

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
KENTUCKY RURAL WATER ASSOCIATION)	
AND STOLL KEENON OGDEN PLLC FOR)	CASE NO. 2019-00350
ACCREDITATION AND APPROVAL OF A)	
PROPOSED WATER DISTRICT)	
MANAGEMENT TRAINING PROGRAM)	

APPLICATION

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

In support of their application, the Joint Applicants state:

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

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

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

6. The Joint Applicants propose to sponsor and conduct a water management training program on October 29, 2019 at Holiday Inn University Plaza/Sloan Convention Center, 1021 Wilkinson Trace, Bowling Green, Kentucky. The program is entitled "Fifth Annual Water Law Series." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

7. As reflected in **Exhibit 1**, the proposed training program will include presentations on recent developments in utility regulatory law, including a general overview of recent Kentucky court and Public Service Commission decisions; general employment law principles and recent developments in federal and state employment law and how these developments will affect water utilities; a general review of the legal and regulatory concept of depreciation; appropriate water utility actions to manage and replace aging water infrastructure; a review of various methodologies to assess water loss and appropriate water loss control measures; and a review of the legal and regulatory aspects of "unaccounted-for water.". These presentations will enhance the attendees' understanding of relevant legal issues involved in the management, operation, and maintenance of water treatment and distribution systems and are calculated to enhance and improve the quality of the management, operation and maintenance of the attendees' water systems.

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

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

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

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

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

¹ See *Electronic Application of Hardin County Water District No. 2 For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2019-00082 (Ky. PSC Mar. 29, 2019); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2019-00081 (Ky. PSC Mar. 27, 2019); *Electronic Application of Hardin County Water District No. 2 For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00110 (Ky. PSC May 9, 2018); *Electronic Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00091 (Ky. PSC May 9, 2018); *Application of Kentucky Rural Water Association Request For Approval of Commissioner Training And Continuing Education Credit*, Case No. 2017-00436 (Ky. Mar. 28, 2018); *Application of Northern Kentucky Water District For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2017-00144 (Ky. PSC March 23, 2017); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2016-00146 (Ky. PSC May 5, 2016); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2015-00147 (Ky. PSC May 18, 2015).

12. The Joint Applicants have sent notice of the proposed training program by electronic mail to the water districts, water associations, and municipal utilities that are under Commission jurisdiction as well as representatives of investor-owned utilities, county judge/executives, county attorneys, and members of the Kentucky Bar Association who are believed to have an interest in the proposed program's subject matter.

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

14. No later than November 30, 2019, the Joint Applicants will file with the Commission a sworn statement:

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

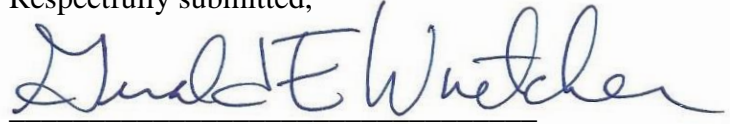
15. The Joint Applicants will include with the sworn statement documentary evidence of the program's certification by certifying authorities and a copy of any written material given to the attendees that has not been previously provided to the Commission.

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

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

Dated: September 20, 2019

Respectfully submitted,



Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
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Lexington, Kentucky 40507-1801
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Fax: (859) 259-3517

*Counsel for Kentucky Rural Water Association and
Stoll Keenon Ogden PLLC*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Joint Applicants' September 20, 2019 electronic filing of this Application is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on September 20, 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 September 24, 2019.



Gerald E. Wuetcher

EXHIBIT 1

5th Annual Water Law Series
Presented by

Kentucky Rural Water Association • Utility Leadership Institute
Stoll Keenon Ogden PLLC
Holiday Inn University Plaza | Sloan Convention Center
Bowling Green, Kentucky

October 29, 2019

MORNING AGENDA

- 7:45 - 8:25 Registration and Refreshments**
- 8:25 - 8:30 Welcome and Program Overview – Gary Larimore**
- 8:30 - 9:30 Recent Developments in Utility Regulation – Damon Talley**
This presentation reviews recent developments in public utility law and regulation. Topics include revisions to the Open Meetings Act, sovereign immunity, wholesale water purchase agreements, franchises, obtaining PSC approval before borrowing money, and laws enacted by General Assembly in its 2018 and 2019 Sessions. The presenter will also examine and discuss recent court and PSC decisions.
- 9:30 - 9:45 BREAK**
- 9:45 - 10:45 Hot Topics in Employment Law: 2019 Update – Amy Miles**
This presentation reviews general employment law principles and addresses recent developments in federal, state, and local employment laws. The presenter will also discuss a water commissioner’s role in providing a hostile free work environment in the “Me Too” era.
- 10:45 - 11:00 BREAK**
- 11:00 - 12:00 Aging Infrastructure and Your Role in Solving This Problem**
Greg Heitzman & Russ Rose
This presentation stresses the need for water utilities to develop a comprehensive Asset Management Program in light of Kentucky’s Aging Water Infrastructure. Kentucky’s Infrastructure Report Card will also be discussed. Other topics include Best Practices, Capital Planning, Managerial and Technical Challenges in the Water Industry, Water Loss, and Water Rates.
- 12:00 - 1:00 LUNCH (Provided On-Site)**

AFTERNOON AGENDA

- 1:00 - 2:00** **Water Loss Evaluation: Percentage vs. Cost – John Dix**
With continuing aging infrastructure, water loss has become an increasingly important metric in the operation of water utilities. This presentation compares different methods of evaluating water loss with three different utilities utilizing cost parameters against traditional volumetric measures.
- 2:00 - 2:15** **BREAK**
- 2:15 - 3:15** **All You Ever Wanted to Know About Depreciation . . .and Then Some
Katelyn Brown**
This presentation explains the importance of “fully funding depreciation” and investigates how many cities and water districts are participating in this key business practice. The consequences of not funding depreciation and what utilities can do to increase their depreciation funding will also be discussed.
- 3:15 - 3:25** **BREAK**
- 3:25 - 4:25** **Legal and Regulatory Aspects of “Unaccounted-For” Water – Gerald
Wuetcher**
The Public Service Commission disallows any costs associated with “unaccounted-for water” exceeding 15 percent of a water utility’s total water purchased or produced. This presentation addresses the legal and regulatory implications of this rule, the history of this rule, and the Commission’s current regulatory stance towards water loss. Significant attention will be devoted to the use of surcharges to fund water loss reduction efforts and how to obtain authorization for such surcharges. Potential financial and regulatory risks posed to utilities and utility officers for high unaccounted-for water levels, including liability for civil penalties, and potential approaches to reducing the disallowance of the water costs in ratemaking proceedings will also be discussed.
- 4:25 - 4:30** **Closing Remarks & Administrative Announcements – Gary Larimore**

EXHIBIT 2



Katelyn L. Brown

Direct Phone: 502.568.5711
 katelyn.brown@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

EDUCATION

University of Kentucky
 College of Law
 2018, J.D., cum laude

University of Kentucky
 2014, B.S. in Accounting

RECOGNITION

Faculty Cup Award, UK
 College of Law, 2018

Student Bar Association
 President, UK College of
 Law, 2017-2018

Student Representative on
 the College of Law Building
 Committee, UK College of
 Law, 2016-2018

Katelyn L. Brown

Katelyn Brown joined Stoll Keenon Ogden in 2018 as an Associate in the Louisville office, following completion of the firm's Summer Associate program in Lexington. She is part of the Utility & Energy and Public Finance practice groups at SKO.

Katelyn graduated from the University of Kentucky, where she went on to earn her J.D. with a cum laude distinction. She is also a Certified Public Accountant. During her time in law school she served as president of the Student Bar Association at UK College of Law and was the student representative on the Building Committee there. She also volunteered with the VITA (Volunteer Income Tax Assistance) Clinic. Katelyn has been recognized with several awards related to her achievements as a law student.

Utility & Energy Services: Katelyn is part of a team that represents utility companies on a wide range of issues before the state commissions in Indiana, Kentucky, Tennessee and Virginia, the Federal Energy Regulatory Commission and the Federal Communications Commission, local governments and trial and appellate courts. As part of her work with this practice group, she drafts pleadings for the largest electric utilities in Kentucky and researches regulations and drafts agreements between local water districts and cities.

