

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 ACCREDITATION AND) CASE NO. 2020-00096
APPROVAL OF A PROPOSED WATER)
DISTRICT MANAGEMENT TRAINING)
PROGRAM)**

APPLICATION

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

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

1. The full name and post office address of Hardin District No. 2 is: Hardin County Water District No. 2, P.O. Box 970, Elizabethtown, Kentucky 42702-0970. Its electronic mail address is syouravich@hcwd2.org.

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

Shaun Youravich
Operations Manager
P.O. Box 970
360 Ring Road
Elizabethtown, KY 42702
(270) 737-1056
syouravich@hcwd2.org

Damon R. Talley
Stoll Keenon Ogden PLLC
P.O. Box 150
Hodgenville, KY 42748-0150
(270) 358-3187
Fax: (270) 358-9560
damon.talley@skofirm.com

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

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

¹ On March 19, 2020, Hardin District No. 2 gave notice pursuant to 807 KAR 5:001, Section 8, of its intent to file this application and of its use of electronic filing procedures.

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

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

6. 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.

7. 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.

8. Joint Applicants proposes to sponsor and conduct a water management training program on April 27, 2020 at Hardin District's offices in Elizabethtown, Kentucky. The program is entitled "Hardin County Water Training 2020." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

9. As reflected in Exhibit 1, the proposed training program will include presentations on recent developments in utility regulatory law, including a general overview of recent Kentucky court and Public Service Commission decisions; the statutory and regulatory requirements related to the contents and filing of utility

tariffs; the regulatory and accounting aspects of depreciation for utilities; the Public Service Commission's rules regarding the periodic testing of water meters and recently Commission decisions regarding waivers of these rules to extend the time period in which water meters must be tested; the present regulatory, financial, operational and social challenges facing water utilities and a suggested approach to addressing these challenges; and a panel discussion on recurring legal issues present in the operation and management of water and wastewater systems. These presentations will enhance the attendees' understanding of relevant legal, financial and technical issues involved in the management, operation, and maintenance of water and wastewater systems and are calculated to enhance and improve the quality of the management, operation and maintenance of the attendees' water and wastewater systems.

10. 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.**

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

12. The written materials to be provided to each attendee are attached at **Exhibit 3**. In addition to a copy of each speaker's presentation, 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, Joint Applicants will include a copy of the revised presentation with its sworn statement and report regarding the instruction.

13. In addition to Hardin District No. 2's staff and commissioners, the management, staff and members of the Boards of Commissioners of the following water district have been invited to attend the proposed training: Grayson County Water District; Hardin County Water District No. 1; Larue County Water District No. 1; Meade County Water District, and North Nelson Water District.

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

15. Within 30 days of the proposed training program's completion, 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.

16. 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.

17. The 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.

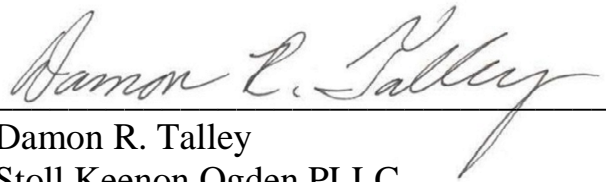
18. The Joint Applicants are committed to conducting this training program in 2020. If the present state of emergency declared by Executive Order 2020-215 appears likely to remain in effect on program's scheduled date, however, the program will be rescheduled to a later date and the Public Service Commission

will be advised of the revised program date on or before that date is announced publicly.

WHEREFORE, the Joint Applicants request that the Commission approve and accredit the proposed training program entitled “Hardin County Water District No. 2 Water Training 2020” for six hours of water district management training.

Dated: March 24, 2020

Respectfully submitted,



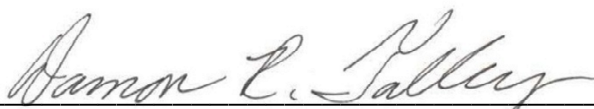
Damon R. Talley
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*Counsel for Hardin County Water District
No. 2 and Stoll Keenon Ogden PLLC*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Joint Applicants' March 24, 2020 electronic filing of this Application is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on March 23, 2020; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that, within 30 days following the end of the state of emergency announced in Executive Order 2020-215, this Application in paper medium will be delivered to the Public Service Commission.



Damon R. Talley

EXHIBIT 1



Hardin County Water Commissioner Training Seminar

Presented by

Hardin County Water District No. 2 & Stoll Keenon Ogden PLLC
360 Ring Road, Elizabethtown, Kentucky

April 27, 2020

Morning Agenda

- 8:00 - 8:25 **Registration and Refreshments**
- 8:25 - 8:30 **Program Overview and Welcome – Mike Bell**
- 8:30 - 9:30 **Recent Developments in Utility Regulation – Damon Talley**
This presentation reviews recent developments in public utility law and regulation. Topics include unaccounted water loss, revisions to the Open Meetings Act, sovereign immunity, wholesale water purchase agreements, franchises, and laws enacted by the 2019 and 2020 General Assembly. The presenter will also examine and discuss recent court and PSC decisions.
- 9:40 - 10:40 **Challenges Facing Water Districts – Greg Heitzman**
This presentation examines the major challenges currently confronting Kentucky's water systems, including the financing and planning of major infrastructure replacement, compliance with announced and anticipated revisions to federal and state safe drinking water laws, increased operating costs, and overcoming public reluctance to rate adjustments to finance improvements. The presenter will offer 12 recommendations for meeting these challenges.
- 10:50 - 11:50 **All You Ever Wanted To Know About Depreciation . . . and Then Some
Katelyn Brown**
This presentation discusses the importance of “fully funding depreciation” and examines how many municipal and PSC-regulated water systems are employing this key business practice. The presenter will also address the consequences of failing to fund depreciation and detail how water utilities can increase their depreciation funding.
- 11:50 - 12:30 **Lunch (provided on-site)**

Afternoon Agenda

- 12:30 - 1:30 **Water Utility Tariffs: Practical Considerations – Gerald Wuetcher**
A water utility's tariff offers a unique opportunity for the water utility to structure its relationship with its customers. This presentation will highlight various provisions that a water utility should have as part of its tariff to protect against financial and legal liability as well as avoid common customer disputes. In the first portion of his presentation, the presenter will discuss the statutory and regulatory framework for utility tariffs and the process by which a tariff may be revised. The presentation will conclude with some practical suggestions for improving a water utility's tariff.
- 1:40 - 2:40 **Extending Meter Service Life – Mary Ellen Wimberly**
Studies show water meters remain largely accurate for 15 years, but PSC regulations require 5/8-inch x 3/4-inch meters be tested or removed every 10 years. This presentation will discuss whether sample testing is the functional equivalent of testing each meter, the ANSI Standard method of sample testing the PSC has approved for gas and electric meters, and the PSC's recent decisions on water utility efforts to extend meter service life to 15 years and beyond.
- 2:45 - 3:45 **Legal Issues in the Operation & Management of Water Systems
Panel Discussion – Damon Talley and Gerald Wuetcher**
A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water utilities. Discussion is expected to address KRS Chapter 74 and its effects on the management and operation of water districts, as well as other highly relevant statutory provisions, such as the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. Public Service Commission regulatory requirements will also be discussed.
- 3:45 **Closing Remarks & Administrative Announcements**

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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Biography

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

2016

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

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

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

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



**625 Myrtle Street
Louisville, Kentucky
502-533-5073**



Damon R. Talley

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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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Mary Ellen Wimberly

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BAR & COURT ADMISSIONS

Kentucky

EDUCATION

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

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

RECOGNITION

Singleton Scholar

Wethington Fellowship

John Todd Shelby Memorial
Merit Scholarship

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

Mary Ellen Wimberly

Mary Ellen joined Stoll Keenon Ogden's Lexington office as an Associate in 2016, after previously serving as a Summer Associate. She focuses on Utility & Energy law and represents utility companies throughout Kentucky.

Before she began her practice at SKO, Mary Ellen was a student at the University of Kentucky. Her bachelor's degree in finance and economics allows her to look at complex legal challenges from a business perspective and offer clients quick, actionable advice.

Mary Ellen earned her J.D. at UK College of Law, where she was elected to the Order of the Coif. During her time in law school, she served as a staff editor of the Kentucky Law Journal, was the president of the Women's Law Caucus and volunteered with the VITA (Volunteer Income Tax Assistance) Program.

Utility & Energy: Mary Ellen works with large, investor-owned electric, water and gas utilities, as well as smaller utility companies and water districts. She has experience in a range of regulatory matters, including rate proceedings, certificates of public convenience and necessity, and environmental surcharges.



Gerald E. Wuetcher

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 gerald.wuetcher@skofirm.com

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

**HARDIN COUNTY
WATER COMMISSIONER
TRAINING SEMINAR**

April 27, 2020



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 27, 2020



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. 2020 General Assembly
8. Recent PSC Orders
9. Cases to Watch





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
 - Kent A. Chandler,
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.

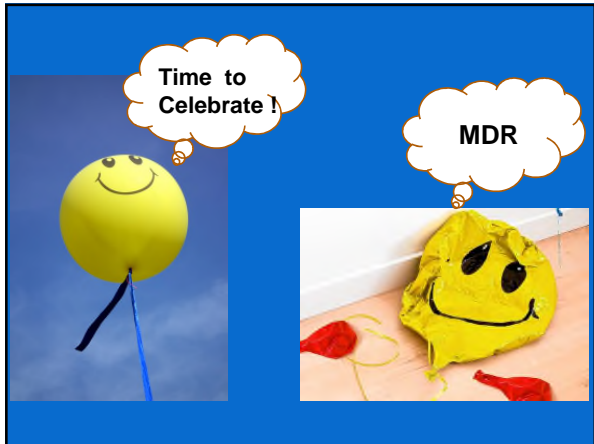
Ledbetter WD

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: 06-10-19
Oral Arguments: None
Decided: 02-20-20

Ky. Supreme Court Holding

- Reversed C/A by 4-2 Vote
- Contract is Franchise
- Section 164 of Const.
 - Must Advertise
 - 20 Years or Less
- Decision Not Final



Ky. Supreme Court Rationale

- Ky. AG Opinion - 1981
- KRS 96.120 (City)
- Broad Definition of Franchise



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.



What's Next?

