

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ELECTRONIC APPLICATION OF )**  
**KENTUCKY RURAL WATER )**  
**ASSOCIATION FOR ACCREDITATION ) CASE NO. 2021-00052**  
**APPROVAL OF COMMISSIONER )**  
**TRAINING AND CONTINUING )**  
**EDUCATION CREDIT )**

**APPLICATION**

Kentucky Rural Water Association (“KRWA” or the “Applicant”) applies for an Order from the Public Service Commission accrediting and approving a proposed water district commissioner training program for continuing education credit pursuant to KRS 74.020(6) and (7) and 807 KAR 5:070.

In support of its application, KRWA states:

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

Katelyn L. Brown  
Stoll Keenon Ogden PLLC  
500 West Jefferson Street, Suite 2000  
Louisville, KY 40202  
(502) 568-5711  
Fax: (502) 333-6099  
katelyn.brown@skofirm.com

Janet Cole  
Kentucky Rural Water Association  
1151 Old Porter Pike  
Bowling Green, KY 42103  
(270) 843-2291  
Fax: (270) 796-8623  
j.cole@krwa.org

5. KRWA proposes to sponsor and conduct a water management training program on March 9, 2021 at Oldham County Water District's office in LaGrange, Kentucky. The program is entitled "Oldham County Water District Water Commissioner Training." A copy of the proposed agenda is attached to this

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<sup>1</sup> On February 2, 2021, KRWA 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.

Application as **Exhibit 1**. This program will be conducted in-person, with the possibility that some presenters may present virtually. The presenters, KRWA representatives, and Oldham County Water District commissioners and staff in attendance at Oldham County Water District's office will abide by all COVID-19 safety protocols and social distancing measures.

6. As reflected in **Exhibit 1**, the proposed training program will include presentations on topics necessary for effective communication between boards and managers; the roles and duties of a board, individual board members, and board officers; the Public Service Commission's ratemaking process for water districts, including specific topics such as cost-based rates, revenue requirement calculation, cost-of-service studies, Alternative Rate Filing procedures, and customer notice requirements; the Public Service Commission's rules regarding the periodic testing of water meters and recent Commission decisions regarding waivers of these rules to extend the time period in which water meters must be tested; and recent developments in utility regulation, including an overview of Kentucky court and Public Service Commission decisions relating to unaccounted water loss, borrowing money, wholesale water purchase agreements, and other topics. These presentations will enhance the attendees' understanding of relevant legal, financial, and technical issues involved in the management, operation, and maintenance of water systems

and are calculated to enhance and improve the quality of the management, operation, and maintenance of the attendees' water systems.

7. 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. **KRWA is not requesting that the proposed training program be accredited as a program of instruction for newly appointed commissioners.**

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

9. The written materials to be provided to each attendee are attached at **Exhibit 3**. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, KRWA will include a copy of the revised presentation with its sworn statement and report regarding the instruction.

10. KRWA will retain a record of the Oldham County Water District commissioners attending the proposed training program.

11. Within 30 days of the proposed training program's completion, KRWA will file with the Public Service 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 commissioner and the number of hours that he or she attended.

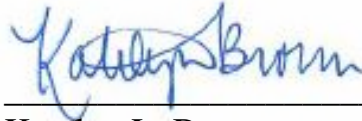
12. KRWA will include with the sworn statement documentary evidence of the program's certification by certifying authorities and a copy of any written material given to the attendees that has not been previously provided to the Public Service Commission.

13. KRWA 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**, KRWA requests that the Commission approve and accredit the proposed training program entitled "Oldham County Water District Water Commissioner Training" for six hours of water district management training.

Dated: February 5, 2021

Respectfully submitted,



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Katelyn L. Brown  
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Telephone: (502) 568-5711  
Fax: (502) 333-6099  
katelyn.brown@skofirm.com

*Counsel for Kentucky Rural Water  
Association*

## CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8 and the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085 regarding electronic filings, I certify that Kentucky Rural Water Association's Application was electronically transmitted to the Public Service Commission on February 5, 2021; 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.



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Katelyn L. Brown

# **EXHIBIT 1**



# **WATER COMMISSIONER TRAINING**

## **Oldham County Water District**

2160 Spencer Court  
LaGrange, KY 40031

Presented by

## **Kentucky Rural Water Association**

March 9, 2021

**10:00 - 10:10 Registration and Refreshments**

**10:10 - 10:15 Welcome and Program Overview – Randall Kelley & Russ Rose**

**10:15 - 11:15 Board and Manager – Andy Lange**

Effective communication is the presentation of views by the sender in a way best understood by the receiver. This session will cover topics necessary for effective communication between boards and managers. Discussion will include defining the roles of each party and how each plays a part in the decision-making for the utility.

**11:15 - 11:20 BREAK**

**11:20 - 12:20 Ratemaking 101, Part I – Gerald Wuetcher**

This presentation is an overview of the Public Service Commission's ratemaking process for water districts. Topics include cost-based rates, revenue requirement calculation, cost-of-service study, Alternative Rate Filing procedures, and customer notice requirements. The presentation also discusses specific terms used in ratemaking such as known and measurable, pro forma, normalizing revenues and expenses, and test year. The speaker will also offer practical suggestions for streamlining the rate making process.

**12:20 - 1:00 LUNCH (Provided On-Site)**

**WATER COMMISSIONER TRAINING (Cont.)  
AFTERNOON AGENDA**

March 9, 2021

**1:00 - 2:00 Boardmanship – Andy Lange**

This session will detail the roles and duties of a board as a whole, the duties of individual board members, and the duties of board officers. Also covered will be the ‘legal standard of care’ and the requirements of the different types of board meetings. Attendees of this session will learn the importance of utility boards in achieving the status of Managerial Capacity.

**2:00 - 2:15 BREAK**

**2:15 - 3:15 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.

**3:15 - 3:25 BREAK**

**3:25 - 4:25 Ratemaking 101, Part II – Gerald Wuetcher**

Continuation of Earlier Presentation

**4:25 - 4:35 BREAK**

**4:35 - 5:35 Recent Developments in Utility Regulation – Damon Talley**

This presentation reviews recent developments in public utility law and regulation. Topics include unaccounted water loss, borrowing money, revisions to the Open Meetings Act, sovereign immunity, wholesale water purchase agreements, franchises, and laws enacted by the 2020 General Assembly. The presenter will also examine and discuss recent court and PSC decisions.

**5:35 - 5:45 Q & A Session**

**5:45 - 5:50 Closing Remarks & Administrative Announcements  
Randall Kelley & Russ Rose**

# **EXHIBIT 2**

## **Andrew C. Lange**

Andy Lange is the Assistant Director for the Kentucky Rural Water Association (KRWA) and has been employed there since 1989. Prior to joining KRWA, Mr. Lange worked for the Barren River Area Development District for five (5) years, providing administrative and financial assistance to local governments in the ten-county BRADD region. Mr. Lange has earned a Bachelor of Science in Geography and a Master of Public Administration from Western Kentucky University in Bowling Green, Kentucky.

As Assistant Director, Mr. Lange is involved with all management and administrative activities of the Association. He was originally responsible for performing loan sub-servicing under the Asset Management Program contract with National Rural Water Association (NRWA) for eight (8) years, ending in 1997. He also currently oversees KRWA's partnership with Western Kentucky University (WKU). These programs are the WKU Small System Circuit Rider, the Utility Management Institute (UMI), and the Technology Demonstration Project. Mr. Lange received the "Field Representative of the Year" award at NRWA's 1996 Annual Conference.

Mr. Lange's other responsibilities at KRWA include: coordinating and monitoring internal membership activities, producing and editing KRWA printed publications, and assisting in the administration of KRWA finance programs. In addition, Mr. Lange has been involved in the production of over seventy-five operation and maintenance manuals for water systems, has produced the final report for the Kentucky River Authority Water Counts project, and has participated in, and written, Operation Review studies for three (3) water and wastewater utilities since 1995.

Andy is a native of Dallas, Texas and has lived in Bowling Green, Kentucky since 1962. He is married to Janice Sims Lange, a newly retired Catholic Elementary School Principal, and has two children and four grandchildren.



## Gerald E. Wuetcher

Direct Phone: 859.231.3017  
 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 and a member of the Utility & Energy practice. He brings to Stoll Keenon Ogden more than 25 years of experience working at the Kentucky Public Service Commission, where he served as a staff attorney, deputy general counsel and executive advisor. He frequently appeared before the Commission in administrative proceedings involving electric, natural gas, water and sewer utility issues and represented the Commission in state and federal courts. Jerry also served as the Commission's representative in a number of interagency groups addressing water and wastewater issues. Between 2009 and 2013, he was the Commission's representative on the Board of the Kentucky Infrastructure Authority. Jerry developed and implemented the Commission's training program for water utility officials and served as an instructor for that program. He is frequent speaker on utility and local government issues before such organizations as the Kentucky Rural Water Association, Kentucky League of Cities, the Kentucky Association of Counties, and the Utility Management Institute.