Public Finance: Katelyn has a strong accounting background and recently received her CPA license, which assists her work in providing strategic counsel to clients. She joins an expert legal team at SKO in representing financial institutions and companies in their taxable and tax-exempt bond matters.

Pro Bono Award (for 50 or more hours of pro bono work during law school), UK College of Law, 2018

Volunteer Income Tax Assistance clinic volunteer, UK College of Law, 2016-2018

Staff Editor, *Kentucky Law Journal*, UK College of Law, 2016-2018

Singletary Scholar, University of Kentucky, 2010-2014

CALI awards: Legal Research & Writing (Rutledge Club), International Business Transactions

Best Brief for the Appellant (Rutledge Club)

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WWW.SKOFIRM.COM

John M. Dix, P.E. is the General Manager of the Warren County Water District, Butler County Water System, Inc. and Simpson County Water District. Mr. Dix has served the water and wastewater utility business in South Central Kentucky since 1992 when he first joined Warren Water. Dix's career also includes serving as Vice President of the regional engineering firm Cannon & Cannon, Inc., City Engineer for Bartlett, Tennessee, and as a Submarine Naval Architect for the Department of the Navy. A Civil Engineering graduate of Virginia Tech in 1982, Dix is a registered Professional Engineer in Kentucky and Tennessee.

Dix was appointed to the state Water Resources Board by Governor Bevin in 2019, selected as president of Kentucky Rural Water Association, and also serves as secretary for the Rochester Dam Regional Water Commission. In 2017, Dix was named a vice president for the Bowling Green Area Chamber of Commerce and was chosen as board volunteer of the year in 2015.



Biography

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

2016

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

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

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

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



625 Myrtle Street
Louisville, Kentucky
502-533-5073



Amy L. Miles

Direct Phone: 502.568.5751
amy.miles@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. Court Of Appeals,
Seventh Circuit

U.S. Court Of Appeals,
Sixth Circuit

U.S. District Court, Eastern
District Of Kentucky

U.S. District Court, Northern
District Of Indiana

U.S. District Court, Southern
District Of Indiana

U.S. District Court, Western
District Of Kentucky

EDUCATION

University of Louisville
Brandeis School of Law
2014, J.D., magna cum
laude

Centre College

Amy L. Miles

Amy joined Stoll Keenon Ogden's Louisville office in 2015 as an Associate in the Labor, Employment & Employee Benefits practice. Amy represents a variety of national, regional and local employers, from franchised auto dealerships to health care organizations.

As employment laws continually change, Amy counsels businesses and organizations on how to navigate complex statutes and regulations, which can create confusion around an employer's legal obligation to their employees. She provides practical, business-tailored advice that helps employers bridge the understanding gap in their organizations and avoid costly challenges in the courtroom.

Prior to beginning her practice at SKO, Amy served as a clerk for the honorable Candace J. Smith, U.S. Magistrate Judge in the Eastern District of Kentucky.

Labor, Employment & Employee Benefits: Amy has experience in all areas of employment law, from pre-litigation investigations to litigation and appeals. She also handles agency investigations, including proceedings before the Equal Employment Opportunity Commission, the Department of Labor and the Kentucky Commission on Human Rights.

Amy routinely advises employers on strategies to resolve workplace issues and prevent litigation by offering recommendations on day-to-day operational practices and broader employee-related policies. She has also conducted training for her clients relating to a variety of issues, including the Americans with Disabilities Act, the Family and Medical Leave Act and Title VII of the Civil Rights Act.

In cases of litigation, Amy represents employers responding to claims of discrimination, retaliation and wrongful termination, employment breach of contract, and wage and hour disputes, among other concerns.

B.A., cum laude

RECOGNITION

ABA-BNA Award for
Excellence in Labor and
Employment Law, 2014

University of Louisville
Brandeis School of Law Carl
A. Warns, Jr. Award, 2014

University of Louisville
Brandeis School of Law ALI
CLE Scholarship and
Leadership Award, 2014.

*University of Louisville Law
Review* Managing Editor,
Volume 52

Phi Kappa Phi

Brandeis Honor Society

Auto Dealer Services: Automobile manufacturers and franchised dealers are among the employers that Amy advises through her practice at SKO. She has a deep understanding of the industry and customizes her recommendations to match her clients' unique needs.

Health Care: Amy also counsels health care organizations and providers on a wide variety of employment-related matters. Her thorough knowledge of the evolving regulations governing the industry allows her to identify opportunities to reduce risks and costs.

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Russell (Russ) Rose grew up in Henry County Kentucky with a Farming background. He worked in the Agricultural industry before becoming a self-employed site contractor and has been in the water industry since 1997. He served as Assistant Manager for the North Shelby Water Company and the U.S. 60 Water District, Director for the LaGrange Utilities Commission, and the Chief Executive Officer for the Oldham County Water District since 2006. Oldham County Water has 21 employees, a 13 million gallon per day water treatment plant, serving over 8400 customers, and wholesaling water to the City of LaGrange.

He serves as the Vice-President for the Kentucky Rural Water Association, on the Board for the Ky Infrastructure Authority, Chair of the KIPDA Regional Water Management Council, and is a member of the AWWA. He also serves on several committees locally and statewide for the Division of Water, Ky Rural Water Association, and the Ky Chamber of Commerce.

Russ holds a Utility Management Certification from the National Rural Water Association, and is a Utility Management Institute Graduate. He is a licensed Water Operator and has been a licensed Wastewater Operator.

Faith and Family are an important part of Russ's life. Russ has been happily married to his wife Dana for 27 years. They have one daughter named Rachel.



Damon R. Talley

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 damon.talley@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. District Court, Eastern District Of Kentucky

U.S. District Court, Western District Of Kentucky

United States Supreme Court

EDUCATION

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

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

RECOGNITION

Damon R. Talley

Damon joined Stoll Keenon Ogden's Utility & Energy practice as Of Counsel in 2015 and serves clients through the firm's Hodgenville, Lexington and Louisville offices.

Before his time at SKO, Damon spent 35 years in private practice working with public utilities throughout Kentucky. He is general counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

Given his substantial experience, Damon is frequently called upon to speak at training sessions sponsored by the Kentucky Rural Water Association, Public Service Commission, Division of Water, Utility Management Institute and other utility groups in the state.

Damon is also highly active in the local community and serves as a board member of several nonprofit organizations. He is a past board member of the Kentucky Infrastructure Authority. He was a charter member, long-time board member and two-term board chairman of the Kentucky FFA Foundation.

Utility & Energy: Damon represents public utility clients before the Kentucky Public Service Commission, as well as before federal and state trial and appellate courts. He handles matters such as rate adjustments, transfers of control, financing and construction applications, and consumer complaint proceedings.

Work Highlights

Damon serves as General Counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

Damon serves as General Counsel of the Kentucky Rural Water

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

Finance Corporation and has served in this capacity since 1995.

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

Outstanding Student,
University of Kentucky
College of Engineering

Omicron Delta Kappa,
president, University of
Kentucky

Kentucky Association of
Future Farmers of America,
president

Outstanding Citizen Award,
LaRue County Chamber of
Commerce, 1990

Outstanding Citizen Award,
Cave City Chamber of
Commerce, 1981

Outstanding Citizen Award,
Horse Cave Chambers of
Commerce, 1979

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BAR & COURT ADMISSIONS

Kentucky

U.S. Court Of Appeals For
The Armed Forces

U.S. District Court, Eastern
District Of Kentucky

U.S. District Court, Western
District Of Kentucky

EDUCATION

Emory University
1984, J.D.

Johns Hopkins University
1981, B.A.

Gerald E. Wuetcher

Jerry is Counsel to the Firm in SKO's Lexington office and is part of the Utility & Energy practice. He joined the firm in 2014, after working for more than 26 years at the Kentucky Public Service Commission (PSC) as a staff attorney, deputy general counsel and executive advisor.

