentucky is probably fine, but the two coal fields remain challenges.

PUF: Since you are an economist, how do you approach utility regulation?

Commissioner Mathews: As an economist, of course, I spend a lot of time saying, on the other hand. I also spend a lot of time talking about things on the margin versus totality. It's just different, and it gets highlighted occasionally, the different way that we look at issues, especially from the accounting perspective versus the economics perspective. We have some great debates but they're a lot of fun.

PUF: What's the most rewarding about this job for you?

Commissioner Mathews: We touch every person in the Commonwealth multiple times in their wallet and in their lifestyle. I'm just trying to do the best job I can do with that, and it is very rewarding. ○

Gwen Pinson

Executive Director

John Lyons

Deputy Executive Director

PUF: What is your typical day like?

Gwen Pinson: My role is to oversee the Staff, make sure that the Staff supports the Commissioners in all respects, and that the Commissioners have all the support they need.

Sort of a liaison between the Staff and the Commissioners. In addition, though the PSC is an independent agency, we're administratively attached to the Energy and Environment cabinet. John and I take turns going to Staff meetings up there. He helps me cover those. We help the Commission stay in touch with what's going on up there and across the administration.

PUF: What is that like? There are people there from different agencies?

Gwen Pinson: Yes, the cabinet is divided into the Department of Natural Resources and the Department of Environmental Protection, which are their two main departments. Below those, they've got a lot of different offices and divisions, such as the Division of Water and the Division of Air Quality. There are some overlapping missions, but we try to coordinate so as to avoid duplicate regulation.

For example, there's some communication coordination we have to do with the Division of Water, given that we regulate so many water utilities.

PUF: John, do you have to tell everybody what's going on, or give a presentation?

John Lyons: For the weekly executive staff meetings that Secretary Snavely has, Gwen's invited to those. Sometimes she can't get there, so I cover for her. It's typically conducted roundtable-style, where we report anything of importance coming out of the Commission that week. We do have that overlap. We work with the cabinet's Division of Oil and Gas, because we regulate natural gas pipelines.

There's also the Emergency Operation Center, which I cover usually for electric outages, when we have storm events, snowstorms or otherwise. We go over to the Boone Center, where the National Guard is housed, and operate out of their control center during those events.

PUF: What do you do in-house?

John Lyons: Gwen and I are a good team. We tag-team a lot of work. She takes the rate cases, and I take all the administrative-type cases. I cover the technical ones. I'm not only the Deputy

One of the things I wanted to do when I got here was get people out of silos.

— *Gwen Pinson*

Executive Director, but I'm also the acting director of the Division of Inspections. I have eleven inspectors that go out and do inspections around the state. That's probably seventy-five percent of my duties.

PUF: If one of the electric companies, or gas, comes in for a big rate case, that's something you're focused on.

Gwen Pinson: Yes. When the Commissioners meet with the staff on rate cases we have going on, I sit in. I don't always have time to review all the case materials, but I sign the orders along with the Commissioners, meaning I attest their signatures. Going to the meetings on the cases is how I keep up with what's going on in them, what the orders are that are going to be crossing my desk, and what to expect.

It's good to sit in on those meetings and see that the Commissioner's questions are being answered by our legal staff and our financial staff. On the more technical cases involving inspection-related issues, John will be in there, too, as well as the inspection staff, if they're involved.

During this time, when the legislature's in session, we get a lot of calls from legislators' offices. When I'm not working on policies, or reviewing documents that we have to issue, I answer those inquiries, or help staff respond.

PUF: Since the number of Staff is a little less than half what it was a few years ago, you can be integrally involved in these big rate cases.

Gwen Pinson: I am in no way a day-to-day participant in the processing of a rate case. We have great Staff who process these cases, and our Division Directors are more integrally involved than I am. I attend the meetings and sometimes participate in policy debates and different discussions with the Commissioners.

Our Commissioners are very engaged. They're involved. They read everything. They ask great questions. They ask questions

(Cont. on page 60)

A Day at the Kentucky PSC

(Cont. from p. 19)

not only of Staff, but of witnesses during hearings. They're an active bench during a hearing. It's great, and it makes my job a lot easier, because they are so involved.

The Commissioners are in the weeds, and they know what they need, so I can focus on ensuring that Staff is delivering. John will be more in the details of a technical case than I would be of a big rate case, because of the way that works.

PUF: When you get a call from legislators what do they say?

Gwen Pinson: Let me give you an example. During my first legislative session with the Commission in 2018, I received a call from a legislator who was concerned that the electric co-op in his district was raising rates unreasonably, because of the installation of advanced metering technology.

I had to dig into the situation with Staff and learn the history of what had occurred to try and help him understand that there were many factors that had contributed to the increasing rates his constituents were experiencing.

It's calls like that. When the legislators are in session, they get more constituent calls. Then their constituent services staff are calling over here to our consumer services folks. We try to respond to these inquiries in a timely manner. If a legislator calls, I try to respond to them directly.

We didn't have a legislative liaison of our own, last session. We just hired one in December. She's doing policy work with Commissioner Mathews on RTO issues. But she's also going to serve as our legislative liaison.

John was having to do a lot of our bill reviews in the system. Staff would help him draft the reviews, I'd have to review them, and then he'd put them in the system. We've got a legislative liaison now, to handle that. That was a great addition. We were thrilled to get Karen, a long-time employee of the Energy and Environment cabinet.

John Lyons: Yes. We had a net metering bill last year that had twenty-two amendments. It was a nightmare, trying to keep up.

Gwen Pinson: We were trying to review all those amendments. It's helpful for us to have this person that's designated to do that, versus John and I trying to fit it into our daily routine.

PUF: John, you have eleven inspectors. That's a critical area, focused on safety. Does that include gas and water?

John Lyons: Yes. I came over in November 2016. I had retired from the cabinet. I worked twenty-seven years in the Department of Environmental Protection. Commissioner Mathews was executive director at the time.

We went through a reorganization. They created the Division of Inspections. She asked me to come on board and oversee that. I did and came out of retirement.

My whole career was from the regulatory standpoint. I was the Division of Air Quality director for twelve years. I fit right in. It wasn't a hard transition for me. It's harder for the folks here, having me come in.

Gwen Pinson: When these Commissioners got on board, enforcement had not been emphasized, in the way that it is now a focal point. There was a huge backlog of inspections. There were inspection reports that hadn't been sent to utilities.

These Commissioners made it a mission to clean that up. They've done a fantastic job of clearing that backlog, staying on top of inspections. We weren't even doing inspections at the recommended intervals. The amount of time between inspections was too long. It wasn't within the guidelines of what you're supposed to be doing, when we got here.

We established a thirty-day required time period for the inspectors to send out their reports.

— John Lyons

PUF: What's your overall scope of work with inspections?

John Lyons: On our mission statement, you've got "safe and reliable" in there. That's what we cover in the Division of Inspections.

The gas side is the critical safety element. We have a federal grant that we operate under. We're a delegated state for that program. We have five individuals that cover that program. We're getting ready to hire another person, so we'll have six.

It's more critical when you talk about water. We have one inspector to cover the whole state. And we have one inspector to cover all the wastewater utilities. We have a couple of guys that cover electric and telecom for us. That's the universe that we cover. It's about twelve hundred utilities.

Gwen Pinson: Safe and reliable service at fair, just and reasonable rates. That's our mission, and DOI under John's leadership does an excellent job in regard to the safety and reliability aspects of that mission. We're going to hire another water inspector soon. It's a lot of utilities to cover.

PUF: What was the secret in trying to catch up?

John Lyons: Well, as an organization, there were no standard operating procedures at all, when I came here. I shouldn't say there weren't any. There were some, they just weren't being followed.

Some of them were probably good, but I used my experience. Compliance enforcement is straightforward. You go out, check things, document deficiencies, and hold people accountable. It's only as good as it is timely, and that was the problem.

Some of the inspections were two years in arrears. The guys upstairs had done the inspections. They just never got sent out. That had already started in earnest getting those backlogged ones out, before I got here.



Executive Director Gwen Pinson and Deputy Executive Director John Lyons.

When the legislature's in session, we get a lot of calls from legislators' offices.

— *Gwen Pinson*

Commissioner Mathews, when she was executive director, along with one staff member, just started signing inspections and sending them out. Then when I came here, we established a thirty-day required time period for the inspectors to send out their reports, and they get held to that standard.

PUF: How do you attract talented people to these positions, especially the younger ones who might have their sights set on working at Apple or Google?

Gwen Pinson: It's been a huge challenge, particularly in two areas. In those two areas, more than any others, we struggle.

For work/life balance reasons, we seem to attract good attorneys. We've hired six attorneys since I came aboard in October of 2017. The PSC has very interesting, challenging legal work, but still has hours that are relatively set. It's not like a law firm, where you've got to work eighty hours a week. I worked in law firm private practice so I can relate.

But we are struggling to attract inspectors and financial analysts. What happens in John's area is, we attract them, and then they are stolen away.

We send them to Oklahoma City for all this training, and then the industry can pay so much more than what we can pay. We lose them. It's hard to attract experienced people. If you haven't worked for a Commission or utility, you've never done this work.

We end up hiring a lot of younger folks straight out of school.

learn about all of the areas we regulate. If you have somebody specialize, and then that person leaves, there goes all of your knowledge of that area, and experience out the door. Our attorneys are doing different type of work, and we reorganized our financial analysts into rate design and revenue requirements branches.

There used to be separate revenue requirements, and rate design, within those classifications of electric and gas and water and sewer. Commissioner Mathews brought them all together, and then I took it further into revenue requirements and rate design. We got them out of the water and sewer, and electric and gas divisions of responsibility, altogether.

PUF: What do you feel is the most rewarding in your job?

John Lyons: I always tell my Staff that they make a difference every day, in the lives of the citizens of the Commonwealth. The Commission does a lot of important work.

In the years I worked in the cabinet, we had much interest from the environmental standpoint. But here, it's people's livelihoods, or their service for electricity, water, sewer, or gas. We get a lot of attention here.

The Commission has earned over the years a great deal of respect in the state as an effective and professional agency. I was surprised by that aspect of it when I came here. I had an opportunity to go back to the cabinet. I turned them down

But then that puts a bigger burden on our managers to train these folks.

We've also lost a lot of Staff members to retirement. There's been a huge turnover. We lost about three hundred and ninety years of experience in 2017, and then another hundred and twenty-seven years of experience in 2018.

Other Staff used to be divided in electric and gas, and water and sewer. Typically, the electric and gas cases take more time and are more involved due to the size of the utilities involved, etc. One of the things I wanted to do when I got here was get people out of silos.

We did the same with the attorneys. I don't want them specializing in just water or sewer cases, or just gas or electric cases. I want them to

because I enjoy working here, and the people here.

Gwen Pinson: It can't be stressed enough, about how much John's changed that culture upstairs, and gotten the focus on enforcement and the importance of what they do. They've just cleared the backlog, and they're getting out in the field when they're supposed to, at regular intervals. The work of this Commission is important and impactful, and I too find that very rewarding.