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

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

### 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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## Mary Ellen Wimberly

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maryellen.wimberly@skofirm.com

### BAR & COURT ADMISSIONS

Kentucky

### EDUCATION

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

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

### RECOGNITION

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.

Order of the Coif

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## 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

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

## Damon R. Talley

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

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

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

### 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 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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# **EXHIBIT 3**

# Board and Manager



Effective Communications for Utility Boards and Managers

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**“The problem with communication...is the illusion that it has been accomplished.”**

George Bernard Shaw



Board and Manager

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## Effective Communication is a Two-way Street!

Board > Management

Management > Board



Board and Manager

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Is this how your Manager feels?



Board and Manager 

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Board member! Is this how you feel?



Board and Manager 

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**A Good Board...**

...hires an effective Manager.

Board and Manager 

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## A Good Board...

- Seeks to Understand the “Big Picture”
- Sets and Approves Reasonable Policies
- Reviews and Follows Policies!
  
- Gives Manager Direction and Flexibility
- Fairly Evaluates the Manager
- Doesn't Micro-manage!



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## A Good Manager...

...develops an effective Board.

How?



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## A Good Manager...

- Provides Accurate Information to the Board
- Helps Board Set Reasonable Policies
- Implements and Follows Policies!
  
- Employs and Directs the Staff
- Is Professional in all Relationships
- Doesn't Micro-manage!



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## Board Policies

- Budgets (Operating & Capital)
- Personnel
- Compensation & Classification
- Purchasing
- Investment
- Rates and Charges
- Customer Service



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## Budgets

- Budgets are the Board's ultimate policy tool – no activity can legally be accomplished without budget authorization from the Board.



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## Budgets

- Budgets should be prepared by Management with Staff input and Board oversight and approval.
- Budget Committee?



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## Budgets

- Budgets are not chiseled in stone – they should be flexibly-followed.

If conditions warrant change, amend the budget!



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## Budgets

- A Capital Budget is a longer-term plan for improvements and additions to the utilities infrastructure.

- 3 years? 5 years? 10 years? 20 years?



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## Personnel

- Personnel Policies (including Classification & Compensation Plans) are a Manager's most important Policy tool!



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## Personnel

- Personnel Policies should be developed with significant input from the Board, Management, and Staff.
- They should always be reviewed by an attorney with experience in personnel and labor laws.



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## Purchasing

- Consider adopting the Kentucky Model Procurement Code (KRS Chapter 45A).
- Establish a Small Purchases Policy and set minimum threshold amounts.



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## Investments

- Adopt a written Investment Policy that establishes how, when and where surplus funds are invested.



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## Rates and Charges

- Adopt cost-based rates and charges.
- Review rates and rate structures periodically.
- Keep your customers informed.



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## Customer Service

- Keep your customers informed!
- Keep your customers informed!!
- Keep your customers informed!!!



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## Customer Service

- Develop a customer-first approach.
  - New-Customer Package
  - Public Relations and Promotion
  - Stress Customer-Friendliness
- If you make doing business easy for your customer, you make doing business easier!



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## Board Reports

- What does the Board want to see?
- What does the Board **need** to see?
  - **Technical Reports?**
  - **Financial Reports?**
  - **Management Reports?**

Board and Manager



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**STOLL | KEENON | OGDEN**  
PLLC

**RATE ADJUSTMENTS MADE EASY**

**PRESENTATION TO**

**OLDHAM COUNTY WATER DISTRICT**

**MARCH 9, 2021**

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



# Order of Presentation

- Overview
- Ratemaking Process: How Are Rates Set?
- Preparing the Application
- Rate Case Procedure
- Common Issues
- Practical Suggestions
- Resources



# OVERVIEW



# Importance of Adequate Rates

- Necessary to Maintain Service Quality
  - Ensure Proper Maintenance/Operation Practices
  - Provide Wages/Salaries/Benefits Sufficient to Attract/Retain Competent Personnel
  - Replace Aging Infrastructure
  - Meet Demands to Extend/Expand Service
- Send Proper Pricing Signals to Users



# Methods For Adjusting Rates

- Purchased Water Adjustments
  - Adjustments to Reflect H<sub>2</sub>O Supplier Increases
  - KRS 278.012/KRS 278.015/807 KAR 5:068
- RD-Financed Construction Project
  - Required by RD Financing Agreement
  - KRS 278.023
- General Rate Adjustment
  - KRS 278.180-.190/807 KAR 5:001





# Reasons for Not Filing General Rate Adjustments

- Lack of Knowledge of Rate-Making Process
- PSC Procedures: Too Complex & Bureaucratic
- Time & Effort Required to Apply for Rate Increase
- Too Expensive (Lawyers, Accountants)
- Customer Resistance/Anger at Rate Increases
- Adverse Publicity
- Political Interference



# Alternative Rate Filing Procedures

- Adopted in 1982 as 807 KAR 5:076
- Purpose: Provide a **simplified & less expensive** procedure for small utilities to adjust rates
- Use of Pre-Printed/Fill-in Blank Application Form
- Key Document: Utility's Annual Report
- Few Supporting Documents Required
- No Experts/Attorneys Needed
- Designed to Encourage More Frequent Filings



# Alternative Rate Filing Procedures: Eligibility Requirements

- Gross annual revenues < \$5M
  - Only 6 of 132 H<sub>2</sub>O Utilities Ineligible
  - Only 1 of 61 Sewer Utilities Ineligible
  - Combined Utilities: Only Division Revenues considered
- Maintain Adequate Financial Records
- Must Have File Annual Report for Immediate Past Year and Prior 2 Years



# RATEMAKING PROCESS



# Steps Of Cost-based Rate Making

**Revenue-Requirement Analysis**



**Cost-of-Service Analysis**



**Rate-Design Analysis**



# What is a Revenue Requirement?

- The reasonable level of revenue required for a utility to **properly operate** and **maintain its system** and meet its **financial obligations**
- Provides basis for determining the amount of revenue **collected from rates**



# Revenue Collected from Rates

## **TOTAL REVENUE REQUIREMENT**

- **Misc Operating Revenues**
- **Unrestricted Interest Income**
- = **Operating Revenue from Rates**



# Methods of Determining Revenue Requirements

- Debt Service
- Operating Ratio
- Rate of Return





# Determining Revenue Requirements: Debt Service Method

Adjusted Operating Expenses

+

Average Annual Debt Service  
Requirement

+

Debt Service Coverage

=

**Total Revenue Requirement**



## Average Annual Debt Service Requirement

- Principal + Interest payable on long-term debt
- PSC generally uses a 3-year average
- **Exception:** 5-year average if greater time between rate cases



## Debt Service Coverage

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

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



# Determining Revenue Requirements: Operating Ratio

Adjusted Operating Expenses

÷ .88

= **Total Revenue Requirement**



# Determining Revenue Requirements: Rate of Return

**Total Revenue Requirement** = Adjusted  
Operating Expenses + Return on Rate Base

Where **RATE BASE** = Net Plant in Service\* +  
Working Capital - Contributions in Aid of  
Construction

\*(Original Cost of Plant - Accumulated Depreciation)



## Test Period

- A consecutive 12-month period
- Generally period used in utility's most recent annual report or audit
- **ARF Rate Application must use most recent annual report**



## Review of Test Period

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



## Adjustments to Test Year

- Test year is adjusted to reflect 12 months that are **representative of on-going, normal operations**
- Adjustments must be:
  - **known and measurable**
  - **adequately documented**





# Types of Adjustments

- Pro forma
- Normalizing



# Pro forma Adjustments

- **Known** or **anticipated** increases or decreases in revenues and expenses
  - Increase in wage rates **after end of test period**
  - Changes in Insurance/Taxes/CERS Contributions **effective prior to date of PSC decision**
- Adjustments require evidentiary support



# Normalizing Adjustments

- Adjustments made to reflect a full 12 months of operations for revenue and expense items that changed during the test period.
  - Example: Electric Rates Increased During Test Period
- Adjustments require evidentiary support



# Operation & Maintenance Expenses

- Salaries & Wages
- Employee Benefits
- Purchased Power
- Purchased Water Rent
- Chemicals
- Materials & Supplies
- Repairs & Maintenance
- General Overhead



# Allocation of Common Costs

- Allocations are necessary to ensure that the water department is not subsidizing other utility divisions or vice-versa.
- Some type of system should be in place for allocating the appropriate level of each expense to the water utility.
- If a system is not currently in place, a basis for logical estimates must be determined.