Over the course of his career, Jerry has frequently appeared before the PSC in administrative proceedings involving electric, natural gas, water and sewer utility issues and has represented the PSC in state and federal courts. He also served as the PSC's representative in several interagency groups addressing water and wastewater issues. He drafted amendments to various provisions of Kentucky's public utility statutes and revisions to the PSC's administrative regulations.

From 2009-2013, Jerry was PSC's representative on the board of the Kentucky Infrastructure Authority. He developed and implemented the PSC's training program for water utility officials and was an instructor for that program.

Jerry is a frequent speaker on utility and local government issues before such organizations as the Kentucky Rural Water Association, Kentucky League of Cities, Kentucky Association of Counties and Utility Management Institute.

Along with his significant experience in the realm of civilian law, Jerry served for 27 years in the U.S. Army as a judge advocate before retiring at the rank of colonel in 2011. He occupied numerous roles on active duty and in a reserve status.

Utility & Energy: Jerry concentrates on public utility law in Kentucky, but also participates in general and commercial litigation, transactions, employment concerns, securities issues and mergers and acquisitions involving gas, electric and water companies. He

handles all facets of regulatory matters, including the negotiation of complex agreements and representation before state agencies and courts.

Work Highlights

Attorney, Kentucky Public Service Commission (1987-2014). Served as a staff attorney, deputy general counsel and executive advisor. Frequently appeared before the Commission in administrative proceedings involving electric, natural gas, water and sewer utility issues and represented the Commission in state and federal courts. Responsible for drafting and revising the Commission's regulations. Served as the Commission's representative in various interagency groups addressing water and wastewater issues. Served as the Commission's representative on the Kentucky Infrastructure Authority's Board of Directors (2009-2014). Developed the Public Service Commission's water training program for water utility officials.


Judge Advocate, U.S. Army (1984 – 2011). Served as a judge advocate in the U.S. Army on active and reserve status in numerous roles. Retired at the rank of Colonel.

Adjunct Professor of Law, University of Louisville (2011)


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EXHIBIT 3



5th ANNUAL WATER LAW SERIES
October 29, 2019



Sponsored by:



HOT LEGAL TOPICS

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




October 29, 2019



DISCUSSION TOPICS

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

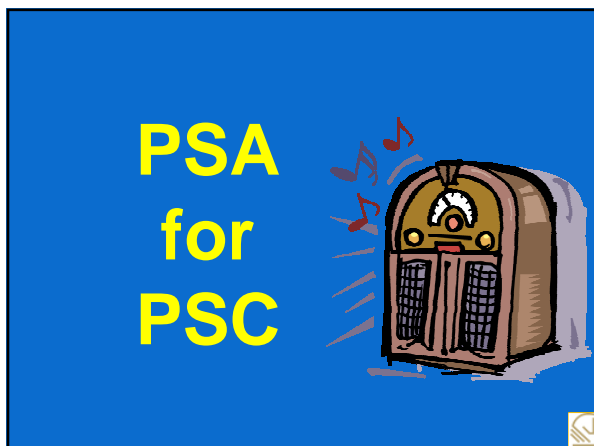
Continued . . .



DISCUSSION TOPICS

6. Borrowing Money
7. 2019 General Assembly
8. Recent PSC Orders
9. Cases to Watch





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

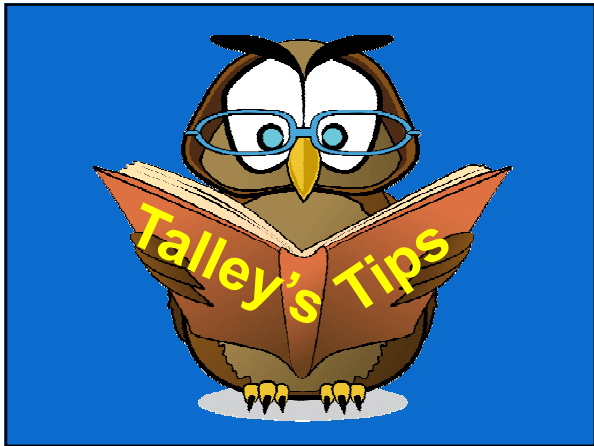
- Who is Covered?
 - Water Districts
 - Water Associations
 - Investor Owned Utilities
 - **Municipal Utilities**



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

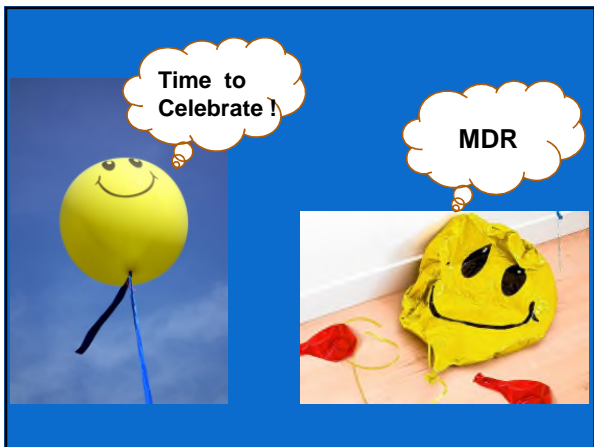
- Why? Contract = Franchise
- Over 20 Years
- Basis: Kentucky Constitution Section 164



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 Tendered: 04-16-19



Ky. Supreme Court

Ledbetter W.D.

vs.

Crittenden-Livingston WD

Amicus Brief Filed: 05-03-19

C-L's Brief Filed: 05-31-19

Reply Brief Filed: 06-14-19

Oral Arguments: ??-??-??

Decided: ??-??-??



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
 - 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-DG

Motion DR: 02-19-19

Response: 03-21-19

DR Granted: 08-29-19



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



Ky. Supreme Court

Northern Ky. WD

vs.

Kate Carucci

DR Granted: 08-29-19

Decided: 08-29-19

Holding: No S/I for
W.D.



Ky. Supreme Court

Northern Ky. WD

vs.

Kate Carucci

KRWA Affidavit: 09-16-19

Pet. Rehearing: 09-18-19

Decided: ??-??-??



C/A Holding

- O/R South Woodford Case
- No S/I for W.D.
- Adopted by Sup. Court
- Providing Drinking Water
Is NOT Integral State Function





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



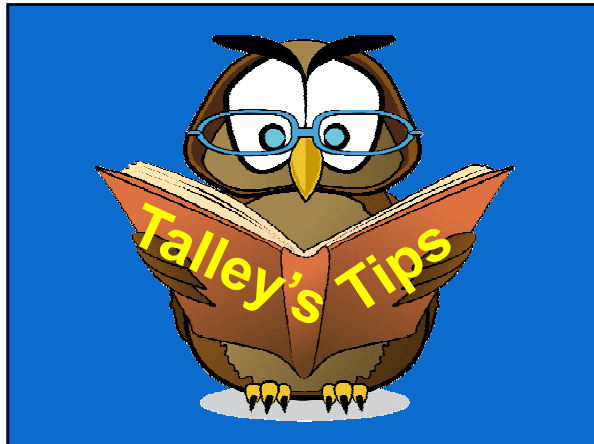
Open Meetings Act

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





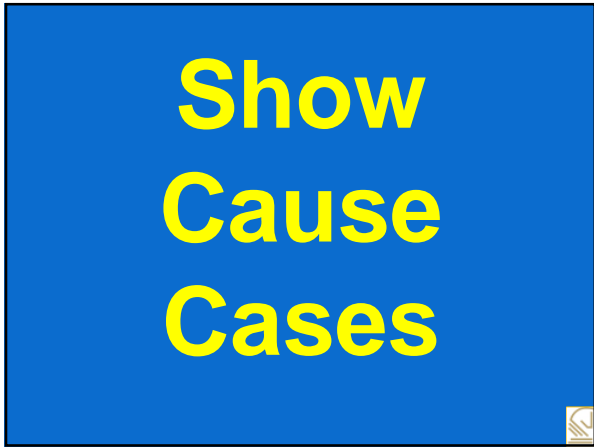
KRS 278.300(1)