- Ky. Supreme Court
 - Decision: 02-20-20
 - Petition for Rehearing: 03-10-20
- Decision Not Final

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
Affirmed: 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

Oral Arguments: None

Decided: 02-20-20



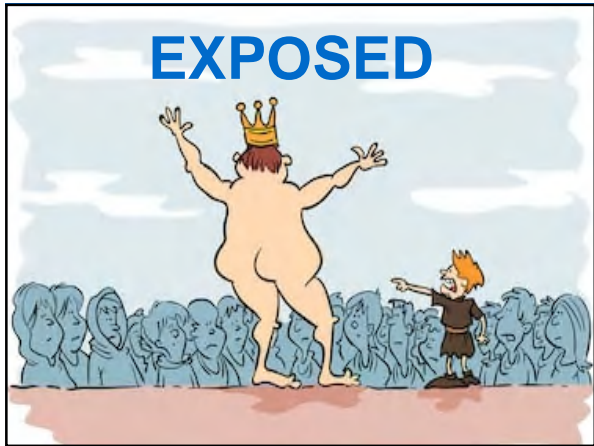
Holding

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













Talley's Tips

- Exercise Reasonable Care
- Use Best Practices
- Adopt Policies
- Follow Policies



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



Borrowing



KRS 278.300(1)

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



Practical Effect

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





Violation

**Show
Cause
Cases**



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 # 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 Show Cause Cases

- WD # 1
 - All Commissioners Resigned
 - General Manager Resigned
 - PSC Dismissed Case



2019 Show Cause Cases

- WD # 2
 - Commissioners Settled with PSC
 - \$500 Fine (suspended)
 - 12 Hours Training Per Year
 - WD Not Fined
 - See Timeline



Timeline

09-27-17 Staff Report
01-11-18 Show Cause Order
02-27-18 Hearing (Rescheduled)

04-08-19 Offer of Settlement
06-19-19 Order Accepting
Offer of Settlement





2019 General Assembly

- ### Notable Bills (6-27-19)
- SB 129 – Ky. 811 - Defeated
 - SB 256 – CPCN Exemption
KRS 278.020
(1)(a)(2)&(3)
 - HB 26 – Procurement
\$30,000

2020 General Assembly

Notable Bills

- SB 165 – Ky. 811
- SB 228 – Ky. 811
- HB 446 – Commissioner Training
- HB 570 – Interlocal Cooperation Act
- Other Bills

Recent PSC Orders

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. 2018 - 394

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



PSC Case No. 2019 - 041

Filed: 03-12-2019
Utility: 11 Water Utilities
Type: Investigation
Issue: Excessive Water Loss
Hearings: 11 Separate Hearings
Decided: 11-22-19



Leaky 11 Cases

Findings:

- High Water Loss is Symptom of Larger Problems
- Poor Board Oversight
- Poor Management
- Poor Financial Health
- Need Rate Increase



Leaky 11 Cases

Utilities Ordered to:

- Develop Water Loss Reduction Plan
- Perform Water Loss Audit
- Adopt Policies
- Adopt Procedures
- Board Training



Leaky 11 Cases

PSC Published

Comprehensive Report:

- November 22, 2019
- 82 Pages
- Summarized Findings
- Legislative Recommendations



PSC Case No. 2019 - 080

Filed: 02-21-2019
Seller: Pikeville
Buyer: Mountain WD
Type: Municipal Wholesale
Rate increase
Hearing: 09-11-2019
Decided: 12-19-19 & 01-31-20

Pikeville

Issues:

- COSS: M1 vs. M54 Manual
- Discovery
- Rate Case Expense

Pikeville

Holding:

- COSS: Invalid
- Wholesale Rate Increase ↓
- Rate Case Expense
 - No COSS Expert \$
 - Attorney Fees OK

Pikeville Holding (cont.)

- Other Wholesale Customer

- Settled Before Case Filed
- PSC Reduced Rate
- Must Pay ½ of Rate Case Expense



Pikeville Status

Decided: 12-19-19 & 01-31-20

Appealed: Franklin Cir. Court

Status: Pending



PSC Case No. 2019 - 268

Filed: 07-31-2019

Seller: Knott Co. WD

Type: ARF Case

Hearing: 01-22-2020

Decided: 01-31-20



PSC Case No. 2019 - 268

- Utility Requested 48% ↑
- Staff Recommended 70% ↑
- PSC Granted Increase:
 - Year One 46%
 - Year Two 15%
- Hearing Noteworthy



PSC Case No. 2019 - 268

- No Rate Increase – 17 Years
- Commissioners' Benefits
- Open Meetings Act Violation
- Other Issues





PSC Case No. 2019 - 115

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





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Presented by
Greg C. Heitzman, PE, MBA
BlueWater Kentucky



RECOMMENDATIONS FOR KENTUCKY'S FAILING WATER SYSTEMS

**Hardin County Water
COMMISSIONER TRAINING SEMINAR
Elizabethtown, KY
April 27, 2020**

2019 Kentucky Infrastructure Report Card

“Mediocre”

Drinking Water = C+

Waste Water = C-



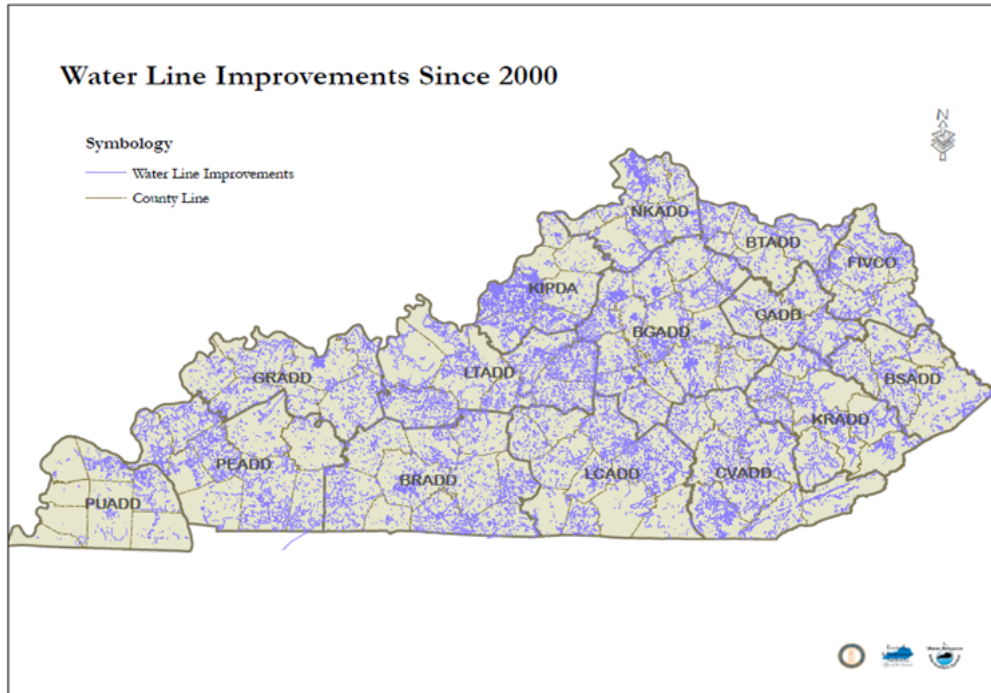
A	EXCEPTIONAL
B	GOOD
C	MEDIOCRE
D	POOR
F	FAILING

<https://www.infrastructurereportcard.org/state-item/kentucky/>

**KENTUCKY'S
SUCCESS SINCE
SB 409
AUTHORIZED IN
2000**

- ✓ 15 Regional Water Management Councils to coordinate planning
- ✓ State-wide water GIS database => KY WRIS
- ✓ Drinking Water coverage at 95%
- ✓ Water and Wastewater system consolidation
- ✓ Water System interconnections through regional cooperation
- ✓ Improved compliance record in water and wastewater
- ✓ Industry Collaboration through KY Water Advisory Council
- ✓ Active Industry Associations (AWWA, KMUA, KWWOA, Rural Water, etc.)
- ✓ Coordinated Agency Funding (KIA, RD, DLG, AML, ARC, CDBG, etc.)
- ✓ Training from AWWA, KDOW, RCAP, Rural Water, UK, etc.
- ✓ R&D support from UK, UL, WKU
- ✓ Partnerships among Best Practice Water/WW systems

KENTUCKY WATER SYSTEMS

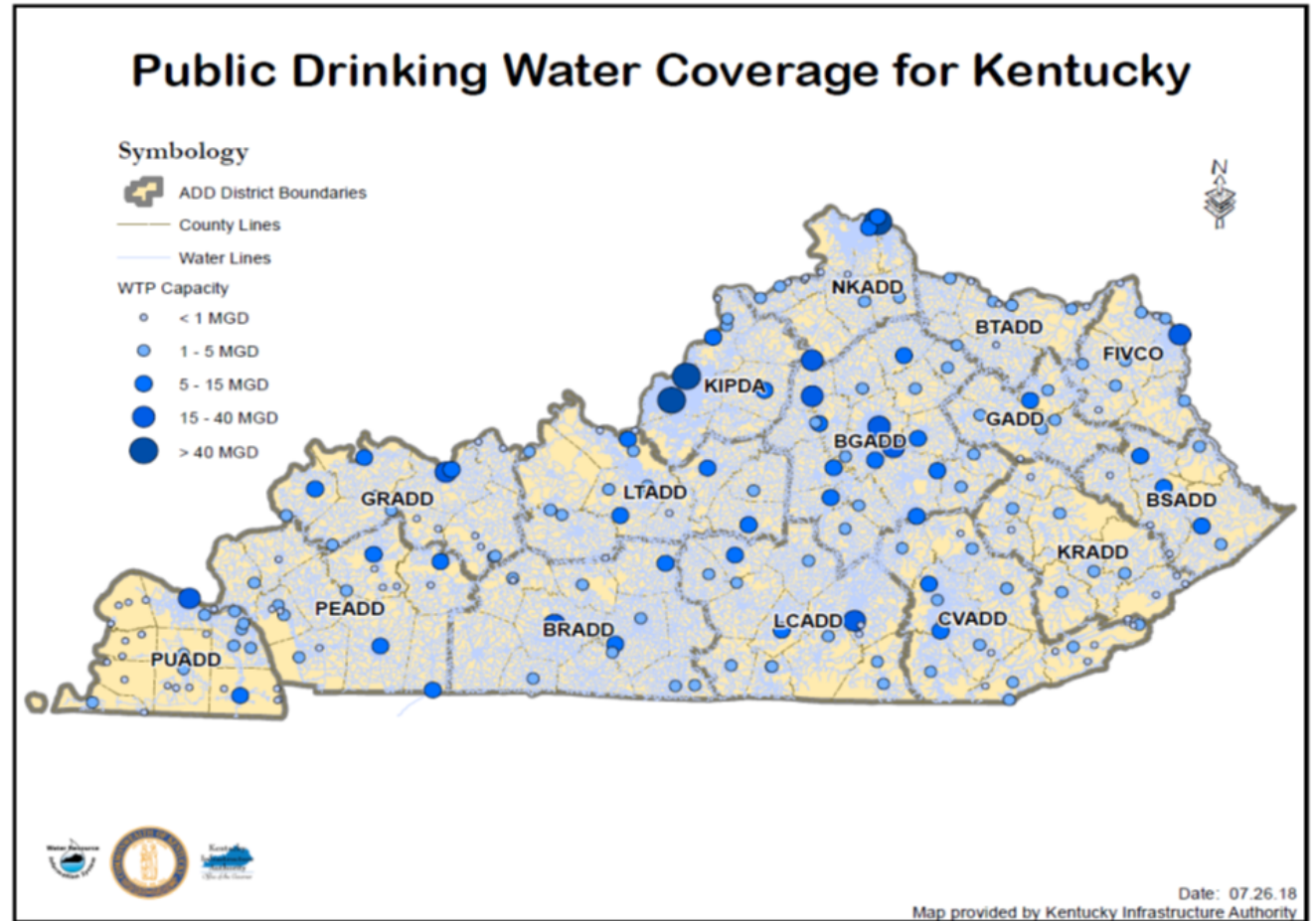


Source: KY Infrastructure Authority and KY Division of Water

- ✓ **435 Public Water Systems**
- ✓ **213 Water Treatment Plants (average age 36 years)**
- ✓ **1,842 Water Storage Tanks (average age 26 years)**
- ✓ **58,783 Miles of Water Main**
 - Average age 38 years
 - 20% over 50 years
- ✓ **Estimated 25,000 lead service lines**