# Depreciation Expense

- Depreciation expense included in revenue requirement determination
- Utility should maintain depreciation schedules
- Separate schedules for each Utility division
- Depreciation schedules **must be submitted** with ARF Application



## Other Adjustments to O&M Expenses

- **Non-recurring expenses** such as tank painting or rate case expense may be amortized over the life of expense
- **Capitalization** of improperly classified expenses such as meters or pumps



## Other Considerations

- Requirements specified in any applicable bond ordinance (e.g., funding of specified reserves)
- Provisions in Water Supply Agreement or other contracts or agreements
  - Financing costs of specific capital improvement
  - Exclusion of depreciation expense in rate calculation





# PREPARING THE APPLICATION



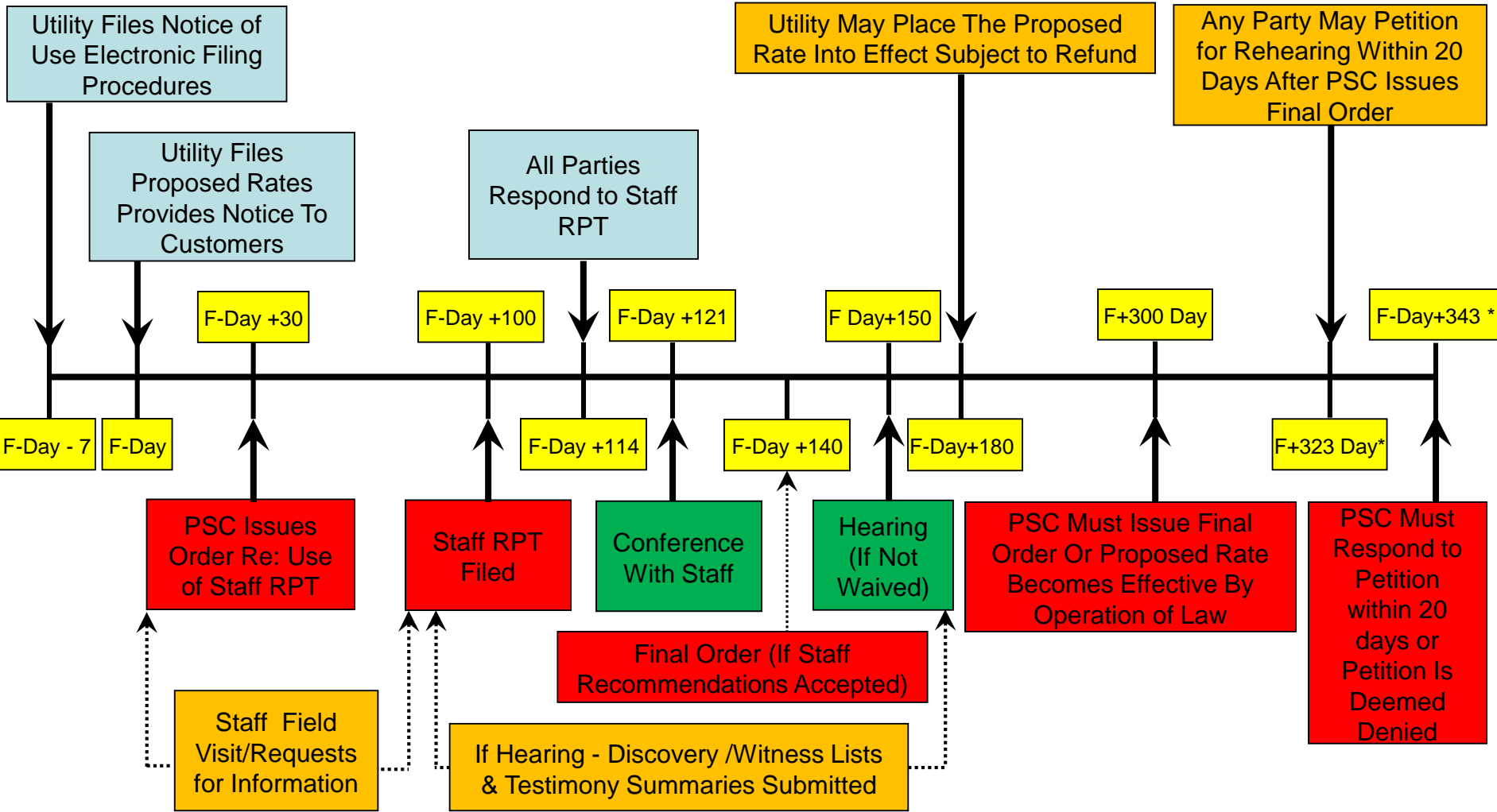
# RATE CASE PROCEDURE



# Order Of Events

1. Pre-filing Notices
2. Filing of Application
3. PSC Order Designating Procedures
4. Staff Field Visit
5. Staff Report
6. Response to Staff Report
7. Conference
8. Hearing
9. Final Order

# TIMELINE FOR RATE ADJUSTMENT FILING PROCEEDING



\* 20-day period for Rehearing Will Not Begin Until Service of Final Order Order Is Presumed To Have Been Served 3 Days After Mailed/E-mailed



# Pre-filing Notices

- Notice of Intent Use Electronic Filing Procedures (At Least 7 Days Before Filing)
- Notice to Attorney General
  - Serve Copy of Application By Mail or E-Mail
  - Before or At Time of Filing
  - E-mail Address: [rateintervention@ky.gov](mailto:rateintervention@ky.gov)
- Provide Notice to Customers
- Public Posting Of Notice



# Notice: Customer Notice

- If 20 customers or less – Must be Mailed
- More than 20 customers:
  - Mail with Customer Bills (NLT Date of Filing)
  - Mail Separately to each customer by Date of Filing
  - Publish in Newspaper of General Circulation weekly for 3 weeks (1<sup>st</sup> publication by Date of Filing)
  - Combining Methods Permitted
- Copy of Notice Must Be **Attached to Application**
- **Proof of Notice** Must be Filed w/i 45 days of application



# Notice: Public Posting

- Post Notice At Utility's Place of Business NLT  
Date of Filing with PSC
- Web Sites – If Utility maintains Web Site:
  - Post Notice on Its **Website**
  - Post **Link to documents' location** on PSC Web Site
  - Utility's Facebook Page considered Website
- Postings May Not Be Removed Until Final Decision



# Filing Application

- Mail/Personal Delivery of **Original & 5 Copies**
- Electronic Procedures
  - Establish Account At PSC
  - Timely Notice of Use Electronic Procedures
  - Upload Electronic Version
  - File **1 Copy** of Paper Version w/i 2 Business Days
- PSC Reviews Application – Issues Letter Re: Acceptance Within 7 – 10 days
- Application Not Deemed Accepted Until All Deficiencies Cured





## Significance of Application's Acceptance

- Starts the Clock
- PSC has **30 days** from date of filing to decide on use of Staff Report (**Procedural Schedule**)
- Utility May Not Place Proposed Rates Into Effect for **6 months from Filing**
- If No Decision Within 6 Months, Proposed Rates May Be Placed Into Effect Subject To Refund
- PSC Must Issue Final Decision within **10 Months**



# Staff Visit/Report

- PSC Establishes Procedural Schedule - Orders Staff To Prepare Report (Generally 10 weeks)
- Staff Conducts Field Visit
  - Inspects Records
  - Gathers Documents
  - Interviews Utility Personnel
- Visit Least Costly Means to Gather Evidence
- **Alternative Approach:** Written Requests for Info
- Staff Issues Written Report of Findings and Recommendations
- Report May Address **Issues Other than Proposed Rates**



## Response to Staff Report

- All parties allowed 14 days to Respond to Report & Request Hearing/Conference
- Failure to Respond Deemed Acceptance of Staff's Findings & Recommendations & Waiver of Hearing
- Evidence May Be Submitted with Response
- **Utility Response Required** if Staff recommends rates higher than proposed rates



## Response to Staff Report Recommending Higher Rates

- Utility Must Accept or Decline Recommendation
- Publication of Notice of Higher Rates Required if Recommended Rates Exceed 110% of Requested Revenue Increase
- PSC Order Specifies Contents of Notice
- Purpose: Opportunity to Object/Comment on Higher Rates



## Conference With PSC Staff

- Generally 14 days After Responses to Report
- Informal – No Attorney Required
- May Question Staff
- Opportunity to Present Additional Evidence or Explanation
- Settlement Discussed



# Hearing

- Formal Hearing
- Utility Must Be Represented By Attorney
- Must Present Witnesses In Support of Its Application
- Opportunity To Present Additional Evidence/Rebut Staff
- PSC Staff Will Present Evidence/May Be Cross-Examine Regarding Report
- AG/Other Parties May Participate
- Recorded/Streamed Over Internet
- Upon Completion – Case Stands Submitted



## Final Decision

- PSC Must Issue Order NLT 10 Months Of Filing
- PSC Generally Issues Order Within 140 days of Filing
- Requests for Rehearing must be Filed Within 23 Days of Order
- PSC has 20 days from Request to Deny or Grant Rehearing
- Any Party May Bring Action For Review in Franklin Circuit Court 23 days after Order Denying Rehearing or 30 days after Final Order



# COMMON ISSUES





# Donations

- PSC has historically disallowed as an expense unrelated to provision of utility service
- Water District donations view as unlawful, inconsistent with statutory purpose
- 1956 OAG 36,219
- OAG 92-043
- Recommended Response: Do not request recovery/Implement Policy Prohibiting



## Commissioners' Salaries/Benefits

- Have Fiscal Court Ordinances re: salary level available for inspection
- Have proof of training attendance if compensation > \$3,600 awarded
- No free or reduced service
- Insurance benefits should not exceed those provided employees
- Why are benefits other than salary needed?