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

Practical Effect

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







Show Cause Case # 3

Case No. 2017 - 469

Opened: 01- 11 - 2018

Hearing: 02 - 27- 2018

Issue: KRS 278.300

Decision: 09 - 17 - 2018





Show Cause Case # 1

Case No. 2016 - 338

Opened: 10 - 11 - 2016

Closed: 02 - 23 - 2017


Issue: KRS 278.300

Hearing: 12 - 13 - 2016




Show Cause Case # 1

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




Show Cause Case # 1

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




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

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



Show Cause Case # 2

Staff Report: 8-9-2017
Recommended: 24%  Rates
\$360,000 Annual
\$30,000 per Month
3 Loans - Local Bank
Hearing: 11-1-17
Decision: 12-20-17

Hearing on 11-1-17

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

Hearing on 11-1-17

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

Show Cause Case # 2

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



Show Cause Case # 2

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



Show Cause Case # 3

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



Timeline

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



Show Cause Case # 3

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

(Continued)

Show Cause Case # 3

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

(Continued)

Show Cause Case # 3

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

Show Cause Case # 3

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

Pages 7 and 8 of Order

Show Cause Case # 3

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



Show Cause Case # 3

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

Show Cause Case # 3

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

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

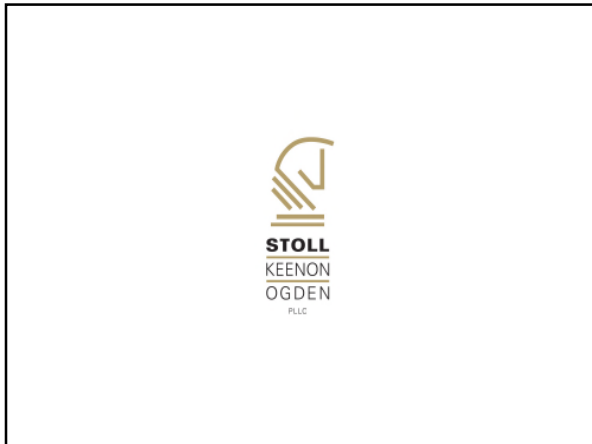




QUESTIONS?

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

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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



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



Federal and State Statutory Protections for Employees



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




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. All of the Above




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



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



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)



Retaliation

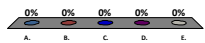
- ✦ Taking adverse action against an employee for exercising a protected activity
 - Example: Discharge for reporting harassment or any other violation of the law





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





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



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"






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





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.**

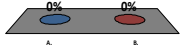
 **STOLL KEENON OGDEN**
P.L.L.C.

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?”



Category	Percentage
A.	0%
B.	0%

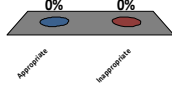
 **STOLL KEENON OGDEN**
P.L.L.C.

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.




Category	Percentage
Appropriate	0%
Inappropriate	0%


 **STOLL KEENON OGDEN**
P.L.L.C.

Background Checks

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




your eCards
someecards.com




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



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







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

 **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?

 **Drug Testing**



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

 **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


 **Federal Legislative Developments**


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



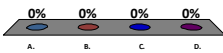
 **#MeToo, More than a Year Later**

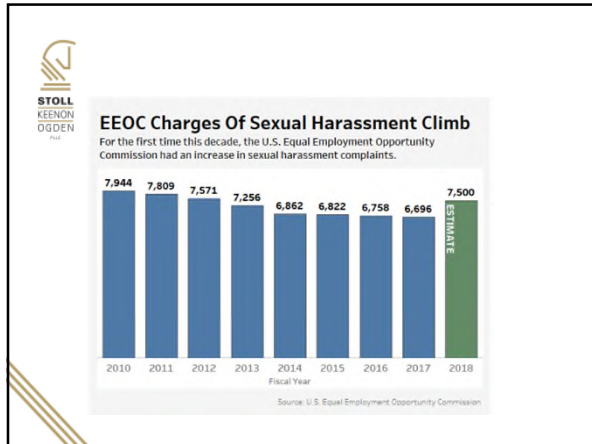
- The original #MeToo → 2017 momentum
- Cultural shift, but has legislation followed?

 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





**#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

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




**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


Employee Leave Proposals


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



Administrative Updates under Trump


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





Kentucky Legal Developments


- Mandatory Arbitration Agreements
- State Wage & Hour Class Actions



Kentucky Legal Developments
Kentucky Pregnant Workers Act (2019)


- Who is covered?
 - Employers with 15 or more employees
- What is required?
 - "Reasonable Accommodations"
- Exceptions?
 - "Undue Hardship"
- New Notice Requirements

Effective: June 27, 2019



STOLL
KEENON
OGDEN
P.C.

Questions? Comments?





**GRADING
KENTUCKY'S
DRINKING WATER
INFRASTRUCTURE**

Greg Heitzman and Russ Rose

5th Annual Water Law Seminar
Sponsored by KY Rural Water and
Stoll Keenon Ogden
Bowling Green, Kentucky
October 29, 2019

2019 INFRASTRUCTURE REPORT CARD

What the Grades Mean

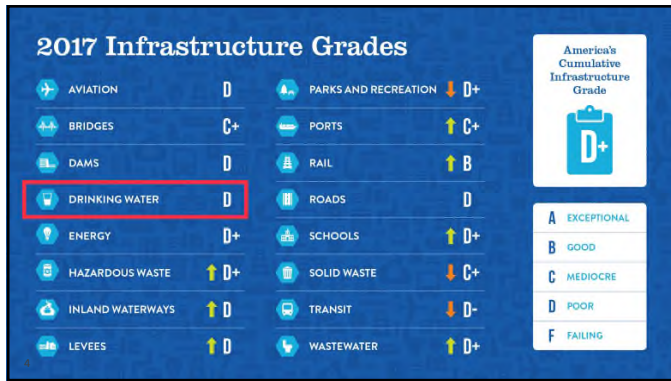
A EXCEPTIONAL Fit for the future	C MEDIocre Requires attention
B GOOD Adequate for now	D POOR At risk
	F FAILING/CRITICAL Unfit for purpose

2

Report Card Methodology

CAPACITY	OPERATION AND MAINTENANCE
CONDITION	PUBLIC SAFETY
FUNDING	RESILIENCE
FUTURE NEED	INNOVATION

3






KY Drinking Water Committee Members


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

2019 INFRASTRUCTURE REPORT CARD

KY 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
- ✓ Estimated over 250 man-hours in collecting and revising data


2019 INFRASTRUCTURE REPORT CARD

KY 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 2003
- ✓ 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

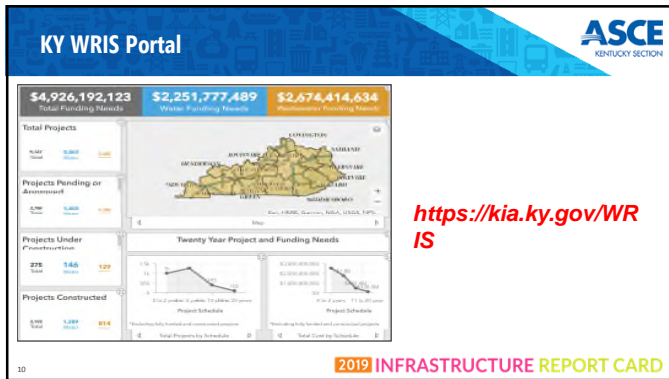
KY 2003	US 2009	KY 2010	US 2013	US 2017	KY 2019
C	D-	B	D	D	C+