I'm a people person. I really enjoy working with our Staff and learning from them. I came over from the finance cabinet. I had done some coal, and oil/gas work out in the private sector, when I was an attorney.

I had regulatory experience from having worked in the finance cabinet in a previous gubernatorial administration. But I hadn't been at the PSC, so it was new to me. I love learning about all the complex issues utilities and regulators face daily.

It's an exciting time to be in the energy field. So much is changing. In our state alone, it's going through such a change

The Commission has earned over the years a great deal of respect in the state as an effective and professional agency.

— John Lyons

with coal plants closing, being phased out. Then, working with this Staff, and my executive team, they're wonderful. We've been able to put people who haven't been in leadership positions before, into leadership roles, watch them develop and watch them train people. It's completely changed the culture.

This Commission is well thought of. As Commissioner Mathews reminds us often, we're small, but mighty. We have a great team. Everybody works together to meet the regulatory challenges and accomplish everything in a timely manner. ○

J.E.B. Pinney

Acting General Counsel

Quang Nguyen and Nancy Vinsel

Assistant General Counsels

PUF: J.E.B., are you the general counsel for the PSC?

J.E.B. Pinney: I'm the acting general counsel. Our general counsel at the time became a senior legal advisor to the Commission, so he solely advises the Commissioners. I was deputy general counsel at the time, and so I've shifted into the spot. It's been about a year and a half since that move occurred.

PUF: Is that gentleman still a legal advisor to the Commissioner side?

J.E.B. Pinney: He is. He mostly does special projects for the Commissioners.

PUF: What do you do on a typical day?

J.E.B. Pinney: I come in the morning and see what emails and voicemails await me. A lot of it is case management within the Office of General Counsel, to make sure that cases move along. I don't work many cases directly anymore.

I've been here for over nineteen years. I started out doing exclusively consumer services cases and then worked on telecommunications for a long period of time. Then, as telecom became deregulated, I moved on to a variety of work, taking whatever cases came in.

Now that I don't work directly on cases all that much, I answer

the call to whatever comes through my emails or phone calls. It's surprising what a general counsel has to deal with, the novel issues come up that you've not addressed as an agency in the past.

PUF: Give us an example?

J.E.B. Pinney: There could be internal questions about human resources issues, or questions about open records issues. Sometimes they're questions, that despite being here nineteen years, I've never heard before and have to research first. More often a utility will call with a question and it gets sent to me.

Often, the general counsel is the primary point of contact with the legal counsel for a utility. There's no good way to be able to plan out your day, because you never know what's coming through the door.

PUF: We understand there's been some turnover.

J.E.B. Pinney: Yes, I have a list that's in my drawer. I've kept track of every single attorney that's worked here that has gone on to other things, whether it's the private sector, or retirement or it just didn't work out here.

In my nineteen years there have been thirty-one attorneys that have come and gone. We're on pace for about two per year in terms of turnover.



From left to right, Assistant General Counsels Quang Nguyen and Nancy Vinsel, and Acting General Counsel J.E.B. Pinney.

We do placement of cell towers in areas that do not have local planning and zoning.

— *J.E.B. Pinney*

Quang's been here for going on twelve years. He's the second-most experienced attorney here with PSC work. Nancy's almost on her five-year anniversary. She's the third-most experienced attorney in the legal division.

We've had trouble retaining attorneys because state government pay is static. We hire good attorneys. Other people recognize that quality, and they're able to offer higher pay, so off they go.

PUF: Quang, what's your typical day like as assistant general counsel?

Quang Nguyen: I still work on cases, even though I have, as of right now, three other attorneys that I'm assigned to supervise. My area is almost entirely in the electric industry.

A typical day is working on any case-related matters, whatever the procedural aspects of that particular case is, especially if there are meetings with team members, Commissioners or executive Staff to discuss certain issues in any case.

We also have litigation that we handle internally; orders that get appealed to the circuit court, so there may be some litigation matters that need to be taken care of. It runs the gamut of some personnel issues as well, but my typical day is primarily case work.

PUF: There are a couple electric IOUs in the state, and then a few big co-ops, but between cases there's still lots to do. Is there always a big rate case going on?

Quang Nguyen: I don't think in any one of the twelve years that I've been here that we've not had a major electric rate case going. The cycle started in 2007 or 2008, especially with the environmental compliance projects.

First it was air emissions and then coal combustion residuals, landfills and the retirement of ash ponds. All of those capital projects need to be recovered through a special surcharge for environmental cost recovery, but also through base rates as well.

There are four IOUs in Kentucky. Two of those IOUs, Louisville Gas and Electric and its sister company, Kentucky Utilities, have been in for rate cases every other year since 2008.

Then you've got the others that come in as well. We're one of the few states that regulate the Rural Electric Cooperatives, so they come in not as regularly as the bigger utilities, but they still come in. So,

you have those rate cases and then capital projects, certificate of public convenience and necessity as well.

PUF: Nancy, what's your typical day like?

Nancy Vinsel: Like Quang, I'm an assistant general counsel so my schedule mirrors Quang's. I have my own cases to manage and then I too supervise the attorneys. I'm juggling my case management and assisting people I supervise with theirs or guiding them through procedural issues.

I'll give you an example. I'm working on a significant order, but one of our attorneys is out sick. She had two pressing cases where we needed to do some work to move it forward, so I've jumped in and can do some pieces on those cases and work back and forth between my cases and the attorney's cases.

I have another attorney who is for the first time following a particular case procedure, so I was walking him through what you need to do. We don't do it that often and he needed some help.

PUF: You all have to work with the technical people in the Commission, an economist, an engineer, or accountant. How do you do that, do you form a team?

Nancy Vinsel: We do. On all of our cases we have team members that represent both legal and financial analysis divisions. In one case that I'm working on, I need information from our inspections division, so I pulled them in too. It can be formal, or it can be informal.

This is very team-oriented, it's collaborative, and we are free to pull in advice from people even if they're not on the team in order to have information we need.

PUF: J.E.B., I heard the overall staff has decreased about half in recent years. There's a lot of utilities in the state. How do you cover everything?

J.E.B. Pinney: When I started here, December 16, 1999, we had a hundred and twenty-nine employees. Now, sixty four of sixty-five is our current Staff. We just hired somebody so we're excited about that.

We've been lucky in our legal division, in that we've managed to maintain fairly consistent staffing levels. We're down a few attorneys but we've not been cut like several of the other staffs have been. Quang and Nancy help out. I supervise them but they don't require much supervision.

They supervise other attorneys and our two paralegals split between the two of them, but we have to be cognizant of deadlines. We have statutory deadlines where we're working on our CPCN cases or our rate cases and cell tower cases.

I don't know how many other Commissions do placement of cell towers, but we do placement of cell towers in areas that do not have local planning and zoning. Depending upon the project schedule for a tower operator, you can get several of those at once and then there's a federal shot clock rule saying that if you don't get it out on time, they can go to federal court.

You don't want the federal court issuing a writ of mandamus ordering you to issue an order, and so you have to be aware of the deadlines. A lot of people don't like cell towers going up so they can be kind of thorny, but we still have to get them out on schedule.

The Commissioners are the ones that ultimately set the agenda. There'll be certain issues that they want addressed, and they want it done quickly, and that's how we prioritize.

We're lucky with staffing. We've managed to hire good attorneys, even though some of them are relatively inexperienced, and may be new to utility law. Two of our attorneys just had their first-year anniversary, and the other ones are coming up on their two-year anniversary. We used to have a nice glide path to bring people up to speed, and now we just throw them into the fire. That's one of the differences.

It is not necessarily governing by crisis. There's sometimes a bit of that, but we have a good internal tracking system so that

deadlines don't often sneak up on us. Because it's a team process, and legal is involved in almost every case, we in the office of general counsel are the team leaders on sixty-five to seventy-five percent of the cases.

Team leaders are ultimately responsible for moving the cases along and meeting the deadline and coordinating with the other team members. They'll place an order in electronic circulation. If it's a final order and there's a deadline for it, whether it's procedural or statutory, they have to get it through the team review and then, depending upon who's supervising them, either Quang or Nancy would review it. Then I'll review it as well as the Director of Financial Analysis. All that goes through an elaborate editing process too.

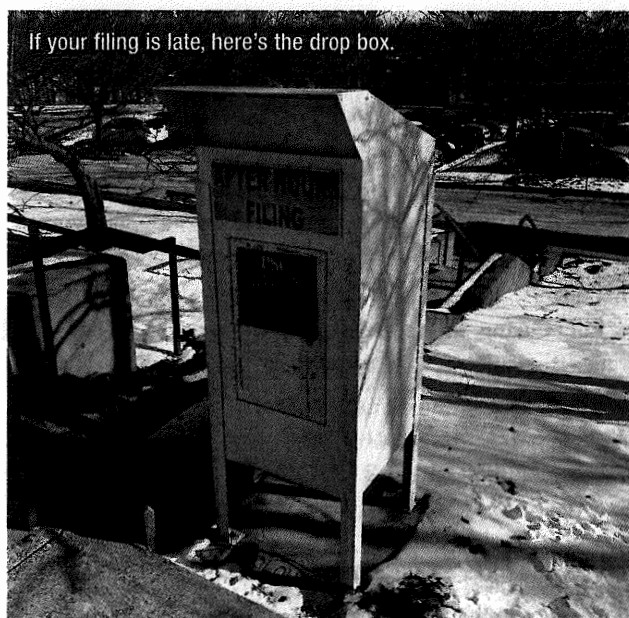
We're one of the few states that regulate the Rural Electric Cooperatives, so they come in not as regularly as the bigger utilities, but they still come in.

— Quang Nguyen

We look at statutory due dates and work backwards from there. In a perfect world we get everything in order so that we can get it through editing, get it to the Commissioners so they can see it, get it to final editing, and then get it out the door well ahead of time. It's not always a perfect process. It's developed by humans and run by humans, so some items fall through the cracks. We don't miss deadlines, but we come close sometimes.

PUF: What's the most rewarding aspect of what you do here?

Quang Nguyen: It's a balance that the Commission has, or my



role in the whole process, of trying to achieve the Commission's ultimate balancing of both ratepayer interest as well as providing from an electric industry sense, fair, just, reasonable rates so that the utility has an opportunity to obtain a reasonable return on its investment.

Just going through the process of working through the guts of the case and then getting to a final product that meets that goal is probably the most rewarding aspect by reaching a balanced outcome.

Nancy Vinsel: I was going to say that exact same thing. I started here as a summer law intern in 2010. I got to work with J.E.B. at that time. I fell in love with the process, and the mission, and was fortunate when I was hired here. This is my dream job.

J.E.B. Pinney: I echo what they said. At the end of the day, what we do at the Commission has an impact on almost every citizen of the Commonwealth. What I find the most rewarding is the people that I work with, particularly in our office of general counsel.

We've made a conscious effort to try to hire people that not only look good on the resume but also in the interview process, and who fit in, because you can have a brilliant attorney but if they're lacking in certain social skills it can undermine the process.