# EMPLOYEE COMPENSATION

- Employee Compensation
  - Wages/Salaries
  - Health Insurance
  - Special Allowances
- Previously Accepted with limited PSC review
- PSC considered expenditures controlled by competitive forces
- Scope of Review: Is compensation excessive?



## **EMPLOYEE COMPENSATION: CASE NO. 2015-00312**

- Electric Utility Sought Rate Increase
- Attorney General (AG) raised concerns re: wage & salary increases/fringe benefits
- PSC:
  - Shares AG's concerns
  - No basis in record to justify determination that wages and benefits are not reasonable
  - Notes problems with studies re: wages



## EMPLOYEE COMPENSATION: CASE NO. 2015-00312

“[T]he Commission believes that employee compensation and benefits need to be more sufficiently researched and studied. The Commission will begin placing more emphasis on evaluating salary and benefits as they relate to competitiveness in a broad marketplace. **Future rate applications will be required to include a salary and benefits survey that is not limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies. The study must include local wage and benefit information for the geographic area where the utility operates and must include state data where available.**”

Order of 9/15/2016 at 15



## EMPLOYEE COMPENSATION: CASE NO. 2016-00054

- Water District Sought Rate Increase
- PSC Staff challenges annual increases for select employees who receive percentage increases greater than other employees
- PSC **disallowed** higher increases:  
“The annual wage rate increase for all employees should be comparable **unless there is evidence demonstrating a reasonable basis for a different increase amount**, such as when an employee receives a promotion for accepting additional responsibilities.”



## **EMPLOYEE COMPENSATION: CASE NO. 2016-00054**

- AG challenged wage expense related to annual wage increase of 3% for all employees & health, life & vision insurance (at no cost)
- PSC rejected challenges and found wage increase & fringe benefit package reasonable
- PSC subsequently granted rehearing to consider AG's objections but eventually affirmed its decision



## **EMPLOYEE COMPENSATION: SUPPORTING COMPENSATION PACKAGE**

- Closer review of Wage/Salary & Fringe Benefits packages
- Include support in Applications for Rate Adjustment
- Compare with other utilities and general community
  - KRWA Salary Survey
  - Kentucky League of Cities' Wage and Salary Survey
  - AWWA Wage/Salary Survey
  - Bureau of Labor Statistics
  - PSC Annual Reports





## **EMPLOYEE COMPENSATION: SUPPORTING COMPENSATION PACKAGE**

- Support for Wage/Salary Increases
  - Consumer Price Index
  - Bureau of Labor Statistics
- Identify factors that affect compensation
  - Utility's Location
  - Local Labor Pool
- Annual Increases: Provide the basis for any percentage increases that are greater than most employees



## **EMPLOYEE COMPENSATION: SUPPORTING COMPENSATION PACKAGE**

- **Document Wage/Benefit Decisions**
  - Bd Minutes should reflect Bd's reasoning for increases
  - Specific, detailed reasons preferred over general
- **Fringe Benefits**
  - Use State Government Fringe Benefits As Baseline
  - Explain the need for benefits packages that exceed the baseline
- **Consider Implementing Evaluation System to provide better support for selective wage/salary increases**



## EMPLOYEE COMPENSATION: BONUSES

- PSC has historically disallowed bonuses
  - Salary adequate
  - Non-recurring
  - Discretionary
- Question of Lawfulness
  - KY Constitution Section 3
  - OAG 62-1
- Consider Implementing Incentive Compensation Policy to Overcome PSC Objections



# DEPRECIATION

“**[D]epreciation** is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. **Annual depreciation** is the loss which takes place in a year. In determining reasonable rates for supplying public service, it is proper to include . . . an allowance for consumption of capital . . .”

*Lindheimer v. Illinois Bell Tele. Co.*, 292 U.S. 151, 167 (1934)



# DEPRECIATION

- Depreciation Permits Recovery of the Cost of A Capital Asset
- Annual Depreciation Expense = (**Asset Cost** – Salvage Value) ÷ **Useful Life** (years)
- Two Critical Components
  - Asset Cost
  - Useful Life



## USEFUL LIFE: EFFECT ON REVENUE REQUIREMENT

**Assume: \$10 Million Water Mains**

Useful Life (Years)	Annual Depreciation Expense
25	\$400,000
30	\$333,334
40	\$250,000
50	\$200,000
62.5	\$160,000
75	\$133,334



## EFFECT OF USEFUL LIFE ON REVENUE REQUIREMENT

- Increases/Decreases Revenue Requirement
- Erroneous Useful Life creates
  - Generational Inequities (Earlier Generation pays for Asset that a Later Generation Uses)
  - Inadequate Revenue for Infrastructure Replacement
  - “Money Left on Table” That Utility Never Recovers (PSC Staff)



## METHODS FOR DETERMINING ASSET'S USEFUL LIFE

- Engineering Estimate/Judgment
- Depreciation Study
- NARUC's *Depreciation Practices for Small Water Utilities*





# DEPRECIATION STUDIES: GENERALLY

- Involves an analysis of past performance and engineering estimates of future
- Requires detailed historical records (30 Years) re: plant additions and retirements
- Survivor Curves plotted
- Supplemented with information from management and operating personnel re: current plant operations & practices
- Interpretation



## **PSC RE: USE OF DEPRECIATION STUDIES FOR SMALLER UTILITIES**

Detailed property records specific to historic plant additions, plant retirements, and salvage practices are required to complete a depreciation study. Generally, “small” water utilities, such as Pendleton District, do not maintain property records with enough detail to properly complete a formal study. Furthermore, even if adequate records were maintained, “small” utilities do not have the financial resources to fund a formal study.

Case No. 2012-00412, PSC Staff Report at 9-10



## ***Depreciation Practices For Small Utilities***

- National Association of Regulatory Utility Commissioners (NARUC) Publication (Aug. 15, 1979)
- Intended to address the needs of regulatory commissions to establish realistic depreciation rates for small H<sub>2</sub>O utilities
- Provided in [table format](#) a range of average service lives then in use by H<sub>2</sub>O utilities throughout the US for H<sub>2</sub>O facilities designed & installed & maintained in accordance with good H<sub>2</sub>O works practice



## ***Depreciation Practices For Small Utilities***

“The commission has previously used . . . [the NARUC] survey when establishing the appropriate depreciable lives for water utilities such as Rattlesnake Ridge when historic property records are not maintained in the manner necessary to perform a formal depreciation study or the utility does not have the financial resources to fund a formal study. Application of the NARUC Study is appropriate in this instance.”

Case No. 2013-00338, Order of 02/07/2014 at 4.



# PSC TREATMENT OF USEFUL LIVES

- Recent Focus on Useful Lives (Mains/Meters)
- PSC Staff Routinely Recommending Changes To Conform to NARUC Guide

Year	Total Cases	Revised Useful Lives
2012	8	5
2013	4	3
2014	6	5
2015	8	7
2016	8	8



# PSC STAFF APPROACHES

- Utility's Useful lives are within NARUC Range – No Change (Engineer)
- Useful Lives Outside NARUC Range – Revise to Minimum Range (Engineer)
- Useful Lives Outside NARUC Range – Revise to Mid-Range (Engineer/Accountant)
- Useful Lives Outside NARUC Range – Revise to Max (Accountant)
- Useful Lives Within NARUC Range – Lives Revised to Longer/Maximum Period (Accountant)



## RESPONSE TO STAFF RECOMMENDATION

- Only 1 Utility has contested recommendation
- Why?
  - Contest would delay rate increase
  - Cost of contesting
  - Surprise
  - Limited time to respond/Lack of expertise
  - Limited benefit: Staff recommended rate increase near requested amount



## PSC DECISIONS RE: DEPRECIATION

- Utility bears Burden of Proof to Demonstrate Why Its Current Useful Life Is Appropriate
- In absence of evidence to the contrary, NARUC Guide will be used to establish useful lives
- PSC has not required PSC Staff proposals to be supported by engineering/technical evidence when maximum range recommended
- Staff Recommendations adopted in **ALL** Cases
- Adopted for Ratemaking & **Accounting** Purposes