KY PUBLIC WATER SERVICE AVAILABILITY

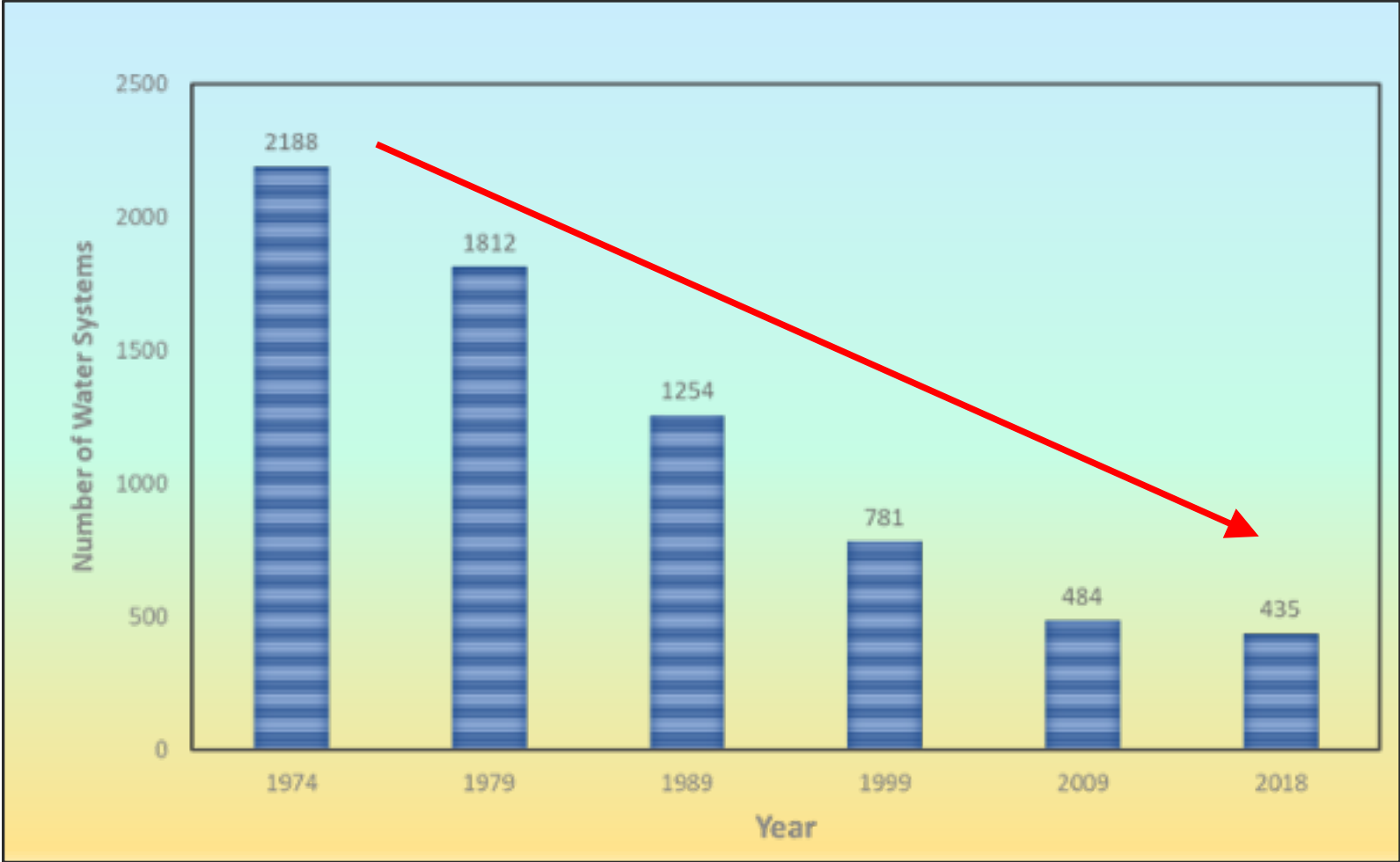
- ✓ 2000 - Governor Paul Patton's 2020 Water Vision thru Senate Bill 409
- ✓ 435 Kentucky Public Water Systems serve 4.5 million people
- ✓ 95% of Kentuckians have access to public water system (top 5 in US)
- ✓ Recognized nationally for regional planning and consolidation



Source: KY Infrastructure Authority and KY Division of Water

Consolidation of KY Water Systems

✓ 80% decline in number of water systems over 45 years (one of best in US)



Source: KY Division of Water

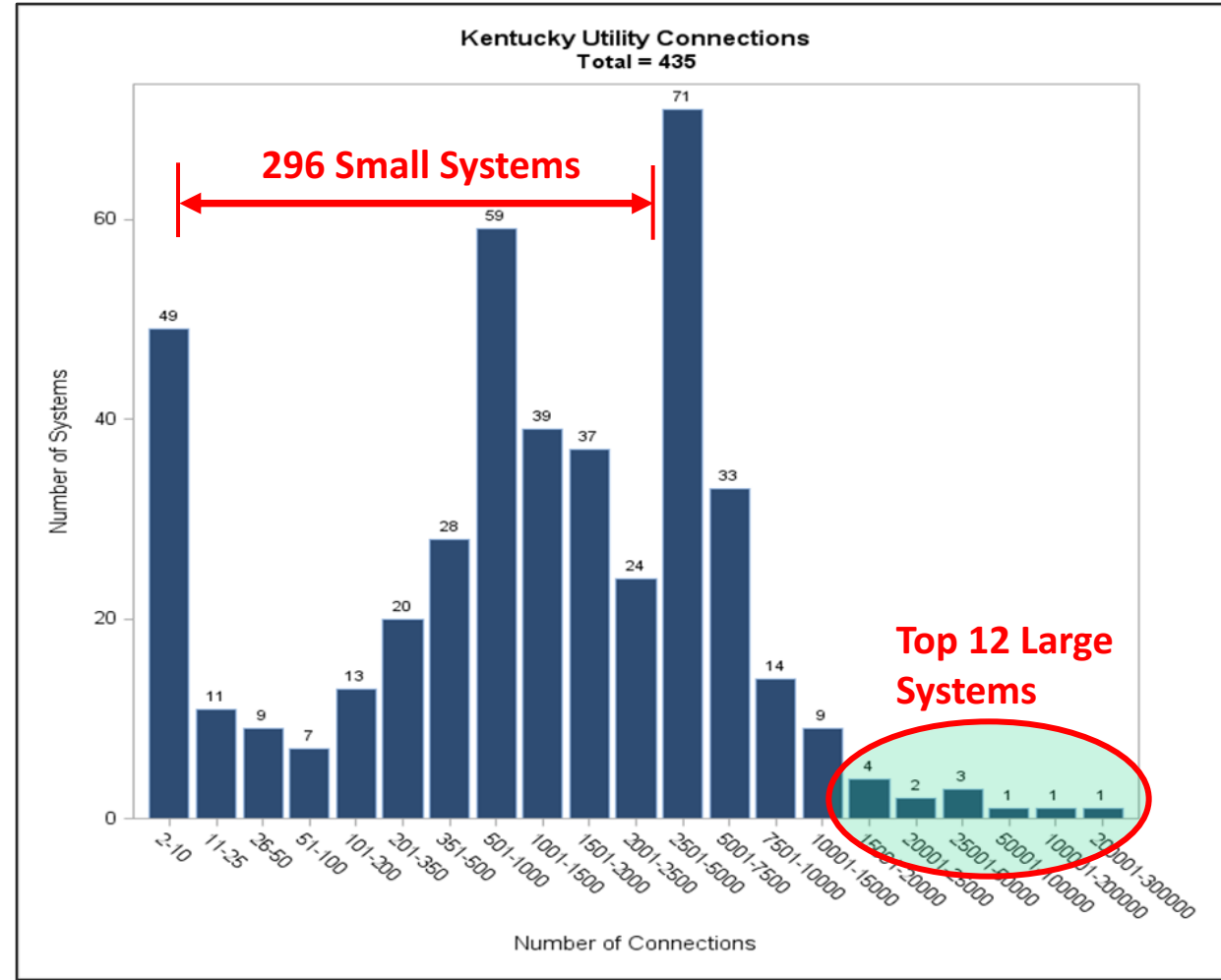
Kentucky Water System Profile

Top 12 Systems Serve:

✓ 37 % of KY Population

✓ 54% of Water Produced

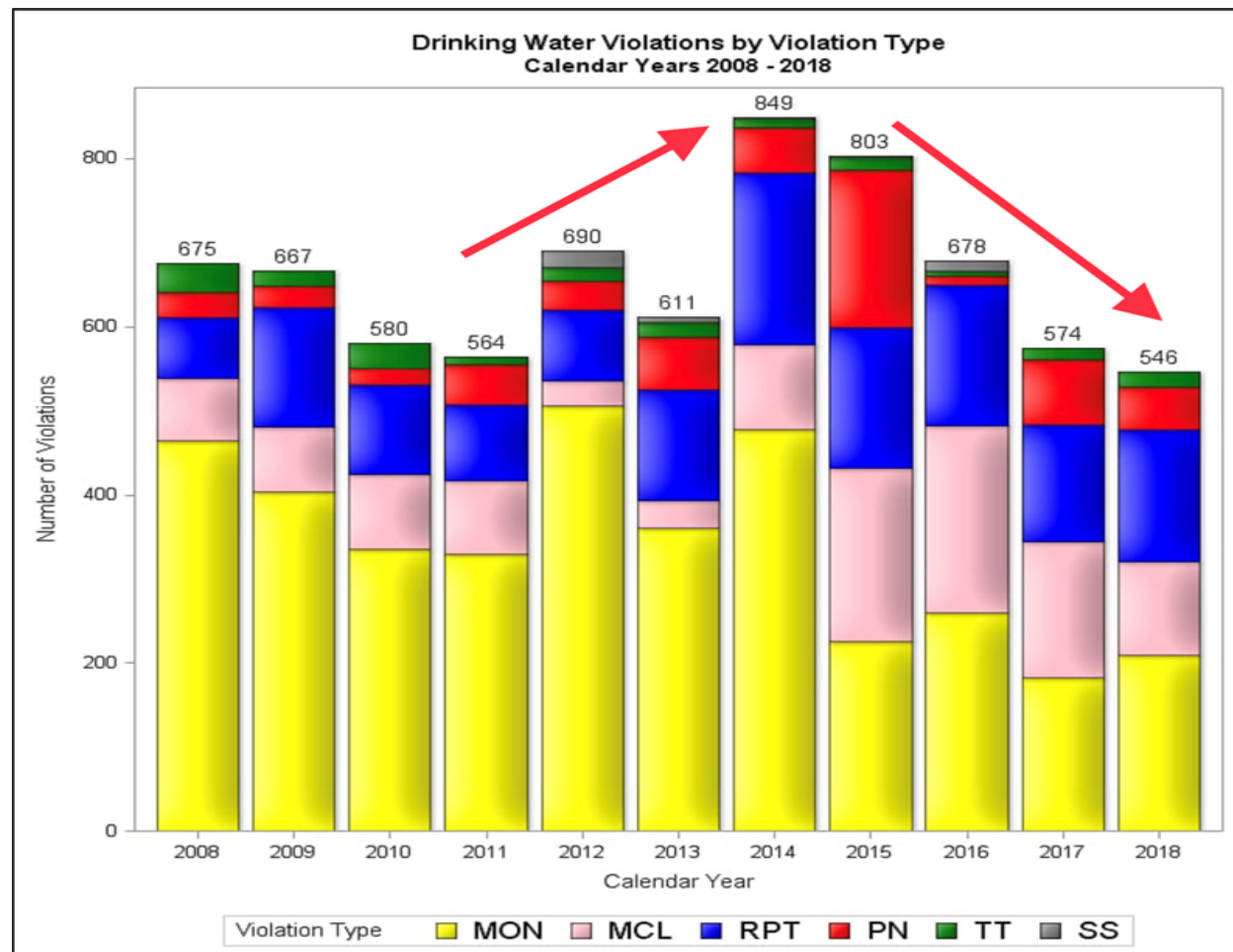
1. Louisville Water Company
2. Kentucky-American Water Co
3. Northern Kentucky Water District
4. Bowling Green Municipal Utilities
5. Owensboro Municipal Utilities
6. Ashland Water Works
7. Paducah Water Works
8. Frankfort Plant Board
9. Somerset Water Service
10. Logan-Todd Regional Commission
11. Glasgow Water Company
12. Hardin County Water District No. 2



Source: KY Division of Water

KY Drinking Water Regulations

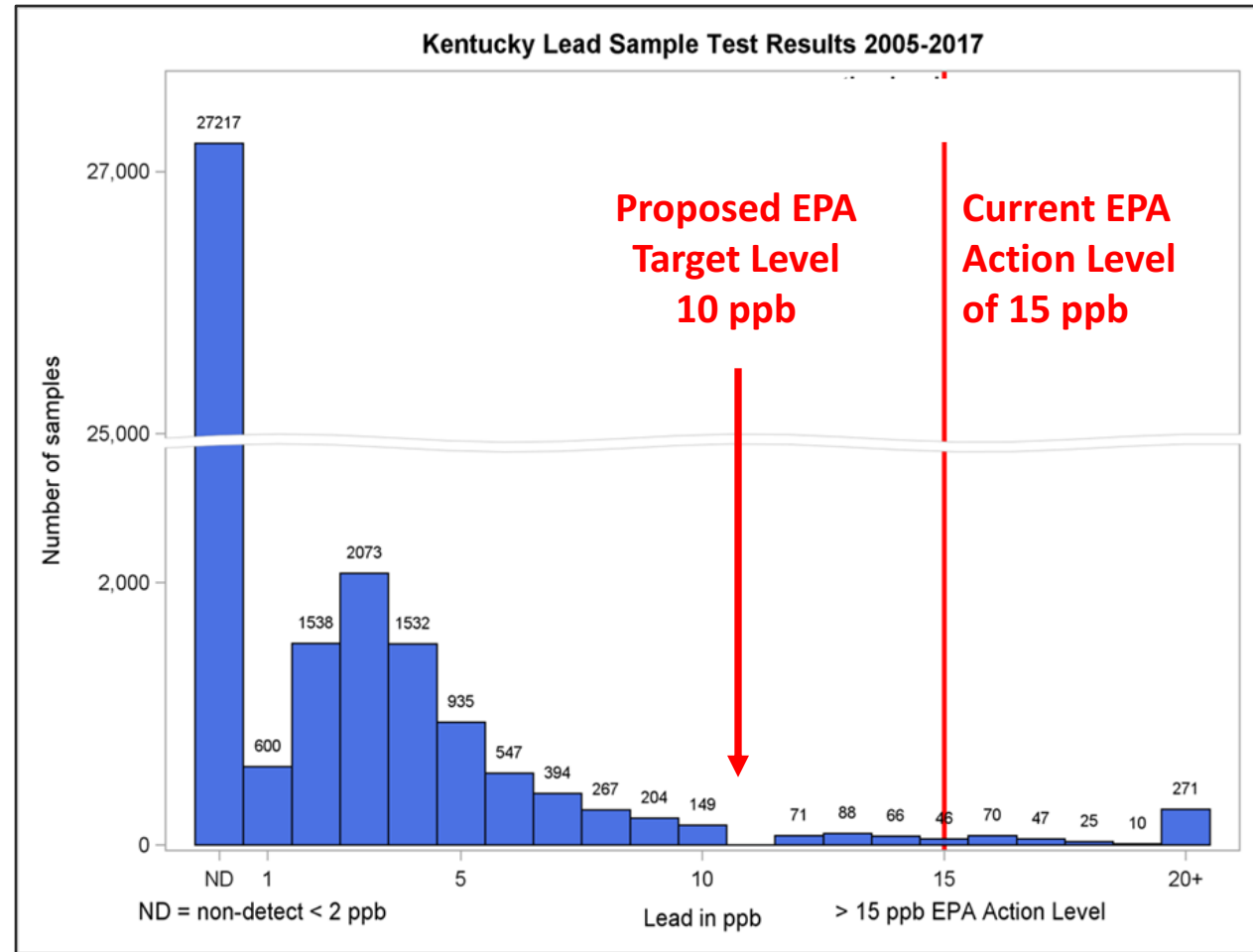
- ✓ Decline in Violations last 5 years from 849 in 2014 to 546 in 2018
- ✓ Increase in 2014 for Disinfection By-Product Violations
- ✓ DBPs have declined through 2018 with technical assistance from KY DOW and KY Rural Water
- ✓ Expect improvement again in 2019



Source: KY Division of Water

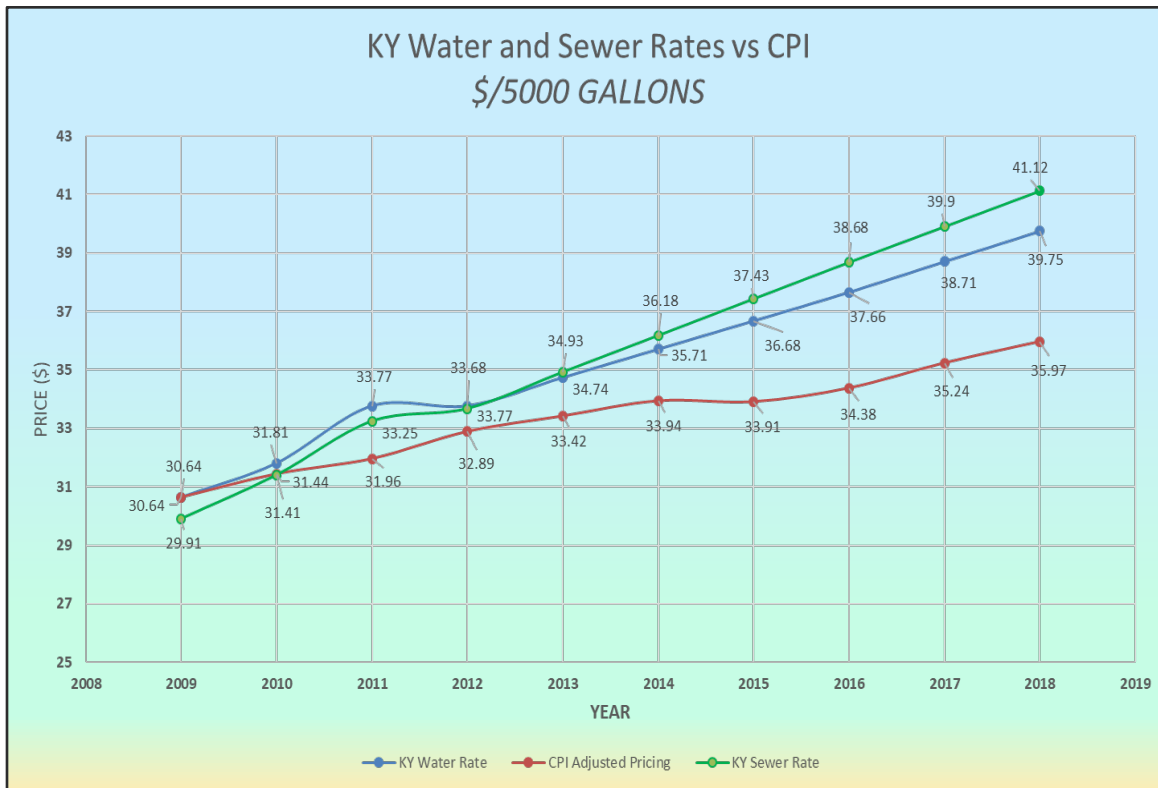
Lead Compliance Record

- ✓ All 435 Public Water Systems are compliant with EPA Lead and Copper Rule
- ✓ Kentucky is generally in good shape if EPA sets “Target” Level at 10 parts per billion (ppb)
- ✓ EPA estimates KY has 53,000 Lead Service Lines
- ✓ KY estimate is less than 25,000 Lead Service Lines, since Louisville has reduced lead service line inventory from 70,000 in 1940 to less than 500 in 2019
- ✓ Need State-wide Lead Inventory