We're not operating on a bonus system here. Raises are hard to come by. Usually the reward for hard work is going to be more work. That's the reality. There are tradeoffs. There are

decent hours and benefits, but for people that come in from private practice, the happiness you would derive is not going to be a bonus check. It's going to be in the kind of familial approach that we try to take.

Nancy mentioned one of our attorneys is out and Nancy took over the cases and is shepherding them through. The attorney who's out has the flu and two of her children have the flu. But no worries. We take over those cases. I've had to be out twice for

**This is very team-oriented,
it's collaborative, and we are free
to pull in advice from people
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in order to have information we need.**

– Nancy Vinsel

unexpected illnesses. Not only did my casework get covered, but when I ran out of sick time, I didn't have to take an unpaid leave day because people were able to donate their time.

Besides our overarching goal, the satisfaction I get is I can come to work, and I don't dread Mondays. The most rewarding aspect is the people I work with. I admire the Commissioners that we have. They are dedicated to getting to the truth of all the rates and the truth of how these utilities are run. ○

Marybeth Purvis

Director, Division of Financial Analysis

PUF: What do you do on an average day?

Marybeth Purvis: It varies every day. It depends on what we are dealing with that day as far as the caseload and where we are procedurally. I have a staff of fifteen and that is counting my administrative assistant.

I have fourteen analysts that work under me and I review their work. I try to stay up with the cases and make suggestions for them. I do some of the analysis myself and write certain orders or parts of certain orders.

I do probably more than I should. I manage all these people, and I deal with all the emails and associated administrative work. I love it though.

PUF: This group of fifteen is a good percentage of the whole staff of sixty-five or so. All these big electric and gas cases come through you. You look at depreciation, cost of service and ROE. How did you get to this position?

Marybeth Purvis: Yes, we review all of these cases. I came in

as a rate design person three years ago and I have experience in the co-op, IOU, and consulting world.

I started out at East Kentucky Power Cooperative, which is a generation and transmission co-op, in their load forecasting department. This was in the mid-'90s. In addition to load forecasting, I worked on forward pricing and customer satisfaction. I got plucked by Kentucky Utilities and I went over to KU/Louisville Gas & Electric and worked on the load forecasting for KU.

About nine months after I went there, they reorganized again and said you've got to move Louisville. But that was not possible with my family.

Due to none of the KU staff choosing to move to Louisville, I was hired as a consultant. When that term ended, it was good timing as my husband was transferred and we left the area for six years. While gone I taught a few classes at community college and took the time to be with my children.

We came back to central Kentucky during the recession

and finding a job was tough. There was a consultant who worked with electric co-ops and I hounded him to hire me. Finally, he hired me, and I began work on rate cases and rate design for the co-ops. He was intelligent, and I learned a lot from him of what to do and, more important, what not to do.

The person that was in my position here called me about four years ago and said, we have a position opening, are you interested? I was hesitant because I had that perfect world where I had flexible hours and could mesh that with my family life. But I didn't like the ups and downs in the consulting world. I came in and talked, and I saw that there was some possibility to move up.

I was hired in the rate design department for electric and gas and was able to come right in and start working. About a year and a half later, the Commission reorganized, and I moved to the manager of water and did that for almost a year.

Then I moved into the director position. It was a quick transition. When I started, I realized there was a chance for upward mobility. Along the way, I don't think I ever gave up any jobs. I just kept picking up more along the way.

PUF: Who's in this Staff that you lead?

Marybeth Purvis: I have a group of financial analysts. They cover rate design and revenue analysis. We used to have electric, gas, water, sewer, and then under that we had revenue requirement people, and rate design people. Each case had members of each branch. Because you are a team, you divide and conquer.

I noticed that in the water and sewer branch the cases are a lot different because their alternative rate filings are smaller, and the work is different. Whereas, in electric and gas, the cases can be more complex and require more work.

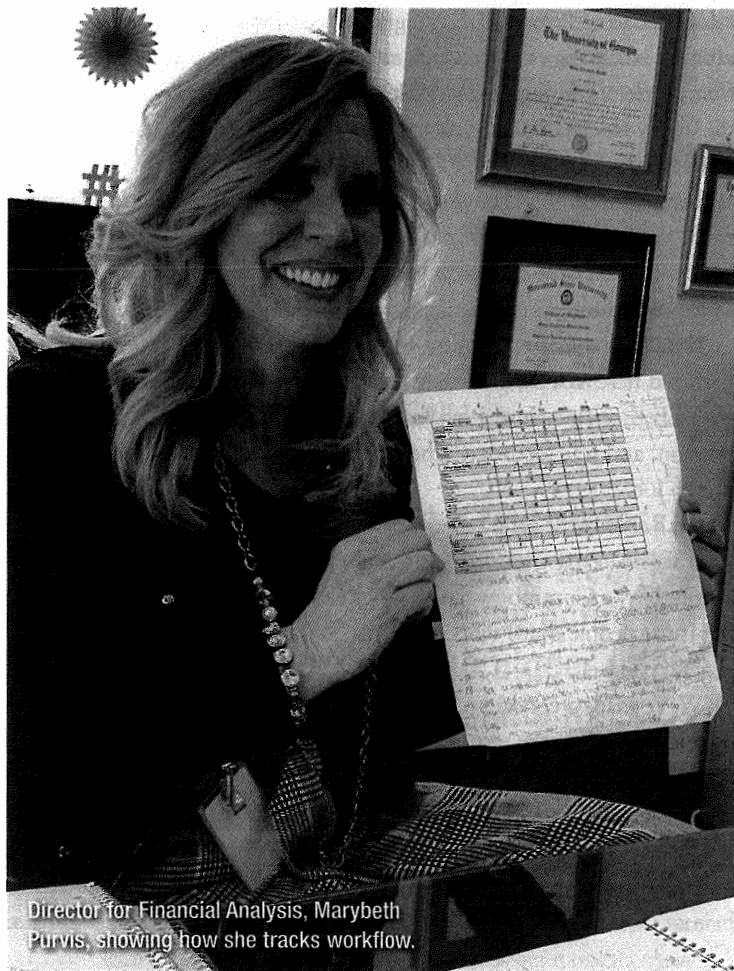
I noticed an imbalance in the workload. I also lost a bunch of people due to retirements. The bulk of the people I lost were all in electric and gas. I was the one with the most experience and I knew that I was going to need to make some changes.

One of the first things I did was to approach Gwen [Pinson, Executive Director] and said, I'd like to reorganize into rate design and revenue requirements and let everybody learn how to do both and not be in a specific utility sector but support each other.

Some people were happy about that, and some were nervous, but it's turned out well. People have stepped up to the plate and the workload is becoming more balanced.

PUF: You have so many cases, you have to prioritize.

Marybeth Purvis: Yes, we have a big case load. I try to make sure I look at the case and fortunately, I still had some people left who had some experience in revenue requirements in electric



Director for Financial Analysis, Marybeth Purvis, showing how she tracks workflow.

There's no PSC rubber stamp anymore.

and gas, which lessens my load a bit.

For electric and gas rate design, the experience was gone, therefore I am trying to train the existing water and sewer employees and encourage their participation to lessen my workload. Fortunately, many have years of service and thus have experience, but translating this experience from water and sewer to electric and gas has been the challenge.

About a third of the Staff are new, and they are learning, and stepping up to the challenge. What used to take someone, three to five years to learn, they're having to do in one, or one-and-a-half years. It takes hard work.

Everyone has a different learning style. Some want to get into a case on their own and will come to you if they get stuck on something or have questions. Others work better with a little more direct guidance. But, in both cases, I want them to work through and find the right answers themselves. My job is to analyze their work, point out what needs more attention, and help them work it out for themselves. That way, they've taught themselves, gotten the experience, and that sort of knowledge is what stays with you.

I have to be an analyst and see the issues, let the new and less experienced staff member know what I have found, and direct them on how to address any issues.

PUF: The Commissioners say they get involved in some of these issues very deeply. How does that work?

Marybeth Purvis: That's been an adjustment to the people who've been here for a long time. We have to anticipate what questions the Commissioners might ask and try to be prepared for those.

We may need to revisit some things and answer more questions. And I want the staff to figure out for themselves, so it will be a learning experience. These Commissioners get into the details, so we need to know the details even better than they do.

And there's no PSC rubber stamp anymore. When I started, I was told that a case would be settled and that a lot of the back-end work would be done. At first, I did not understand this, but several large cases were settled, and I saw how quickly a settlement allowed a case to be wrapped up.

Then, the Commission began opening up the black box settlements and questioning what went into them. I said, this is not the same world anymore. We need to be ready and prepared to give answers. That's why I read everything and try to stay on top of it. I need to be prepared because the Commissioners often come to me first.

PUF: The regulated utilities have a different world too. They used to have these settlement discussions, and now these issues are adjudicated. So, they had to adjust?

Marybeth Purvis: The settlements were not with us. The utilities have a settlement discussion with the parties of the case. We don't partake in any discussions.

Then the parties come to us. The first couple times the utilities were thrown off a bit at the request to open up the black box and tell the Commission the components. I feel like now all understand. The utility needs to come with a revenue requirement of X million dollars and support of what comprises this revenue requirement.

The settlement is not a for-sure thing with this Commission either. More focus is given to the reasonableness of the settlement. If the Commission believes modifications need to be made, I will be asked if there is enough in the record to support the modification.

The question will be directed to me. Mary Beth, what do you think? Can you do this? I will discuss with my staff, we will develop an opinion and make a staff recommendation. But in the end, the decision rests with the Commission and our job as staff is to make our best recommendation, with the evidentiary support for it.

PUF: Do you still have a favorite part to work on?

Marybeth Purvis: Yes. Rate design is the fun part. In all

these recent cases arising from the federal corporate income tax reduction, I decided to keep the fun part for myself. One of the other people in my department said he'd finish the work I had done to that point. I didn't let him, because I said, wait a minute. That's the fun part. No, I get to allocate the rates and do a little bit of the math.

One of the things that fell in my lap in this job was calculating ROE, and I have limited finance experience. It's something that I taught myself. I've really picked up on it and enjoy doing it.

PUF: If you're doing ROE, do you testify?

Marybeth Purvis: We don't testify. We just do the discovery and make sure that, between the utility and the intervenors, we have the evidence needed to decide and support it.

More focus is given to the reasonableness of the settlement.

PUF: What do you aspire to change or improve over the next, say three years, for your group?

Marybeth Purvis: Besides getting more people? I've really seen in this group improvement in the attitude of people. I always try to convey my appreciation. For one employee, I recently went in and said, I really appreciate you. You stepped up to the plate. You've earned this.

This person looked at me and said, nobody has ever told me that. They know that not only am I in it with them, I've got their back and I'm supporting them. They realize that. The work quality and the turnaround times are improving.

I'd like to continue that improvement. Sometimes I tell Gwen [Pinson, Executive Director], I feel like my hands are in so many things, I'm not doing anything effectively. I'd like to be able to focus on being a more effective director, than a director, an analyst and a manager.