## IMPACT OF DISALLOWANCE

Case No.	Disallowance	Requested Increase	Percentage
2016-00177	\$ 48,822	\$ 118,913	41.06%
2016-00163	\$ 66,141	\$ 324,726	20.37%
2016-00068	\$ 93,784	\$ 165,260	56.75%
2016-00054	\$ 167,568	\$ 374,168	44.78%
2015-00428	\$ 41,123	\$ 701,615	5.86%
2015-00341	\$ 88,792	\$ 486,222	18.26%
2015-00331	\$ 22,414	\$ 64,514	34.74%
2015-00308	\$ 3,350	\$ 255,707	1.31%



## STEPS TO AVOID OR REDUCE DISALLOWANCE IN RATE CASE: PRE-APPLICATION

- Review Useful Lives – Are they within NARUC range? (Emphasize Mains/Meters)
- Revise for Compliance with Lower Range (Unless basis for variance)
- Estimate effect of Revision on Revenue Requirement at Mid-Point & Higher Range
- If Effects of Mid-Point/Higher Range Revision Significant, Include **Supporting Evidence** for Useful Lives in Application



## TYPES OF SUPPORTING EVIDENCE

- Past PSC Treatment of Depreciation Expense
- Depreciation Study
  - Adequate Records?
  - Potential Cost
- Engineer Testimony
  - Sworn Affidavit
  - Greater Weight



# ENGINEER AFFIDAVIT CONTENTS: PART I

- Education Background
- Professional Licenses/Memberships
- General Experience in Water Industry
- Description of Utility Facilities/Past History
- Experience with the Utility's Operations & Facilities
- Alternative to Experience with Utility
  - Review of Utility Records
  - Interviews of Prior Engineering Firms & Utility Personnel
  - Investigation of Construction Firms Performing Work



## ENGINEER AFFIDAVIT CONTENTS: PART II

- Personal Experience with Contractors/Materials in work for other utilities
- Industry Experience with Materials/Facilities
- Opinion re: useful lives
- Reasoning for Opinion



## STEPS TO AVOID OR REDUCE DISALLOWANCE: AFTER THE STAFF REPORT

- Review Staff Report
  - Is Disallowance of Depreciation Expense Recommended?
  - Does recommended Revenue Requirement (RR) meet utility's needs?
  - What is the effect on RR if utility's proposed depreciation expense level accepted?
  - If acceptance of proposed depreciation expense level would generate higher RR than requested, can utility responsibly use the additional funds?



## STEPS TO AVOID OR REDUCE DISALLOWANCE: AFTER THE STAFF REPORT – **RATES ACCEPTABLE**

- Conditional Waiver/Acceptance
  - Waive all rights & Accept Recommended **RR** and **rates** on condition PSC addresses only those 2 issues
  - No PSC ruling on other Staff recommendations
  - Still Note Objections to Report/Contested Issues
- Alternative Request for Relief
  - Full Discovery including depositions
  - Hearing
  - Separation/Isolation of Assigned Staff



## STEPS TO AVOID OR REDUCE DISALLOWANCE: AFTER THE STAFF REPORT - **RATES UNACCEPTABLE**

- Note Objections/Contested Issues
- Contested Issues (Depreciation Only)
  - Prior PSC Position on Depreciation in Prior Cases
  - Legal Objections to Use of NARUC Guidelines
  - Policy/Fact Objections to Use or Application of NARUC Guidelines
  - Staff Qualifications to Render Opinion
  - Met Standard (Within Range And Produced Evidence)
- Procedural Requests (Same as Alternative Relief)





# DEPRECIATION: SUMMARY

- **Major Issue** in Water Utility Rate Proceedings
- Examine Useful Lives **NOW**/Determine if Valid
- **(BEFORE FILING APPLICATION)** Assess the Effects on Revenue Requirement of Major Revisions in Useful Lives
- Address in Application for Rate Adjustment
- Start Maintaining the Records to Perform Depreciation Study



# DEPRECIATION: SUMMARY

- Consider Conditional Waiver To Avoid Expensive and Unproductive Litigation
- Preparation Costs Can Be **Recovered As Rate Case Expenses**



# PRACTICAL SUGGESTIONS



## Strategic Considerations

- What are the limits to your request?
- What are your time constraints for recovery of additional revenue?
- What is the cost of delaying implementation of proposed rates?
- What are the utility's priorities for using additional revenues?



## Practical Suggestion: ARF Application & Planning

- Incorporate Attachments SAO-W & RR-DC Into Planning
- Annually Review the Need For Rate Increase
- Rate Review Includes Non-Recurring Charges & Fee
- Consider More Frequent Filings To Reduce Rate Shock & Increase Customer Acceptance



## Practical Suggestion: Preparing Application

- Review all test year expenses for:
  - Improper or unlawful expenditures
  - Non-mission related expenses
  - Expenditures contrary to PSC Policy
  - Embarrassing Expenditures
- Make Adjustments to remove these expenses before filing
- Correct the Problem & Note the Correction



## Practical Suggestion: Preparing Application

- Incorporate By Reference Any Documents Already Filed with PSC (e.g., bond ordinances)
- Use Electronic Filing Procedures
- Provide Non-required Documents
  - General Ledger
  - Minutes of Board Meetings
  - Accountant's Adjusting Entries



## Practical Suggestion: Non-Recurring Charges

- NRC: Charge or fee assessed to a customer to recover the specific cost of an activity
- Examples:
  - Tap-on Fee
  - Reconnection Charge
  - Service Visit
- ARF Procedures do not prohibit revisions to Non-recurring charges





## Practical Suggestion: Non-Recurring Charges

- ARF Application provides opportunity to ensure NRCs reflect cost of service
- Revision ensures NRCs are not resulting in net losses
- Reduces the Cost of Updating
- Avoids limits placed upon revisions when made outside of general rate case



# Practical Suggestions: Review & Response to Staff Report

- Review the Entire Report
- Accountant & Attorney should also review
- Note Overall Rate Recommendation – Are the recommended rates acceptable?
- Review specific findings & recommendations
  - Does the Utility disagree with any specific finding or recommendation?
  - What is the basis for disagreement?
- Give Attention to Non-Rate Specific Recommendations



## Practical Suggestions: Review & Response to Staff Report

- Consider the future effect of accepting Staff finding or recommendation
- Response:
  - Provide additional evidence/statement to request reconsideration
  - Consider the Use of a Conditional Acceptance
  - Note all objections
  - Acceptance of Higher Rates
  - Phasing In Higher Rates
- Board Should Formally Approve Response/Acceptance



## Practical Suggestions: Is A Lawyer Needed?

- 807 KAR 5:076, §13
- No Attorney is required to:
  - File application
  - Respond to information requests
  - Appear at conferences
  - Submit Response to Staff Report
- Attorney Required Only for Hearings



## Practical Suggestions: Is A Lawyer Needed?

- How Familiar Is Utility With Process?
- Opposition/Intervenors Expected?
- Complicated Issues?
  - Depreciation
  - Debt Service
  - Rate Design
  - Unusual Expenses
- Likelihood of Hearing?
- Cost – How much can Utility afford?



## Practical Suggestions: Is A Lawyer Needed?

- Purposes for Retaining Lawyer:
  - Identify/Address Potential Ratemaking Problems
  - Avoid Procedural Delays (Delay = \$\$\$)
  - Counterweight to PSC Staff/AG/Other Intervenors
  - Prepare for Hearing
- How much lawyer is needed?
  - Standby/limited oversight
  - Full Participation
- How Familiar is Lawyer with the PSC Process?



## Practical Suggestions: Is A Lawyer Needed?

- Fees:
  - Fixed Fee for Expected Services
  - Fixed Fee/Retainer: Max Fee but Charge Per Hour until Max
  - Contingency: Hourly Rate if Hearing
  - County Attorney (No Fee)
  - Lower Rate/Lesser Involvement in Later Cases
- Fees Recoverable as Rate Case Expense



# RESOURCES





# AVAILABLE RESOURCES

- PSC Website ([psc.ky.gov](http://psc.ky.gov))
  - PSC Orders since 1980 **SEARCHABLE**
  - All Active Utility Tariffs **SEARCHABLE**
  - All Utility Tariff Filings since 2005 **SEARCHABLE**
  - Staff Opinions **SEARCHABLE**
  - Audits
  - Annual Reports since 1990
  - PSC Case Records Since 2005 **SEARCHABLE**
  - PSC Video Transcripts (Available online from 2011)
  - Listing of Daily Filings & Orders



# AVAILABLE RESOURCES

- Statutes (<http://www.lrc.ky.gov/Statutes/index.aspx>)
- Regulations (<http://www.lrc.ky.gov/Statutes/index.aspx>)
- Compilation of Utility Laws App (<http://bit.ly/2cT2oVo>)
- PSC Staff Directory  
([http://psc.ky.gov/agencies/psc/reports/psc\\_staff.pdf](http://psc.ky.gov/agencies/psc/reports/psc_staff.pdf))
- Kentucky Water Utility Law Twitter Feed  
(<https://twitter.com/gwuetcher>)
- Small Utilities Web Page (<http://smallutilities.ky.gov/>)
- PSC Regulations (<http://www.lrc.state.ky.us/kar/TITLE807.HTM>)



# AVAILABLE RESOURCES

- Presentation - <http://bit.ly/2lguH6U>



Questions?