Source: KY Division of Water

KY WATER AND WASTEWATER RATES



Source: KY Rural Water/Cannon & Cannon Rate Survey

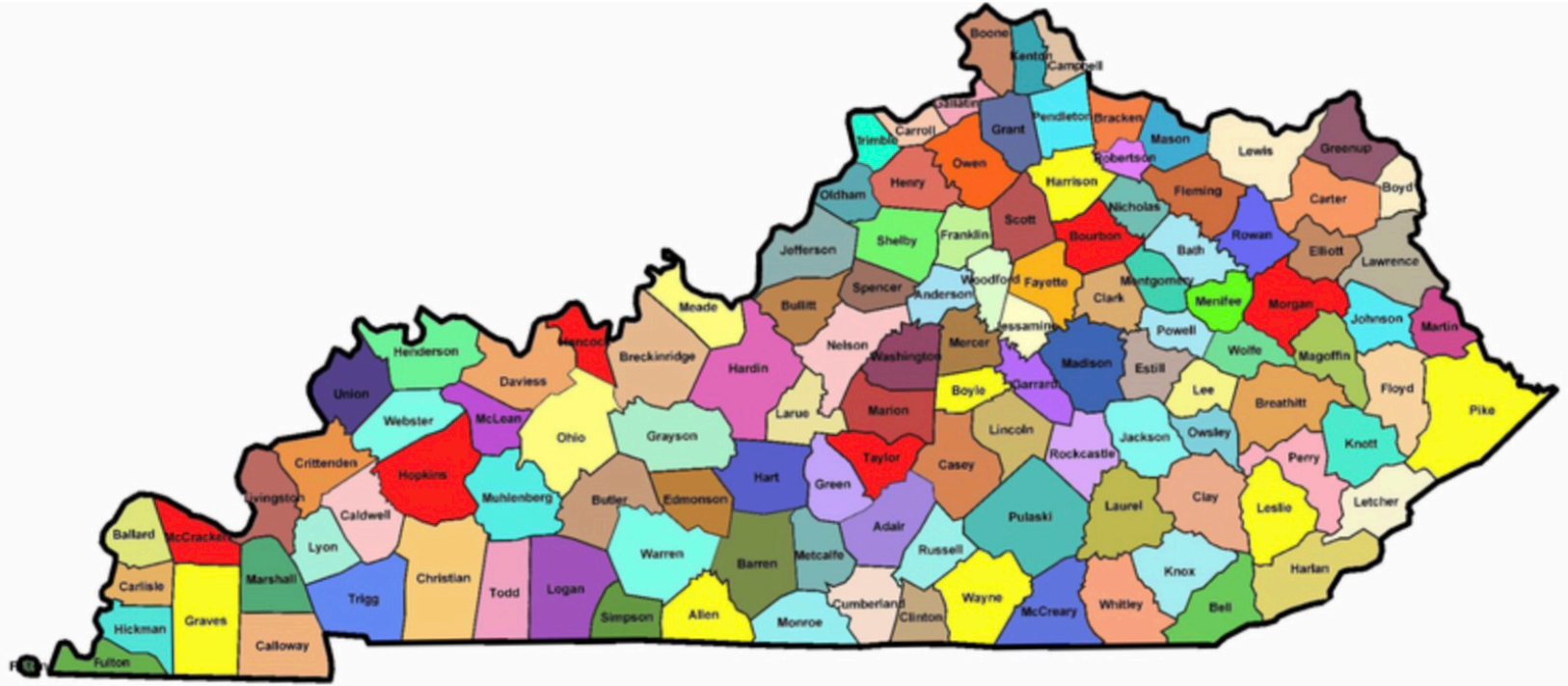
- **Average KY Water Bill for 5,000 gallons/month**
 - 2012 - \$33.77
 - 2018 - \$39.75
 - 2.75% average annual increase (CPI about 2%)

- **Average KY Wastewater Bill for 5,000 gallons/month**
 - 2012 - \$33.68
 - 2018 - \$41.12
 - 3.0% average annual increase (CPI about 2%)

- **Total W/WW Bill Averages \$80.87/month or \$970/Year**
 - Some KY communities exceed \$100 per month or \$1,200/Year

- **Averages 2% of KY Median Household Income of \$48,375**
 - Some KY communities at 2.5% of KY MHI

TOP CHALLENGES FOR KENTUCKY WATER SYSTEMS



TOP CHALLENGES FOR KY WATER SYSTEMS



#1 COMPLIANCE WITH REGULATIONS

Especially Impacting Small Systems

- Disinfection By-Products (DBP) in drinking water
- Lead and Copper → Focus IS now on Lead In Schools
- America's Water Infrastructure Act of 2018 (AWIA)
- Algal Toxins and PFAS (perfluoroalkyl) substances
- Pesticides and Herbicides

TOP CHALLENGES FOR KY WATER SYSTEMS

2 AGING INFRASTRUCTURE

- Water - Aging treatment, storage, pumping, distribution
- Wastewater – Aging collections, storage, treatment, pumping, flood protection
- Growing deferred maintenance
- Slow adoption of Asset Management and Life Cycle Analysis
- Lack of capital planning (5,10,20 years)
- Funding and Procurement Cycle



48" Water Main Break



Flood Protection Pumps and Levees



2" galvanized line



3/4" lead service line



Failed Treatment Clarifier



6" unlined cast iron pipe



6" main break



Sewer Collapse

TOP CHALLENGES FOR KY WATER SYSTEMS

- **\$8.2 Billion Funding Gap for KY Drinking Water (\$1,800/person) over next 20 years**
- **\$6.2 Billion Funding Gap for KY Wastewater (\$1,400/person)**

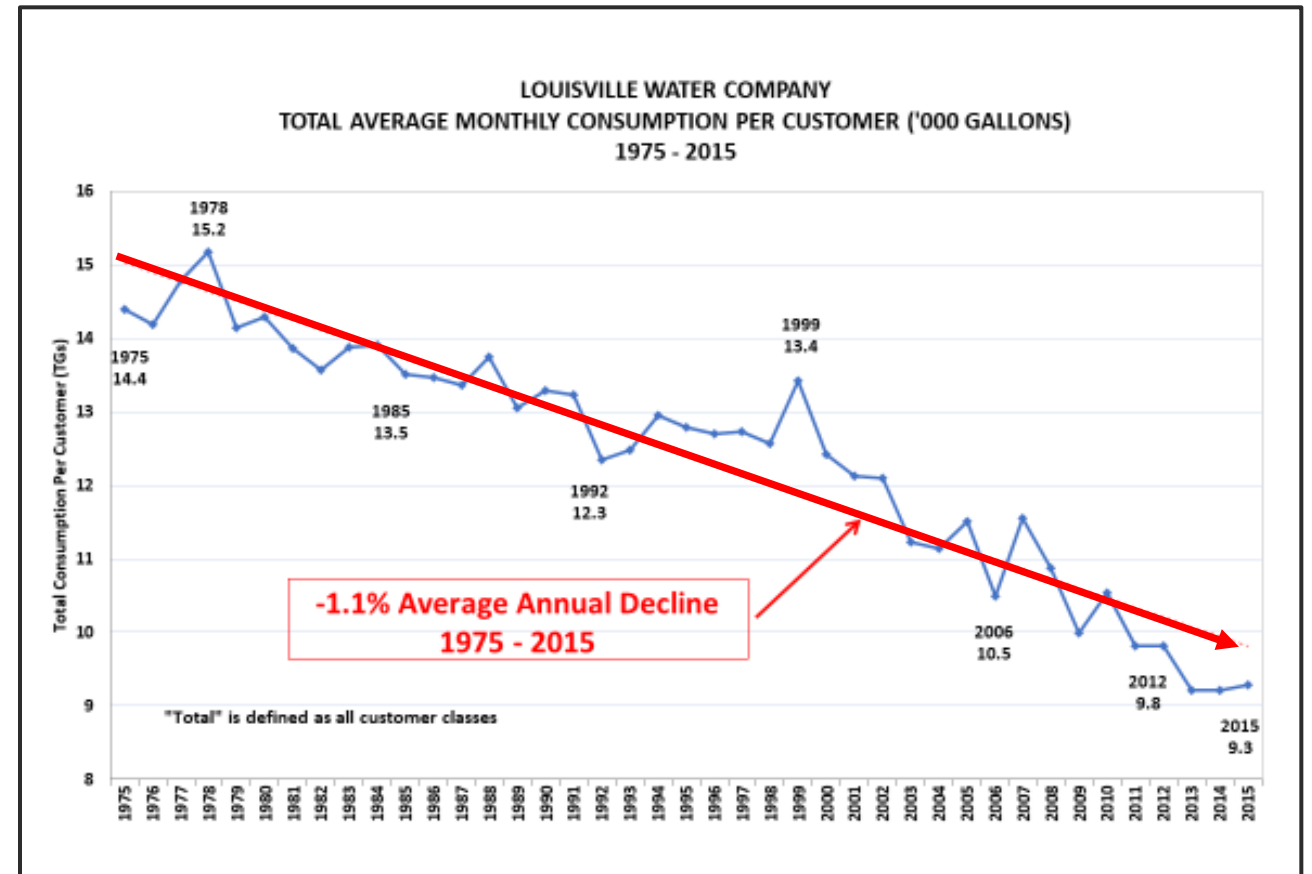
#3 INFRASTRUCTURE FUNDING

- Current customer rate base is not adequate to fund infrastructure needs
- Funding focus has been on new infrastructure and not on repair, maintenance and replacement
- Loans are replacing grants (systems waiting on grants)
- Limited funds available for soft costs (planning, new technology, best practice, life cycle analysis)

TOP CHALLENGES FOR KY WATER SYSTEMS

#4 CONSUMPTION & RATES

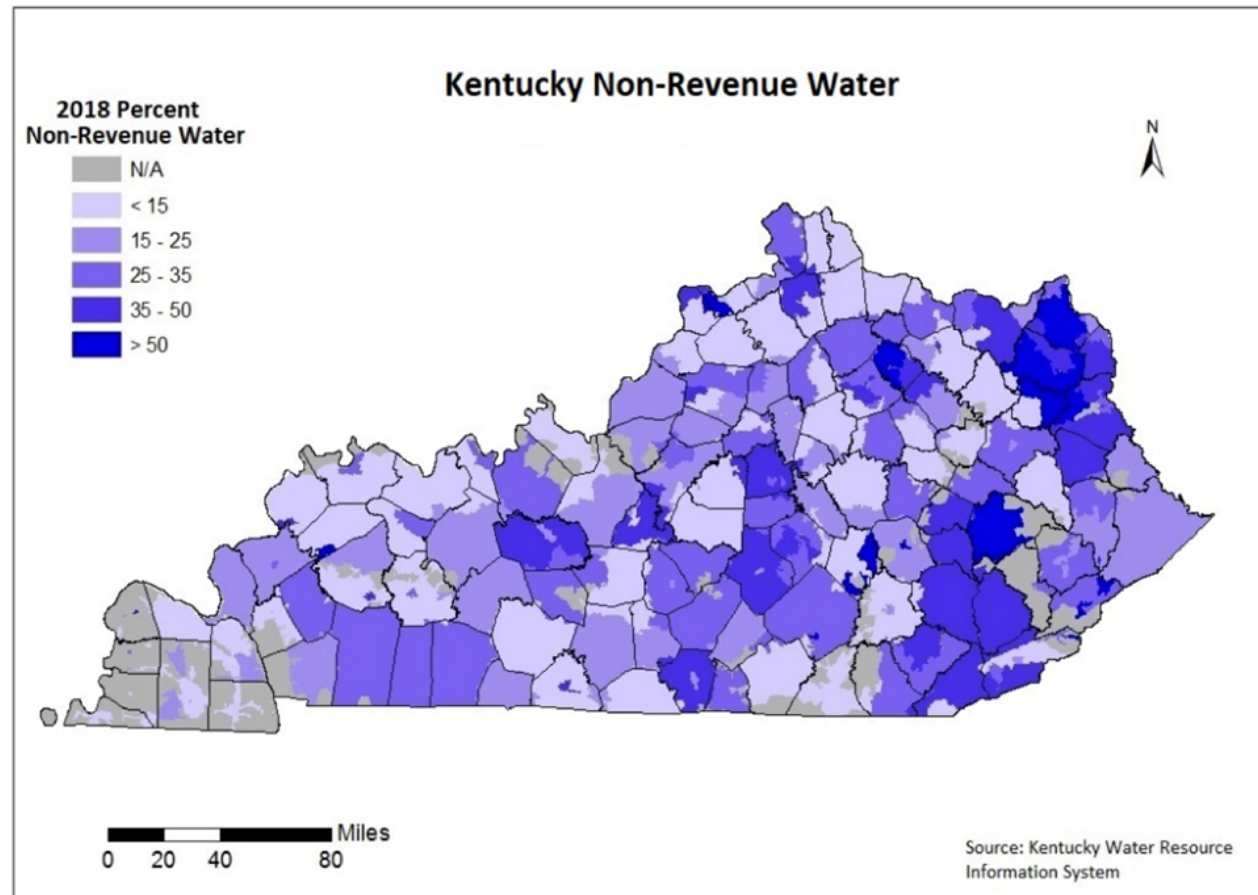
- Kentucky is generally a slow or no-growth economy
- Water consumption is declining:
 - transition to service economy
 - recycling/reuse
 - low-flow plumbing fixtures
 - therefore fixed costs are spread over fewer gallons sold
- Different rate approval methods (PSC -regulated vs Municipal)
- Reluctance by elected officials and appointees to raise rates due to public pressure
- Affordability of water becomes a concern in some communities when full-cost pricing is implemented