PUF: What's the most rewarding aspect of what you do?

Marybeth Purvis: I love my job. I really do. When I started, I struggled because it wasn't fast enough for me at the time. I would go around asking, is there anything for me to do? I was a new employee to the PSC, but I didn't come in as a new employee. I had a lot of experience. Even though some days I feel overwhelmed, I like the challenge of it, and that's the most rewarding aspect.

My mom will say, you're really happy with your job. I am. I am continuously looking to improve the output. I have focused on increasing transparency and making sure the final orders are more accurate.

I hate making mistakes and love the rewarding feeling of a completed work product. You learn from your mistakes. When mistakes occur, I think, how can I make this better?

We just continually improve the product. ○

Stephanie Schweighardt

Division Director of General Administration

Rosemary Tutt

Manager, Customer Services Branch

PUF: Rosemary, what is your role here?

Rosemary Tutt: We take calls, emails, and faxes from our customers who have complaints that they have not been able to resolve with the utility companies.

PUF: Are those communications difficult to manage?

Rosemary Tutt: They can be very difficult, because usually by the time the customer has called us, they're already very upset.

PUF: Can you give an example?

Rosemary Tutt: A customer was without water over the weekend, and he was upset because there was no local person he could contact. Every time he called, he was getting into a call center. The only response was, we are aware of the issue. So, the customer is like, well you may be aware of it, but that doesn't help me.

This was a small water company that was taken over by a larger water company, so he was upset because, according to him, customers were promised a lot of things when the takeover took place. The larger water company is not living up to the agreement, so why isn't the PSC on it? It's the PSC's fault that I didn't have water over the weekend.

PUF: Are there some that are good calls?

Rosemary Tutt: In the ten years I've been here, I've had relatively few calls where the caller was pleased with our services.

PUF: Are they mostly for water or can they be on electric or gas?

Rosemary Tutt: We have eleven hundred utilities that we regulate, so you have no idea when you pick up that phone what they are calling about. Is it for gas, electric, water, or telephone?

PUF: Do you have any help in the department and how do you handle the bad calls?

Rosemary Tutt: There are two ladies that work with me. If they have a bad call, they pass it off to me as the supervisor. We tell the customers we're not taking sides. We're just telling you what the rules, regulations, statutes, and tariffs are, and that's what we have to go by.

PUF: Are you ever able to resolve or fix something that can make a difference for the caller?

Rosemary Tutt: We feel like we can. We do a lot with our customers in trying to get payment arrangements. With the furloughs and everything, they're getting disconnection notices

for their services because they haven't been paid in two months. That's not their fault, but our utility companies know what the situation is, so they're going to be willing to work with us.

There are a few customers that you're never going to be able to please, I don't care what you do. Some customers don't understand that if they default on a payment arrangement, the utility company doesn't have to offer them another one. We get customers who have defaulted seven, eight, nine times, yet they're just highly upset.

Stephanie Schweighardt: Rosemary and her staff, sometimes find a refund is due to the consumer, and these consumers are very appreciative for their assistance.

Rosemary and her staff often bring an issue to our attention. They hear from the consumers that the electricity in their area is out, or about water issues. Rosemary relays this information to our Executive Director or Deputy Executive Director, to investigate, if necessary.

PUF: What is your role here?

Stephanie Schweighardt: I'm the Division Director of General Administration. I believe this division is the most diverse because we oversee a variety of needs for the agency such as technology, financing/budget, administrative, filings, personnel and payroll, making us the backbone of the PSC.

If we receive a request to view a case back from 2015, our Filings Branch is on it. They will know exactly where to locate it. This branch maintains all the PSC records from the case records to the inspection reports. Our Technology staff not only oversees all the IT needs for staff and the agency, but also maintains the PSC website, geographic information systems and the public broadcast of all hearings.

Rosemary has already explained how busy her consumer services branch is. Our Administrative Services branch includes staff that oversee the agency's budget and financing, making sure staff have the office supplies they need, building and facilities, keeping staff warm during the cold winter, as well as the front desk, greeting all visitors and staff.

PUF: What are some of the big issues you try to deal with? Also, with the Staff size decreasing, how are you attracting younger people to come work when the retirees leave?

Stephanie Schweighardt: I oversee personnel, so it's getting the people in the building. The challenge with this is with the public sector and competing with the salaries offered, but we are working on getting better and more competitive salaries. There are employees that have been here twenty-seven to thirty years. When they retire, they take a lot of experience, knowledge and history with them.

That's why we are trying desperately to get Staff in to do cross training so it's not such a burden when experienced employees leave.

When we have new Staff, my favorite part of this job is seeing them start their career here, sometimes as an intern, and then climbing that career ladder all the way to a division director or higher. I really enjoy it.

PUF: I guess these younger folks need training to develop their expertise.

Stephanie Schweighardt: Correct. That's why cross training is so important, especially when an employee is close to retirement. You're happy for the employee that is able to retire, but you also have to be concerned about the lost expertise and how you are going to replace it, both by hiring new people and providing additional training to the ones already here.

PUF: On the IT side they're upgrading the streaming, and the secretarial function of the Commission is handling the dockets, but that's a lot. How many people do you have helping you?

Stephanie Schweighardt: Yes, it really is. We have four contract employees, and one state employee, and they're busy. Now that we're trying to go forward with a paperless initiative, that's keeping them busy as well.

Deciding how a document may be processed and submitted without having to print it, this is where our filings branch and IT staff work together to come up with a solution.

PUF: Is there a trend with the Consumer Services? Are people calling less or more, or they're angrier or less angry?

Rosemary Tutt: They're angrier. Eastern Kentucky, because of its economic problems, is where the situation is most critical. You get a phone call that says, I only get six hundred a month (in fixed income) and my electric bill's fifteen hundred. I can either help pay my electric bill or I can go get my medicine. Are you going to let me freeze to death, or are you going to let me



From left to right, Director for General Administration, Stephanie Schweighardt, and Manager for Consumer Services, Rosemary Tutt.

We are trying desperately to get Staff in to do cross training so it's not such a burden when experienced employees leave.

— Stephanie Schweighardt

starve to death? What are you going to do about it?

PUF: What do you say in those situations?

Rosemary Tutt: We can only try and work out a payment arrangement with the utility. The customer has to become better aware of his or her circumstances. Most people aren't engineers, so they have a very limited understanding of how appliances, particularly things like heat-pump-based systems, work. They don't realize that when the temperature drops below freezing, their electric usage is going to go up exponentially. If they knew that, they wouldn't be so surprised by large bills in cold weather.

The other issue is people don't read their bill carefully, or they don't fully understand it. A lot of bills are complicated, with a lot of line items. What we do is essentially a lot of education and outreach, to try to help those folks who call become a

better-informed consumer, to understand what they're looking at, and how to cut their energy usage down.

Unfortunately, a lot of people in eastern Kentucky also live in poorly insulated housing, a lot of it rental. They are limited in their ability to improve energy efficiency. Last winter, when we had a period of very cold weather, some of those people were averaging bills of fifteen hundred to two thousand for a month, and their income may be just six hundred dollars a month.

And they have children. You just have to stay on top of what's going on in the state, and you just try and sympathize, but you can't take sides. We do try to help them find and obtain financial assistance through the various government, community-based and utility-run programs.

No matter what we do, though, they're not going to be happy about their energy bills, but you try and do the best you can for them. Everybody's a human being, and you want to treat them that way.

PUF: Stephanie, give us a couple of examples of what you've done that are particularly rewarding.

Stephanie Schweighardt: Number one is our order process.

When I started here, the order was a printed copy, and the copy would be passed around the building, giving staff the opportunity to note any revisions and/or corrections. It often made several trips around the place.

I was informed I would have to run the copy here, run the copy there. I said, yeah, no. Let's don't run, let's get this processed electronically. With the help of Lisa [Mendez] in our IT group, and Brenda [Stith], who oversees the orders processing, we were able to switch to an electronic process using Share Point software.

Staff now may review and edit the order electronically and once

We tell the customers we're not taking sides. We're just telling you what the rules, regulations, statutes, and tariffs are.

— Rosemary Tutt

it's completed, just the final copy is printed for Commissioners to sign. It has reduced paper usage enormously, and orders are processed much faster, and with significantly fewer typos and other errors. That was rewarding.

When I was appointed as Division Director, overseeing personnel, and although our divisions work well together, every now and then, we do need to have a Kumbaya and motivational type meeting, just to make sure staff are all on the same page. This really helps.

We also have many morale events for our staff.

Monthly birthday recognitions, Halloween costume contest, holiday event for staff and their families, and a Fourth of July picnic, to name a few. Our Commissioners, Executive and Deputy Executive Directors are wonderful. They never hesitate to participate and contribute toward these and other events, to ensure staff get together and have a good time.

This year, we're starting the Employee Spotlight, and we will be spotlighting two or three employees, either for their above-and-beyond achievements at work, or within their communities.

If they do volunteer work or donate blood, that's something to spotlight. Seeing all the employees come together and visibly enjoy an event that was a lot of fun, I like that, that's great to see.

Rosemary Tutt: Our Commissioners took each division out for lunch. We'd never had that before. They took us to a good restaurant. That was very appreciated.

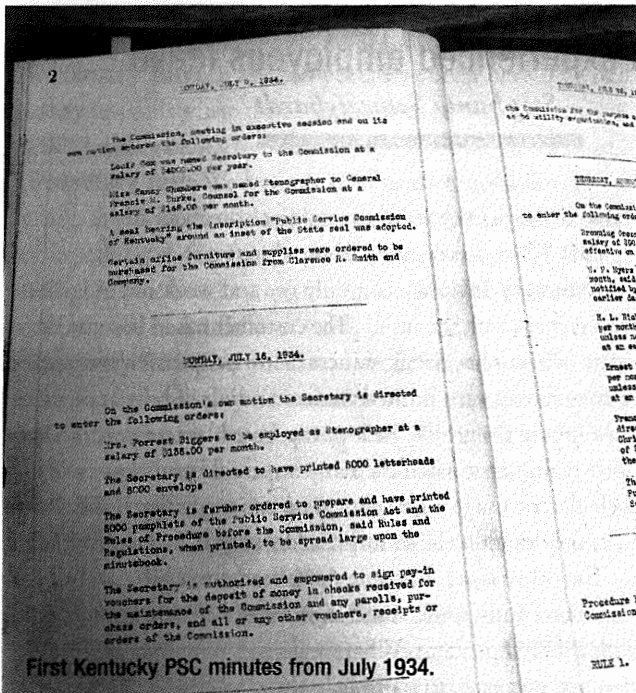
With what we do, you don't often get appreciation. You get hollered at, you get called lots of names, but to know that the Commissioners appreciate what we do was very rewarding to us.

PUF: The people here, that's one part that you really like, Rosemary?