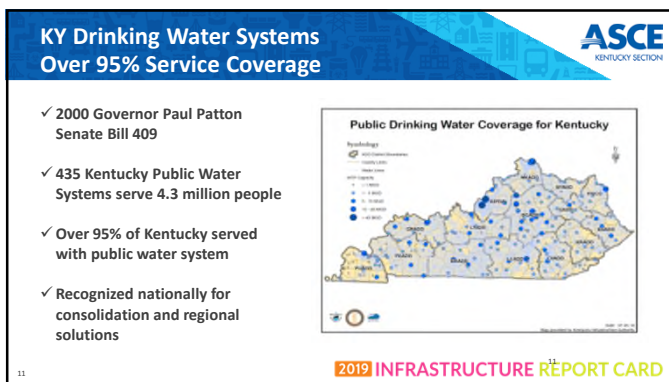
2019 INFRASTRUCTURE REPORT CARD

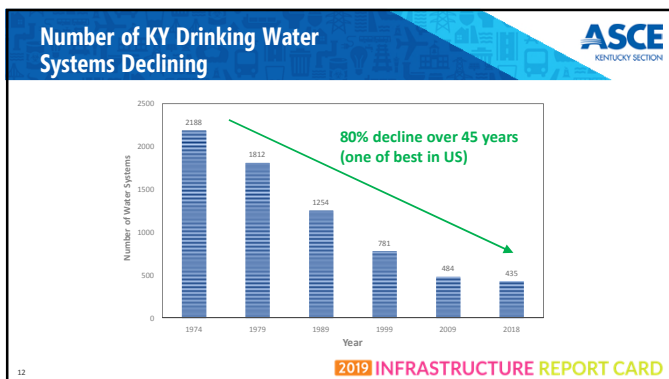
KY Drinking Water System Planning Manager by KIA 

- ✓ GOVERNOR PAUL PAYTON'S 2020 WATER PLAN
- ✓ 1990 - SENATE BILL 409 CHARGES NEW COURSE FOR WATER MANAGEMENT AND PLANNING IN KENTUCKY
- ✓ GOAL TO PROVIDE WATER SERVICE TO ALL OF KENTUCKY BY 2020
- ✓ PLANNING/MANAGEMENT THROUGH KY INFRASTRUCTURE AUTHORITY – INCLUDES WATER INDUSTRY REPRESENTATION
- ✓ REGIONAL WATER MANAGEMENT COUNCILS TO COORDINATE WATER/WW PROJECTS
- ✓ CLEARING HOUSE FOR ALL WATER/WW PROJECTS
- ✓ CREATE STATEWIDE GIS – WATER RESOURCE INFO SYSTEM (WRIS)
- ✓ ROBUST ASSET MANAGEMENT PORTAL (BEST IN CLASS PLANNING MODEL)


2019 INFRASTRUCTURE REPORT CARD



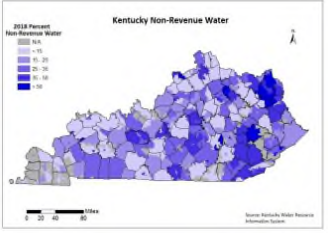




KY Water Loss and Leakage




- ✓ Kentucky Water Loss averages 29 percent
- ✓ National Best Practice and KY PSC at 15%
- ✓ No standard method for measuring water loss in Kentucky
- ✓ Needs Improvement

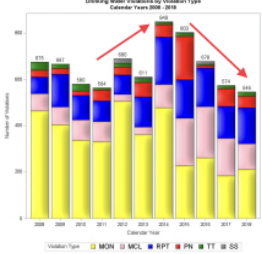


2019 INFRASTRUCTURE REPORT CARD

Kentucky Drinking Water Compliance




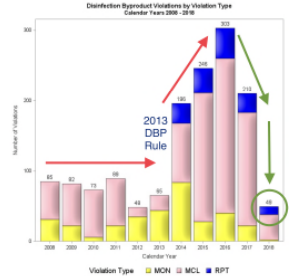
- ✓ Past 10-year trend less than peak of 1,400+ Violations in FY 2006-07
- ✓ Increase in 2014 for Disinfection By-Product Violations
- ✓ Decline in Violations last 4 years since 2014 to 546 in 2018
- ✓ Expect improvement again in 2019



2019 INFRASTRUCTURE REPORT CARD


KY DBP Rule Compliance






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

2019 INFRASTRUCTURE REPORT CARD


Capital Planning Needed in Kentucky 

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/pumping
 - > Transmission/Distribution
 - > Equipment
 - > Computer Systems (SCADA, Billing, Metering)




25 **2019 INFRASTRUCTURE REPORT CARD**

Summary of Best Practices in Drinking Water for Kentucky 

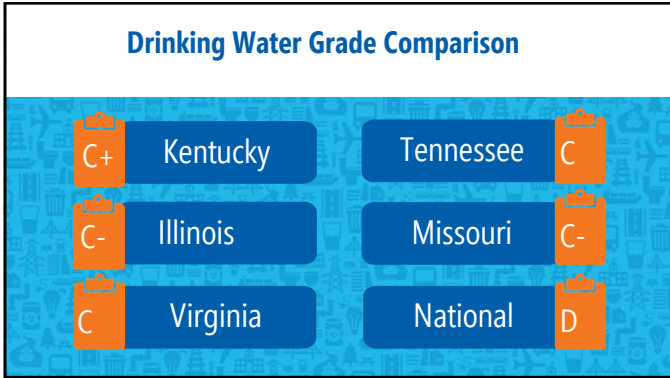
1. Consolidation of systems by over 80 % decline since 1974 (national best practice)
2. Over 95% public water service available through 57,000 miles of pipe (top 5 is US)
3. KY Drinking Water Advisory Council – stakeholder group for collaboration (national best practice)
4. KY WRIS Portal for Water/Wastewater (Interactive GIS database)
5. Compliance with lead and copper rule
6. KY drought risk significantly mitigated since 2010
7. Water quality – DBPs declining from high in 2014
8. Access to federal and state funding for water projects

26 **2019 INFRASTRUCTURE REPORT CARD**

Recommendations and Areas to Improve for Kentucky 

1. Improve water loss and leak detection
2. Replace aging infrastructure
3. Adopt Capital Improvement Planning Process
4. Adopt "Cost of Service" rate methodology and full cost pricing of water
5. Recruit and develop managerial and technical capacity and expertise in water
6. Improve access to funding
7. Promote the value of water in our communities

27 **2019 INFRASTRUCTURE REPORT CARD**



Conclusion




The Committee Recommended and the National ASCE approved a C+ rating for Kentucky's Drinking Water Infrastructure

Full Report Available:
www.infrastructurereportcard.org/state-item/kentucky/

2019 INFRASTRUCTURE REPORT CARD


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.

2019 INFRASTRUCTURE REPORT CARD

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

Add a footer

2019 INFRASTRUCTURE REPORT CARD

Recommendations




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
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

Add a footer

2019 INFRASTRUCTURE REPORT CARD

Recommendations



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

Add a footer

2019 INFRASTRUCTURE REPORT CARD

Questions and Discussion





Contact Info:

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Russ Rose
Oldham County Water District
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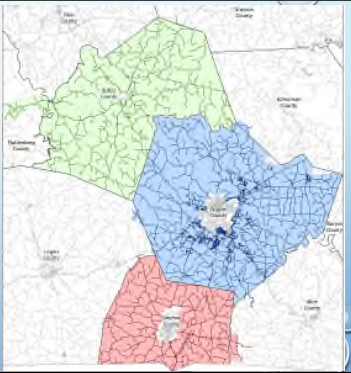
2019 INFRASTRUCTURE REPORT CARD

**WATER LOSS EVALUATION
PERCENTAGE vs COST**
Warren County Water District
Simpson County Water District
Butler County Water System, Inc.