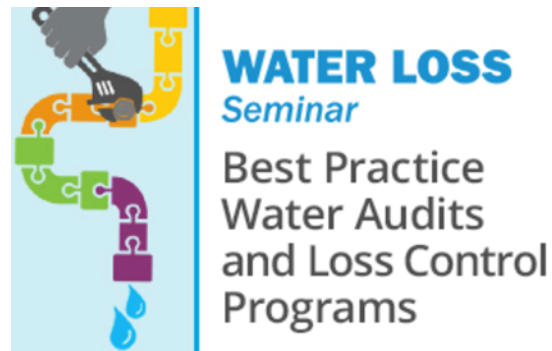
TOP CHALLENGES FOR KY WATER SYSTEMS

#5 Water Loss

- KY Water Loss averages over 30 percent
- Inconsistent methods of measuring water loss
- No statewide standard practice
- PSC method vs municipal methods
- Extensive use of estimates
- Percent water loss not industry best practice
- Need economic approach to water loss (\$ value of water)



TOP CHALLENGES FOR KY WATER SYSTEMS



#6 WORKFORCE

- Retiring Boomer workforce
- Projected gap in licensed operators and technical staff
- Non-competitive salary and benefits in robust economy
- State pension crisis impact on workforce and balance sheet
- Agency staff shortage (DOW, KIA, PSC)
- Changing expectations of millennial workforce
 - Teamwork
 - Mobility
 - Technology

TOP CHALLENGES FOR KY WATER SYSTEMS

#7 Planning & Best Practices

- Lack of Business/Strategic Planning
- Lack of Asset Management & Capital Planning
- Best Practices slow to adopt
- Slow to adopt new technology (IoT)
- Outdated procurement regulations (slow/inefficient)
- Life cycle costing rarely evaluated



RECOMMENDATIONS BY BLUEWATER KENTUCKY

- 1. Continue Kentucky Drinking Water and Clean Water Advisory Councils.**
- 2. Continue to enhance water planning in Kentucky required under SB 409:**
 - Improve accuracy and consistency of WRIS data
 - Engage local Water Management Planning Councils
 - Fully fund staff and technology resources

**RECOMMENDATIONS
BY
BLUEWATER
KENTUCKY**

3. Leverage federal funds with state funding (i.e. Indiana WIFIA approach).

4. Establish Kentucky Water Infrastructure Fund:

- Provide a annual funding of \$25 million
- To assist water/wastewater/stormwater systems in planning, engineering, design and construction
- Revolving loan program with up to 30% annually for grants

RECOMMENDATIONS BY BLUEWATER KENTUCKY

5. Develop Kentucky uniform performance criteria and rating system for water utilities:

- Include technical, managerial and financial criteria
- Collaborate with industry to develop rating system and key performance metrics
- Develop peer review process to improve performance
- Recognize and award and top-rated systems
- Publish water system ratings
- Take corrective action on failing water systems

6. Create financial incentives (principal forgiveness) for assessing capacity and achieving performance levels in areas of:

- Technical - regulatory compliance/operations
- Finance - financial capacity, cost of service rates, audits
- Managerial – asset management, planning, water loss, customer service, system reliability, consolidation, interconnects, risk management plans

RECOMMENDATIONS BY BLUEWATER KENTUCKY

- 7. Adopt full cost pricing of water using industry standards (AWWA M1):**
 - Adopt rate indexing to W/WW based CPI
 - Use infrastructure surcharges to address funding gaps
 - Use system development charges to fund growth infrastructure
- 8. Adopt industry standard for water audits and loss control programs (AWWA M36).**

RECOMMENDATIONS BY BLUEWATER KENTUCKY

9. Establish “Centers for Excellence in Water” through partnerships with utilities, water industry associations and academic institutions:

- Water quality/operations
- Infrastructure/asset management
- Water loss
- Finance
- Customer service
- Innovation/Best Practices in water

10. Conduct state-wide studies on the following:

- Water loss
- Lead service/plumbing inventory
- System interconnections for reliability and drought relief
- Affordability of water/wastewater for low/fixed income households

RECOMMENDATIONS BY BLUEWATER KENTUCKY

11. Revise administrative regulations to:

- Define technical, managerial and financial roles for KY PSC, DOW and KIA to eliminate duplication and streamline processes
- Provide authority to DOW/KIA/PSC to address failing water systems (technical, managerial financial) and ability to intervene and take corrective action
- Establish water and wastewater rate indexing allowing annual rate adjustments. (CPI or equivalent)

12. Require water systems to prepare Capital Improvement Plans for Asset Management and Infrastructure Renewal.

- 5-Year CIP for Small Systems serving <10,000 pop
- 10-Year CIP for Medium Systems 10,000 to 50,000
- 20-Year CIP for Large Systems > 50,000

SOURCES AND REFERENCES

- **ASCE Infrastructure Report Card – Drinking Water 2019**
- **ASCE Infrastructure Report Card – Wastewater 2019**
- **2018 KY Rural Water/Cannon & Cannon Rate Survey**
- **Kentucky Division of Water**
- **Kentucky Infrastructure Authority/WRIS**
- **Kentucky Rural Water Association**
- **KY-TN AWWA**
- **Louisville Water Company**

**DISCUSSION
AND
QUESTIONS**

Greg C. Heitzman, PE, MBA

**Retired CEO Louisville Water
and Louisville MSD**



BlueWater
Kentucky

www.bluewaterky.com


502-533-5073



**HARDIN COUNTY
WATER COMMISSIONER
TRAINING SEMINAR**


April 27, 2020






**ALL YOU EVER WANTED TO
KNOW ABOUT DEPRECIATION
.... AND THEN SOME**


Katelyn Brown
Stoll Keenon Ogden PLLC
katelyn.brown@skofirm.com
(502) 568-5711






ORDER OF PRESENTATION


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






ORDER OF PRESENTATION

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




WHAT IS DEPRECIATION?



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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Depreciation Formula


Annual Depreciation Cost =

$$\frac{(\text{Cost} - \text{Salvage Value})}{\text{Useful Life in Years}}$$


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↓




<https://www.2020offroadmagazine.com/offroadmagazine-beetle-2019/>
<http://www.foxnews.com/story/2019/04/24/bug-beetle-2019/>
<http://www.foxnews.com/story/2019/04/24/bug-beetle-2019/>


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<http://www.dellacourtindependent.com/news/2018/05/01/water-tank-removal-ready-for-construction-2018-04-24-13-49-46-463227244.html>
<http://www.dellacourtindependent.com/news/2018/05/01/water-tank-removal-ready-for-construction-2018-04-24-13-49-46-463227244.html>
<http://www.dellacourtindependent.com/news/2018/05/01/water-tank-removal-ready-for-construction-2018-04-24-13-49-46-463227244.html>



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?




Typical Ways that Useful Lives are Determined

- Rural Development (RD)
- Kentucky Infrastructure Authority (KIA)
- CPA
- Engineer
- PSC (NARUC Guidelines)
- Board




WHAT DOES IT MEAN TO "FULLY FUND" DEPRECIATION?




“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)




CONSEQUENCES OF NOT FULLY FUNDING DEPRECIATION



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




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




PSC CONCERNS WITH DEPRECIATION




The PSC is concerned with:

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




ANALYSIS OF VARIOUS WATER DISTRICTS AND CITIES



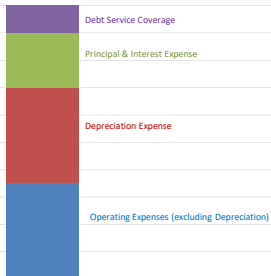
Revenue Requirement

The total amount of money a utility must collect from its customers in a calendar or fiscal year:


- (1) To pay all non-capital costs, including operating expenses, depreciation, and debt service expense (principal & interest); and
- (2) To enable the utility to meet the debt service coverage requirement set forth in the utility's covenants to its bondholders and other lenders.