Rosemary Tutt: Very much so. I've been here ten years, and at one point we had about three hundred years of experience retire, and that just set everybody on edge. But the entire staff pulled together to help each other, to make sure everyone had the information they needed to do their jobs, and that my staff had what we needed to help customers.

Stephanie Schweighardt: That's the best part about this agency. Everyone here is very professional. They know what you're dealing with. Everybody is equally busy, everyone's work is important, and everyone respects everyone else.

That's why we all work well together. We're here to serve consumers and utilities. It's a great group. ○



Andrew Melnykovych

Communications Director

PUF: What do you do on a typical day?

Andrew Melnykovych: I do a little bit of everything. I've been here for nearly seventeen years. In that time the job has evolved. All that I did when I first came here was media relations, press releases, and media monitoring.

It evolved into doing speech writing for the Commissioners, which I still do to some extent. It varies with each group of Commissioners how much they want to write their own, and how much they want somebody helping them.

We've gotten much more engaged with doing public outreach. I've always had a role in content on the website, but the public outreach piece has gotten big.

We've started doing public meetings for most of the major rate proceedings. We go out into the service territory and do a public meeting where we present information about the PSC process, something about the specific case, and then invite the public to comment back to us about the case.

We've been doing a lot of rate case meetings, even though they're not required by law. There are some construction cases, not rate cases, where we're statutorily required to go out and do public meetings, but we haven't had many of those recently. In general, that kind of public outreach has become a much bigger part of what I do.

PUF: Most people pay a utility bill, but they don't know about the Public Service Commission, and what it does.

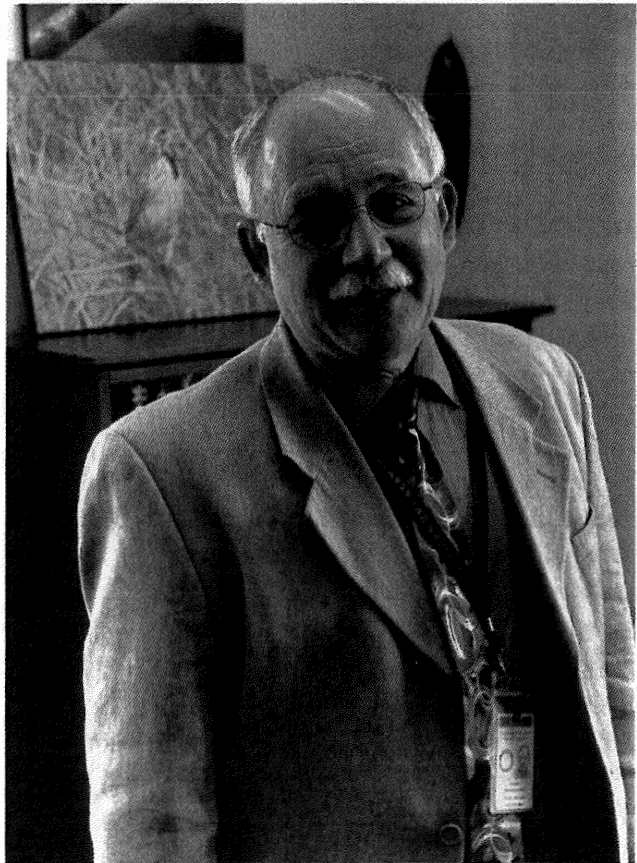
Andrew Melnykovych: The level of understanding of rate-making is fairly low. That's a polite way of putting it. It's an educational process. If asked, we do presentations for legislators about how the process works. We'll go out and talk to anybody who wants a presentation on it. We're doing a lot more of that. Explaining what the PSC does has become a much bigger part of the job in recent years.

We've got some videos on a YouTube channel where people can see a narrated PowerPoint show that walks people through the ratemaking process. I can't imagine anything more boring than that, but it's there in case anybody's interested.

If we have a report that needs to be written or edited, I'm generally the person involved. The biggest ones that we've done in the time I've been here was in September 2008, and then in January 2009. We had the two biggest power outages in the history of Kentucky within six months of each other.

The Commission decided after the first one to do a report, and before we could even get up to speed on the report on the first one, we got hit with the second one, which was worse.

We ended up doing this exhaustive report that was about



Explaining what the PSC does has become a much bigger part of the job in recent years.

a hundred and seventy pages long, looking at every aspect of how utilities, the Commission, state agencies and everybody responded to those outages.

We ended up with about sixty-three findings and recommendations. I wrote the bulk of it. What I didn't write, I edited. That's the kind of report that we've done from time to time that I have been involved with

PUF: Media has changed so much over the years. Back in the day, they'd be covering the PSC and utilities. How have you coped with the changes?

Andrew Melnykovych: That's been tough because when I came here the two largest newspapers in the state, the one in Lexington and the one in Louisville, each had a business writer who was assigned about fifty percent of the time to cover utilities.

Now there is nobody who covers utilities on a day-to-day,

ongoing basis in the state. So, every time something happens where a regulatory issue is involved, you get a reporter who is likely to be a total novice.

You've got to start at zero, get them up to speed, and try to explain the process to them. I've spent a lot of time with reporters basically trying to walk them through who we are and what we do.

That's become a much bigger challenge because it used to be the experienced reporter would call me up, and they'd already understand ratemaking. I could get into the nitty-gritty of it fairly quickly.

But with a lot of these newer reporters, there's some twenty-five-year-old kid fresh out of journalism school, who doesn't know anything about what the PSC does. It's an arcane subject that's complicated.

When I was a reporter, I was an environmental writer. My specialty was taking subjects that are complicated and trying to explain them in terms that ordinary people could understand. I'm still doing that, only from the other side.

The other two things that have been added to my duties more recently are I now coordinate the training that we do for small water utilities. We've got a hundred and thirty or a hundred and forty small water utilities, most of which are county-run water utilities.

They're run by appointed boards of Commissioners. Those Commissioners are required to undergo training every year that's administered by the PSC. We've tightened the training standards in the last year, but I've been doing that for a couple of years, coordinating that training.

We've gotten, just in the last year, enforcement responsibility for the Before You Dig protections for gas lines.

We've been doing a lot of outreach with that as well, mainly to the construction industry and anyone who goes around doing excavation, but also to gas line operators. Between my colleague and I in the inspections division who does that, we've gotten in front of about twelve hundred people in the last six months.

One of the outreach functions is tied directly to the penalties the PSC assesses for causing damage to a gas line. If you're a first-time offender, you get a chance to come in, and basically go to traffic school for excavators and get your penalty reduced. Learn about what you're required to do before you start taking a backhoe to something. We hold traffic school once a quarter. I'm doing that.

I've also got a role in editing orders issued by the PSC. I am not the main

editor – more of a backup and style arbiter on acronyms and the like. So, I'm editing orders as well.

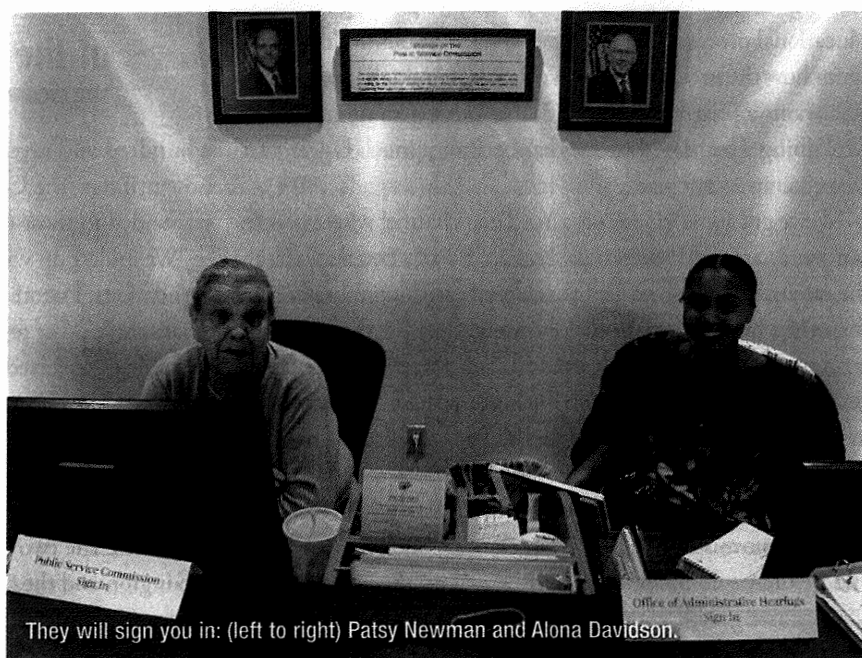
On top of that I'm actively involved in NARUC, in their international programs, as chair of the staff subcommittee on international relations. I've been working on putting together the International Relations Committee panels for the February meeting, for example. I've been chairing the staff subcommittee since 2013, but before that, I started doing international work through various partnership exchanges, mostly through NARUC. We had a partnership with the Republic of Georgia that went from 2010 through 2014. I was the coordinator at this end.

We've gotten, just in the last year, enforcement responsibility for the Before You Dig protections for gas lines.

Since then, we've worked with Nigeria and Kosovo on bilateral partnerships, where they've come here, and we've gone there. In addition, I've been to several other countries as a NARUC volunteer.

Last year I went to the World Forum on Energy Regulation in Mexico as part of the NARUC delegation. I went to Sri Lanka last year and Indonesia last year, although Indonesia was part of the Bangladesh program because we couldn't go to Bangladesh, so we met in Jakarta. I went to Bosnia last year also. I've been all over the place. Last year was just crazy busy in that regard.

I've done eleven international trips for NARUC with seven different countries, along with some other international work



They will sign you in: (left to right) Patsy Newman and Alona Davidson.

with other groups.

PUF: Is it personally rewarding for you to do these things?

Andrew Melnykovych: Yes, very much so. I really enjoy it. It's an opportunity to give back.

My parents were immigrants to this country from Ukraine. That's why I've been asked to go to Ukraine four times. I grew up speaking Ukrainian, so I am useful there because I fit in easily with them. It's rewarding.

PUF: You mentioned YouTube. Is that something that you all are getting into, or are still using?

Andrew Melnykovych: We've had a web presence for decades with streaming hearings and a website. But we started a Twitter account about five years ago. We just topped fifteen hundred followers, so we're not exactly Lady Gaga.

That has been the focus of our social media presence. We have not done anything on Facebook, simply because if you're going to do social media, the amount of time required is enormous. You need to have somebody dedicated to that. We don't have the staff. It would take a full-time person to run social media.

What we have is a Twitter account where we do not use it as an interactive mechanism. We use it to push information. Much of the news media in the state follow the Twitter account. If we put out a news release, we'll put it out on Twitter with a link to the news release on our website. It's been successful.

Where it's taken off is if we have any kind of major emergency situation in the state with a power outage, for example. The utilities are doing a better job of communicating via social media to their customers about situations like power outages, but we can aggregate the information because they're reporting it all to us.

We aggregate the information and put it out on Twitter, and the news media finds that useful. We've found ways to use the social media to our benefit, but it's still not our principal means of communicating with the public.