MILES OF DISTRIBUTION MAIN:

Warren 1,156
Simpson 397
Butler 518



YEAR 2018 STATISTICS

	<u>Warren County Water District</u>	<u>Simpson County Water District</u>	<u>Butler County Water System, Inc.</u>
Description	Urban, Industrial, Agricultural	Agricultural, Some Industry	Rural
No. of Customers:	29,471	3,415	4,908
Residential	27,243	3,046	4,594
Commercial	2,107	336	301
Industrial	121	33	13
Largest Customer Annually	Industrial 181.7 MG	Feed Mill 20.1 MG	Chicken House 3.1 MG
Daily	497,800 Gals	54,800 Gals	8,490 Gals

YEAR 2018 STATISTICS (CON'T)

	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
Miles of Distribution Main	1,156	397	518
Customers Per Mile of Main	25.5	8.6	9.5
Miles of Service Line	179	23	31
Gallons Sold:	2,745,187,000	340,563,000	256,515,000
% Residential	53%	52%	87%
% Commercial \ Industrial	47%	48%	13%
New Meter Applications	801	42	50

DISTRIBUTION MAIN BY SIZE

Pipe Size (in)	Miles		
	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
4" or Less	575	276	322
6"	351	61	159
8"	133	42	33
10"	34	10	1
12"	30	6	4
14"	5	0	0
16"	9	2	0
20" or Larger	19	0	0
Total	1,156	397	518

SOURCE OF SUPPLY

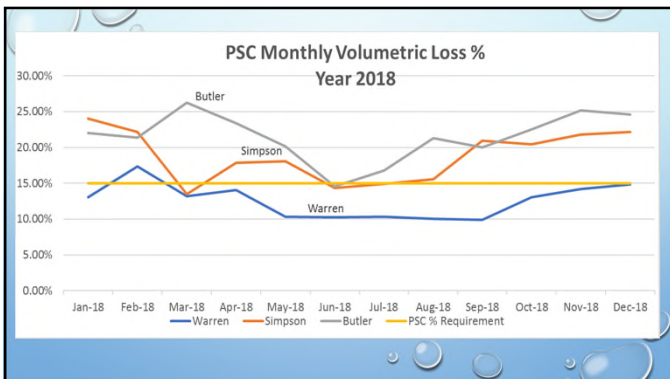
	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
Purchased (Gals)	3,145,932,000	423,024,000	
Produced (Gals)			329,354,000
Supplier	Bowling Green Municipal Utilities	White House Water District	N/A
Cost per 1,000 Gals	\$1.3570	\$2.6590	\$1.6138

2018 PSC ANNUAL REPORT
WATER STATISTICS (Ref Page 30)

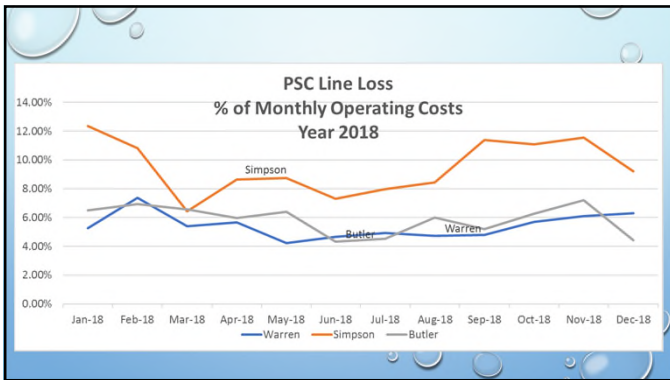
Ln	WARREN	SIMPSON	BUTLER
4 Purchased	3,145,932,000	423,024,000	-
Produced	-	-	329,354,000
13 Sold	<u>2,745,187,000</u>	<u>340,563,000</u>	<u>256,515,000</u>
Total Lost	400,745,000	82,461,000	72,839,000
17 Wastewater Plant	-	-	-
18 System Flushing	10,800,000	2,571,000	2,343,000
19 Fire Department	172,000	39,000	81,000
20 Other	<u>1,765,000</u>	<u>468,000</u>	<u>232,000</u>
21 Total Other Water Used	12,737,000	3,078,000	2,656,000

2018 PSC ANNUAL REPORT
WATER STATISTICS (REF PAGE 30)
(CON'T)

Ln	WARREN	SIMPSON	BUTLER
24 Tank Overflows	121,000	-	266,000
25 Line Breaks	2,830,000	2,057,000	888,000
26 Line Leaks	382,446,000	76,350,000	66,249,000
27 Other	<u>2,611,000</u>	<u>976,000</u>	<u>2,780,000</u>
28 Total Line Loss	388,008,000	79,383,000	70,183,000
33 Line 28 divided by Line 4	12.3%	18.8%	21.3%



FINANCIAL IMPACT YEAR 2018			
	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
PSC Line Loss	388,008,000	79,383,000	70,183,000
Purchased \ Produced Cost per 1000 Gals	\$1.3570	\$2.6590	\$1.6138
Power Costs	\$0.1323	\$0.0622	\$0.1123
Total Pumping Costs	\$1.4893	\$2.7212	\$1.7261
PSC Line Loss \$	\$577,863	\$216,019	\$121,143
Operating Costs	\$10,856,765	\$2,276,445	\$2,099,856
PSC Line Loss as % of Operating Costs	5.3%	9.5%	5.8%



AWWA WATER AUDIT YEAR 2018				
<u>System Attributes:</u>	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>	
Apparent Losses	20.211	2.590	1.967	MG/Yr
+ Real Losses	<u>360.640</u>	<u>76.041</u>	<u>63.413</u>	MG/Yr
= Water Losses	380.852	78.631	65.380	MG/Yr
Unavoidable Annual Real Losses (UARL)	321.11	77.31	120.65	MG/Yr
Annual Cost of Apparent Losses	\$80,845	\$16,599	\$15,529	
Annual Cost of Real Losses	\$537,715	\$203,104	\$40,543	Variable Cost

AWWA WATER AUDIT YEAR 2018 (CON'T)

Performance Indicators:

Financial:	WARREN	SIMPSON	BUTLER
Non-revenue water as % by volume of Water Supplied	12.5%	19.3%	21.0%
Non-revenue water as % by cost of operating system*	5.9%	10.0%	2.8%

*Real Losses Valued at Variable Production Cost

AWWA WATER AUDIT YEAR 2018 (CON'T)

Performance Indicators:


Operational Efficiency:	WARREN	SIMPSON	BUTLER	
Apparent Losses per service connection per day:	1.75	1.76	0.93	gals/conn/day
Real Losses per length of main per day:	854.72	524.76	335.07	gals/mile/day
Real Losses = Current Annual Real Losses (CARL):	360.64	76.04	63.41	MG/Yr
Infrastructure Leakage Index (ILI) [CARL/UARL]	1.12	0.98	0.53	
Data Validity Score	81	81	81	

SUMMARY

	WARREN	SIMPSON	BUTLER
Volumetric:			
PSC Water Loss %	12.3%	18.8%	21.3%
AWWA Non Revenue Water %	12.5%	19.3%	21.0%
Financial:			
PSC Water Loss as % of Operating Costs	5.3%	9.5%	5.8%
AWWA Non-Revenue % of Operating Costs	5.9%	10.0%	2.8%

WATER LOSS EVALUATION
% vs \$
WARREN COUNTY WATER DISTRICT
SIMPSON COUNTY WATER DISTRICT
BUTLER COUNTY WATER SYSTEM, INC.


QUESTIONS ?

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ALL YOU EVER WANTED TO KNOW ABOUT DEPRECIATION AND THEN SOME


Kentucky Rural Water Association – Utility Leadership Institute
October 29, 2019

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STOLL KEENON OGDEN  PLLC


ORDER OF PRESENTATION

- What is Depreciation?
- What Does it Mean to “Fully Fund” Depreciation?
- Consequences of Not Fully Funding Depreciation
- Reading Financial Statements


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ORDER OF PRESENTATION

- PSC Concerns with Depreciation
- Analysis of Various WDs and Cities
- How to Increase or Improve Depreciation Funding


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WHAT IS DEPRECIATION?

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Definition of Depreciation

- The process of allocating the cost of a utility plant asset to expense over its service (useful) life in a rational and systematic manner
- Think of initial capital investment as a prepaid expense with a portion of that expense systematically recorded as Depreciation Expense in subsequent accounting periods


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Why is Depreciation Important?

- Although non-cash, depreciation expense creates cash flow in regulated entities (like WDs & WAs) and municipal utilities
- Informs management, creditors, investors, and others of the utility's cost of operating
- Helps to more accurately match revenues with expenses
- Who determines your utility's depreciation?