Revenue Requirement Components

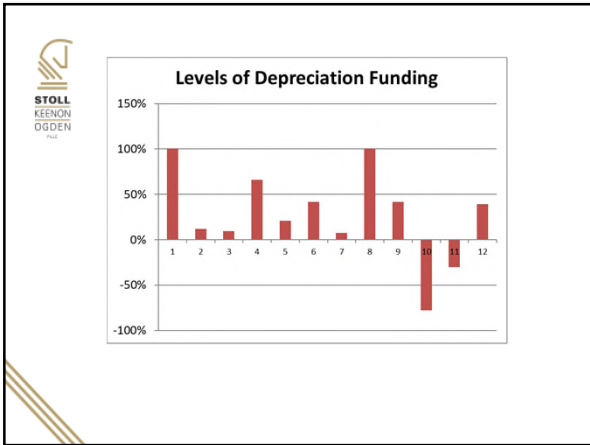



Component
Debt Service Coverage
Principal & Interest Expense
Depreciation Expense
Operating Expenses (excluding Depreciation)



Analyzed 12 WDs and Cities

- Labeled utilities #s 1-12 for anonymity
- Based on 2018 numbers
- Looked at:
 - Level of Depreciation Funding (% and \$)
 - # of customers
 - Depreciation Expense compared to other operating expenses
 - \$ of Debt Service Expense (P & I) and Debt Service Coverage






Utility	Depreciation Expense
1	\$ 958,570
2	\$ 392,152
3	\$ 635,761
4	\$ 455,008
5	\$ 274,374
6	\$ 315,697
7	\$ 908,262
8	\$ 3,022,902
9	\$ 190,955
10	\$ 404,363
11	\$ 227,638
12	\$ 217,039

High – Utility 8 at \$3,022,902


Median - \$398,258

Low – Utility 9 at \$190,955




Utility	Customer Count
1	8,401
2	3,573
3	4,969
4	3,425
5	5,168
6	7,452
7	7,029
8	28,620
9	3,523
10	3,712
11	2,655
12	1,180

High – Utility 8 at 28,620
Median – 4,341
Low – Utility 12 at 1,180




Depreciation Expense Compared to Other Operating Expenses

- For 8 of 12 of the WDs and cities analyzed, Depreciation Expense was either the highest operating expense or 2nd highest operating expense




Debt Service Expense vs. Debt Service Coverage

- Bond Ordinance or Bond Authorizing Resolution dictates the DSC
- Different funding agencies have different DSC requirements
 - KIA: 1.1
 - RD: 1.2
 - Some cities: 1.25 or higher
 - LWC: 1.5




Utility	Debt Service Expense	$\times 0.2 =$	Debt Service Coverage
1	\$ 1,177,701		\$ 235,540
2	\$ 186,750		\$ 37,350
3	\$ 515,223		\$ 103,045
4	\$ 210,206		\$ 42,041
5	no debt		no debt
6	no debt		no debt
7	\$ 1,004,459		\$ 200,892
8	\$ 1,674,169		\$ 334,834
9	\$ 94,563		\$ 18,913
10	\$ 314,767		\$ 62,953
11	\$ 79,281		\$ 15,856
12	\$ 95,231		\$ 19,046

Debt Service Coverage
High – Utility 8 at \$334,834
Median - \$52,497
Low – Utility 11 at \$15,856



How to Increase or Improve Depreciation Funding

- 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



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



**STOLL
KEENON
OGDEN**
LLP

QUESTIONS?



**WATER UTILITY TARIFFS:
PRACTICAL
CONSIDERATIONS**

Gerald Wuetcher
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ORDER OF PRESENTATION

- Legal Framework
- Process for Revising Tariff
- Tariff Provisions To Consider
- Managing Your Tariff

LEGAL FRAMEWORK



KRS 278.160(1)

Under rules prescribed by the commission, **each utility shall file with the commission**, within such time and in such form as the commission designates, schedules showing **all rates and conditions for service established by it and collected or enforced**. The utility shall keep copies of its schedules **open to public inspection** under such rules as the commission prescribes.



KRS 278.160(2)


No utility shall **charge, demand, collect or receive** from any person a **greater or less compensation** for any service rendered or to be rendered than that **prescribed in its filed schedules**, and no person shall receive any **service** from any utility for a **compensation greater or less** than that **prescribed in such schedules**.



WHAT IS A RATE?


[A]ny individual or joint **fare, toll, charge, rental, or other compensation for service** rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and **any schedule or tariff or part of a schedule or tariff thereof**.

KRS 278.010(12)




EXAMPLES OF A "RATE"

- Commodity Charge
- Water Meter Installation Charge
- Billing Recalculation Policy
- Length Of Time To Pay Bill
- Minimum Contract Period
- Rule/Regulation




WHAT IS A CONDITION OF SERVICE?

Requirement, action or task that must be met or taken by applicant for service as a prerequisite for receiving or continuing to receive service.




EXAMPLES OF A "CONDITION OF SERVICE"

- Completing An Application Form
- Providing Evidence Of Inspections
- Deposit Requirement
- Easement Requirement
- Technical Specifications For Connection



EFFECT OF KRS 278.160


- Tariff Has The Status Of Law
- Only Filed Rates May Be Charged
- Only Filed C of S May Be Imposed
- Filed Rates/C of S **MUST** be Enforced
- Tariff Governs Utility's Relationship With Customer



FAILURE TO COMPLY WITH KRS 278.160

- Refund/Backbilling
- Assessment of Penalties
- Removal of WD Commissioners
- Compensatory & Punitive Damages

REVISING TARIFFS: PROCEDURE




GENERAL PROCEDURES

- 30 Days Prior Notice To PSC
- Notice Is Filing Of New Tariff Sheet
- Submit Cover Letter & Tariff Sheet
- Tariff Sheet Must Comply With PSC Regs




GENERAL PROCEDURES

- Tariff Sheet Should State Effective Date
- Attorney Is **NOT** Required
- Public Notice Must Be Provided




PUBLIC NOTICE

- Three Methods to Provide Notice
- For Contents of Notice, See 807 KAR 5:011
- Post Copy of Notice at Office
- Post Notice on Utility's Website and Social Media Accounts




PSC RESPONSE TO FILING

- Take No Action – Becomes Effective 30 days from Filing
- Request Minor Modifications
- Suspend & Investigate
- Final Action Within 10 Months of Filing




NONRECURRING CHARGES

A charge designed to recover customer-specific cost incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken.



EXAMPLES OF NONRECURRING CHARGES


- Meter Connection Fees
- Inspection Fees
- Returned Check Charges
- Turn-off/Turn-on Charge
- Field Collection Charge
- Meter Resetting Charge



NONRECURRING CHARGES

- Letter Filing
- No Attorney Required
- Specific Cost Justification
- Income Statement & Balance Sheet
- Stmt Why Not Filed in Rate Case
- Tariff Sheet

TARIFF PROVISIONS TO CONSIDER



REQUIRED PROVISIONS

- Deposit Requirements
- Special Charges
- Monthly Budget Plan Availability
- Reconnection Charge
- Requested Meter Test Charge



REQUIRED PROVISIONS

- Rules & Administrative Regulations
- Rules Re: Size, Design, Material and Installation of Service Lines
- Rules Re: Service Line Installation & Maintenance
- Customer Usage Monitoring Procedures



APPLYING FOR SERVICE

- Is Customer Required to Complete Application or Agreement?
- Are **ALL** Contents Listed in Tariff?
- Case No. 2013-00309: All Conditions/Requested Info In Application Must Be in Tariff or Form Must Be Filed




APPLICATION: CUSTOMER INFO

- Name and Address
- Social Security Number - **NO**
- Driver's License No.*
- Presentation of Photo ID*
- E-mail Address
- Mobile Telephone No.



**APPLICATION:
CUSTOMER INFO**

- Employer’s Name & Address
- Marital Status
- Spouse’s Name
- Own or Rent?
- Rental Agreement




**APPLICATION:
CUSTOMER INFO**

- Adults Living In Household
- “Do You or Any Household Members Owe The Utility For Unpaid Water Service Or Other Tariff Charges?”




**APPLICATION:
CONDITIONS FOR SERVICE**

- Comply With Rules & Regulations
- Release of Liability If Not Present At Service Turn-On
- Duty to Maintain Current Info
- Pay All Charges & Fees
- Attorney Fees/Collection Fees




**APPLICATION:
CONDITIONS FOR SERVICE**

- Electronic Delivery of Bills
- Electronic Delivery of Notices
- Permission to Send Text Messages
- Easements




DEPOSITS

- Utility May Require Deposit
- Must State Method For Calculating Deposit Amount
- Criteria for Requiring Deposit
- Policy/Rules on Refunding
- Policy on Interest




RENTER ISSUES

- Deposit Requirement Based On Status as Renter **Prohibited**
- Deposit Requirement on Landlord for Renter's Benefit **Disfavored**
- Required Payment Guaranty from Landlord **Disfavored**




PAYMENT

- Form of Payment
- Fees For Credit Card/ACH Payment
- Returned Check Fee
- Payment Date
- “Dropbox” Payment
- Multiple Structures/Single Meter




LATE PAYMENT FEES

- Assessed if no payment by due date
- Assessed only once on any bill
- No penalty on unpaid penalties
- Payments applied 1st for service
- Late Posting/Delays in Transit
- Federal/State Agencies




LEAK ADJUSTMENTS

- No Duty to Make Adjustment
- Tariff Provision Necessary To Make Adjustments
- Uniform Application of Provision
- Utility Must Recover At Least The Variable Cost of Water



COMPONENTS OF LEAK ADJUSTMENT CLAUSE

- Average Use @ Regular Rate + Excess @ Leak Adjustment Rate
- Written Request From Customer
- Evidence of Leak/Repairs
- Use Limited: Number/Time Period
- Board Oversight



REFUSING SERVICE: PSC GROUNDS

- Violation of PSC Or Utility Rules*
- Dangerous Conditions**
- Refusal of Access*
- Outstanding Indebtedness
- Noncompliance with Gov't Codes*
- Nonpayment of Bills*
- Illegal Use/Theft of Service**




REFUSING SERVICE: ADDITIONAL GROUNDS

- Waste of Water
- Tampering/Interfering W/Facilities
- Misrepresentation
- Obtaining Service By Fraud



REFUSING SERVICE FOR NONPAYMENT


- May Refuse Service For **Any Debt For Service Or Tariff Charges**
- May Discontinue Service Only for **Debt Incurred at Present Location**
- 5 Days Notice Prior to Termination
- No Termination Before 20 days After Mailing Date of Original Unpaid Bil



IMPUTED LIABILITY

- Family/Household Member Requests Service After Termination
- No Prior Contract With Utility
- PSC Regs Requires Utility to Provide Service To New Applicant

UNLESS




IMPUTED LIABILITY

- Tariff Provides That Liability for Unpaid Bills Is Imputed to Each Adult Member of Household
- Uses Benefit of Service Theory
- Not Sufficient to Obtain Judgment
- Adequate Basis to Deny Service




BILLING FOR SEWER SERVICE

- Utility Provides Both Services - Follow PSC Regs
- City/Water District Provides Service - Follow KRS 96.930-.943
- Sanitation Dist - Follow KRS 220.510
- Private Sewer Utility – PSC Approval Required



BILLING FOR GARBAGE COLLECTION

- Cities May Discontinue H2O Service For Failure to Garbage Collection Bill
- PSC Utilities: Not Permitted Unless PSC expressly approves
- OAG 17-30: City May Delegate Its Authority to Water District



BILLING FOR OTHER SERVICES

- 911 Fees
- Service Line Warranty Programs
- Establish **Priority of Payment** in Tariff
- Bill Format Must Reflect All Other Billed Services




FIRE PROTECTION SERVICES

- Free H2O To Fire Depts Permitted
- Fire Protection/Fire Training Only
- Fire Dept Must Keep Usage Estimates & Report Quarterly
- Penalty If Reports Not Timely Filed
- Tariff Provision Required



FIRE PROTECTION SERVICES

- Free Service Without Tariff Provision Violates KRS 278.170(3)
- Allowing Fire Dept to Withdraw H2O Without Reports Violates KRS 278.160
- Failure to assess penalty against Fire Dept violates KRS 278.160



FIRE PROTECTION SERVICES

- Limit Amount Of “Free H2O” Per Fire Event
- Example: No More Than 4 Hours – Then Property Owner Responsible
- Avoids Potential Financial Hardship For Water Utility



LIMITING TORT LIABILITY

- Disclaimer of Liability
- Low H2O Pressure – Damage to Customer Equipment/Facilities
- Lack of Adequate Fire Flows
- Interruptions in Water Supply
- Hydrant Usage



MISCELLANEOUS

- Water Main Extension Policies
- Incentive/Discount Tap-on Fees
- Water Priority/Water Shortage Response Plans
- Special Contracts
- Forms

MANAGING YOUR TARIFF




MANAGING YOUR TARIFF

- Know The Contents of Your Tariff
- Review At Least Annually
- Encourage Utility Staff Involvement in Review
- Tariff Is Not Internal Management & Practices Manual



MANAGING YOUR TARIFF

- Do Not Repeat PSC Regulations
- Provide For Widest Utility Discretion
- Annual Review of NRCs
- Make NRC & Tariff Changes Part of Rate Adjustment Applications



MANAGING YOUR TARIFF: FILINGS WITH PSC

- Explain In Detail Purpose/Reasons For Filing In Cover Letter
- Provide Supporting Evidence
- Research/Anticipate Expected Questions/Issues
- Address Those Issues In Advance



**STOLL
KEENON
OGDEN**

QUESTIONS?