PUF: What are some exciting items coming up in the next year or so?

Andrew Melnykovych: I'm hoping we can finally revamp

our website. It's functional, but the functionality is aimed at utilities to make it easier for them to file all electronically and find documents.

Everything the consumer might want is on there, but it's not as easy to find as it needs to be. My goal in the next year is to get the website redesigned to make it more consumer friendly, and without compromising the usefulness of it for the utility companies that we serve.

The utilities are doing a better job of communicating via social media to customers about power outages, but we can aggregate the information.

The gas line protection program is something that's going to be a big part of the next year. We're hoping to get the number of incidents down through public education. We still see anywhere from three to five gas line dig-ins nearly every day in Kentucky, due to a variety of causes.

It's a miracle that we haven't had any major injury or loss-of-life incidents in the time that I've been here, at least involving the distribution systems that we regulate. We've had some significant interstate transmission pipeline accidents. Nobody's gotten badly hurt yet in any of those either, thankfully, but pipeline safety is an ongoing challenge.

Hopefully the enforcement will help. If you start penalizing people for not following the rules, maybe they'll think more carefully about what they're doing.

There's a lot going on. The international work is my labor of love. It's in addition to my regular duties, and I don't let it interfere with those. There is plenty on my plate with the regular work. There's always something going on. What I really like about this job is that no two days are the same. It keeps you on your toes. **PUF**

IN THE HALLWAY AT THE NARUC WINTER POLICY SUMMIT

Dr. Linda Capuano of the U.S. Energy Information Administration, second from the right, at the EIA's exhibitor booth at the NARUC Summit, undoubtedly discussing her agency's latest Energy Outlook.





April 16, 2019

Kentucky Clarifies Accommodations for Pregnant Workers

Under new legislation signed into law by Governor Matt Bevin, many Kentucky employers have enhanced responsibilities to provide reasonable accommodations to pregnant employees. Kentucky is the 25th state to adopt such legislation.

For all but the smallest employers, pregnancy discrimination is already prohibited under the Kentucky Civil Rights Act, KRS Chapter 344, and its federal counterpart, Title VII. However, these federal laws provide little guidance on what constitutes "reasonable accommodations" for pregnant workers and new mothers. The new Kentucky Pregnant Workers Act (the "Act") amends and clarifies the Kentucky Civil Rights Act on this issue and imposes additional responsibilities on employers with respect to pregnant employees and new mothers.

Under the Act, employers with fifteen or more employees within Kentucky are required to provide "reasonable accommodations" for employees' pregnancy, childbirth, or related medical conditions, including lactation or breast milk expression. "Reasonable accommodations" may include more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, appropriate seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, modified work schedule, and private space that is not a bathroom for expressing breast milk.

An employer is not required to provide an accommodation if the employer can show that providing the accommodation would cause an "undue hardship." Such a showing, however, requires proof of a "significant difficulty or expense" when considered in light of various factors, including the nature and cost of the specific accommodation, the overall financial resources of the facility, and the impact on operations. Employers must also consider the expected duration of the requested accommodation and whether similar accommodations are required by policy to be made, have been made, or are being made for other employees due to any other reason.

The Act also includes the following requirements and legal presumptions:

1. An employer may not require an employee to take

Contact a member of the Labor, Employment and Employee Benefits practice.

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leave from work if another reasonable accommodation can be provided;

2. The employer and employee must engage in a timely, good faith, and interactive process to determine effective reasonable accommodations; and

3. There is a rebuttable presumption that the accommodation does not impose an undue hardship on the employer if the employer has a policy to provide, would be required to provide, is currently providing, or has provided a similar accommodation to other classes of employees.

Finally, the Act requires covered employers to post written notice of the Act in a conspicuous location, inform new employees of the Act at the commencement of their employment, and provide existing employees with written notice no later than thirty (30) days after the effective date of the Act.

The Act, which was signed into law on April 9th, will become effective June 27, 2019. Therefore, the deadline for employers to provide existing employees with notice is July 27, 2019.

Moving forward, Kentucky employers should review their human resources practices and make sure that they are in compliance with the requirements of the new law. Violations of the Act can be prosecuted in the courts or through the Kentucky Commission on Human Rights, as with other claims brought under the Kentucky Civil Rights Act.

If you have questions about how this legal development might affect your business, please do not hesitate to contact a member of **SKO's Labor, Employment and Employee Benefits** team.

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STAYING OUT OF HOT WATER

Lack of Attention to Commissioner Salary Issues Can Result in Major Headaches

Approximately 99 of the 112 water districts in Kentucky pay their commissioners a salary as compensation for their services. While these salaries are generally small relative to the responsibilities of the office, they can present major headaches. Water district commissioners should pay close attention to issues related to their salaries to avoid public embarrassment, personal financial hardship, and possible legal actions.

KRS 74.020 governs water district commissioner salaries. It establishes a maximum annual salary of \$3,600 for a commissioner. Commissioners who attend six hours of certified water management training may be eligible for a maximum annual salary of \$6,000. Commissioners who serve as their water district's treasurer are also entitled to receive an additional amount not to exceed \$200 per year. With the exception of the extra compensation that a treasurer receives, a water district's commissioners must be paid the same salary.

While KRS 74.020 establishes the maximum salary for water district commissioners, the fiscal court of the county in which the water district is located determines the amount of any salary. The payment of a salary to commissioners is not required, but is within the fiscal court's discretion.

A water district should keep readily available a copy of the fiscal court resolution establishing its commissioners' salary level or the minutes of the fiscal court meeting reflecting the adoption of such resolution. Without such documents, a water district lacks evidence of authorization to pay a salary to its commissioners. In rate proceedings, the Kentucky Public Service Commission ("KPSC") will request such evidence and, if not produced, will disallow the water district's recovery of those salaries through rates. Equally important, commissioners receiving a salary in the absence of such evidence generally will be required to refund any previously paid salaries. Should they fail to make such refunds, they may be subject to potential lawsuits for recovery of the unauthorized salaries as well as potential criminal proceedings for authorizing and accepting unlawful payments. Moreover, the commissioners are likely to face adverse publicity for their actions.

If the fiscal court authorizes an annual salary in excess of \$3,600, the water district commissioner must attend at least six hours of certified water management training during the calendar year to receive the higher salary. The KPSC is responsible for certifying water management training programs.

A water district commissioner required to attend certified water management training should plan his or her attendance early in the year. Given the limited number of available certified programs, it may prove difficult to meet the attendance requirement near the close of the calendar year. A water district commissioner who fails to attend the required training must refund that portion of his or her salary that is based solely on his or her attendance at such program.

Prior to attending a management training program, a water district commissioner should confirm that the KPSC has certified the program, or that an application for certification is

pending before the KPSC, and the number of hours for which the program has been certified. The KPSC no longer accepts applications for certification after a program has been conducted. Upon attending the program, the commissioner should obtain a certificate of attendance from the program provider that indicates the number of hours of training attended.

If it is paying its commissioners a salary in excess of \$3,600, a water district should adopt procedures to remind its commissioners of the training requirement and to advise them of available training programs. It should also adopt and implement procedures to track its commissioners' attendance at certified training programs and their continued eligibility to receive the higher salary. It should request and retain for its records a copy of training attendance certificates and the KPSC order certifying the program as evidence of the commissioner's entitlement to a higher salary. Commissioners should retain a copy of these documents for their personal files as well.

A commissioner's salary is an annual salary and is not conditioned upon the commissioner's attendance at board meetings. A commissioner does not forfeit his or her salary for the month that he or she fails to attend a meeting. A commissioner's repeated failure to attend board meetings, however, is likely to serve as grounds for his or her removal from office.

Commissioners should exercise caution with fringe benefits to avoid exceeding established salary ceilings. While the value of fringe benefits, such as paid health insurance or dental insurance, is generally not considered as salary, it will be if the fringe benefit is part of a scheme to increase the commissioner's salary through the subterfuge of paying benefits not uniformly available to all water district employees. For example, if a water district provides paid family health insurance coverage to its commissioners but only paid single health insurance coverage to its employees, the arrangement is likely to be viewed as an effort to circumvent established salary limits and the cost of the additional insurance coverage will be deemed as additional salary.

In summary, a water district should review its records to ensure that the salaries paid to its commissioners have been properly authorized and do not exceed the established maximum. Water district commissioners receiving annual salaries in excess of \$3,600 should ensure they obtain the required amount of certified water management training each year. A water district and its commissioners should maintain documentary evidence of the commissioners' completion of such training. Finally, a water district should have its legal counsel review its records annually as an additional compliance measure.

Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 W. Vine Street, Suite 2100
Lexington, Kentucky 40507
(859) 231-3017
gerald.wuetcher@skofirm.com

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A photograph of a winter landscape. A stream flows through the center, surrounded by snow-covered trees and bushes. The scene is captured in a soft, slightly blurred style, emphasizing the texture of the snow and the movement of the water.

Waterproof

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BORROWERS BEWARE!

Public Service Commission Warns of Substantial Civil Penalties for

Gerald Wuetcher, Stoll Keenon Ogden

Recently the Kentucky Public Service Commission (“KPSC”) issued a warning to members of water utility governing boards: *If your water utility issues evidences of indebtedness without the required KPSC authorization, you and your utility are likely to be assessed substantial civil penalties.* The warning, issued in its **Order of September 17, 2018** in Case No. 2017-00469, is a cogent reminder that the governing bodies of public water utilities must be familiar with the statutory requirement to obtain KPSC approval before issuing debt.

KRS 278.300 requires a public utility to obtain KPSC authorization before issuing “any securities or evidences of indebtedness” or assuming “any obligation or liability in respect to the securities or evidences of indebtedness of any other person.” “Evidences of indebtedness” includes all types of debt instruments, not only bonds, but also promissory notes, assistance and loan agreements, lease agreements, even an agreement with a local automobile dealer for the installment purchase of a vehicle.

Two exceptions to the requirement for prior KPSC approval exist. Firstly, KPSC approval is not required for notes that are payable in two years or less. Such notes, however, cannot be renewed for an aggregate term of more than six years. For example, a utility could issue a note for two years and then renew the note for two additional two-year periods without obtaining KPSC approval. If the utility wishes to renew the two-year

note for a third time, however, it must request KPSC authorization.

Secondly, KPSC authorization is not required if the debt instrument is subject to the supervision or control of a Federal Government agency. For example, the issuance of bonds to or a loan agreement with USDA Rural Development does not require KPSC authorization since the bond issuance or loan agreement is subject to Rural Development’s supervision and Rural Development is an agency of the Federal Government.

The amount of the indebtedness is immaterial. It does not matter whether the note is for five million dollars or five thousand dollars. Any debt, except for the two exceptions noted above, requires KPSC authorization.

Failure to strictly comply with the terms of a KPSC order authorizing the issuance of an evidence of indebtedness will also subject the utility and its officers to possible penalty. In Case No. 2016-00338, a water district issued debt exceeding the authorized amount. Although the issuance refinanced the existing debt at a lower rate of interest and produced significant savings to the water district, the KPSC assessed civil penalties against the water district’s commissioners for issuing debt in excess of the authorized amount.