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**WHAT DOES IT MEAN TO
“FULLY FUND”
DEPRECIATION?**


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**“Fully Funding” Depreciation
means....**

- Setting aside cash equivalent to the utility’s annual depreciation expense in order to purchase replacement assets in the future
- Set aside in a safe investment (CD or money market account)


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**CONSEQUENCES OF NOT
FULLY FUNDING
DEPRECIATION**

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Not Fully Funding Depreciation will....

- Cause the utility to have to borrow \$\$ to purchase the replacement asset
- Cause the utility to seek outside funding (added interest)
- Cause the utility to use funds budgeted for other purposes


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READING FINANCIAL STATEMENTS

Financial Statements


- Depreciation Expense is an Income Statement account
 - But Income Statement only accounts for Interest Expense, does not take into account the principal of loans/bonds that must be paid
- Accumulated Depreciation is a Balance Sheet account
 - Shown on Statement of Net Position
- Statement of Cash Flows
 - Reflects principal payments

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PSC CONCERNS WITH DEPRECIATION


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The PSC is concerned with:

- Long-term financial health of utilities
- Utility's aging infrastructure
- Frequency of rate cases

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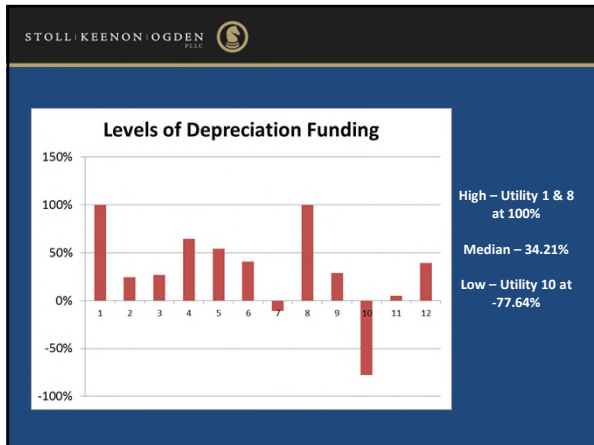


ANALYSIS OF VARIOUS WATER DISTRICTS AND CITIES

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Analyzed 12 WDs and Cities

- Labeled utilities #s 1-12 for anonymity
- Based on 2017 numbers
- Looked at:
 - Level of Depreciation Funding (% and \$)
 - # of customers
 - Depreciation Expense compared to other operating expenses
 - \$ of Debt Service Coverage



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Utility	Depreciation Expense
1	\$ 941,370
2	\$ 390,702
3	\$ 576,885
4	\$ 404,238
5	\$ 272,221
6	\$ 309,108
7	\$ 923,626
8	\$ 2,935,452
9	\$ 151,146
10	\$ 404,363
11	\$ 228,085
12	\$ 217,039

High – Utility 8 at \$2,935,452
 Median - \$397,470
 Low – Utility 9 at \$151,146

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Utility	Customer Count
1	8,285
2	3,436
3	4,625
4	3,391
5	5,158
6	7,348
7	6,855
8	26,878
9	3,517
10	3,785
11	2,663
12	1,180

High – Utility 8 at 26,878
 Median – 4,205
 Low – Utility 12 at 1,180

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Depreciation Expense Compared to Other Operating Expenses

- For 9 of 12 of the WDs and cities analyzed, Depreciation Expense was either the highest operating expense or 2nd highest operating expense behind Water Purchased


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Utility	Debt Service Coverage
1	\$ 262,556
2	\$ 37,863
3	\$ 66,324
4	\$ 42,694
5	no debt
6	no debt
7	\$ 225,956
8	\$ 334,874
9	\$ 14,140
10	\$ 62,953
11	\$ 15,706
12	\$ 19,046


High – Utility 8 at \$334,874
 Median - \$40,279
 Low – Utility 9 at \$14,140

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HOW TO INCREASE OR IMPROVE DEPRECIATION FUNDING

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- Create a separate fund in which to deposit depreciation expense for future replacement of utility assets
 - FDIC concerns
- Evaluate whether or not you need to request a rate increase
- Discuss useful life of assets with the person/entity who decides your annual Depreciation Expense

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CONCLUSION/SUMMARY

- Evaluate your own water utility's depreciation practices
- Determine whether or not current rates are sufficient
- Board Commissioners/Members must be good stewards


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PLLC



QUESTIONS?

LEGAL AND REGULATORY ASPECTS
OF "UNACCOUNTED-FOR"
WATER LOSS

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WATER LOSS IN THE NEWS

- Highly publicized water utility failure due to high water loss
- News reports of troubled water utilities & high rates of water loss
- Heightened PSC emphasis on water loss




UNACCOUNTED-FOR
WATER LOSS



WHAT IS UNACCOUNTED-FOR WATER?

“Unaccounted-for water” means the volumetric sum of all water purchased and produced less the volume of water: (a) Sold; (b) Provided to customers without charge as authorized by the utility’s tariff; and (c) Used by the utility to conduct the daily operation and maintenance of its treatment, transmission, and distribution systems.


807 KAR 5:067



WHAT IS UNACCOUNTED-FOR WATER?

“[T]he difference of the total amount of water produced and purchased and the sum of water sold, water used for fire protection purposes, and water used in treatment and distribution operations (e.g. , backwashing filters, line flushing).”


Case No. 2011-00233, Order of 11/3/2011




WHAT IS UNACCOUNTED-FOR WATER?

“Generally speaking, the unaccounted-for water loss is the result of line breaks and leaks, inaccurate meters, tank overflows, excavation damages, and theft.”

Case No. 2018-00394, Order of 12/18/2018




WHAT IS UNACCOUNTED-FOR WATER?
Current PSC Annual Report Form:
Unaccounted-For Water = Total Line Loss
Total Line Loss =
Tank Overflows + Line Breaks + Line Leaks
+ [Other](#)




PSC CASE NO. 2018-00394

- Established Dec. 2018
- All PSC-regulated water utilities made parties
- PSC noted its greater emphasis on utilities that consistently exceed 15% unaccounted-for water loss



PSC CASE NO. 2018-00394

- PSC: “Some utilities are having difficulty properly measuring and reporting their water loss”
- All utilities required to respond to survey re: water loss reporting
- Effort for uniform & consistent reporting among H₂O utilities




PSC CASE NO. 2018-00394

Revised PSC Annual Report Form:

Unaccounted-For Water = Total Line Loss

Total Line Loss =


Tank Overflows + Line Breaks + Line Leaks
+ Excavation Damages + Theft +
[Unknown Loss](#)



PSC CASE NO. 2018-00394

Chair, AWWA Water Loss Committee
Comments


- Present reporting system likely creating widespread inconsistency & inaccuracy in H₂O-loss reporting
- No measure for data accuracy and reliability
- No Master Meter & Supply Error Adjustment




PSC CASE NO. 2018-00394

Chair, AWWA Water Loss Committee
Comments

- Exported water should not be considered in determining water loss %
- WTP H₂O use prior to effluent meter is irrelevant
- “Water Break” & “Water Leak” confusing
- Recommends Discontinuing Use of 15% Measure




**UNACCOUNTED-FOR
WATER LOSS AND RATEMAKING**



**UNACCOUNTED-FOR WATER
AND UTILITY RATES**


807 KAR 5:066, Section 6(3):

“[F]or 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.”




EFFECT OF 807 KAR 5:066, §6(3)

- Utility may not recover cost of unaccounted-for water exceeding 15 % of total water produced or purchased
- Disallowance based upon:
 - Total production cost of water
 - Water purchase costs
 - Pumping costs (purchased power)




EFFECT OF 807 KAR 5:066, §6(3)

- In 2018-19 PSC disallowed H₂O and purchase power expense in 15 of 20 water rate cases – 75% of all cases
- Total Amount Disallowed: \$1,165,675
- Average Disallowance: \$77,712




WHY 15 PERCENT?

- Current officials unable to explain
- 807 KAR 5:066 (1992): No explanation when regulation promulgated
- 15 Percent limit in 807 KAR 5:067 when promulgated in 1981 (no explanation)
- 1980 PSC Orders note “longstanding practice”
- 1957 AWWA Committee Report




REASONS FOR THE RULE

- Protect Ratepayers from excessive losses
- Encourage Management to take reasonable actions to control water loss




IS THE RULE WORKING?