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**<https://twitter.com/gwuetcher>**

**(859) 231-3017**

# Boardsmanship



Roles and Responsibilities of Utility Board Members

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## To Govern...

not

## ...Manage.



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## Specific Duties of a Board

- Hire, evaluate and compensate a Manager
- Adopt Policies
- Adopt and Amend Budgets
- Adopt Long-range Plans
- Adopt Rates, Rules & Regulations (Tariffs)



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## Individual Board Members...

...act in the best interest  
of the utility.

Boardsmanship



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## Specific Duties of Board Members

- Stay informed
- Attend meetings regularly
- Perform tasks assigned by Board
- Support decisions of the Board
- Keep Board matters confidential
- Avoid Conflict of Interest

Boardsmanship



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## Board Officers

Offices of a Water District (KRS 74.020(5))

Chairman

Vice Chairman (Optional – No statutory authority)

Secretary

Treasurer

Boardsmanship



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## Board Officers

Offices of a Water Association (KRS 273.227 & Bylaws)

President or Chairman

Vice President or Vice Chairman

Secretary

Treasurer

Others

Boardsmanship



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## Board Officers

Offices of a Utility Commission (KRS Chapter 96)

*Dependent on Class of City and establishing ordinance*

Chairman

Vice Chairman

Secretary

Treasurer

Boardsmanship



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## Board Officers

### Chairman or President

Preside over meetings

Sign warrants (KRS 74.050)

Prepare meeting agendas

Call special meetings

Execute documents approved by Board

Perform other duties assigned by Board

Perform other duties specified in Bylaws or Ordinance

Boardsmanship



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# Board Officers

## Vice Chairman or Vice President

No statutory duties (Water District or Utility Commission)

Preside over meetings in absence of Chairman or President

Perform other duties assigned by Board

Perform other duties specified in Bylaws or Ordinance

Boardsmanship



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# Board Officers

## Secretary

Cause the Minutes of all meetings to be prepared

Act as custodian of official records

Countersign warrants (KRS 74.050)

Authenticate official records

Perform other duties assigned by Board

Perform other duties specified in Bylaws or Ordinance

Boardsmanship



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# Board Officers

## Treasurer

Cause all funds to be disbursed according to law and procedures adopted by Board

Perform other duties assigned by Board

Perform other duties specified in Bylaws or Ordinance

Boardsmanship



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# Legal Standard of Care

## The "PIG" Rule

If it seems "piggish" to you, it probably is!  
...so keep your snout in your own trough!



Boardsmanship



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# Legal Standard of Care

## Water Districts and Utility Commissions

No statutory standard of care but the case law standard requires...

- Good faith
- Reasonable care and diligence
- Acting within the scope of authority

*The statutory standard of care for water association directors is instructive for water districts and utility commissions.*

Boardsmanship



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# Legal Standard of Care

## Water Associations (KRS 273.215)

A Director shall discharge his duties:

- In good faith
- On an "informed basis"
- In the best interests of the Association

Boardsmanship



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## Legal Standard of Care

### “Informed Basis” KRS 273.215(2)

A director shall be considered to discharge his duties on an informed basis if he makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the corporation or into a particular action to be taken or decision to be made.

Boardsmanship



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## Legal Standard of Care

### Reliance on Information KRS 273.215(3)

A director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- ✓ Officers or employees of the corporation whom the director honestly believes to be reliable and competent;
- ✓ Legal counsel, public accountants or other experts as to matters the director honestly believes to be within that expert's area of expertise; or
- ✓ A committee of the board of directors of which he is not a member if the director honestly believes the committee merits confidence.

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## Legal Standard of Care

Exceptions may be made in instances where a director possesses special knowledge that indicates alternative action is prudent and necessary.

Boardsmanship



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## Board Meetings

- ✓ Regular Meetings
- ✓ Special Meetings
- ✓ Preparing for Meetings
- ✓ Conduct of Meetings
- ✓ Action by Individual Board Members Outside of Meetings

Boardsmanship



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## Board Meetings

### Regular Meetings

- Adopt a regular meeting schedule
  - Set time, date and location
- Inform the Media (radio, print, television)
- Inform the Public (bills, website, newsletter)

Boardsmanship



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## Board Meetings

### Special Meetings

- Who calls a special meeting?
- Notice of meeting
  - Board Members, Media, General Public
- Agenda – action limited to agenda items
- How much advance notice is required?

Boardsmanship



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# Board Meetings

## Preparing for Meetings

- Develop an Agenda
- Prepare an Information Packet for Board Members
  - Delivered in advance (between two days and one week)
- Contents
  - Meeting Agenda
  - Minutes of prior meeting
  - Operational, Management & Financial Reports
  - Other information

Boardsmanship



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# Board Meetings

## Conduct of Meetings

- Follow the Agenda
- Use Parliamentary Procedure
- Voting by Chairman or President?
- Public Comment
- Closed (Executive) Session

Boardsmanship



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# Board Meetings

## Action By Individual Board Members Outside of Meetings

- Officers
- Other Board Members

Boardsmanship



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## Board Minutes

A Board “speaks only through its minutes.”

Boardsmanship



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## Board Minutes

### Preparation of Minutes

Who prepares minutes?

- Board Secretary or Staff

Who edits minutes?

- Staff or legal counsel

Are meetings recorded on audio and/or video?

Signing and Approval of Minutes

Boardsmanship



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## Board Minutes

A complete set of approved Minutes should be maintained at the utility office for inspection by the general public and the media.

When are the Minutes considered in “final form” and available for public inspection?

Boardsmanship



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## Parting Thought

Every utility's Board should develop and adopt a "Board Governance & Policy Manual."

Questions?

Boardsmanship



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**EXTENDING METER SERVICE LIFE**

Mary Ellen Wimberly  
Stoll Keenon Ogden PLLC

March 9, 2021



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**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



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**Meter Testing Requirements**



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### 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)



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### 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.**”



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### 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



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**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%



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**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)



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**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



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**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



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**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



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**Meter Accuracy**



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### 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



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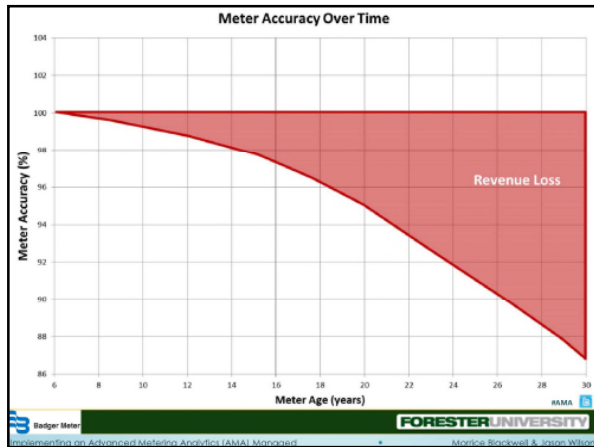
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### Meter Accuracy

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



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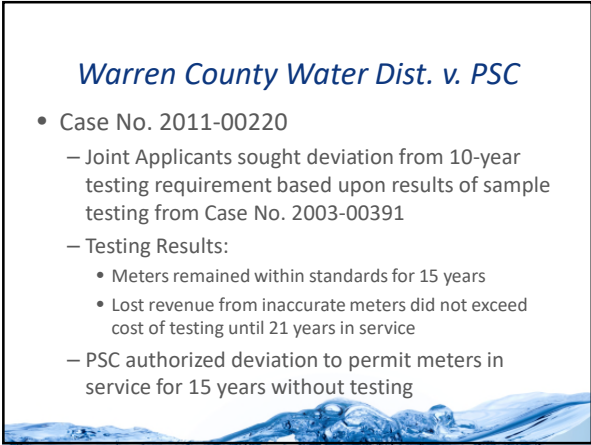
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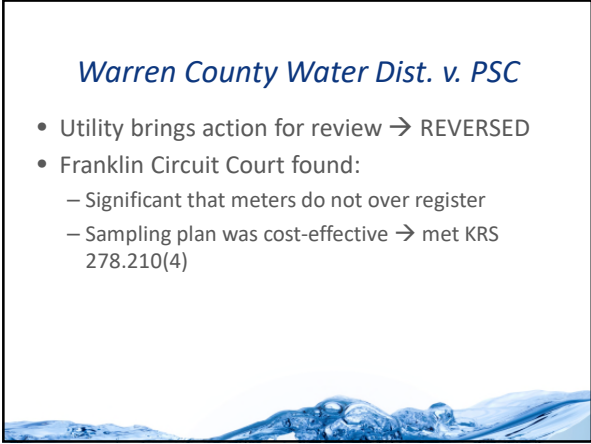
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**Case No. 2009-00253**