What are the consequences of violating KRS 278.300? The most obvious consequence is civil penalties

assessed against the utility and its officers and agents. KRS 278.990(1) permits the assessment of a civil penalty of no less than \$25 and no greater than \$2,500 for each violation of KRS Chapter 278 or for aiding and abetting a violation of KRS Chapter 278. KRS 278.990(1) also provides for a criminal penalty of imprisonment for no more than six months. (A court, not the KPSC, must impose a criminal penalty.)

In its Order of September 17, 2018, the KPSC made clear that non-profit water districts and water associations will be assessed civil penalties for violating KRS 278.300. Previously, it had expressed a reluctance to penalize such utilities because penalties deprive those utilities of revenue necessary to maintain or improve the quality of service. The increasing number of violations, however, had led the KPSC to reconsider this policy.

The KPSC has been less reluctant to penalize water district commissioners and general managers. While it is the utility that actually issues the evidence of indebtedness, KRS 278.990(1) permits the KPSC to penalize persons who “aid and abet” a violation of KRS Chapter 278. Water district commissioners have been found to aid the unauthorized issuance by voting to approve a resolution to issue the debt instruments or signing an unauthorized promissory note or loan agreement. The KPSC has also penalized general managers for their involvement in the unauthorized issuance of debt.



Water Utilities and Their Board Members for Unauthorized Debt

In addition to assessing penalties against him, the KPSC may initiate administrative proceedings to remove a water district commissioner from office for aiding and abetting a water district's unauthorized debt issuance. The KPSC has also mandated that water district commissioners attend certified water management training as punishment for their actions.

Another consequence of violating KRS 278.300 is potential public embarrassment for the utility and its officers. The KPSC generally holds a public hearing on any allegation of unauthorized debt issuance and requires the utility's officers and members of its governing board to appear and testify at such hearing. These hearings are streamed live on the KPSC's website. The KPSC requires the utility to publish in the largest circulating newspaper in its service area notice of the hearing, the allegations giving rise to the hearing, and how the public may view the hearing.

The failure to obtain prior authorization does not affect the debt instrument. The water utility's obligation to honor the instrument remains. In fact, most debt instruments now require the borrower to certify or represent that all required regulatory approvals for the loan or debt have been obtained. If the underlying debt instrument were deemed unenforceable, the borrower would still be subject to legal action for breach of contract.

The KPSC has previously held that the lack of authorization will deprive a utility of any right to recover through rates the interest payments associated with the debt instrument. In most cases, however, the KPSC has permitted recovery of the interest and principal payments through rates so long as the proceeds of the debt instrument are used for a reasonable purpose related to the provision of utility service and the debt was reasonably necessary and appropriate for the purpose. When they are not, however, the KPSC has denied recovery of the principal and interest payments through utility rates. For example, the KPSC will not allow recovery of principal or interest on a debt instrument whose proceeds were used solely to pay current operating expenses.

The available defenses to the assessment of a civil penalty are very limited. Ignorance of KRS 278.300 is not a defense. The KPSC has declared that "[i]gnorance is not a valid excuse ... as it is the responsibility of the utility and its directors to comply with the laws of the Commonwealth ..." The KPSC has further held that reliance upon the advice of legal counsel does not prevent the finding of a violation.

How can violations be avoided? Utility officers should become familiar with the laws governing the utility's operations. They should attend annually a course

of instruction on the laws governing their utility's operation. (The KPSC, the Kentucky Rural Water Association, and other entities regularly conduct such programs.) Knowledge of the law's requirements will reduce the likelihood of a violation.

A water utility should adopt policies requiring legal review of the proposed agenda and minutes of all meetings of its governing board. It should require legal review of all evidences of indebtedness prior to their issuance. It should ensure that its legal counsel is familiar with the requirements of KRS Chapter 278. In many of the KPSC proceedings in which violations were found, the governing bodies acted without legal review of these documents or relied upon the assistance of counsel who were unfamiliar with the KPSC's laws and regulations.

In summary, the KPSC is aggressively pursuing water utilities that fail to obtain KPSC authorization prior to issuing evidences of indebtedness. Water utilities and their governing boards should take steps to ensure a full and complete understanding of KRS 278.300 and make every effort to comply with its requirements. Failure to do so will likely subject them to significant civil penalties and public criticism.

1 AN ACT relating to the Public Service Commission.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 278.020 is amended to read as follows:

- 4 (1) (a) No person, partnership, public or private corporation, or combination thereof
5 shall commence providing utility service to or for the public or begin the
6 construction of any plant, equipment, property, or facility for furnishing to the
7 public any of the services enumerated in KRS 278.010, except:
- 8 1. Retail electric suppliers for service connections to electric-consuming
9 facilities located within its certified territory;~~and~~
 - 10 2. Ordinary extensions of existing systems in the usual course of business;
11 or
 - 12 3.~~2.~~A water district created under KRS Chapter 74 or a water association
13 formed under KRS Chapter 273 that undertakes a waterline extension or
14 improvement project if the water district or water association is a Class
15 A or B utility as defined in the uniform system of accounts established
16 by the commission according to KRS 278.220 and:
 - 17 a. The water line extension or improvement project will not cost
18 more than five hundred thousand dollars (\$500,000); or
 - 19 b. The water district or water association will not, as a result of the
20 water line extension or improvement project, incur obligations
21 requiring commission approval as required by KRS 278.300.
- 22 In either case, the water district or water association shall not, as a result
23 of the water line extension or improvement project, increase rates to its
24 customers;
- 25 until that person has obtained from the Public Service Commission a
26 certificate that public convenience and necessity require the service or
27 construction.

- 1 (b) Upon the filing of an application for a certificate, and after any public hearing
2 which the commission may in its discretion conduct for all interested parties,
3 the commission may issue or refuse to issue the certificate, or issue it in part
4 and refuse it in part, except that the commission shall not refuse or modify an
5 application submitted under KRS 278.023 without consent by the parties to
6 the agreement.
- 7 (c) The commission, when considering an application for a certificate to construct
8 a base load electric generating facility, may consider the policy of the General
9 Assembly to foster and encourage use of Kentucky coal by electric utilities
10 serving the Commonwealth.
- 11 (d) The commission, when considering an application for a certificate to construct
12 an electric transmission line, may consider the interstate benefits expected to
13 be achieved by the proposed construction or modification of electric
14 transmission facilities in the Commonwealth.
- 15 (e) Unless exercised within one (1) year from the grant thereof, exclusive of any
16 delay due to the order of any court or failure to obtain any necessary grant or
17 consent, the authority conferred by the issuance of the certificate of
18 convenience and necessity shall be void, but the beginning of any new
19 construction or facility in good faith within the time prescribed by the
20 commission and the prosecution thereof with reasonable diligence shall
21 constitute an exercise of authority under the certificate.
- 22 (2) For the purposes of this section, construction of any electric transmission line of one
23 hundred thirty-eight (138) kilovolts or more and of more than five thousand two
24 hundred eighty (5,280) feet in length shall not be considered an ordinary extension
25 of an existing system in the usual course of business and shall require a certificate
26 of public convenience and necessity. However, ordinary extensions of existing
27 systems in the usual course of business not requiring such a certificate shall include:

- 1 (a) The replacement or upgrading of any existing electric transmission line; or
- 2 (b) The relocation of any existing electric transmission line to accommodate
- 3 construction or expansion of a roadway or other transportation infrastructure;
- 4 or
- 5 (c) An electric transmission line that is constructed solely to serve a single
- 6 customer and that will pass over no property other than that owned by the
- 7 customer to be served.
- 8 (3) Prior to granting a certificate of public convenience and necessity to construct
- 9 facilities to provide the services set forth in KRS 278.010(3)(f), the commission
- 10 shall require the applicant to provide a surety bond, or a reasonable guaranty that the
- 11 applicant shall operate the facilities in a reasonable and reliable manner for a period
- 12 of at least five (5) years. The surety bond or guaranty shall be in an amount
- 13 sufficient to ensure the full and faithful performance by the applicant or its
- 14 successors of the obligations and requirements of this chapter and of all applicable
- 15 federal and state environmental requirements. However, no surety bond or guaranty
- 16 shall be required for an applicant that is a water district or water association or for
- 17 an applicant that the commission finds has sufficient assets to ensure the continuity
- 18 of sewage service.
- 19 (4) No utility shall exercise any right or privilege under any franchise or permit, after
- 20 the exercise of that right or privilege has been voluntarily suspended or
- 21 discontinued for more than one (1) year, without first obtaining from the
- 22 commission, in the manner provided in subsection (1) of this section, a certificate of
- 23 convenience and necessity authorizing the exercise of that right or privilege.
- 24 (5) No utility shall apply for or obtain any franchise, license, or permit from any city or
- 25 other governmental agency until it has obtained from the commission, in the manner
- 26 provided in subsection (1) of this section, a certificate of convenience and necessity
- 27 showing that there is a demand and need for the service sought to be rendered.

1 (6) No person shall acquire or transfer ownership of, or control, or the right to control,
2 any utility under the jurisdiction of the commission by sale of assets, transfer of
3 stock, or otherwise, or abandon the same, without prior approval by the
4 commission. The commission shall grant its approval if the person acquiring the
5 utility has the financial, technical, and managerial abilities to provide reasonable
6 service.

7 (7) No individual, group, syndicate, general or limited partnership, association,
8 corporation, joint stock company, trust, or other entity (an "acquirer"), whether or
9 not organized under the laws of this state, shall acquire control, either directly or
10 indirectly, of any utility furnishing utility service in this state, without having first
11 obtained the approval of the commission. Any acquisition of control without prior
12 authorization shall be void and of no effect. As used in this subsection, the term
13 "control" means the possession, directly or indirectly, of the power to direct or cause
14 the direction of the management and policies of a utility, whether through the
15 ownership of voting securities, by effecting a change in the composition of the
16 board of directors, by contract or otherwise. Control shall be presumed to exist if
17 any individual or entity, directly or indirectly, owns ten percent (10%) or more of
18 the voting securities of the utility. This presumption may be rebutted by a showing
19 that ownership does not in fact confer control. Application for any approval or
20 authorization shall be made to the commission in writing, verified by oath or
21 affirmation, and be in a form and contain the information as the commission
22 requires. The commission shall approve any proposed acquisition when it finds that
23 the same is to be made in accordance with law, for a proper purpose and is
24 consistent with the public interest. The commission may make investigation and
25 hold hearings in the matter as it deems necessary, and thereafter may grant any
26 application under this subsection in whole or in part and with modification and
27 upon terms and conditions as it deems necessary or appropriate. The commission

1 shall grant, modify, refuse, or prescribe appropriate terms and conditions with
2 respect to every such application within sixty (60) days after the filing of the
3 application therefor, unless it is necessary, for good cause shown, to continue the
4 application for up to sixty (60) additional days. The order continuing the application
5 shall state fully the facts that make continuance necessary. In the absence of that
6 action within that period of time, any proposed acquisition shall be deemed to be
7 approved.