**STOLL
KEENON
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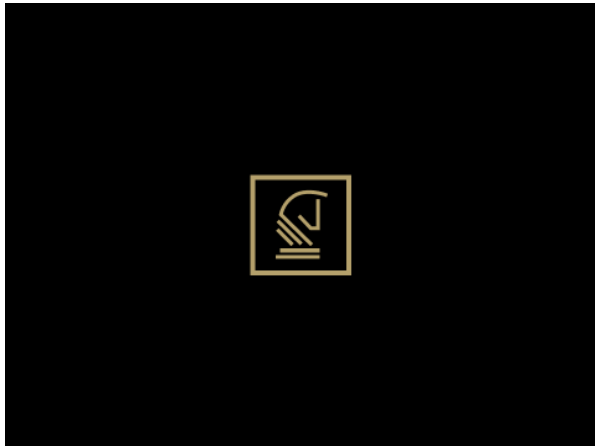
This Presentation
<https://bit.ly/2SGqpoY>

PSC Sample Tariff
<https://psc.ky.gov/Home/Library?type=TariffSamples>



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EXTENDING METER SERVICE LIFE


Mary Ellen Wimberly
Stoll Keenon Ogden PLLC

April 27, 2020



Overview

1. Meter Testing Requirements
2. Meter Accuracy
3. Utilities Achieving Extended Service Life
4. Sample Testing
5. Case No. 2016-00432
6. Case No. 2019-00115




Meter Testing Requirements




Meter Testing Requirements

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




Meter Testing Requirements

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




Meter Testing Requirements

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




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

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




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

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



Meter Testing Requirements

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



Significant Savings Example

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



Significant Savings Example

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




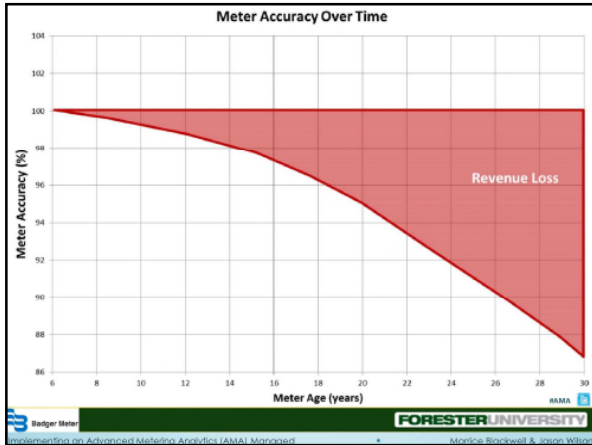
Meter Accuracy



Meter Accuracy


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



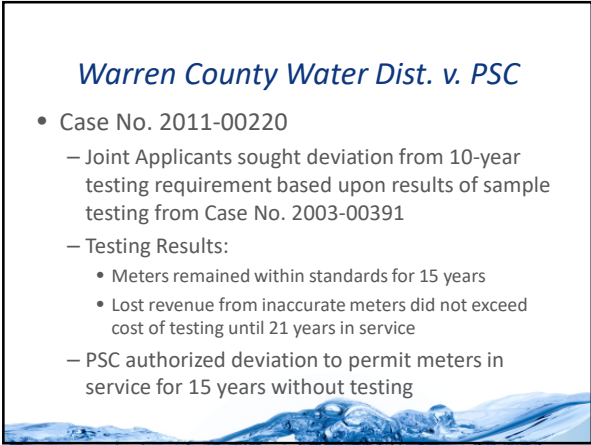


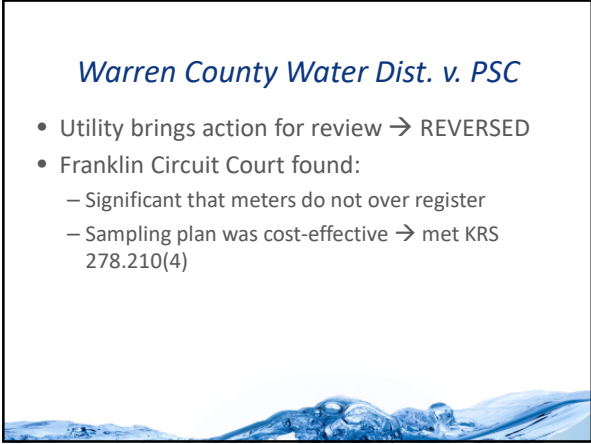
Meter Accuracy

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









Case No. 2009-00253

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



Sample Testing



Sample Testing

- Sample = subset containing characteristics of a larger population
- Is sample testing the functional equivalent of testing every meter?
- Statutes and regulations acknowledge sample testing



Sample Testing

- KRS 278.210(4)
 - “If a utility demonstrates through **sample testing** that no statistically significant number of its meters over-register”
- 807 KAR 5:041, Section 16 (Electric)
- 807 KAR 5:022, Section 8(5)(c) (Gas)



Sample Testing

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



ANSI Standard

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


Table A-1
AQL Conversion Table

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




ANSI Standard

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



ANSI Standard

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




ANSI Standard

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

Table A-2¹
Sample Size Code Letters²

Lot Size	Inspection Levels	
	Special S ₁ S ₂	General I II III
2 to 8	B B	B B C
9 to 15	B B	B B D
16 to 25	B B	B C E
26 to 30	B B	C D F
31 to 90	B B	D E G
91 to 150	B C	E T H
151 to 280	B D	F G I
281 to 400	C E	G H J
401 to 500	C E	G I J
501 to 1,200	D F	H I K
1,201 to 3,200	E G	I K L
3,201 to 10,000	F H	J L M
10,001 to 35,000	G I	K M N
35,001 to 150,000	H J	L N P
150,001 to 500,000	H K	M P P
500,001 and over	H K	N P P



ANSI Standard

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

Table B-3 Standard Deviation Method
Master Table for Normal and Tightened Inspection for Plans Based on Variability Unknown
(Double Specification Limit and Form 2—Single Specification Limit)

Sample Size Code Letter	Sample Size	Acceptance Quality Limits (normal inspection)											
		T	.10	.15	.25	.40	.63	1.00	1.50	2.50	4.00	6.50	10.00
		M	M	M	M	M	M	M	M	M	M	M	M
B	3												
C	4												
D	5												
E	7												
F	10												
G	15												
H	20												
I	25												
J	35	0.251	0.373	0.534	0.871	1.21	1.87	2.88	3.70	5.58	8.11	11.80	18.67
K	50	0.240	0.358	0.500	0.798	1.16	1.79	2.47	3.44	5.21	7.46	11.20	18.07
L	75	0.228	0.348	0.480	0.741	1.08	1.64	2.27	3.17	4.65	6.60	10.20	16.07
M	100	0.218	0.333	0.464	0.694	1.02	1.52	2.18	3.06	4.42	6.38	10.20	16.07
N	150	0.210	0.320	0.442	0.650	0.960	1.42	2.05	2.88	4.12	6.06	9.86	14.18
P	200	0.208	0.314	0.433	0.645	0.945	1.42	2.04	2.86	4.10	6.04	9.84	14.16
		.10	.15	.25	.40	.63	1.00	1.50	2.50	4.00	6.50	10.00	

Case No. 2016-00432: Maximum Flow Results

- | | | |
|-----------|----------|-----------|
| 1. 99.5 | 13. 99.2 | 25. 99.6 |
| 2. 99.4 | 14. 99.6 | 26. 99.7 |
| 3. 99.2 | 15. 99.9 | 27. 101.0 |
| 4. 98.5 | 16. 99.6 | 28. 99.0 |
| 5. 99.3 | 17. 99.5 | 29. 99.6 |
| 6. 100.0 | 18. 99.4 | 30. 99.3 |
| 7. 99.5 | 19. 99.5 | 31. 98.5 |
| 8. 100.0 | 20. 99.2 | 32. 99.2 |
| 9. 100.2 | 21. 99.4 | 33. 98.5 |
| 10. 99.8 | 22. 99.6 | 34. 99.5 |
| 11. 100.3 | 23. 99.6 | 35. 99.3 |
| 12. 100.0 | 24. 99.5 | |

1	Sample Size: n	35
2	Sum of Measurements	3482.9
3	Sum of Squared Measurements	346596.6
4	Correction Factor (CF)	346588.4
5	Corrected Sum of Squares (SS)	8.235429
6	Variance (V)	0.242218
7	Estimate of Lot Standard Deviation	0.492157
8	Sample Mean	99.51143
9	Upper Specification Limit	101.5
10	Lower Specification Limit	98.5
11	Quality Index: QU (Upper)	4.040523
12	Quality Index: QL (Lower)	2.055093
ANSI Standard Table B-5 used to derive values below		
13	Estimate of Lot Percent Nonconforming above Upper	0.000%
14	Estimate of Lot Percent Nonconforming below Lower	1.720%
15	Total Estimate Percent Nonconforming in Lot (P)	1.720%
16	Maximum Allowable Percent Nonconforming (M)	5.580%
17	Acceptability Criterion (to accept, P<M)	Accepted


Low Flow Calculation

- Utility proposed using the Single Specification Limit Variability Unknown-Standard Deviation Method
 - AQL: 10
 - Inspection Level I

**Case No.
2016-00432**


Case No. 2016-00432

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



Case No. 2016-00432

- Request for deviation → GRANTED
 - Lots must be divided by installation year, manufacturer, and type of mechanism used to measure water usage
 - Only damaged meters can be removed
 - Low flow testing method approved
 - Commission found cost savings significant
 - Additional protections for customers are important



Proceed With Caution . . .

- Line loss must be low





Proceed With Caution . . .

- “Moreover, with respect to any utility that would seek to rely on this Order as the basis for a request for deviation allowing sample testing, the Commission observes that this Order should provide notice that **implementing such a plan prior to seeking Commission approval is a violation of 807 KAR 5:066, Section 16(1), and doing so may indicate a willful violation justifying the imposition of penalties.**”



Case No.
2019-00115



Case No. 2019-00115

- (PENDING)



Questions?

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