- 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



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**Sample Testing**



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**Sample Testing**

- Sample = subset containing characteristics of a larger population
- Statutes and regulations acknowledge sample testing



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### 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)




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### 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




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### 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




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### 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



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### ANSI Standard

- Three Inputs
  - 3. Lot Size
    - Size of entire group
    - Example: Total number of meters of a certain age
  - Based on inputs, ANSI Standard provides sample size
  - Must randomly select sample!
    - PSC has approved selections by Excel, billing software, or other computerized process



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### ANSI Standard

Lot Size	Sample Size
Less than 16	3
16 to 25	4
26 to 50	5
51 to 90	7
91 to 150	10
151 to 280	15
281 to 400	20
401 to 500	25
501 to 1,200	35
1,201 to 3,200	50
3,201 to 10,000	75



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### 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	

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#### ANSI Standard Acceptance for Maximum Flow

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

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### Low Flow Calculation

- Commission approved using a lower level of scrutiny for low flow test
  - AQL: 10
  - Inspection Level I

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**Case No.  
2016-00432**



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**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



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**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



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### Proceed With Caution . . .

- Line loss must be low



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### 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.**”

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### Accuracy of Meters

- Have Hardin County Water District’s meters remained accurate after 10 years?



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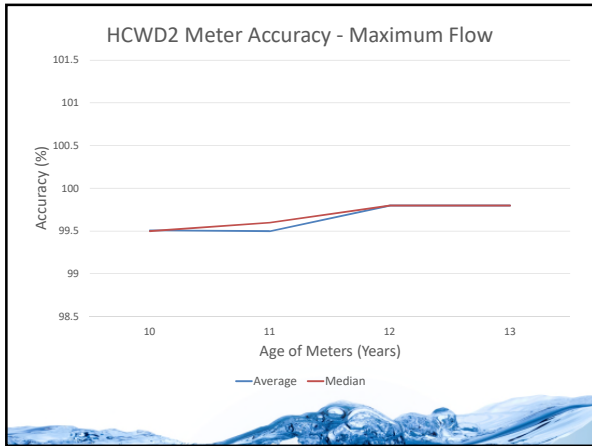
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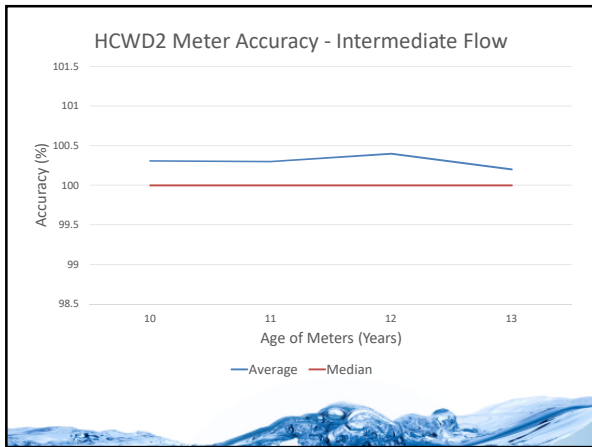
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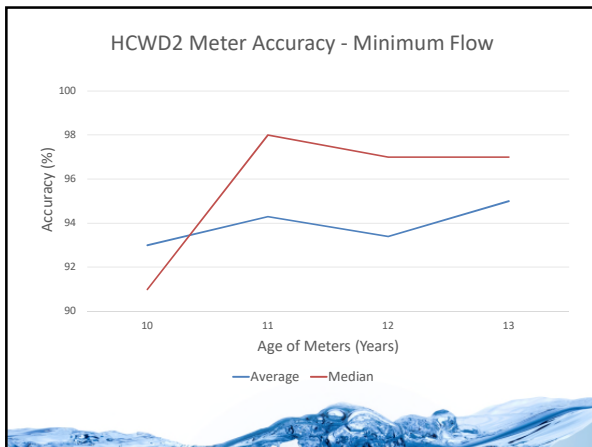
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**Case No.  
2019-00115**




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**Case No. 2019-00115**

- Grayson County Water District requested deviation from 807 KAR 5:066, Section 16(1) – Badger Model 25: 13 years → 15 years
- Approved with same restrictions as Case No. 2016-00432
- Commission stated Grayson District should test all meters in the sample at low flow rates




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**Case Nos. 2020-00137 & 2020-00138**

- Filed June 8, 2020
- Final Order requested by October 1, 2020




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## Questions?

Mary Ellen Wimberly  
maryellen.wimberly@skofirm.com  
(859) 231-3047



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**WATER COMMISSIONER TRAINING**
  
 March 9, 2021
   


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**Hot Legal Topics**
  
 March 9, 2021
   
 Damon R. Talley, General Counsel
   
 Kentucky Rural Water Association, Inc.
   
 Stoll Keenon Ogden PLLC
   
 damon.talley@skofirm.com
   
 270-358-3187
   


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


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## DISCUSSION TOPICS

6. Borrowing Money
7. 2020 General Assembly
8. Surcharges
9. Recent PSC Orders
10. Cases to Watch

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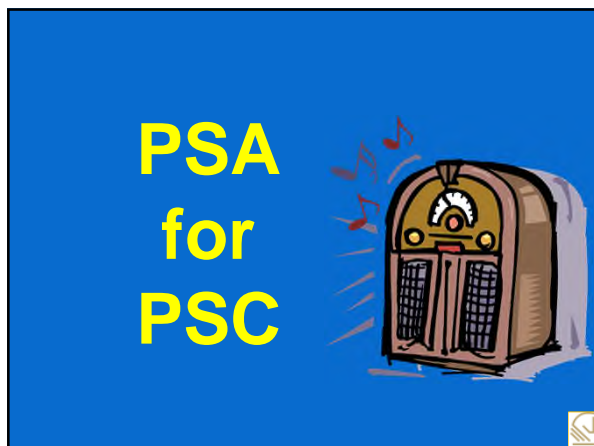
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## Reporting Requirements

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

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## Vacancy

- Inform CJE 60 Days Before Term Ends (KRS 65.008)
- CJE / Fiscal Court – 90 Days
- Then, PSC Takes Over
  - CJE Loses Right To Appoint

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## E-Mail Address Regs.

- All PSC Orders Served by E-mail
- Duty to Keep Correct E-mail Address on file with PSC
  - Default Regulatory E-mail Address
- Duty to List E-mail Address in Application & All Other Papers
  - Utility Official
  - Its Attorney



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## E-Mail Address

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



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## Why Municipals?

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



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**Default Regulatory E-mail Address**

- Send E-mail to PSC
  - [psc.reports@ky.gov](mailto:psc.reports@ky.gov)
  - [PSCED@ky.gov](mailto:PSCED@ky.gov)
- Send Letter to PSC
  - Linda C. Bridwell,  
Executive Director



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**Franchises  
and  
Contracts**



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## Franchise

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



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## Franchise

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



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**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



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**Ky. Constitution Section 164**

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



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## Court of Appeals

Crittenden-Livingston WD

vs.

Ledbetter WD

Case No. 2017-CA-000578

Oral Argument: 4-24-18

Decided: 8-17-18

Holding: No Franchise



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## Court of Appeals @ Page 4

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



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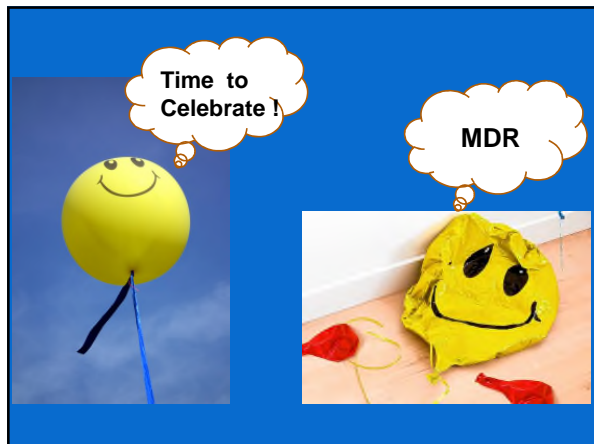
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## Ky. Supreme Court

Ledbetter W.D.

vs.

Crittenden-Livingston WD

Case No. 2018-SC-000494-DG

Motion DR: 09-12-18

DR Granted: 02-07-19

Oral Arguments: None

Decided: 02-20-20



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## Ky. Supreme Court

Ledbetter W.D.

vs.