8 (8) Subsection (7) of this section shall not apply to any acquisition of control of any:

9 (a) Utility which derives a greater percentage of its gross revenue from business
10 in another jurisdiction than from business in this state if the commission
11 determines that the other jurisdiction has statutes or rules which are applicable
12 and are being applied and which afford protection to ratepayers in this state
13 substantially equal to that afforded such ratepayers by subsection (7) of this
14 section;

15 (b) Utility by an acquirer who directly, or indirectly through one (1) or more
16 intermediaries, controls, or is controlled by, or is under common control with,
17 the utility, including any entity created at the direction of such utility for
18 purposes of corporate reorganization; or

19 (c) Utility pursuant to the terms of any indebtedness of the utility, provided the
20 issuance of indebtedness was approved by the commission.

21 (9) In a proceeding on an application filed pursuant to this section, any interested
22 person, including a person over whose property the proposed transmission line will
23 cross, may request intervention, and the commission shall, if requested, conduct a
24 public hearing in the county in which the transmission line is proposed to be
25 constructed, or, if the transmission line is proposed to be constructed in more than
26 one county, in one of those counties. The commission shall issue its decision no
27 later than ninety (90) days after the application is filed, unless the commission

1 extends this period, for good cause, to one hundred twenty (120) days. The
2 commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its
3 discretion, it deems it necessary to hire a competent, qualified and independent firm
4 to assist it in reaching its decision. The issuance by the commission of a certificate
5 that public convenience and necessity require the construction of an electric
6 transmission line shall be deemed to be a determination by the commission that, as
7 of the date of issuance, the construction of the line is a prudent investment.

8 (10) The commission shall not approve any application under subsection (6) or (7) of
9 this section for the transfer of control of a utility described in KRS 278.010(3)(f)
10 unless the commission finds, in addition to findings required by those subsections,
11 that the person acquiring the utility has provided evidence of financial integrity to
12 ensure the continuity of sewage service in the event that the acquirer cannot
13 continue to provide service.

14 (11) The commission shall not accept for filing an application requesting authority to
15 abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
16 providing services unless the applicant has provided written notice of the filing to
17 the following:

- 18 (a) Kentucky Division of Water;
- 19 (b) Office of the Attorney General; and
- 20 (c) The county judge/executive, mayor, health department, planning and zoning
21 commission, and public sewage service provider of each county and each city
22 in which the utility provides utility service.

23 (12) The commission may grant any application requesting authority to abandon
24 facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
25 providing services upon terms and conditions as the commission deems necessary
26 or appropriate, but not before holding a hearing on the application and no earlier
27 than ninety (90) days from the date of the commission's acceptance of the

1 application for filing, unless the commission finds it necessary for good cause to act
2 upon the application earlier.

3 (13) If any provision of this section or the application thereof to any person or
4 circumstance is held invalid, the invalidity shall not affect other provisions or
5 applications of this section which can be given effect without the invalid provision
6 or application, and to that end the provisions are declared to be severable.

7 ➔Section 2. KRS 278.183 is amended to read as follows:

8 (1) Notwithstanding any other provision of this chapter, effective January 1, 1993, a
9 utility shall be entitled to the current recovery of its costs of complying with the
10 Federal Clean Air Act as amended and those federal, state, or local environmental
11 requirements which apply to coal combustion wastes and by-products from facilities
12 utilized for production of energy from coal in accordance with the utility's
13 compliance plan as designated in subsection (2) of this section. These costs shall
14 include a reasonable return on construction and other capital expenditures and
15 reasonable operating expenses for any plant, equipment, property, facility, or other
16 action to be used to comply with applicable environmental requirements set forth in
17 this section. Operating expenses include all costs of operating and maintaining
18 environmental facilities, income taxes, property taxes, other applicable taxes, and
19 depreciation expenses as these expenses relate to compliance with the
20 environmental requirements set forth in this section.

21 (2) Recovery of costs pursuant to subsection (1) of this section that are not already
22 included in existing rates shall be by environmental surcharge to existing rates
23 imposed as a positive or negative adjustment to customer bills in the second month
24 following the month in which costs are incurred. Each utility, before initially
25 imposing an environmental surcharge pursuant to this subsection, shall thirty (30)
26 days in advance file a notice of intent to file said plan and subsequently submit to
27 the commission a plan, including any application required by KRS 278.020(1), for

1 complying with the applicable environmental requirements set forth in subsection
2 (1) of this section. The plan shall include the utility's testimony concerning a
3 reasonable return on compliance-related capital expenditures and a tariff addition
4 containing the terms and conditions of a proposed surcharge as applied to individual
5 rate classes. Within six (6) months of submittal, the commission shall conduct a
6 hearing upon the request of a party, and shall, regardless of whether or not a
7 hearing is requested~~[to]~~:

8 (a) Consider and approve the plan and rate surcharge if the commission finds the
9 plan and rate surcharge reasonable and cost-effective for compliance with the
10 applicable environmental requirements set forth in subsection (1) of this
11 section;

12 (b) Establish a reasonable return on compliance-related capital expenditures; and

13 (c) Approve the application of the surcharge.

14 (3) The amount of the monthly environmental surcharge shall be filed with the
15 commission ten (10) days before it is scheduled to go into effect, along with
16 supporting data to justify the amount of the surcharge which shall include data and
17 information as may be required by the commission. At six (6) month intervals, the
18 commission shall review past operations of the environmental surcharge of each
19 utility, and after hearing, as ordered, shall, by temporary adjustment in the
20 surcharge, disallow any surcharge amounts found not just and reasonable and
21 reconcile past surcharges with actual costs recoverable pursuant to subsection (1) of
22 this section. Every two (2) years the commission shall review and evaluate past
23 operation of the surcharge, and after hearing, as ordered, shall disallow improper
24 expenses, and to the extent appropriate, incorporate surcharge amounts found just
25 and reasonable into the existing base rates of each utility.

26 (4) The commission may employ competent, qualified independent consultants to assist
27 the commission in its review of the utility's plan of compliance as specified in

1 subsection (2) of this section. The cost of any consultant shall be included in the
2 surcharge approved by the commission.

3 (5) The commission shall retain all jurisdiction granted by this section and KRS
4 278.020 to review the environmental surcharge authorized by this section and any
5 complaints as to the amount of any environmental surcharge or the incorporation of
6 any environmental surcharge into the existing base rate of any utility.

7 ➔Section 3. The following KRS sections are repealed:

8 278.510 Consolidation of telephone lines.

9 278.545 Countywide service by major telephone company required, when.

278.023 Approval of federally-funded construction projects -- Commission review of agreement and supporting documents -- Surcharge.

- (1) The provisions of this section shall apply to any construction project undertaken by a water association, commission, district, or combined water, gas or sewer district formed under KRS Chapter 74 or 273, which is financed in whole or in part under the terms of an agreement between the water utility and the United States Department of Agriculture or the United States Department of Housing and Urban Development. Because federal financing of such projects entails prior review and oversight by the federal agency and obligates the utility to certain actions, and because conflicting requirements by the federal agency and the Public Service Commission may place the water utility in an untenable position and delay or jeopardize such projects, it is declared to be the policy of the Commonwealth that such agreements shall be accepted by the Public Service Commission, and that the commission shall not prohibit a water utility from fulfilling its obligations under such an agreement.
- (2) No agreement between a water utility and federal agency under this section shall take effect until thirty (30) days after such agreement, together with necessary applications and documentation, is filed with the commission, unless the commission acts within a lesser time. The commission in its administrative regulations shall list the specific documents required to be filed under this subsection.
- (3) The commission shall review the project and the agreement, may recommend changes to the utility and the federal agency, but shall not modify or reject any portion of the agreement on its own authority. The commission shall issue a certificate of necessity and convenience and such other orders as may be required to implement the terms of the agreement no later than thirty (30) days after filing.
- (4) The commission shall not prohibit the inclusion of any cost or the use of any accounting procedure in reviewing or setting the rates of the utility if such cost or procedure is required as a condition for federal financing of a construction project under an approved agreement between the water utility and federal agency.
- (5) If the federal agency approves a surcharge to the water bills of customers who receive service through an extension of water facilities under this section, which is in lieu of an assessment against the customer for the cost of the extension, then the Public Service Commission shall allow collection of the surcharge to continue for the period of years for which the surcharge was established.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 158, sec. 1, effective July 15, 1994. ^{â€} Amended 1992 Ky. Acts ch. 388, sec. 2, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 12, sec. 4, effective July 15, 1988.

278.300 Issuance or assumption of securities by utilities.

- (1) No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.
- (2) Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes. Every such application shall be made under oath, and shall be signed and filed on behalf of the utility by its president, or by a vice president, auditor, comptroller, or other executive officer having knowledge of the matters set forth and duly designated by the utility. Every such application shall be placed at the head of the docket of the commission and disposed of promptly within sixty (60) days after it is filed with the commission, unless it is necessary for good cause to continue the application for longer time than sixty (60) days, in which case the order making the continuance shall state fully the facts that make it necessary.
- (3) The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.
- (4) The commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate. The order of the commission shall specify that the securities or evidences of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes specified in the application, and both the application of the utility and the order of the commission shall state in general terms the purpose of the issuance or assumption.
- (5) A copy of any order made and entered by the commission under this section, duly certified by the executive director of the commission, shall be sufficient evidence for all purposes of full and complete compliance by the utility with all procedural and other matters required precedent to the entry of the order.
- (6) Securities and evidences of indebtedness issued and obligations and liabilities assumed by a utility, for which, under the provisions of this section, the authorization of the commission is required, shall comply with the terms and conditions of the order of authorization entered prior to the issue or assumption, and where the order has been fully complied with the validity of the issue or assumption shall not be affected by a failure to comply with any provision of this section or rule of the commission relating to procedure or other matters preceding the entry of the order of authorization or order supplemental thereto.
- (7) The commission may require periodical or special reports from the utility issuing any security or evidence of indebtedness. The report shall show, in such detail as the commission requires, the disposition made of such securities or evidences of

indebtedness, and the application of the proceeds thereof.

- (8) This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.
- (9) Nothing in this section implies any guarantee of securities or evidences of indebtedness by the state, or any obligation on the part of the state with respect thereto, and nothing in this section limits the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.
- (10) This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.
- (11) This section also does not apply to the issuance of securities or evidence of indebtedness by a utility principally engaged in transportation of gas by pipeline in interstate commerce and subject to the supervision, control or jurisdiction of the federal government or any agency, board or commission thereof.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 166, sec. 3, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 34, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 37, effective April 1, 1979. -- Amended 1972 Ky. Acts ch. 9, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-24.

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

Rate Application Forms

Alternative Rate Filing Application Forms

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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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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)

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Estill County Water District No. 1, Case No. 2017-00467 (Ky. PSC Feb. 20, 2018)
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