- No profit incentive for non-profit water utilities
- Creates incentive to under-report or falsely report water usage
- Almost half of PSC-regulated water utilities have greater than 15% water loss



IS THE RULE WORKING?

	2015	2016	2017
Over 15%	46.7%	49.3%	46.3%
Over 20%	26.3%	26.1%	26.0%
Over 25%	15.3%	14.2%	17.9%
Over 30%	10.2%	14.2%	12.2%
Average %	17.31	17.43	17.6
Median %	14.43	14.82	14.43




CRITICISMS OF THE RULE

- Percentage is unduly affected by varying levels of customer consumption
- Rule fails to take into account the cost of water
- Water loss target dictated by pressure, terrain, and variable cost of H₂O



**RATEMAKING
CONSIDERATIONS**



**IS 15 PERCENT APPROPRIATE
MEASURE?**

- 807 KAR 5:066, § 6(3): PSC authorized to establish an alternative level of unaccounted-for water loss
- Utility OR PSC may propose
- Proposal may be made in rate case or separate proceeding
- Utility must demonstrate alternative level is more reasonable




**ARGUMENTS FOR
ALTERNATIVE LEVEL**

- Service Area Topography
- Age/Condition of Facilities
- Consolidated Systems w/ Legacy Issues
- New management/legacy problems
- Cost of Water
- Infrastructure Replacement/Repair not cost-effective




WATER SERVICE TO FIRE DEPARTMENTS

- Enforcement of Reporting Requirements
- Accuracy of Usage Reports
- Measurement of Fire Department Use
- Failure to Assess Penalties



SYSTEM FLUSHING

- Overstatement of Flushing Usage
- Accuracy of Reports
- Measurement of Use




OTHER RATE CASE ISSUES

- Properly Measuring Consumption
 - Periodic Testing of Utility Meters
 - Testing of H2O Suppliers' Meters
 - Verification of Purchases
- Allocating Power Costs to Pumping
- Calculation of Water Treatment Costs




WATER LOSS CONTROL SURCHARGE




WHY SURCHARGE?

- Excessive water loss requires \$\$ to implement control measures
- No funds to pay H₂O expense or take corrective measures
- Disallowance creates “Death Spiral”
- Q: How can corrective measures be funded if not through general rates?




SURCHARGE ALTERNATIVE

- Water Loss Demonstration Project (1980s)
- Cannonsburg WD (2018-00376)
- Graves County WD (2018-00429)
- Estill County Water District (2019-00119)




WATER LOSS DEMONSTRATION PROJECT

- Utilities with high H₂O loss permitted to assess surcharge to finance repairs
- Surcharge = disallowed H₂O cost + identified cost of repairs/improvements
- Temporary Surcharge (generally 3 years)
- Use of proceeds for H₂O loss efforts only
- Reporting Requirements




CANNONSBURG WATER DISTRICT (2018-00376)

- 2012: PSC authorizes surcharge/requires comprehensive plan (Rate Case)
- Utility's Unaccounted-for H₂O: 29.9%
- 3-yr collection - \$5.53/mo - \$700,875
- Reporting requirements imposed
- PSC establishes case to monitor
- PSC approves zone metering plan (2014)




CANNONSBURG WATER DISTRICT (2018-00376)

- Problems with Implementation
- New Manager hired 2016
- 2017-19: H₂O loss drops - 55% to 27%
- New Rate Case
- PSC Staff recommends disallowance of \$373,853 of Purchased H₂O Expense




CANNONBURG WATER DISTRICT (2018-00376)

- WD requests additional surcharge
- Seeks \$510,000 (\$4.00 / mo.) to complete zone metering implementation (\$521,035 remains from 1st Surcharge)
- PSC OKs – Authorizes immediate collection




GRAVES COUNTY WATER DISTRICT (2018-00429)

- WD files for rate adjustment, requests \$136,000 for water leak detection repair
- PSC Staff recommends:
 - Disallow \$42,371 (excessive H₂O Loss)
 - 3-yr Surcharge - \$3.20 - \$183,323
- PSC orders hearing on WD's plan, encourages comprehensive plan




GRAVES COUNTY WATER DISTRICT (2018-00429)

- WD files for rate adjustment, requests \$136,000 for water leak detection repair
- PSC Staff recommends:
 - Disallow \$42,371 (excessive H₂O Loss)
 - 3-yr Surcharge - \$3.20 - \$183,323
- PSC orders hearing on WD's plan, encourages comprehensive plan




GRAVES COUNTY WATER DISTRICT (2018-00429)

- WD files supplemental proposal
- Proposes work plan with estimated cost of \$1.4 million
- Requests \$5.00/mo. Surcharge for 6 yrs – total amount \$1.7 million
- Proposes several reporting requirements & biennial review of surcharge




ESTILL COUNTY WATER DISTRICT NO. 1 (2019-00119)

- PSC ordered WD to file Corrective Action Plan
- Initial Cost: \$1,021,000
- WD requests \$3.54/mo surcharge for 3 years (minimum) - \$479,000
- Not part of general rate adjustment




ESTILL COUNTY WATER DISTRICT NO. 1 (2019-00119)

- Proposes reporting requirements
- Requests immediate collection, but no expenditure of funds without PSC approval of plan




**ELEMENTS OF VIABLE WATER
LOSS CONTROL SURCHARGE**

- Part of application for general rate adjustment
- Detailed Plan of Corrective Measures
- Detailed Information re: Costs
- Proposed Surcharge Total Amount = Excessive H₂O Costs + Cost of Repairs
- Flexibility – Amount & Expenditure



**ELEMENTS OF VIABLE WATER
LOSS CONTROL SURCHARGE**

- Record/reporting requirements
 - Rpt on Collections/Disbursements
 - Monthly H₂O loss reports
 - Itemized Listing of Expenditures
 - Separate interest bearing account for Proceeds
 - Termination of Surcharge/Refund




**ELEMENTS OF VIABLE WATER
LOSS CONTROL SURCHARGE**

- Advanced PSC review/approval programs
- Periodic Review of Surcharge Operation



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REGULATORY
LIABILITY



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OGDEN

KRS 278.030


“Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.”



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807 KAR 5:066, § 7

“The utility’s facilities shall be designed, constructed and operated so as to provide adequate and safe service to its customers and shall conform to requirements of the Natural Resources Cabinet with reference to sanitation and potability of water.”




EXCESSIVE WATER LOSS AS PUNISHABLE OFFENSE

- PSC Inspection Reports: Water Loss over 15% is violation of 807 KAR 5:066, § 7
- Case No. 2019-00084:
 - Water Loss over 15% is violation of 807 KAR 5:066, § 7
 - Failure to limit water loss to 15% is failure to provide adequate service



EXCESSIVE WATER LOSS AS PUNISHABLE OFFENSE


- Violation of KRS 278.030
- Utility may be subjected to penalty
- Responsible Utility officers may be penalize for failure
- What constitutes a willful violation?



WATER & FIRE PROTECTION

KRS 278.170(3):


- Permits free water service to fire depts for fire protection/training
- PSC-approved tariff re: free service
- Tariff must require Fire Dept to maintain estimates of H₂O usage and file periodic reports with utility



WATER & FIRE PROTECTION


807 KAR 5:095:

- Utility permitting free/reduced rate water service to fire depts must require quarterly reports of H₂O usage
- Utility tariffs must also provide for a penalty if failure to report H₂O usage.



WATER & FIRE PROTECTION

- Permitting Fire Depts to withdraw H₂O at no charge without tariff provisions violates KRS 278.170(3)
- Permitting Fire Dept to withdraw H₂O without requiring reports violates KRS 278.160
- Failure to assess penalties violates KRS 278.160



AVOIDING VIOLATIONS

- Enforce the tariff's terms
- Enforce reporting requirements
- Fire Depts failing to report must be charged for H₂O withdrawn
- Consider a rate for Fire Dept usage
- Coordination/Education



STOLL
KEENON
OGDEN

QUESTIONS?

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