Crittenden-Livingston WD

Decided: 02-20-20

Petition for Rehearing: 03-10-20

Decision Final: 07-09-20

**NOT TO BE PUBLISHED**



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## Ky. Supreme Court Holding

- Reversed C/A by 4-2 Vote
- Contract is Franchise
- Section 164 of Const.
  - Must Advertise
  - 20 Years or Less



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**Ky. Supreme Court Rationale**

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

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**Dissents by 2 Justices**

- Justice VanMeter
  - 2 Pages
  - "Simple contract for the sale of water from one district to the other . . ."
  - Explained Meaning of Franchise in Context of Utilities
    - Delivering Water to Retail Customers
    - Billing Customers Directly

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## Dissents by 2 Justices

- Chief Justice Minton
  - 3 Pages
  - Agreed with J. VanMeter
  - Look at Big Picture
    - Nature of Right Being Conveyed
    - No Special Privilege
    - Supplier Already Had Right to Produce and Sell Water



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## Why?

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

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## How Long Is Long Term?

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



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## Significance

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

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## What's Next

- Rural Development Response
  - 20 - Year Contract and 40 - Year Loan ? ? ?
  - OGC Opinion
- PSC Response ? ? ?

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## FAQ

1. My Utility's Contract Was Originally a 40 - Year Contract. Is It Null and Void?

Answer: NO

- Opinion Did **Not** Void All Such Contracts
- Someone Must File Suit

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## Unique Facts in Ledbetter

- Supplier Constructed 6 Miles of Water Line Inside Purchaser's Service Area
- Master Meter Located on Purchaser's Property (Water Tank)
- Building Constructed to House Master Meter on Purchaser's Property



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## FAQ

2. Our Utility is a City. We Supply Water to a Water District. Does This Court Case Affect Us?

Answer: YES



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## FAQ

3. Our Utility is a City. We Supply Water to Another City. Does This Court Case Affect Us?

Answer: YES

But . . . Don't Have to Worry About PSC



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**FAQ**

4. Our Utility's Contract Was Only for 15 Years. Does This Court Case Affect Us?

Answer: NO



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**FAQ**

5. Our Utility's Contract Was Originally for 40 Years, But It Only Has 15 Years Left. Does This Court Case Affect Us?

Answer: YES

Same Facts as in Ledbetter Case



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**FAQ**

6. What is the Significance of the Supreme Court Opinion Being an Unpublished Opinion?

**Answer:**

It Cannot Be Cited as Authority in Another Case Without Providing Copy to Judge and Opposing Attorney. Judge Can Still Rely on the Case as Authority.



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## KRWA's Role

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



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STOLL  
KEENON  
OGDEN

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## Sovereign Immunity



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# The King Can Do No Wrong



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## 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



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## 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



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**Ky. Supreme Court**  
Northern Ky. WD vs. Carucci  
Case No. 2019-SC-000105-DG  
Citation: 600 S.W.3d 240  
Motion DR: 02-19-19  
DR Granted: 08-29-19  
Affirmed: 08-29-19  
Final: 02-20-20

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**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

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## 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



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## Ky. Supreme Court

Northern Ky. WD vs. Carucci

DR Granted: 08-29-19

Oral Arguments: None

Decided: 08-29-19

Final: 02-20-20

Holding: No S/I for  
W.D.



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## Holding

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



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### Talley's Tips

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



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**QUESTIONS?**



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# Filed - Rate Doctrine 101

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## *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

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## *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.

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**Filed – Rate Doctrine**

Requires Filing of:

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



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**Filed – Rate Doctrine**

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



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# Open Meetings Act

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## Attending Board Meeting Via Zoom

- 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

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## Special Rules - VTC

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

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## 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



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## 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



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**KRS 278.300(1)**

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

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### Practical Effect

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



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**Violation**

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**Show  
Cause  
Cases**



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### Show Cause Case # 3

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



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### Show Cause Case # 3

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

(Continued)

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### Show Cause Case # 3

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

(Continued)

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### Show Cause Case # 3

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

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### Show Cause Case # 3

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

Pages 7 and 8 of Order

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### Show Cause Case # 3

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



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### Show Cause Case # 3

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



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### Show Cause Case # 3

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



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### 2019 Show Cause Cases

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



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## 2019 Show Cause Cases

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



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## 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



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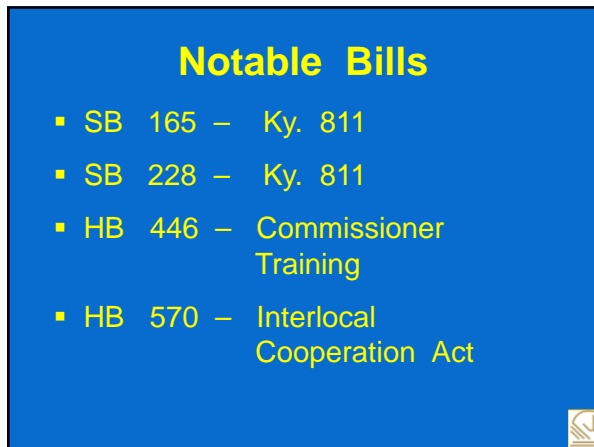
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# Surcharge Cases

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### W.D. Surcharges

Cannonsburg	2014-267 & 2018-376
Martin Co.	2018-017
Estill Co.	2019-119
Graves Co.	2019-347
Farmdale	2020-021
Southern	2019-131

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- ### Water Loss Reduction Surcharge
- Mechanism to Recover Reduction in Revenue Requirement Because of Unaccounted for Water Loss over 15%
  - Time Limit: 36 or 48 Months
  - Monetary Limit
  - Restrictions

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## Restrictions

- Separate Bank Account
- Water Loss Reduction Plan
- Prior PSC Approval
- Monthly Reports



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## How to Get Surcharge

1. File ARF Case
  - Staff Report
  - Motion for Surcharge
2. File Separate Application



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STOLL  
KEENON  
OGDEN  
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# Recent PSC Orders

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## Thou Shall File a Rate Adjustment Case

- Over 2 Dozen Utilities . . .
- Case Type
  - PWA
  - Refinancing
  - .023 cont.

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## Rate Adjustment

- Case Type
  - Defending Wholesale Rate Increase
  - Intervention
  - Deviation
  - Any Application

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## Rate Adjustment

- Reasons
  - No Recent General Base Rate Adjustment
  - Negative Cash Flow
  - Decreasing Depreciation Reserves



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## 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



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## Leaky 11 Cases

Findings:

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



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## Leaky 11 Cases

Utilities Ordered to:

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



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## Leaky 11 Cases

PSC Published

Comprehensive Report:

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



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## 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



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## Pikeville

Issues:

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



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## Pikeville

### Holding:

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

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## Pikeville Holding (cont.)

- Other Wholesale Customer
  - Settled Before Case Filed
  - PSC Reduced Rate
  - Must Pay 1/2 of Rate Case Expense

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## Pikeville Status

Decided: 12-19-19 & 01-31-20  
Appealed: Franklin Cir. Court  
Status: Pending

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## PSC Case No. 2019 - 444

Filed: 11-27-2019  
Seller: Princeton  
Buyers: Caldwell Co. WD &  
Lyon Co. WD  
Type: Municipal Wholesale  
Rate increase  
Hearing: 05-05-2020  
Decided: 06-15-2020



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## Princeton

### Issues:

- Unit Cost Approach
- No True COSS
- Allocation of Expenses
- Rate Case Expense



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## Princeton

### Holding:

- Unit Cost Approach: Invalid
- Wholesale Rate Increase ↓
- Rate Case Expense
  - Reduced
  - Attorney Fees OK



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## Princeton Holding (cont.)

- Rate Case Expense Shared by Princeton & Wholesale Customers
- Criticized for No Negotiations
- Both Wholesale Customers Must File Rate Adjustment Application



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## PSC Case No. 2019 - 268

Filed: 07-31-2019  
Seller: Knott Co. WD  
Type: ARF Case  
Hearing: 01-22-2020  
Decided: 01-31-20



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## PSC Case No. 2019 - 268

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



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## PSC Case No. 2019 - 268

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



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## PSC Case No. 2019 - 115

Filed: 4-11-2019  
Utility: Grayson Co. WD  
Type: Deviation  
Issue: 15 Year Meters  
Sample Testing  
Decided: 4-28-20



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## PSC Case No. 2020 - 137

Filed: 6-8-2020  
Utility: West Daviess Co.  
Type: Deviation  
Issue: 15 Year Meters  
Sample Testing  
Decided: Pending



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## PSC Case No. 2020 - 138

Filed: 6-8-2020  
Utility: Southeast Daviess Co.  
Type: Deviation  
Issue: 15 Year Meters  
Sample Testing  
Decided: Pending



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270-358-3187



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